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Contents

Federal Register

Vol. 91, No. 192

Tuesday, October 6, 2026

Agriculture Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 63520–63521

Alcohol and Tobacco Tax and Trade Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 63651–63656

Coast Guard
RULES
Security Zone:
Patapsco River, Baltimore, MD, 63497–63498
PROPOSED RULES
Safety Zone:
Red Bull Flugtag, Intercoastal Waterway, Biscayne Bay, Miami, FL, 63515–63516

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration
See Patent and Trademark Office

Commodity Futures Trading Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 63531–63532

Delaware River Basin Commission
PROPOSED RULES
Basin Regulations:
Water Code, 63511–63513

Employee Benefits Security Administration
RULES
Transparency in Coverage, 63748–63867

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 63534
Importation or Exportation of Liquified Natural Gas or Electric Energy; Applications, Authorizations, etc.:
Freedom LNG LLC, 63532–63534

Environmental Protection Agency
PROPOSED RULES
Initial Air Quality Designations for the 2024 Revised Primary Annual Fine Particle National Ambient Air Quality Standards, 63516–63519
NOTICES
2027 Allowance Allocations for Production and Consumption of Regulated Substances under the American Innovation and Manufacturing Act, and Final Actions Establishing Administrative Consequences:
Phasedown of Hydrofluorocarbons, 63548–63556
Certain New Chemicals or Significant New Uses:
Statements of Findings—June 2026, 63556

Federal Aviation Administration
RULES
Airspace Designations and Reporting Points:
Peoria, IL, 63475–63476
PROPOSED RULES
Airspace Designations and Reporting Points:
Gunnison-Crested Butte Regional Airport, Gunnison, CO, 63509–63511
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Aviation Administration Surface Weather Status Dashboard, 63639–63640

Federal Bureau of Investigation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals
Monthly Return of Arson Offenses Known to Law Enforcement, 63580–63581

Federal Communications Commission
RULES
Radio Broadcasting Services:
Selmer, TN, 63499–63500
Whitehall, MI, 63499
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 63556–63560

Federal Deposit Insurance Corporation
NOTICES
Privacy Act; Systems of Records, 63561

Federal Emergency Management Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Hazard Mitigation Grant Programs, 63570–63572

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 63544–63545
Application:
BIF III Holtwood LLC, 63542–63543
Natural Gas Pipeline Co. of America LLC, 63540–63542
Combined Filings, 63539–63540, 63545–63548
Environmental Issues:
Southern Star Central Gas Pipeline, Inc.; Proposed Evergy Mcnew Power Plant Delivery Project, 63534–63536
Institution of Section 206 Proceeding and Refund Effective Date:
PJM Interconnection, LLC, 63548
Licenses; Exemptions, Applications, Amendments, etc.:
Alaska Energy Authority; Fishway Prescriptions, 63543–63544
Scoping Period on Environmental Issues:
Transcontinental Gas Pipe Line Co., LLC; Proposed Leidy Access Expansion Project, 63537–63539

Federal Motor Carrier Safety Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Pilot Program to Allow Commercial Drivers to Pause Their 14-Hour Driving Window, 63640–63642

Federal Reserve System
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 63561–63562

Financial Crimes Enforcement Network
PROPOSED RULES
Proposal of Special Measure Regarding Convertible Virtual Currency Mixing, as a Class of Transactions of Primary Money Laundering Concern; Withdrawal, 63513–63514
Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets; Withdrawal, 63514–63515

Food and Drug Administration
RULES
Medical Devices:
Cardiovascular Devices; Classification of the Hyperoxia Monitoring Device Adjunct to Pulse Oximetry, 63491–63493
Exemptions from Premarket Notification: Class II Devices; Certain Clinical Toxicology Test Systems, 63478–63487
General and Plastic Surgery Devices; Classification of the Focused Ultrasound System for Non-Thermal, Mechanical Tissue Ablation, 63493–63495
Immunology and Microbiology Devices; Classification of the High Throughput DNA Sequencing for Hereditary Cancer Predisposition Assessment Test System, 63487–63491
NOTICES
Drug Products not Withdrawn from Sale for Reasons of Safety or Effectiveness:
Pralidoxime Chloride (Autoinjector) (Pralidoxime Chloride) solution, 600 Milligrams/2 Milliliters (300 Milligrams/Milliliter), 63562–63563
Issuance of Priority Review Voucher; Rare Pediatric Disease Product:
Fayuvi (rebisufligene etisparvovec-hopf), 63569
Request for Information:
Design and Safety Considerations for Clinical Trials Involving Ibogaine Drug Products, 63563–63569
Withdrawal of Approval of Drug Application:
Teva Pharmaceuticals USA, Inc., et al.; Correction, 63569

Foreign Assets Control Office
NOTICES
Sanctions Action, 63656–63670

Foreign-Trade Zones Board
NOTICES
Application for Duty Free Entry of Scientific Instruments:
New Mexico Institute of Mining and Technology, et al., 63521–63522

Health and Human Services Department
See Food and Drug Administration
See National Institutes of Health
RULES
Transparency in Coverage, 63748–63867

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See U.S. Citizenship and Immigration Services

Housing and Urban Development Department
NOTICES
Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for 2027, 63573–63578

Interior Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Improving Customer Experience, 63578–63580

Internal Revenue Service
RULES
Transparency in Coverage, 63748–63867
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Cognitive and Psychological Research Coordinated by Statistics of Income on Behalf of All IRS Operations Functions, 63670–63671

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Frozen Warmwater Shrimp from Thailand, 63527–63529
Certain Uncoated Paper from Portugal, 63522–63523
Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates, 63525–63527
Drawn Stainless Steel Sinks from the People's Republic of China; Correction, 63523–63524
Large Diameter Welded Pipe from the Republic of Turkiye, 63524–63525

Justice Department
See Federal Bureau of Investigation

Labor Department
See Employee Benefits Security Administration

National Archives and Records Administration
See Office of Government Information Services
NOTICES
Privacy Act; Systems of Records, 63581–63582

National Highway Traffic Safety Administration
RULES
Eliminating Obsolete Regulations Related to the 911 Grant Program, 63500–63502
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Assessment of Contextual Driver Monitoring Systems, 63642–63650
Request for Information:
Nationwide Implementation of Prehospital Blood Transfusion, 63650–63651

National Institutes of Health
NOTICES
Hearings, Meetings, Proceedings, etc.:
National Cancer Institute, 63569–63570

National Oceanic and Atmospheric Administration
RULES
Reef Fish Fishery of the Gulf of America; Amendment 62, 63502–63508

National Telecommunications and Information Administration
RULES
Eliminating Obsolete Regulations Related to the 911 Grant Program, 63500–63502

Nuclear Regulatory Commission
NOTICES
Facility Operating Licenses:
Applications and Amendments Involving Proposed No Significant Hazards Considerations, etc., 63583–63587
Privacy Act; Systems of Records, 63587–63604

Office of Government Information Services
NOTICES
Hearings, Meetings, Proceedings, etc.:
Chief Freedom of Information Act Officers Council, 63582–63583

Patent and Trademark Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Global Intellectual Property Academy Surveys, 63530–63531
Resource Center Metrics, 63529–63530

Postal Regulatory Commission
NOTICES
New Postal Products, 63604–63605

Securities and Exchange Commission
RULES
EDGAR Filer Manual, 63476–63478
PROPOSED RULES
Adviser and Regulated Fund Custody Rules; Crypto Custody Rules, 63870–64103
Investment Adviser Performance-Based Compensation Modernization, 63676–63745
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 63611–63612
Registration as a National Securities Exchange Pursuant to the Securities Exchange Act:
ICE Futures U.S., Inc., 63609
Self-Regulatory Organizations; Proposed Rule Changes:
Cboe BZX Exchange, Inc., 63614–63616
Cboe C2 Exchange, Inc., 63609–63611
Cboe EDGX Exchange, Inc., 63612–63614
Investors Exchange LLC, 63606–63609
New York Stock Exchange LLC, 63616–63623
NYSE American LLC, 63623–63624
NYSE Arca, Inc., 63605–63606
Texas Stock Exchange LLC, 63624–63626
The Options Clearing Corp., 63626–63637

Small Business Administration
NOTICES
Disaster Declaration:
Connecticut, 63637
Oregon, 63637–63638

Surface Transportation Board
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Classification Index Survey Form, 63639
Petitions for Declaratory Order and Petitions for Relief Not Otherwise Specified, 63638–63639

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See National Highway Traffic Safety Administration

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
See Financial Crimes Enforcement Network
See Foreign Assets Control Office
See Internal Revenue Service
RULES
Privacy Act Exemptions, 63495–63497

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application to Replace Permanent Resident Card, 63572

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Designation of Work Study Site Supervisors, 63672–63673
Financial Status Report, 63673
PayVA (Pay Now Enter Info Page), 63672
Work Study Work Site Application, 63671–63672

Separate Parts In This Issue

Part II
Securities and Exchange Commission, 63676–63745

Part III
Health and Human Services Department, 63748–63867
Labor Department, Employee Benefits Security Administration, 63748–63867
Treasury Department, Internal Revenue Service, 63748–63867

Part IV
Securities and Exchange Commission, 63870–64103

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

14 CFR
71 63475
Proposed Rules:
71 63509
17 CFR
232 63476
Proposed Rules:
239 63676
249 63676
270 63870
274 (2 documents) 63676, 63870
275 (2 documents) 63676, 63870
279 63870
18 CFR
Proposed Rules:
410 63511
21 CFR
862 63478
866 63487
870 63491
878 63493
26 CFR
54 63748
29 CFR
2590 63748
31 CFR
1 63495
Proposed Rules:
1010 (2 documents) 63513, 63514
1020 63514
1022 63514
33 CFR
165 63497
Proposed Rules:
165 63515
40 CFR
Proposed Rules:
81 63516
45 CFR
147 63748
47 CFR
Ch. IV 63500
73 (2 documents) 63499
50 CFR
622 63502

Rules and Regulations

Federal Register
Vol. 91, No. 192
Tuesday, October 6, 2026

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2026–8054; Airspace Docket No. 26–AGL–15]

RIN 2120–AA66

Establishment of Class E Airspace; Peoria, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at OSF St Francis Medical Center Heliport, Peoria, IL. This action supports new instrument procedures and instrument flight rule (IFR) operations.

DATES: Effective 0901 UTC, December 24, 2026. 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. An electronic copy of this document may also be downloaded from *www.federalregister.gov.*

FAA Order JO 7400.11M, 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 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 OSF St Francis Medical Center Heliport, Peoria, IL, to support IFR operations.

History

The FAA published an NPRM for Docket No. FAA–2026–8054 in the **Federal Register** (91 FR 44779; July 24, 2026) proposing to establish Class E airspace at OSF St Francis Medical Center Heliport, Peoria, IL. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. Nine comments were received. One comment expressed support for the NPRM.

The FAA received eight comments objecting to the proposed amendment on the grounds that low-flying helicopter traffic is causing noise and vibration, resulting in disturbance and structural damage to homes within Peoria, including historic homes and districts. These commenters expressed concern with the proposal on these grounds without articulating how it would cause or worsen these conditions that they allege already exist. These commenters requested an environmental review pursuant to the National Environmental Policy Act that considers these impacts, including cumulative impacts, and includes a formal Section 106 review and consultation under the National Historic Preservation Act (NHPA).

In response to these comments, the FAA clarifies that Class E5 airspace extending upward from 700 feet above the surface already exists in the Peoria, IL, area to protect instrument procedures for Peoria International Airport (PIA). The instant rulemaking action does not alter or expand the existing PIA Class E5 airspace footprint over the City of Peoria west of the Illinois River where the commenters' properties are located. This action only establishes a minimal extension of Class E5 airspace east of the Illinois River to safely contain aircraft executing the missed approach segment of the new instrument approach procedure for the OSF helipad. Moreover, this rulemaking action does not change existing flight patterns, altitudes, or baseline operations, including those over the historic districts cited by the commenters. Accordingly, the FAA has determined that the Area of Potential Effects (APE) for this undertaking does not encompass these properties. In accordance with 36 CFR 800.4(d)(1), the FAA finds that no historic properties are affected by this rule. A formal Section 106 review and consultation with respect to the pre-existing Peoria airspace is outside the scope of this action.

One commenter also raised issues outside the scope of this action, such as the number of annual operations at OSF, airspace congestion, and the perceived lack of standardized traffic patterns. Other commenters similarly referenced increasing numbers of operations. The FAA is not addressing these topics because this rulemaking action is unrelated to these matters.

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 7400.11M, dated July 30, 2026, and effective September 15, 2026. These amendments will be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11M, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly

available as listed in the **ADDRESSES** section of this document.

The Rule

This action modifies 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6.6-mile radius of OSF St Francis Medical Center Heliport, Peoria, IL. This action is the result of instrument procedures being developed for this heliport to support IFR operations.

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 Order 2100.6B, ''Rulemaking and Guidance Procedure'' (March 10, 2025); and (3) is expected to result in, at most, de minimis costs from compliance with applicable operating requirements or minor flight rerouting for operators choosing to navigate around the controlled airspace. Since these amendments are routine and the expected impact to operators is de minimis, the FAA certifies 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 1050.1G, ''FAA National Environmental Policy Act Implementing Procedures,'' paragraph B–2.5(a), which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph B–2.5(k), which categorically excludes from further environmental impact review the publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks. As such, this action is not expected to result in any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11M, Airspace Designations and Reporting Points, dated July 30, 2026, and effective September 15, 2026, is amended as follows:

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

* * * * *

AGL IL E5 Peoria, IL [Establish]

OSF St Francis Medical Center Heliport, IL (Lat. 40°42′10″ N, long. 89°35′32″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the OSF St Francis Medical Center Heliport.

* * * * *

Issued in Fort Worth, Texas, on September 28, 2026.

Jerry J. Creecy,

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

[FR Doc. 2026–20479 Filed 10–5–26; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–11438; 34–106345; 39–2565; IC–36326]

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to Volume II of the Electronic Data Gathering, Analysis, and Retrieval system Filer Manual (''EDGAR Filer Manual'' or ''Filer Manual'') and related rules and forms. EDGAR Release 26.3 will be deployed in the EDGAR system on September 14, 2026.

DATES: *Effective date:* October 6, 2026. The incorporation by reference of the revised Filer Manual volumes is approved by the Director of the Federal Register as of October 6, 2026.

FOR FURTHER INFORMATION CONTACT: For questions regarding the amendments to Volume II of the Filer Manual, please contact Rosemary Filou, Deputy Director and Chief Counsel, Dan Chang, Senior Special Counsel, or Jerard Gibson, Senior Special Counsel, in the EDGAR Business Office at (202) 551–3900. For questions regarding the EDGAR submission of Form 1, please contact Justin Pica, Assistant Director, or David Michehl, Special Counsel, in the Division of Trading and Markets at (202) 551–5500. For questions regarding EDGAR submission of ANE Exception Notices and withdrawals, please contact John Guidroz, Assistant Director, or Israel Goodman, Special Counsel, in the Division of Trading in Markets at (202) 551–5500. For questions regarding the change to the cover page of Form 13F, please contact Heather Fernandez at (202) 551–6708 or Gregory Jaffray (202) 551–6717 in the Division of Investment Management.

SUPPLEMENTARY INFORMATION: We are adopting an updated Filer Manual, Volume II: ''EDGAR Filing,'' Version 78 (September 2026) and amendments to 17 CFR 232.301, Rule 301 of Regulation S–T. The updated Filer Manual Volume is incorporated by reference into the Code of Federal Regulations.

I. Background

The Filer Manual contains information needed for filers to make submissions on EDGAR. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[1] Filers must consult the Filer Manual in conjunction with our rules governing mandated electronic filings when preparing documents for electronic submission.

II. Amendments to Volume II of the Filer Manual

EDGAR will be updated pursuant to EDGAR Release 26.3, and corresponding amendments to Volume II of the Filer

[1] *See* Rule 301 of Regulation S–T.

Manual are being made to reflect those changes, as descried below.

Submission of XBRL Documents

Technical information regarding the submission of XBRL documents is being removed from Chapter 6 of the Filer Manual and placed in the EDGAR XBRL Guide, the technical specification document containing detailed information regarding the submission of Inline XBRL documents on EDGAR. The XBRL information being moved is highly technical and therefore it is more appropriate for it to be part of the EDGAR XBRL Guide technical specification document.

Forms 13F and 13F–CTR

The submission templates available on the EDGAR Filing website for Forms 13F and 13F–CTR are being revised to correct an error in labeling. In the ''Cover Page'' section of those templates, the reference to ''Special Instruction 5'' will be corrected to ''Special Instruction 4,'' so filers will be referred to the correct instruction (''Do you wish to provide explanatory information (*e.g.,* pursuant to Special Instruction 4) on your filing?'').

ANE Exception Notices Under 17 CFR 240.3a71–3(d)(1)(vi)

As part of the Division of Trading and Market's Paper to Electronic initiative, on September 14, 2026, EDGAR is introducing a new online ANE Exception Notice interface on the EDGAR Filing website that will allow filers to electronically submit ANE Exception Notices and withdrawals on the interface or via EDGAR filer-constructed submissions.

- Filers are not required to submit ANE Exception Notices and withdrawals on EDGAR until January 1, 2027 and may continue to submit ANE Exception Notices and requests for withdrawal via email until December 31, 2026.
- Filers may submit LIVE ANE Exception Notices and withdrawals on EDGAR as of September 14, 2026.
- Filers may make TEST submissions on EDGAR as of September 14, 2026. Filers may also test the ANE Exception Notice filing process on the EDGAR Beta environment beginning two weeks prior to September 14, 2026.
- As of January 1, 2027, email filings of ANE Exception Notices and withdrawals will not be accepted, and all such submissions must be submitted electronically via the new online ANE Exception Notice EDGAR interface or be filer-constructed for EDGAR.
- Filers who have not filed electronically on EDGAR previously must submit Form ID to convert their EDGAR CIK from ''paper'' to electronic filing, and follow the relevant instructions on *SEC.gov* (Apply for EDGAR Access—Applicants With an EDGAR Central Index Key (CIK) Account but No Access Codes: Broker-Dealer or ''Paper Filer'' Seeks Electronic Access for the First Time in Order to File Electronically on EDGAR).

Form 1

In addition, as part of the Division of Trading and Market's Paper to Electronic initiative, on September 14, 2026, EDGAR is introducing a new online Form 1 interface on the EDGAR Filing website that will allow filers to electronically submit Form 1 and all related variants (1, 1AA, 1AC, 1/A, 1/A–A, 1/A–T, 1/S–M, 1/S–R, and 1W) on the interface or via EDGAR filer-constructed submissions.

- Filers are not required to submit Form 1 and variants on EDGAR until March 2, 2027, and may continue to submit Form 1 and variants in paper until March 1, 2027.
- Filers may submit LIVE Form 1 and variant submissions on EDGAR as of September 14, 2026.
- Filers may make TEST submissions on EDGAR as of September 14, 2026. Filers may also test the Form 1 filing process on the EDGAR Beta environment beginning two weeks prior to September 14, 2026.
- As of March 2, 2027, paper filings of Form 1 and variant submissions will not be accepted, and all such submissions must be submitted electronically via the new online Form 1 EDGAR interface or be filer-constructed for EDGAR.
- Filers who have not filed electronically on EDGAR previously must submit Form ID to convert their EDGAR CIK from paper to electronic filing, and follow the relevant instructions on *SEC.gov* (Apply for EDGAR Access—Applicants With an EDGAR Central Index Key (CIK) Account but No Access Codes: Broker-Dealer or ''Paper Filer'' Seeks Electronic Access for the First Time in Order to File Electronically on EDGAR).

III. Amendment to Rule 301 of Regulation S–T

Along with the adoption of the updated Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference of the revised Filer Manual into the Code of Federal Regulations. This incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

The updated EDGAR Filer Manual is available at *https://www.sec.gov/edgar/filer-information/current-edgar-filer-manual.*

IV. Administrative Law Matters

Because the Filer Manual and rule amendments relate solely to agency procedures or practice and do not substantially alter the rights and obligations of non-agency parties, publication for notice and comment is not required under the Administrative Procedure Act (''APA'').[2] It follows that the amendments do not require analysis under requirements of the Regulatory Flexibility Act [3] or a report to Congress under the Small Business Regulatory Enforcement Fairness Act of 1996.[4]

The Office of Management and Budget has determined that this action is not a significant regulatory action as defined in Executive Order 12866, as amended, and therefore it was not subject to Executive Order 12866 review.

The effective date for the updated Filer Manual and related rule amendments is October 6, 2026. In accordance with the APA,[5] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manual with the related system upgrades.

V. Statutory Basis

We are adopting the amendments to Regulation S–T under the authority in sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[6] sections 3, 12, 13, 14, 15, 15B, 23, and 35A of the Securities Exchange Act of 1934,[7] section 319 of the Trust Indenture Act of 1939,[8] and sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[9]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

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[2] 5 U.S.C. 553(b)(A).

[3] 5 U.S.C. 601 through 612.

[4] 5 U.S.C. 804(3)(c).

[5] 5 U.S.C. 553(d)(3).

[6] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[7] 15 U.S.C. 78c, 78*l,* 78m, 78n, 78*o,* 78*o*–4, 78w, and 78*ll.*

[8] 15 U.S.C. 77sss.

[9] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78n–1, 78*o*(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets forth the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the EDGAR Filer Manual, Volume I: ''General Information,'' Version 43 (March 2026). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 78 (September 2026). All EDGAR material referenced in this paragraph is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. You must comply with these requirements in order for documents to be timely received and accepted. The EDGAR Filer Manual is made available for inspection by the Commission and the National Archives and Records Administration (NARA). The EDGAR Filer Manual may be obtained from the SEC's website at *https://www.sec.gov/edgar/filerinformation/current-edgar-filer-manual.* For information on the availability of the EDGAR Filer Manual at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.*

By the Commission.

Dated: September 14, 2026.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2026–20461 Filed 10–5–26; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 862

[Docket No. FDA–2026–N–4268]

Medical Devices; Exemptions From Premarket Notification: Class II Devices; Certain Clinical Toxicology Test Systems

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA) is publishing an order setting forth its final determination to exempt certain class II clinical toxicology test systems from premarket notification (510(k)) requirements, subject to certain limitations. This exemption from 510(k) requirements, subject to certain limitations, is immediately in effect for such devices. This exemption will decrease regulatory burdens on the medical device industry and will eliminate private costs and expenditures required to comply with certain Federal regulations. FDA is amending the classification language within the Code of Federal Regulations (CFR) for certain class II clinical toxicology test systems to reflect this final determination. FDA is publishing this order in accordance with the Federal Food, Drug, and Cosmetic Act (FD&C Act).

DATES: This order is effective October 6, 2026.

FOR FURTHER INFORMATION CONTACT: Joseph Kotarek, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3528, Silver Spring, MD 20993, 301–796–2718, *Joseph.Kotarek@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and FDA's implementing regulations in part 807, subpart E of the CFR (21 CFR part 807, subpart E), persons who are required to register and who propose to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a device intended for human use are required to submit a 510(k) to FDA. The device may not be marketed until FDA (we or the Agency) finds it ''substantially equivalent'' within the meaning of section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a legally marketed device that does not require premarket approval. A 510(k) is not required for devices in certain situations, such as when they have been exempted from that requirement under section 510(m) of the FD&C Act.

The 21st Century Cures Act (Cures Act) (Pub. L. 114–255) was signed into law on December 13, 2016. Section 3054 of the Cures Act amended section 510(m) of the FD&C Act. As amended, section 510(m)(1)(A) of the FD&C Act requires that within 90 days of the date of enactment of the Cures Act, and at least once every 5 years thereafter (as FDA determines appropriate), FDA publish in the **Federal Register** a notice containing a list of each type of class II device that FDA determines no longer requires a report under section 510(k) of the FD&C Act to provide reasonable assurance of safety and effectiveness. After providing at least a 60-day public comment period, FDA must then publish in the **Federal Register** a list representing the final determination with respect to the devices contained in the list under section 510(m)(1)(B) of the FD&C Act. Additionally, section 510(m)(2) of the FD&C Act provides that FDA may exempt a class II device from the requirement to submit a report under section 510(k) of the FD&C Act, upon FDA's own initiative or a petition of an interested person, if FDA determines that a 510(k) is not necessary to assure the safety and effectiveness of the device. FDA must publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and provide a 60-day period for public comment.

Exemptions from premarket notification for certain clinical toxicology test systems, in addition to exemptions for other device types, were proposed and finalized in 2017. FDA published its initial notice for these clinical toxicology test systems under section 510(m)(1)(A) of the FD&C Act in the **Federal Register** of March 14, 2017 (82 FR 13609), and issued its final determination of exemption of the devices in a notice in accordance with section 510(m)(1)(B) of the FD&C Act in the **Federal Register** of July 11, 2017 (82 FR 31976). In the **Federal Register** of December 30, 2019 (84 FR 71794), FDA amended the relevant sections of the CFR to reflect the exemptions finalized in July 2017.

In the **Federal Register** of May 1, 2026 (91 FR 23427) (''the May 2026 notice''), FDA published a notice announcing its intent to expand the exemptions from premarket notification requirements for certain class II clinical toxicology test systems to additional devices within the device types and provided 60 days for interested persons to submit comments

by June 30, 2026. Specifically, FDA announced its intent to remove the exception for devices intended for Federal drug testing programs from the 510(k) exemptions for the clinical toxicology test systems identified in the May 2026 notice. FDA received comments from approximately 70 commenters during the 60-day comment period. FDA's responses to the timely received comments can be found in section III of this order. This final order sets forth our final determination to expand the exemptions for the class II clinical toxicology test systems that were the subject of the May 2026 notice. Through this action, FDA is amending the language for the identified classification regulations (21 CFR 862.3100(b), 862.3150(b), 862.3170(b), 862.3250(b), 862.3270(b), 862.3580(b), 862.3610(b), 862.3620(b), 862.3630(b), 862.3640(b), 862.3650(b), 862.3700(b), 862.3870(b), and 862.3910(b)) to reflect this final determination.[1]

This final order is expected to result in decreased regulatory burdens on the medical device industry and will eliminate private costs and expenditures required to comply with certain Federal regulations. Specifically, regulated industry will no longer have to invest time and resources in 510(k) submissions for devices exempt from such requirements.

II. Factors FDA Generally Considers for Exemption

There are a number of factors FDA generally considers to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the January 21, 1998, **Federal Register** notice (63 FR 3142) and subsequently in the guidance the Agency issued on February 19, 1998, titled ''Procedures for Class II Device Exemptions from Premarket Notification'' (Ref. 1).

Accordingly, FDA generally considers the following factors to determine whether premarket notification is necessary or if an exemption would be appropriate for class II devices: (1) the device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device; (2) characteristics of the device necessary for its safe and effective performance are well established; (3) changes in the device that could affect safety and effectiveness will either (a) be readily detectable by users by visual examination or other means such as routine testing, before causing harm, or (b) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (4) any changes to the device would not be likely to result in a change in the device's classification. FDA may also consider that, even when exempting devices from 510(k) requirements, these devices would still be subject to general limitations of exemptions. FDA's determinations that premarket notification is not necessary to provide a reasonable assurance of safety and effectiveness for class II devices are often based on the Agency's knowledge of the devices, including past experience and relevant reports or studies on device performance (as appropriate), the applicability of general and special controls, and the Agency's ability to limit an exemption, as discussed in section IV of this notice.

III. Comments on the Proposed Exemptions and FDA's Response

In the May 2026 notice, FDA announced its intent to expand the 510(k) exemptions for certain class II clinical toxicology test systems to additional devices within the device types, subject to certain limitations, upon its own initiative, and provided opportunity for interested persons to submit comments by June 30, 2026. After reviewing the comments received, FDA is now providing its final determination on expanding the 510(k) exemptions for the class II clinical toxicology test systems listed in table 1 to include devices intended for use in Federal drug testing programs, subject to certain limitations as identified in this order. FDA is also amending the codified language for the classification regulations for the class II clinical toxicology test systems listed in table 1 to reflect this final determination.

In response to the May 2026 notice announcing FDA's intent to expand the 510(k) exemptions for certain class II clinical toxicology test systems, FDA received comments from approximately 70 commenters, including individuals, trade organizations, regulated industry, labor unions, and other interested parties. Some of the comments contained one or more comments on one or more issues.

The order of the comments and our response to them is purely for organizational purposes and does not signify the comment's value or importance or the order in which comments were received. Certain comments are grouped together under a single number because the subject matter is similar. Please note that in some cases we separated different issues discussed by the same commenter and designated them as distinct comments for purposes of our responses.

(Comment 1) The majority of commenters expressed support for the proposed expansion of the 510(k) exemptions. Commenters stated that they believed the proposal, if finalized, would reduce unnecessary regulatory burdens. Commenters noted that device manufacturers would no longer need to invest time and resources into 510(k) submissions for newly exempt test systems. Many commenters stated that there would be no drop-off in the quality or accuracy of test systems used in Federal drug testing programs should the exemptions be finalized, and one commenter added that unnecessary barriers to adoption of clinical toxicology test systems in Federal drug testing programs are a public safety concern. Several commenters described the proposal as ''a practical, overdue, and well-reasoned step toward a federal drug testing framework that reflects current science and operational reality.''

(Response 1) FDA agrees with the commenters' support for the expansion of the 510(k) exemptions. In this order, FDA is finalizing the proposed exemptions without modification.

(Comment 2) Some commenters requested clarification regarding the scope of the proposed expanded 510(k) exemptions included in the May 2026 notice. Specifically, commenters asked whether a test system would be exempted from 510(k) requirements by the exemptions proposed in the May 2026 notice when the test system measures a different analyte, uses a different methodology, or has a different cutoff concentration than all already cleared devices in a generic device type included in the May 2026 notice. Another commenter asked FDA to clarify that a ''Federal-program-specific predicate is not required for an eligible test system to fall within the exemption.'' Many comments encouraged FDA to liberally interpret the boundaries of the finalized exemptions.

(Response 2) FDA encourages commenters to review the finalized partial limitations of exemption discussed in section IV of this order as well as § 862.9 (21 CFR 862.9) (titled ''Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act)''). Under § 862.9(a), a device that otherwise

[1] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

would fall within a 510(k) exemption is not exempt from 510(k) requirements when ''[t]he device is intended for a use different from the intended use of a legally marketed device in that generic type of device.'' As reflected in table 1, a test system must be intended for employment and insurance testing to fall within the 510(k) exemptions for the generic device types that are the subject of this order. Additionally, under § 862.9(b), such a device is not exempt from 510(k) requirements when the ''device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device.'' These general limitations of exemption apply to generic device types exempted from 510(k) requirements by this order as well as other generic device types classified in 21 CFR part 862.

Whether a specific test system is or is not exempt from 510(k) requirements depends on the specifics of the test system. FDA encourages manufacturers who have questions about whether a specific test system is exempt from 510(k) requirements to discuss their test system with FDA. Manufacturers may consider submitting a request for information under section 513(g) of the FD&C Act (21 U.S.C. 360c(g)). For more information regarding section 513(g) of the FD&C Act requests for information, please see FDA's guidance document titled ''FDA and Industry Procedures for Section 513(g) Requests for Information under the Federal, Food, Drug, and Cosmetic Act'' (Ref. 2).

(Comment 3) Multiple commenters requested that FDA clarify its authority around Federal drug testing programs and how this authority interacts with that of the Substance Abuse and Mental Health Services Administration (SAMHSA) and the National Laboratory Certification Program (NLCP). Other commenters requested that FDA, SAMHSA, and the NLCP coordinate to reduce regulatory requirements.

(Response 3) FDA's Center for Devices and Radiological Health aims to assure that patients and providers have safe, effective, and high-quality medical devices and safe radiation-emitting products. The term ''device'' is defined under section 201(h) of the FD&C Act (21 U.S.C. 321(h)) to mean, in relevant part, ''an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is— . . . (B) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals . . . and which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes.''

FDA does not administer or implement Federal drug testing programs. However, FDA regulates test systems used in Federal drug testing programs. Manufacturers and importers of devices such as clinical toxicology test systems may be subject to a variety of requirements under the FD&C Act and FDA's regulations, including establishment registration, device listing, 510(k), labeling, quality management system, and medical device reporting requirements. Class II devices that are 510(k) exempt are still subject to other applicable requirements.

SAMHSA's Division of Workplace Programs oversees Federal drug-free workplace programs, which aim to eliminate illicit drug use in Federal workplaces. It also oversees the NLCP, which certifies laboratories to conduct forensic drug testing for Federal agencies and federally regulated industries. SAMHSA has published mandatory guidelines for drug testing for urine (88 FR 70768) and for oral fluid (88 FR 70814).

FDA agrees that FDA, SAMHSA, and the NLCP should coordinate to best protect the public health, which may include reducing regulatory requirements where appropriate. In this final order, FDA is expanding the 510(k) exemptions for certain clinical toxicology test systems to include devices intended for Federal drug testing programs. Upon publication of this order, a 510(k) will no longer be required for such devices (subject to the general limitations of exemption under § 862.9 and the partial limitations of exemption identified in table 1).

(Comment 4) Two commenters stated that test systems used for Federal drug testing programs are not devices because they do not meet the definition of a device in the FD&C Act, and therefore, these test systems are not subject to FDA regulation.

(Response 4) FDA disagrees. As previously discussed in our response to comment 3, as defined in section 201(h) of the FD&C Act, the term ''device'' means, in relevant part, ''an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is— . . . (B) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals . . . and which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes.'' Drugs of abuse test systems, even when used for employment and insurance testing, are intended to provide information about a condition, namely, whether drugs of abuse are being used or have been used by the subject (see 65 FR 18230 at 18232). Therefore, the test systems newly exempted in this order are devices.

(Comment 5) Some commenters stated that the May 2026 notice did not specify what standards would replace 510(k) requirements for the test systems newly exempted by this order.

(Response 5) For clinical toxicology test systems that are newly exempted in this order, FDA has determined that a 510(k) is not necessary to assure the safety and effectiveness of the device, in accordance with section 510(m)(2) of the FD&C Act. Clinical toxicology test systems of the types listed in table 1 are therefore exempt from 510(k) requirements, including when such test systems are intended for use in Federal drug testing programs, upon publication of this order, subject to the general limitations of exemption under § 862.9 and the partial limitations of exemption identified in table 1. No standards or additional requirements replace 510(k) requirements for these devices. However, as discussed in our response to comment 3, 510(k) exempt devices remain subject to other applicable regulatory requirements, including SAMHSA's mandatory guidelines, to the extent they are used in Federal drug testing programs.

(Comment 6) Many commenters stated that finalizing the expansion of the 510(k) exemptions proposed in the May 2026 notice is a necessary step for the implementation of oral fluid testing in Federal drug testing programs, including those programs administered by SAMHSA and the Department of Transportation (DOT). Some comments questioned why, or expressed frustration that, oral fluid testing has not yet been ''approved'' for use in these programs. Other commenters stated that delays in implementing oral fluid testing in Federal drug testing programs have had, and will continue to have, effects on transportation safety.

(Response 6) FDA is expanding the 510(k) exemptions for the clinical toxicology test systems identified in table 1 of this order because, in consideration of the factors listed in section II of this order, FDA has

determined that a 510(k) is not necessary to assure the safety and effectiveness of these devices, subject to the general limitations of exemption under § 862.9 and the partial limitations of exemption identified in table 1. While FDA understands that the expansion of the exemptions finalized in this order may facilitate the use of oral fluid testing in Federal drug testing programs, FDA does not oversee Federal drug testing programs (as noted in our response to comment 3) and so does not decide whether oral fluid testing may be used in such programs.

(Comment 7) Some commenters stated that finalizing the expansion of the 510(k) exemptions proposed in the May 2026 notice is a necessary step for the implementation of hair testing in Federal drug testing programs, including those programs administered by SAMHSA and DOT.

(Response 7) As noted in our response to comment 3, FDA does not oversee Federal drug testing programs and so does not decide whether hair testing may be used in such programs. Please see our response to comment 6.

(Comment 8) Multiple commenters stated that in addition to the 510(k) exemptions proposed in the May 2026 notice, FDA should exempt additional device types from 510(k) requirements, including test systems for phencyclidine (PCP); all class II clinical toxicology test systems intended for employment or insurance testing; all test systems used in Federal drug testing programs, including automatic additions when new drugs are added to Federal drug testing programs; unspecified additional test systems not intended for employment and insurance testing; and oral fluid collection devices.

(Response 8) These comments are outside the scope of what was proposed in the May 2026 notice and are, therefore, outside the scope of this final order. FDA notes that the 510(k) exemptions in this order are being finalized under the authority of section 510(m)(2) of the FD&C Act, which allows FDA to exempt only class II devices from 510(k) requirements, yet some of the additional device types suggested by comments have not been classified into class II. In addition, some of the device types suggested by the comments have different safety and effectiveness profiles (*e.g.,* oral fluid collection devices) than the test systems for which 510(k) exemptions are being finalized in this order. FDA has not made a determination that a 510(k) is not necessary to assure the safety and effectiveness of oral fluid collection devices; thus, finalizing a 510(k) exemption for them would not be appropriate. FDA notes that there are 510(k)-cleared oral fluid collection devices that may be used with test systems for any drug of abuse analyte.

As indicated in table 1, the list of device types for which FDA is expanding 510(k) exemptions in this order is unchanged from the list proposed in the May 2026 notice.

(Comment 9) One commenter requested clarification regarding product code DJG being listed in the non-exempt product codes in the May 2026 notice and whether fentanyl test systems under product code DJG are exempt from 510(k) requirements if they are intended solely for employment and insurance testing. A different commenter requested clarification regarding whether fentanyl test systems are included in this order because fentanyl test systems were not mentioned by name in the May 2026 notice.

(Response 9) While fentanyl test systems and test systems for other opioids were not mentioned by name in the May 2026 notice, such test systems generally fall within the classification regulation for opiate test systems (§ 862.3650), which is one of the generic device types for which FDA is expanding the 510(k) exemptions in this order. Under § 862.3650(a), an opiate test system is a device intended to measure any of the addictive narcotic pain-relieving opiate drugs in blood, serum, urine, gastric contents, and saliva. Section 862.3650(a) also defines an opiate as any natural or synthetic drug that has morphine-like pharmacological actions. Test systems intended to test for fentanyl generally fall under this regulation. Therefore, fentanyl test systems intended for Federal drug testing programs are included in the 510(k) exemptions finalized in this order.

Test systems that previously were designated under product code DJG will now fall under product code PVH and are 510(k) exempt if they do not exceed the limitations of exemption discussed in section IV of this order, including the limitation that the test system be intended for use solely in employment or insurance testing. For each product code listed in the ''Non-Exempt Product Codes'' column of table 1 of this order, there is a corresponding product code under the ''Exempt Product Code'' column in the same row. When a device in the generic device type does not exceed the limitations of exemption discussed in section IV of this order, then that device is 510(k) exempt and falls under the corresponding exempt product code.

(Comment 10) One comment stated that the 510(k) exemption for opiate test systems (exempt product code PVH) should not include test systems for fentanyl and its analogs. This commenter implied that it is uniquely difficult to accurately test for fentanyl and its analogs compared to other drugs of abuse, and therefore, fentanyl test systems are not appropriate for 510(k) exemption.

(Response 10) FDA disagrees. FDA's classification of opiate test systems includes test systems intended to test for fentanyl (see our response to Comment 9), and FDA has previously exempted opiate test systems, including test systems intended to test for fentanyl, from 510(k) requirements subject to certain limitations. FDA does not believe that fentanyl test systems raise unique considerations above and beyond those that apply to other test systems in this order. In consideration of the factors which FDA generally considers to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device (see section II of this order), FDA has determined to expand the 510(k) exemption that already exists for opiate test systems (including test systems intended to test for fentanyl) to include test systems intended for Federal drug testing programs.

(Comment 11) Some commenters requested additional specificity regarding the labeling language needed to avoid exceeding the partial limitations of exemption applicable to all exemptions in this order, which state that the exemptions are limited to tests ''for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing.''

(Response 11) FDA does not believe it is necessary or appropriate to provide further specificity regarding the labeling statement identified in the partial limitations of exemption for the clinical toxicology test systems covered by this order. The commenters did not explain why they thought clarification of this statement was necessary or how the partial limitation as proposed in the May 2026 notice was unclear. A partial limitation of exemption indicates that FDA has determined that premarket notification is necessary to provide a reasonable assurance of safety and effectiveness for devices that exceed the limitation. Regarding the labeling statement at issue, FDA has determined that premarket notification is necessary if the labeling for the device does not indicate that the device is intended solely for employment and insurance testing, but FDA has not determined

that specific verbiage must be used for that statement. We therefore decline to provide additional specificity regarding the labeling statement identified in the partial limitations of exemption for these devices.

(Comment 12) Some commenters requested that FDA exercise enforcement discretion regarding compliance with labeling requirements for test systems that were previously 510(k) exempt for employment and insurance testing, and that are labeled as not intended for use in Federal drug testing programs, when now intended for use in Federal drug testing programs consistent with the expanded 510(k) exemptions finalized by this order.

(Response 12) FDA declines to adopt a general enforcement discretion policy as requested by these commenters. FDA expects the clinical toxicology test systems covered by this order, whether exempt from 510(k) requirements or not, to be labeled in accordance with all applicable labeling requirements under the FD&C Act and 21 CFR parts 801 and 809, including that the labeling not be false or misleading.

(Comment 13) Multiple commenters requested that FDA exercise enforcement discretion regarding 510(k) requirements for any test system used in Federal drug testing programs and subject to NLCP requirements, even when such test systems have not been exempted from 510(k) requirements. Many of these commenters also requested that FDA ''stop regulating'' devices intended for use in Federal drug testing programs and ''transfer'' any FDA authority over Federal drug testing programs to NLCP. In contrast, at least one commenter recommended that if FDA were ''to stop regulating'' test systems intended for use in Federal drug testing programs, FDA should not transfer its responsibilities to NLCP.

(Response 13) FDA declines to adopt a general enforcement discretion policy for 510(k) requirements for all test systems used in Federal drug testing programs. FDA is expanding the exemptions from 510(k) requirements for clinical toxicology test systems identified in this order to include test systems intended for use in Federal drug testing programs based on a determination that a 510(k) is not necessary to assure the safety and effectiveness of these devices (subject to the general limitations of exemption under § 862.9 and the partial limitations of exemption identified in table 1). To the extent these comments are requesting or recommending that jurisdiction over these tests systems be transferred from FDA to another Federal agency, such comments are outside the scope of this final order and would require statutory changes by Congress. In addition, FDA considers aspects of these comments to arise from a mistaken premise that FDA oversees Federal drug testing programs and can transfer that authority to another agency. That is not the case. As noted in response 3, FDA regulates devices used in Federal drug testing programs but does not oversee Federal drug testing programs themselves.

(Comment 14) Some commenters stated their belief that if the expansion of the exemptions proposed in the May 2026 notice is finalized, the quality of test systems could decrease, including worse accuracy and reliability, because the devices will no longer undergo premarket review. One commenter suggested expanding the exemptions could lead to decreased confidence in the accuracy of Federal drug testing. Other commenters opposed the expansion of the 510(k) exemptions because the commenters believed expanding the exemptions could lead to increased medical device fraud.

(Response 14) FDA disagrees that the quality of test systems available for Federal drug testing programs will decrease due to the expansion of the exemptions from 510(k) requirements finalized in this order or that fraudulent devices will enter the market because of the expansion of the exemptions. FDA has determined that premarket notification is not necessary to assure the safety and effectiveness of the class II clinical toxicology test systems subject to the limitations outlined in table 1. While 510(k) exempt test systems intended for use in Federal drug testing programs generally will no longer be subject to FDA premarket review requirements, they remain subject to other requirements under the FD&C Act and FDA's regulations as discussed in our response to comment 3, including quality management system requirements, medical device reporting requirements, and labeling requirements. In addition, laboratories that test samples for Federal drug testing programs are subject to requirements associated with Federal drug testing programs and overseen by SAMHSA, including the mandatory guidelines. These requirements may allow interested parties to remain confident in the accuracy of Federal drug testing programs.

(Comment 15) Some commenters did not support the expansion of the 510(k) exemptions proposed in the May 2026 notice because they believed that the expansion could lead to increased highway safety incidents, including increased crashes, injuries, and/or loss of life. The commenters believed that without premarket review, new exempt test systems that are not currently on the market may fail to correctly detect positive samples that would be detected by test systems currently used in Federal drug testing programs. Commenters also expressed similar concerns about other industries subject to DOT testing, including aviation, rail, transit, and maritime industries.

(Response 15) FDA disagrees with comments that suggest that expanding the 510(k) exemptions to include test systems intended for use in Federal drug testing programs will likely cause harm by leading to an increased frequency of highway crashes or other mishaps caused by impaired/intoxicated workers. These comments appear to be premised on the belief that once premarket review of certain test systems intended for use in Federal drug testing programs is no longer required, the test systems will less accurately detect positive samples. However, as noted in our response to comment 14, we disagree with that premise, including because other applicable requirements will help to ensure the safety and effectiveness of these test systems and the accuracy of testing conducted under Federal drug testing programs. In addition to the controls imposed by SAMHSA as discussed in response 14, applicable requirements under the FD&C Act and FDA regulations besides premarket review requirements will continue to apply to the test systems being made 510(k) exempt in this order. For example, manufacturers of test systems exempted from 510(k) requirements by this order remain subject to establishment registration, device listing, quality management system, and device labeling requirements, among other requirements and as applicable (see generally 21 CFR parts 801, 803, 807, 809, and 820). FDA therefore does not believe this order will result in newly exempted test systems lacking reasonable effectiveness in detecting positive samples.

(Comment 16) One commenter stated that they were opposed to the expansion of the 510(k) exemptions proposed in the May 2026 notice because, in their view, FDA caused injury in other contexts by lifting restrictions on medications, and they believed that expansion of the exemptions could similarly cause injury.

(Response 16) We are not clear as to what actions or events the commenter was referencing when stating that FDA has ''gotten people killed or severely sick'' by lifting restrictions on medications. Nevertheless, FDA disagrees that expanding the 510(k)

exemptions for the clinical toxicology test systems identified in this order to include when such test systems are intended for use in Federal drug testing programs is likely to cause harm to patients. The expansion of the exemptions only applies to test systems that are intended for employment and insurance testing. While these test systems are intended to provide information about a condition, namely, whether drugs of abuse are being used or have been used by the subject, these test systems are not intended to be used to make treatment decisions. Therefore, FDA does not agree that the expansion of the exemptions finalized in this order is likely to cause harm to patients.

(Comment 17) A few commenters stated that finalizing the expansion of the exemptions proposed in the May 2026 notice could cause potential disruption to existing Federal drug testing programs or unintended compliance challenges for interested parties in the drug testing industry.

(Response 17) FDA disagrees with these comments. Tests systems intended for use in Federal drug testing programs that were previously authorized by FDA can continue to be used in such programs (assuming compliance with other applicable laws). The final order will enable additional test systems intended for Federal drug testing programs to be legally marketed without first obtaining 510(k) clearance from FDA. Therefore, FDA does not agree that finalization of this order could cause disruption to existing Federal drug testing programs.

(Comment 18) One commenter alleged that non-Federal workplace drug testing programs are often poorly run, and that the expansion of the 510(k) exemptions for the clinical toxicology test systems identified in this order, to include such test systems when intended for use in Federal drug testing programs, would open Federal drug testing programs to poor management seen in these other programs.

(Response 18) FDA does not agree that the finalization of the exemptions in this order will likely affect the management quality of Federal drug testing programs. This order exempts certain clinical toxicology test systems intended for use in Federal drug testing programs from FDA's 510(k) requirements but does not otherwise affect Federal drug testing programs, including the management thereof. FDA believes that the only effect this order will have on Federal drug testing programs is the possible increase in the number of test systems that may be utilized in such programs.

(Comment 19) Some commenters urged FDA to finalize the expansion of the exemptions proposed in the May 2026 notice as soon as possible.

(Response 19) FDA agrees with the commenters that the expansion of the exemptions proposed in the May 2026 notice should be finalized. The comment period regarding the expansion of the exemptions proposed in the May 2026 notice closed on June 30, 2026. FDA has worked to finalize this order as soon as was practicable following consideration of the comments submitted on the May 2026 notice.

(Comment 20) One commenter requested that FDA open a docket regarding how it assigns product codes for ''[F]ederally mandated workplace drug test system devices.'' This commenter indicated that an analyte-specific categorization framework may be inconsistent with modern drug testing systems which generally rely on multi-analyte platforms.

(Response 20) As explained in FDA's guidance document titled ''Medical Device Classification Product Codes'' (the Product Codes guidance), ''[c]lassification product codes are a method of internally classifying and tracking medical devices'' (Ref. 3). The Product Codes guidance states that product codes are assigned and maintained by the Agency, and are used to, among other things, ''help to delineate technology and indication subgroups within a regulation.'' FDA currently does not intend to open a docket regarding product code assignment. However, as stated in the Product Codes guidance, ''[a]s technology changes and 510(k) review practice evolves, some classification product codes may become obsolete. In some cases, product code definitions may be updated to accommodate new technology.'' As technology continues to evolve, FDA may consider modifications to the product codes assigned to the clinical toxicology test systems covered in this order.

(Comment 21) Various comments expressed displeasure with the commenters' personal circumstances connected to failed (or invalid) drug tests administered as part of a Federal drug testing program and/or displeasure with how SAMHSA, the NLCP, the DOT, and other non-FDA organizations administer and/or regulate Federal drug testing programs. Many of these comments were addressed to entities other than FDA. These comments did not address the expansion of the exemptions proposed in the May 2026 notice.

(Response 21) These comments are outside the scope of the May 2026 notice and this order. As discussed in more detail in comment 3, FDA does not oversee Federal drug testing programs.

IV. Limitations of Exemptions

FDA has determined that premarket notification is not necessary to assure the safety and effectiveness of the class II clinical toxicology test systems subject to the limitations outlined in table 1. This determination is based, in part, on the Agency's knowledge of the devices, including past experience and relevant reports or studies on device performance (as appropriate), the applicability of general and special controls, and the Agency's ability to limit an exemption.

A. General Limitations of Exemptions

The exemptions from premarket notification requirements for the class II device types listed in table 1 apply only to those devices that have existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostics, only to the extent that misdiagnosis as a result of using the device would not be associated with high morbidity or mortality (see § 862.9). Thus, a manufacturer of a device listed in this order will still be required to submit a premarket notification to FDA before introducing a device or delivering it for introduction into interstate commerce for commercial distribution when the device exceeds any of the limitations of exemptions described in § 862.9.

B. Partial Limitations of Exemptions

In addition to the general limitations described in section IV.A of this notice, partial limitations may limit an exemption from premarket notification requirements to specific devices within a device type. In such situations where a partial limitation of the exemption has been identified, FDA has determined that premarket notification is necessary to assure the safety and effectiveness for devices that exceed the limitations.

Prior to issuance of this order, the classification regulations listed in table 1 already included an exemption from 510(k) requirements (subject to the general limitations in § 862.9 as discussed in section IV.A of this notice) ''provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing,'' and as long as the device was not intended for use in Federal drug testing

programs.[2] In this order, FDA is removing the exception to the 510(k) exemption for devices intended for Federal drug testing programs. As such, devices in the device types listed in table 1 are exempt from 510(k) requirements even if intended for use in Federal drug testing programs as long as they do not exceed any of the general limitations of exemptions in § 862.9, and provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing, as described in table 1.

When FDA finalized the partial exemptions from 510(k) requirements that were in effect for the classification regulations listed in table 1 prior to issuance of this order, FDA assigned new product codes to ensure that exempt and non-exempt devices within a device type would have separate product codes (82 FR 31976 at 31977). FDA will continue to use the previously established product codes; however, the definitions of the product codes for exempt devices will be modified to accurately reflect the scope of the exemption,[3] and devices which are newly exempt will change from a non-exempt product code to the corresponding exempt product code.

V. List of Class II Devices

FDA has determined that premarket notification is not necessary to assure the safety and effectiveness of clinical toxicology test systems of the types listed in table 1 when they are intended for Federal drug testing programs (see ''New Partial Limitations'' listed in table 1). Devices in the device types listed in table 1 no longer require premarket notification under section 510(k) of the FD&C Act when they are intended for Federal drug testing programs, so long as they do not exceed the partial limitations of exemptions specified in table 1 and the corresponding general limitations of exemptions found in § 862.9.

TABLE 1—CLASS II DEVICES

21 CFR section	Generic device type	Exempt product code	Non-exempt product codes	Partial limitations prior to issuance of this order	New partial limitations
862.3100	Amphetamine test system.	PUX	DIT, DJL, DJP, DKZ, DNI, DOD, DPJ, NFT, NVI, OIW.	Exemption is limited to test systems intended to measure amphetamine for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing, and does not include devices intended for Federal drug testing programs.	Exemption is limited to test systems intended to measure amphetamine for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing.
862.3150	Barbiturate test system.	PUY	DIS, DJN, DKN, DKX, DLX, DMF, KZY, PTH.	Exemption is limited to test systems intended to measure barbiturates for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing, and does not include devices intended for Federal drug testing programs.	Exemption is limited to test systems intended to measure barbiturates for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing.
862.3170	Benzodiazepine test system.	PUZ	JXM, KZZ, LAA, LAB, NFV.	Exemption is limited to test systems intended to measure any of the benzodiazepine compounds for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing, and does not include devices intended for Federal drug testing programs.	Exemption is limited to test systems intended to measure any of the benzodiazepine compounds for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing.
862.3250	Cocaine and cocaine metabolite test system.	PVA	DIN, DIO, DIR, DLN, DMN, DNG, DOM, JXO, KLN, LAC, NFY.	Exemption is limited to test systems intended to measure cocaine and a cocaine metabolite (benzoylecgonine) for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing, and does not include devices intended for Federal drug testing programs.	Exemption is limited to test systems intended to measure cocaine and a cocaine metabolite (benzoylecgonine) for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing.
862.3270	Codeine test system.	PVB	DLD, LAD, LAE	Exemption is limited to test systems intended to measure codeine for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing, and does not include devices intended for Federal drug testing programs.	Exemption is limited to test systems intended to measure codeine for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing.
862.3580	Lysergic acid diethylamide (LSD) test system.	PVC	DLB, DOL	Exemption is limited to test systems intended to measure LSD for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing, and does not include devices intended for Federal drug testing programs.	Exemption is limited to test systems intended to measure LSD for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing.

[2] 21 CFR 862.3100, 862.3150, 862.3170, 862.3250, 862.3270, 862.3580, 862.3610, 862.3620, 862.3630, 862.3640, 862.3650, 862.3700, 862.3870, and 862.3910; 84 FR 71794. Federal drug testing programs include, for example, programs run by the Substance Abuse and Mental Health Services Administration (SAMHSA), the Department of Transportation (DOT), and the U.S. military.

[3] For example, prior to issuance of this order, the definition for product code PUX (Test, Amphetamine, Employment and Insurance Testing, Exempt) included a reference to 82 FR 31976 (the action establishing the exemption). Following publication of this order, this reference, and corresponding ones for the other 510(k)-exempt product codes, will be replaced with a reference to this order which codifies the expanded scope of the exemption.

TABLE 1—CLASS II DEVICES—Continued

21 CFR section	Generic device type	Exempt product code	Non-exempt product codes	Partial limitations prior to issuance of this order	New partial limitations
862.3610	Methamphetamine test system.	PVD	DJC, LAF, LAG, NGG.	Exemption is limited to test systems intended to measure methamphetamine for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing, and does not include devices intended for Federal drug testing programs.	Exemption is limited to test systems intended to measure methamphetamine for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing.
862.3620	Methadone test system.	PVE	DIW, DJR, DKR, DMB, DNT, DPP, PTG.	Exemption is limited to test systems intended to measure methadone for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing, and does not include devices intended for Federal drug testing programs.	Exemption is limited to test systems intended to measure methadone for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing.
862.3630	Methaqualone test system.	PVF	KXS	Exemption is limited to test systems intended to measure methaqualone for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing, and does not include devices intended for Federal drug testing programs.	Exemption is limited to test systems intended to measure methaqualone for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing.
862.3640	Morphine test system.	PVG	DIQ, DJJ, DLR, DMY, DNA, DNK, DOE, DOK, DPK, NGI.	Exemption is limited to test systems intended to measure morphine and its analogs for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing, and does not include devices intended for Federal drug testing programs.	Exemption is limited to test systems intended to measure morphine and its analogs for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing.
862.3650	Opiate test system	PVH	DJF, DJG, DKT, DLT, LAH, LAI, NGL.	Exemption is limited to test systems intended to measure any of the addictive narcotic pain-relieving opiate drugs for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing, and does not include devices intended for Federal drug testing programs.	Exemption is limited to test systems intended to measure any of the addictive narcotic pain-relieving opiate drugs for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing.
862.3700	Propoxyphene test system.	PVI	DPN, JXN, LAJ, LAK, QBF.	Exemption is limited to test systems intended to measure propoxyphene for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing, and does not include devices intended for Federal drug testing programs.	Exemption is limited to test systems intended to measure propoxyphene for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing.
862.3870	Cannabinoid test system.	PVJ	DKE, LAT, LDJ, NFW.	Exemption is limited to test systems intended to measure any of the cannabinoids for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing, and does not include devices intended for Federal drug testing programs.	Exemption is limited to test systems intended to measure any of the cannabinoids for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing.
862.3910	Tricyclic antidepressant drugs test system.	PVK	LFG, LFH, LFI, MLK, QAW.	Exemption is limited to test systems intended to measure any of the tricyclic antidepressant drugs for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing, and does not include devices intended for Federal drug testing programs.	Exemption is limited to test systems intended to measure any of the tricyclic antidepressant drugs for employment and insurance testing and for which the test system labeling includes a statement that the device is intended solely for employment and insurance testing.

VI. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not normally have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Paperwork Reduction Act of 1995

FDA concludes that this final order contains no new collection of information. This final order refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120, the collections of information in 21 CFR parts 801 and 809, regarding device labeling, have been approved under OMB control number 0910–0485, and the collections of information in 21 CFR part 820, regarding quality management system regulation, have been approved under OMB control number 0910–0073.

VIII. References

The following references are on display at the Dockets Management

Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* Although FDA verified the website addresses in this document, please note that websites are subject to change over time.

1. FDA Guidance, ''Procedures for Class II Device Exemptions from Premarket Notification,'' February 19, 1998, available at *https://www.fda.gov/media/72685/download.*
2. FDA Guidance, ''FDA and Industry Procedures for Section 513(g) Requests for Information Under the Federal, Food, Drug, and Cosmetic Act,'' August 23, 2024, available at *https://www.fda.gov/media/78456/download.*
3. FDA Guidance, ''Medical Device Classification Product Codes,'' April 11, 2013, available at *https://www.fda.gov/media/82781/download.*

List of Subjects in 21 CFR Part 862

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 862 is amended as follows:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

■ 1. The authority citation for part 862 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l,* 371.

■ 2. In § 862.3100, revise paragraph (b) to read as follows:

§ 862.3100 Amphetamine test system.

* * * * *

(b) *Classification.* Class II (special controls). An amphetamine test system is not exempt if it is intended for any use other than employment or insurance testing. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing.

■ 3. In § 862.3150, revise paragraph (b) to read as follows:

§ 862.3150 Barbiturate test system.

* * * * *

(b) *Classification.* Class II (special controls). A barbiturate test system is not exempt if it is intended for any use other than employment or insurance testing. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing.

■ 4. In § 862.3170, revise paragraph (b) to read as follows:

§ 862.3170 Benzodiazepine test system.

* * * * *

(b) *Classification.* Class II (special controls). A benzodiazepine test system is not exempt if it is intended for any use other than employment or insurance testing. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing.

■ 5. In § 862.3250, revise paragraph (b) to read as follows:

§ 862.3250 Cocaine and cocaine metabolite test system.

* * * * *

(b) *Classification.* Class II (special controls). A cocaine and cocaine metabolite test system is not exempt if it is intended for any use other than employment or insurance testing. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing.

■ 6. In § 862.3270, revise paragraph (b) to read as follows:

§ 862.3270 Codeine test system.

* * * * *

(b) *Classification.* Class II (special controls). A codeine test system is not exempt if it is intended for any use other than employment or insurance testing. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing.

■ 7. In § 862.3580, revise paragraph (b) to read as follows:

§ 862.3580 Lysergic acid diethylamide (LSD) test system.

* * * * *

(b) *Classification.* Class II (special controls). A lysergic acid diethylamide (LSD) test system is not exempt if it is intended for any use other than employment or insurance testing. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing.

■ 8. In § 862.3610, revise paragraph (b) to read as follows:

§ 862.3610 Methamphetamine test system.

* * * * *

(b) *Classification.* Class II (special controls). A methamphetamine test system is not exempt if it is intended for any use other than employment or insurance testing. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing.

■ 9. In § 862.3620, revise paragraph (b) to read as follows:

§ 862.3620 Methadone test system.

* * * * *

(b) *Classification.* Class II (special controls). A methadone test system is not exempt if it is intended for any use other than employment or insurance testing. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing.

■ 10. In § 862.3630, revise paragraph (b) to read as follows:

§ 862.3630 Methaqualone test system.

* * * * *

(b) *Classification.* Class II (special controls). A methaqualone test system is not exempt if it is intended for any use other than employment or insurance testing. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and

includes a statement in the labeling that the device is intended solely for use in employment and insurance testing.

■ 11. In § 862.3640, revise paragraph (b) to read as follows:

§ 862.3640 Morphine test system.

* * * * *

(b) *Classification.* Class II (special controls). A morphine test system is not exempt if it is intended for any use other than employment or insurance testing. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing.

■ 12. In § 862.3650, revise paragraph (b) to read as follows:

§ 862.3650 Opiate test system.

* * * * *

(b) *Classification.* Class II (special controls). An opiate test system is not exempt if it is intended for any use other than employment or insurance testing. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing.

■ 13. In § 862.3700, revise paragraph (b) to read as follows:

§ 862.3700 Propoxyphene test system.

* * * * *

(b) *Classification.* Class II (special controls). A propoxyphene test system is not exempt if it is intended for any use other than employment or insurance testing. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing.

■ 14. In § 862.3870, revise paragraph (b) to read as follows:

§ 862.3870 Cannabinoid test system.

* * * * *

(b) *Classification.* Class II (special controls). A cannabinoid test system is not exempt if it is intended for any use other than employment or insurance testing. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing.

■ 15. In § 862.3910, revise paragraph (b) to read as follows:

§ 862.3910 Tricyclic antidepressant drugs test system.

* * * * *

(b) *Classification.* Class II (special controls). A tricyclic antidepressant drugs test system is not exempt if it is intended for any use other than employment or insurance testing. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–20448 Filed 10–5–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2026–N–10990]

Medical Devices; Immunology and Microbiology Devices; Classification of the High Throughput DNA Sequencing for Hereditary Cancer Predisposition Assessment Test System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA) is classifying the high throughput DNA sequencing for hereditary cancer predisposition assessment test system into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for classification of the high throughput DNA sequencing for hereditary cancer predisposition assessment test system. We are taking this action because we have determined that classifying the device into class II will provide a reasonable assurance of the safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective October 6, 2026. The classification was applicable on September 29, 2023.

FOR FURTHER INFORMATION CONTACT: Jingya Wang, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3250, Silver Spring, MD 20993–0002, 301–837–7257, *Jingya.Wang@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA (the Agency or we) has classified the high throughput DNA sequencing for hereditary cancer predisposition assessment test system into class II (special controls), which we have determined will provide a reasonable assurance of the safety and effectiveness of the device. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified into, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act (see also part 860, subpart D (21 CFR part 860, subpart D)). Section

207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo classification process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a premarket notification (510(k)) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining ''substantial equivalence''). Instead, sponsors can use the less burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On March 29, 2021, FDA received Invitae Corporation's request for De Novo classification of the Invitae Common Hereditary Cancers Panel. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see section 513(a)(1)(B) of the FD&C Act). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on September 29, 2023, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 866.6095.[1] We have named the generic type of device ''high throughput DNA sequencing for hereditary cancer predisposition assessment test system,'' and it is identified as a qualitative in vitro diagnostic (IVD) system intended for analysis of human DNA extracted from human specimens to detect germline mutations in a panel of targeted cancer-related genes. It is intended to aid in hereditary cancer predisposition assessment by qualified health care professionals in accordance with professional guidelines. The device is not intended for screening, prenatal testing, or as a stand-alone diagnostic test. The device is for prescription use only.

FDA has identified the risks to health associated with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—RISKS TO HEALTH AND MITIGATION MEASURES FOR HIGH THROUGHPUT DNA SEQUENCING FOR HEREDITARY CANCER PREDISPOSITION ASSESSMENT TEST SYSTEMS

Identified risks to health	Mitigation measures
False positive, false negative, or failure to provide a result.	Certain design verification and validation including certain analytical and clinical studies, and mutation annotation and clinical interpretation rules identified in special control (1). Certain labeling information including limitations, device descriptions, methodology and protocols, and performance information identified in special control (2).
Incorrect interpretation of variants/alterations by the lab.	Certain design verification and validation including certain analytical and clinical studies, and mutation annotation and clinical interpretation rules identified in special control (1). Certain labeling information including limitations, device descriptions, methodology and protocols, and performance information identified in special control (2).
Incorrect interpretation of test results by the healthcare provider.	Certain design verification and validation including certain analytical and clinical studies, and mutation annotation and clinical interpretation rules identified in special control (1). Certain labeling information including limitations, device descriptions, methodology and protocols, and performance information identified in special control (2).

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness of the device. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this final order.

At the time of classification, high throughput DNA sequencing for hereditary cancer predisposition assessment test systems are for prescription use only. Therefore, these devices are subject to the prescription

[1] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

labeling requirements for IVD products (see 21 CFR 809.10(a)(4) and (b)(5)(ii)).

Under the FD&C Act, submission of a premarket notification under section 510(k) is required to reasonably assure the safety and effectiveness of class II devices unless FDA determines that the device type should be exempt under section 510(m) of the FD&C Act. At this time FDA has not made this determination for high throughput DNA sequencing for hereditary cancer predisposition assessment test systems. This device is therefore subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not normally have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820 regarding quality management system regulation have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801 and 809 regarding labeling have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 1. The authority citation for part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 866.6095 to subpart G to read as follows:

§ 866.6095 High throughput DNA sequencing for hereditary cancer predisposition assessment test system.

(a) *Identification.* A high throughput DNA sequencing for hereditary cancer predisposition assessment test system is a qualitative in vitro diagnostic (IVD) system intended for analysis of human DNA extracted from human specimens to detect germline mutations in a panel of targeted cancer-related genes. It is intended to aid in hereditary cancer predisposition assessment by qualified health care professionals in accordance with professional guidelines. The device is not intended for screening, prenatal testing, or as a stand-alone diagnostic test. The device is for prescription use only.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Design verification and validation must include:

(i) A description of genomic coverage that includes:

(A) A list of all genes, variant types, and target regions within each gene that the device detects;

(B) Summary information regarding the clinical significance of each gene, including references;

(C) A description of the genes with high clinical significance that are detected by the device, defined as genes for which the test result(s) may lead to prophylactic screening, confirmatory procedures, or treatment that may incur morbidity or mortality; and

(D) A description of any within-gene targeted regions that cannot be reported.

(ii) Specifications for specimen requirements, including any specimen collection devices, handling, and storage.

(iii) Specifications of the DNA extraction method and criteria for DNA quality and quantity that are prerequisite to performing the assay.

(iv) Detailed documentation of the methodology and protocols for each step of the test, including reagents, instrumentation, and software required. The documentation must include the analysis algorithms used for mutation detection and annotation, and specify the quality metrics, variant calling thresholds, and filters at each step of the test, including the criteria for run failures, batch failures, specimen failures, invalid calls (*e.g.,* failed quality control), and ''no calls'' (*i.e.,* absence of a result), as applicable.

(v) Description of required instrumentation and equipment, and any ancillary reagents, instrumentation, or equipment.

(vi) Detailed documentation of device software, including software applications and hardware-based devices that incorporate software. The documentation must include verification, validation, hazard analysis, and risk assessment activities.

(vii) Documentation of internal and external controls that are recommended or provided and control procedures. The documentation must identify those control elements that are incorporated into the testing procedure.

(viii) Detailed documentation pertaining to the probability of test failure based on data from clinical samples, description of scenarios in which a test can fail, and any risk mitigations, including follow-up actions to be taken.

(ix) Detailed documentation of the rules, procedures, tools, and criteria used for establishing mutation-hereditary disease relationships and mutation annotation, evaluation, and classification (*e.g.,* pathogenic, likely pathogenic, variant of unknown significance, benign, and likely benign).

(x) Detailed documentation of any internal or external database(s) or decision rules used for mutation annotation, including:

(A) The protocol(s) used for variant interpretation, including training of personnel, monitoring accuracy of decision, resolution of discordant interpretations, and updating interpretations;

(B) Detailed documentation of the basis for interpretation, including the use of alternate databases, literature, and guidelines, and the basis for risk reporting;

(C) Methods for data preservation and security; and

(D) Data formats and nomenclature.

(xi) Information that demonstrates the performance characteristics of the device, evaluated either specifically for each gene/mutation or, when determined to be acceptable and appropriate by FDA, using a representative approach based on other mutations of the same type, including:

(A) Data that adequately support the intended specimen type(s) (*e.g.,* whole blood), specimen handling protocol, and DNA extraction method.

(B) A summary of the evidence that demonstrates how the analytical quality metrics and thresholds used to

determine the acceptability of reporting support the minimum accuracy requirements.

(C) Data to adequately support device accuracy using clinical specimens representing all indicated specimen types, mutation types, and size ranges intended to be detected and reported by the device. Accuracy data must fulfill the following:

(*1*) Accuracy of the device must be evaluated with clinical specimens collected in accordance with the device labeling and selected without bias, or well-characterized human cell line samples, when determined to be acceptable and appropriate by FDA.

(*2*) Accuracy must be evaluated by comparison to bidirectional Sanger sequencing or other orthogonal methods identified as appropriate by FDA. Performance criteria for both the comparator method(s) and the device must be predefined and appropriate to the device's intended use. Detailed study protocols must be documented.

(*3*) A sufficient number of specimens must be tested. For BRCA1 and BRCA2 genes, a minimum of 120 variant positive specimens must be tested. For other genes with high clinical significance, at least 40 variant-positive specimens must be tested per gene, including representative specimens for each indicated variant type based on a justification determined to be appropriate and acceptable by FDA. For remaining genes detected by the device, testing must include variant positive specimens representing each variant type, unless the variant type has a prevalence of less than 0.01 percent. Specimen selection must be prioritized based on clinical significance. The selected specimens must be representative of zygosity and challenging genomic context (*e.g.,* guanine-cytosine content, near tandem repeats and homopolymer stretches, pseudogene), and must cover the range of sizes (for insertions, deletions, copy number variant (CNV) amplifications and CNV deletions) intended to be detected and reported by the device.

(*4*) Except as permitted by FDA under paragraph (b)(1)(xi)(C)(*5*) of this section, tested specimens must be selected based on results obtained from the orthogonal method. Positive percent agreement (PPA) and negative percent agreement (NPA) must be calculated and demonstrated for each variant type detected and reported by the device, as well as for clinically relevant variants. PPA is calculated as the number of variants that are tested positive by both the device and the orthogonal method (true ''positives'' (TP)) divided by the number of variants tested positive as determined by the orthogonal method (TP plus false negatives (FN) by the device). NPA is calculated as the number of variants that are tested negative (wild type) by both the device and the orthogonal method (true ''negatives'' (TN)) divided by the number of variants tested negative (wild type) by the orthogonal method (TN plus false positives (FP) by the device). Point estimates for PPA and NPA must be calculated along with 95 percent two-sided confidence intervals (CI). Uncertainty of the point estimate must be within an acceptable range, as identified by FDA, and must be demonstrated using the 95 percent CI.

(*5*) When it is determined by FDA to be appropriate and acceptable to select samples based on the results obtained with the device, accuracy must be presented as technical positive predictive value (TPPV) and technical negative predictive value (TNPV). TPPV relates to the likelihood that a variant call is a true positive and reflects the number of false positives per test. TPPV is calculated as the number of variants that are tested positive by both the device and the orthogonal method (TP) divided by the number of variants tested positive by the device (TP plus FP). TNPV relates to the likelihood that a variant call is a true negative and reflects the number of false negatives per test. TNPV is calculated as the number of variants that are tested negative by both the device and the orthogonal method (TN) divided by the number of variants tested negative by the device (TN plus FN).

(*6*) Any ''no calls'' or invalid calls in the study must be reported separately. The percent of final ''no calls'' or invalid calls must be clinically justifiable.

(*7*) Accuracy as a function of each performance metric (*e.g.,* coverage depth, base quality scores) must be documented to provide evidence of the accuracy of the overall run.

(*8*) Detailed documentation for accuracy of the device must include information and results for the overall study, each mutation type, and each gene. The accuracy must further be described based upon stratification within each mutation type by zygosity, genomic context, and size (for indels and CNVs). Overall accuracy for reporting of substitutions must be ≥99.0 percent; insertions and deletions, ≥99.0 percent; CNVs, ≥99.0 percent for positive agreement (PPA, TPPV); and ≥99.9 percent for negative agreement (NPA, TNPV).

(D) Documentation of the data to adequately support device precision using clinical specimens representing all specimen types, mutation types, and sizes intended to be detected and reported by the device. The precision study must fulfill the following:

(*1*) The study must be performed using multiple instruments and multiple operators, on multiple non-consecutive days, and using multiple reagent lots. If the device is to be performed at more than one site, different sites must be included and reproducibility across sites must be evaluated.

(*2*) Representative clinical specimens of each mutation type must be tested (both positive and negative), considering clinical significance, prevalence, zygosity, genomic context, and size (for indels and CNVs). The precision for CNV detection must be demonstrated on the gene level for genes with high clinical significance. Alternatively, a justification for why such data are not needed must be found acceptable and appropriate by FDA.

(*3*) The study must assess the performance of all steps, including DNA extraction, unless a separate extraction study is performed.

(*4*) The study must use predefined performance criteria. Agreement estimates such as PPA/NPA and average positive agreement/average negative agreement must be provided, including point estimates and 95 percent confidence intervals. Documentation from the precision study must be demonstrated for the overall precision study, in addition to each mutation type, each gene, and each sample. Precision must further be demonstrated upon stratification within each mutation type by zygosity, genomic context, and size (for indels and CNVs). The overall precision point estimates for each variant type must be >99.0 percent.

(*5*) Any ''no calls'' or invalid calls in the study must be included in precision study results and reported separately. The percent of ''no calls'' or invalid calls and key quality control metrics parameters (*e.g.,* coverage, sequencing score) must be summarized and based on stratification in the same way as the precision estimates.

(E) Documentation of the nucleic acid assay input range and the evidence to adequately support the range.

(F) Detailed documentation of additional analytical validation studies, including endogenous and exogenous interfering substances, specimen and reagent stability, cross-reactivity, carryover and cross-contamination, guard-banding, and index misassignment, as applicable. If specimens are pooled, index cross-contamination must be evaluated and

demonstrate that pooling does not negatively impact test performance.

(G) Specimen type and matrix comparison data must be generated if more than one specimen type or anticoagulant can be tested with the device, including failure rates for the different specimen types.

(xii) Information that adequately supports the variant annotation and clinical interpretation of the test must include:

(A) A summary documenting the clinical significance for each gene on the test panel, including the associated conditions/cancers, the most prevalent and representative mutations, and summary of clinical evidence with references, including expected frequency in the general population and different ethnicities, and risks of developing the disease in relevant ethnic populations and the general population.

(B) Detailed documentation of the data to adequately support the performance of the variant annotation algorithms (*e.g.,* concordance studies between the device generated variant classifications and externally established variant classifications, manual classifications by medical professionals, or classifications generated from clinical test reports).

(C) Documentation of any procedures or protocols for incorporation of any updates of valid scientific evidence into variant classification algorithms.

(2) The labeling required under § 809.10 of this chapter must include the following, as applicable:

(i) The intended use must include a description of the intended specimen type(s) and matrix (*e.g.,* whole blood), the validated germline mutation types (*e.g.,* single nucleotide variant, insertion, deletion, CNV), and a statement that the test is for hereditary cancer predisposition assessment and to aid in identifying hereditary genetic variants potentially associated with a diagnosed cancer.

(ii) The name of the testing facility or facilities (*e.g.,* for single-site assays).

(iii) A summary of device description in accordance with paragraphs (b)(1)(i) through (b)(1)(viii) of this section.

(iv) A section that provides summary information on how the test works, how to interpret the results of the test, and an explanation on the database(s) used for mutation annotation.

(v) A summary of the information that demonstrates the performance characteristics of the device as required under paragraph (b)(1)(xi) of this section.

(vi) The following limiting statements:

(A) A statement that the test is not intended for use as a stand-alone diagnostic to diagnose cancer or other health conditions, and is not intended for use for prenatal testing nor as a cancer screening test.

(B) A statement that the test is specifically designed for heritable germline mutations and is not appropriate for the detection of somatic mutations.

(C) A description of the intended test population.

(D) A statement that the risk of cancer or disease for an individual cannot be predicted.

(E) A statement that: test results should be interpreted in the context of clinical findings, family history, lifestyle, environment, and other factors; molecular testing may not detect all possible mutations leading to cancer predisposition; a negative result does not rule out the possibility that the individual has an unidentified variant leading to cancer; and for more information, physicians ordering the test may wish to consult with a clinical medical geneticist or genetic counselor.

(F) A statement that other factors, such as ethnicity, may affect whether the test results are relevant for a particular patient and may also affect how their genetic health results are interpreted.

(G) A statement describing the situations that a patient should not receive the test (*e.g.,* a patient with bone marrow transplant).

(H) A statement describing the challenging genomic contexts that may have reduced performance, where results should be interpreted with care.

(I) A statement disclosing the genetic coverage of the test, including any gaps in coverage.

(J) Statements describing testing conditions that were identified to cause test failures (*e.g.,* low specimen volume, poor DNA quality).

(vii) For variants detected and reported by the device under the category of ''variants of uncertain significance'' or equivalent designation, a limiting statement that the clinical significance has not been demonstrated with adequate clinical evidence in accordance with established guidelines (*e.g.,* professional guidelines).

(viii) For variants detected and reported by the device under the category of ''variants with evidence of clinical significance'' or equivalent designation, reference(s) for physicians to access internal or external information concerning decision rules or conclusions about the level of evidence for clinical significance.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–20443 Filed 10–5–26; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. FDA–2026–N–10995]

Medical Devices; Cardiovascular Devices; Classification of the Hyperoxia Monitoring Device Adjunct to Pulse Oximetry

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA) is classifying the hyperoxia monitoring device adjunct to pulse oximetry into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for classification of the hyperoxia monitoring device adjunct to pulse oximetry. We are taking this action because we have determined that classifying the device into class II will provide a reasonable assurance of the safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective October 6, 2026. The classification was applicable on October 12, 2023.

FOR FURTHER INFORMATION CONTACT: Annie Abraham, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1264, Silver Spring, MD 20993–0002, 240–402–5219, *Annie.Abraham@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA (the Agency or we) has classified the hyperoxia monitoring device adjunct to pulse oximetry into class II (special controls), which we have determined will provide a reasonable assurance of the safety and effectiveness of the device. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower

device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified into, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act (see also part 860, subpart D (21 CFR part 860, subpart D)). Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo classification process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a premarket notification (510(k)) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining ''substantial equivalence''). Instead, sponsors can use the less burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On December 21, 2020, FDA received Masimo Corporation's request for De Novo classification of the ORi device. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see section 513(a)(1)(B) of the FD&C Act). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on October 12, 2023, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 870.2720.[1] We have named the generic type of device ''hyperoxia monitoring device adjunct to pulse oximetry,'' and it is identified as a device that monitors elevated hemoglobin oxygen saturation levels as an adjunct to arterial oxygen saturation monitoring.

FDA has identified the risks to health associated with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—RISKS TO HEALTH AND MITIGATION MEASURES FOR HYPEROXIA MONITORING DEVICES ADJUNCT TO PULSE OXIMETRY

Identified risks to health	Mitigation measures
Inaccurate measurement of hyperoxia or hypoxia leading to escalation of unneeded therapy and false reassurance.	Clinical performance testing.
Incorrect or delayed treatment due to over-reliance on device output for clinical decision-making without using arterial blood gas values for confirmation.	Clinical performance testing; Human factors/usability testing; and Labeling.
Procedure delay or inaccuracy due to software failure or corruption in data transfer	Software verification, validation, and hazard analysis.
Patient or operator injury due to electrical hazards	Electrical safety testing; and Electromagnetic compatibility testing.
Adverse tissue reaction	Biocompatibility evaluation.
Inaccurate measurement or infection due to unclean surfaces	Reprocessing validation; and Labeling.

[1] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of the safety and effectiveness of the device. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this final order.

Under the FD&C Act, submission of a premarket notification under section 510(k) is required to reasonably assure the safety and effectiveness of class II devices unless FDA determines that the device type should be exempt under section 510(m) of the FD&C Act. At this time FDA has not made this determination for hyperoxia monitoring devices adjunct to pulse oximetry. This device is therefore subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not normally have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820 regarding quality management system regulation have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR part 801 regarding labeling have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 870

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 870 is amended as follows:

PART 870—CARDIOVASCULAR DEVICES

■ 1. The authority citation for part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l,* 371.

■ 2. Add § 870.2720 to subpart C to read as follows:

§ 870.2720 Hyperoxia monitoring device adjunct to pulse oximetry.

(a) *Identification.* A hyperoxia monitoring device adjunct to pulse oximetry is a device that monitors elevated hemoglobin oxygen saturation levels as an adjunct to arterial oxygen saturation monitoring.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Clinical performance testing under anticipated conditions of use must evaluate the accuracy of hyperoxia monitoring by the device and evaluate all adverse events.

(2) Human factors/usability testing must demonstrate that the user can correctly use the device, based solely on reading the instructions for use.

(3) Performance data must demonstrate the electromagnetic compatibility and electrical safety of the device.

(4) The patient-contacting components of the device must be demonstrated to be biocompatible.

(5) Performance testing must validate the reprocessing instructions for the device, including demonstration of device performance after repeated cleaning and disinfection.

(6) Software verification, validation, and hazard analysis must be performed. Performance testing must demonstrate compatibility with pulse oximeter devices labeled to be compatible with the device.

(7) Labeling must include:

(i) Cleaning and disinfection instructions;

(ii) A summary of the clinical performance testing with the device;

(iii) A warning against over-reliance on device output without using arterial blood gas values for confirmation; and

(iv) Instructions to monitor oxygen delivery and patient clinical/cardiovascular status when device output changes.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–20441 Filed 10–5–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. FDA–2026–N–10992]

Medical Devices; General and Plastic Surgery Devices; Classification of the Focused Ultrasound System for Non-Thermal, Mechanical Tissue Ablation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA) is classifying the focused ultrasound system for non-thermal, mechanical tissue ablation into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for classification of the focused ultrasound system for non-thermal, mechanical tissue ablation. We are taking this action because we have determined that classifying the device into class II will provide a reasonable assurance of the safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective October 6, 2026. The classification was applicable on October 6, 2023.

FOR FURTHER INFORMATION CONTACT: Cal Rabang, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4633, Silver Spring, MD 20993–0002, 301–796–6412, *Cal.Rabang@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA (the Agency or we) has classified the focused ultrasound system for non-thermal, mechanical tissue ablation into class II (special controls), which we have determined will provide a reasonable assurance of the safety and effectiveness of the device. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by

reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified into, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act (see also part 860, subpart D (21 CFR part 860, subpart D)). Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo classification process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a premarket notification (510(k)) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining ''substantial equivalence''). Instead, sponsors can use the less burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On December 2, 2022, FDA received HistoSonics, Inc.'s request for De Novo classification of the Edison System. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see section 513(a)(1)(B) of the FD&C Act). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on October 6, 2023, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 878.4405.[1] We have named the generic type of device ''focused ultrasound system for non-thermal, mechanical tissue ablation,'' and it is identified as a device that uses focused ultrasound to mechanically ablate soft tissue. The device is not intended to thermally ablate tissue.

FDA has identified the risks to health associated with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—RISKS TO HEALTH AND MITIGATION MEASURES FOR FOCUSED ULTRASOUND SYSTEM FOR NON-THERMAL, MECHANICAL TISSUE ABLATION

Identified risks to health	Mitigation measures
Impaired tissue or organ function, abscess, pain, or other adverse events downstream of tissue ablation.	Clinical performance testing; Labeling; and Human factors testing.
Acoustic path, non-targeted tissue injury	Clinical performance testing; Human factors testing; Animal performance testing; and Non-clinical performance testing.
Tissue injury due to device malfunction or misuse	Clinical performance testing; Software verification, validation, and hazard analysis; Non-clinical performance testing; Labeling; and Human factors testing.
Adverse tissue reaction	Biocompatibility evaluation.
Electrical shock or electromagnetic interference	Electrical safety testing; Electromagnetic compatibility testing; and Labeling.

[1] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of the safety and effectiveness of the device. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this final order. FDA supports the principles of the ''3Rs,'' to replace, reduce, and/or refine animal use in testing when feasible. We encourage sponsors to consult with us if they wish to use a non-animal testing method they believe is suitable, adequate, validated, and feasible. We will consider whether such an alternative method could be assessed for equivalency to an animal test method.

Under the FD&C Act, submission of a premarket notification under section 510(k) is required to reasonably assure the safety and effectiveness of class II devices unless FDA determines that the device type should be exempt under section 510(m) of the FD&C Act. At this time FDA has not made this determination for focused ultrasound systems for non-thermal, mechanical tissue ablation. This device is therefore subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not normally have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820 regarding quality management system regulation have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR part 801 regarding labeling have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 878 is amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

■ 1. The authority citation for part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 878.4405 to subpart E to read as follows:

§ 878.4405 Focused ultrasound system for non-thermal, mechanical tissue ablation.

(a) *Identification.* This device uses focused ultrasound to mechanically ablate soft tissue. The device is not intended to thermally ablate tissue.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use. Testing must document the adverse event profile and characterize tissue destruction.

(2) Animal performance testing must demonstrate that the device mechanically destroys targeted tissue while characterizing the chronic safety profile, including thermal and mechanical injury to adjacent, non-target tissue.

(3) Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use. The following performance characteristics must be tested:

(i) Acoustic characterization at clinically relevant settings;

(ii) Determination of the minimum drive voltages necessary to sustain a bubble cloud in the target tissue;

(iii) Validation of mechanisms to prevent energy delivery that would result in adverse thermal effects;

(iv) Availability of real-time monitoring during the procedure;

(v) Validation that the treatment zone is limited to the defined target tissue; and

(vi) Validation of mechanisms to prevent, pause, and terminate ablation in the event of device failure.

(4) Performance data must support the electrical safety and electromagnetic compatibility of the device.

(5) All patient-contacting components of the device must be demonstrated to be biocompatible.

(6) Software validation, verification, and hazard analysis must be performed.

(7) Human factors testing must demonstrate that the user can safely and correctly use the device.

(8) Labeling must include the following:

(i) A warning that focused ultrasound ablation should only be considered in patients with sufficient functional reserve to withstand the destruction of the planned volume of tissue;

(ii) A statement that the device has not been evaluated for the treatment of any specific disease or condition; and

(iii) A detailed summary of the clinical testing with the device.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–20440 Filed 10–5–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 1

Privacy Act Exemptions

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of the Treasury (Treasury) is issuing a final rule, exempting a new system of records entitled ''Department of the Treasury, Treasury .032—Federal Program Waste, Fraud, and Abuse Tip Intake and Referral Records'' from certain provisions of the Privacy Act. This system of records is established to support the receipt, maintenance, review, triage, and referral of tips, complaints, allegations, leads, supporting information, and related correspondence concerning suspected waste, fraud, abuse, improper payments, misuse of Federal funds, or other misconduct affecting Federal programs. The exemption is intended to protect investigatory material compiled for law enforcement purposes.

DATES: This rule is effective on November 5, 2026.

FOR FURTHER INFORMATION CONTACT: For general questions and questions regarding privacy issues, please contact: Ryan Law, Deputy Assistant Secretary for Privacy, Transparency, and Records, Department of the Treasury, 1500 Suite #8100, JBAB, 250 Murray Lane SW, BLDG 410/Door 123, Washington, DC 20222; telephone: (202) 622–5710.

SUPPLEMENTARY INFORMATION:

Background

Treasury published a notice of proposed rulemaking (Systems Exemption NPRM) in the **Federal Register**, 91 FR 36550 (June 17, 2026), proposing to exempt portions of the system of records from one or more provisions of the Privacy Act.

Executive Order 14249, ''Protecting America's Bank Account Against Fraud, Waste, and Abuse,'' states that it is the policy of the United States to defend against financial fraud and improper payments and directs Treasury-related activity to support fraud prevention and payment integrity. Executive Order 14395, ''Establishing the Task Force To Eliminate Fraud,'' directs a comprehensive national strategy to stop fraud, waste, and abuse in Federal benefit programs and includes Treasury, the Department of Justice, inspectors general, and other agencies in coordinated anti-fraud work.

Treasury intends to receive and maintain tips, complaints, allegations, referrals, supporting information, and related correspondence submitted by members of the public, Federal agencies, law enforcement entities, contractors, and grant recipients concerning suspected fraud, waste, abuse, improper payments, misuse of Federal funds, and related misconduct affecting Federal programs. Treasury will review, assess, validate, categorize, de-duplicate, triage, and refer such information to appropriate Federal agencies, Offices of Inspector General, law enforcement agencies, or other authorized entities in support of fraud detection, investigative, enforcement, and recovery activities. Treasury's review and referral activities are intended to facilitate the coordination and referral of matters that may warrant further review, investigation, enforcement action, or recovery efforts by authorized governmental entities.

To the extent that records maintained within this system constitute investigatory material compiled for law-enforcement purposes, including information supporting investigative, enforcement, and fraud-detection activities conducted by authorized agencies, such records may be exempt from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

Public Comments

Treasury received two comments on the proposed rule. One commenter opposed the proposed exemptions, arguing they were overly broad, expressing concerns regarding transparency, oversight, and the handling of personal information. Another commenter generally supported protecting legitimate investigatory material but urged Treasury to narrow the scope of the exemption to qualifying investigatory records and preserve certain Privacy Act protections for non-law-enforcement records.

The system of records is established to support the receipt, maintenance, review, triage, and referral of tips, complaints, allegations, leads, supporting information, and related correspondence concerning suspected waste, fraud, abuse, improper payments, misuse of Federal funds, or other misconduct affecting Federal programs. After careful consideration of the comments received, Treasury continues to conclude that the exemptions adopted in this final rule are authorized by 5 U.S.C. 552a(k)(2) and are necessary to protect the integrity of investigatory material compiled for law enforcement purposes. The exemptions do not apply broadly to all records maintained in the system merely because those records are contained in the system. Rather, the exemptions apply only to records, or portions of records, that constitute investigatory material compiled for law enforcement purposes and otherwise qualify for exemption under 5 U.S.C. 552a(k)(2). Records maintained in the system that do not meet the statutory criteria for exemption remain subject to the applicable provisions of the Privacy Act. This limitation addresses the commenters' concerns that the proposed exemptions could extend to non-law-enforcement records or otherwise apply more broadly than permitted by the statute. Accordingly, Treasury is adopting the proposed rule without change.

Treasury is hereby promulgating a final rule to exempt the Federal Program Waste, Fraud, and Abuse Tip Intake and Referral Records system from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2) and the authority vested in the Secretary of the Treasury by 31 CFR 1.23(c).

Under 5 U.S.C. 552a(k)(2), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records contains investigatory material compiled for law enforcement purposes that are not within the scope of subsection (j)(2) of the Privacy Act (which applies to agencies and components thereof that perform as their principal function any activity pertaining to the enforcement of criminal laws).

To the extent that this system of records contains investigatory materials compiled for law enforcement purposes protected by 5 U.S.C. 552a(k)(2), Treasury exempts the following system of records from various provisions of the Privacy Act:

Treasury .032—Federal Program Waste, Fraud, and Abuse Tip Intake and Referral Records.

Under 5 U.S.C. 552a(k)(2), Treasury is promulgating a final rule to exempt certain records in the above-referenced system of records be exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act. See 31 CFR 1.36.

The following are the reasons why investigatory materials contained in the above-referenced system of records may be exempted from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

(1) 5 U.S.C. 552a(c)(3) requires an agency to make any accounting of disclosures of records required by 5 U.S.C. 552a(c)(1) available to the individual named in the record upon his or her request. Exemption from this requirement is appropriate because release of the accounting of disclosures could alert individuals that they are the subject of a tip, complaint, allegation, referral, inquiry, or law enforcement-related review or analysis. Disclosure of the accounting could reveal the existence, scope, nature, or status of an inquiry or referral and could impede law enforcement or program-integrity efforts by allowing individuals to evade detection, influence witnesses, alter conduct, destroy evidence, fabricate information, or otherwise interfere with lawful investigative, enforcement, or recovery activities.

(2) 5 U.S.C. 552a(d) grants individuals access to records containing information about them and permits them to request amendment of records pertaining to them. Exemption from these requirements is appropriate because access to or amendment of records contained in this system could reveal the existence, nature, scope, or status of investigatory or law enforcement-related materials and could interfere with ongoing or prospective investigations, activities, recovery efforts, or other law enforcement purposes. Providing access or permitting amendment could enable subjects of tips or investigations to avoid detection, intimidate or influence

witnesses, destroy evidence, conceal assets, coordinate testimony, or otherwise impede lawful activities. In addition, investigatory material may include information obtained from third parties or other agencies, the disclosure of which could compromise confidentiality, investigative techniques, or sensitive law enforcement information.

(3) 5 U.S.C. 552a(e)(1) requires an agency to maintain only such information about an individual as is relevant and necessary to accomplish a purpose required by statute or executive order. Exemption from this requirement is appropriate because, during the receipt, assessment, triage, referral, and review of tips and allegations, Treasury may obtain information whose relevance or accuracy is not immediately apparent. In the interests of effective fraud prevention, payment integrity, law enforcement coordination and program-integrity activities, it is appropriate to retain information that may aid in identifying patterns, relationships, schemes, trends, or other indicators relevant to suspected waste, fraud, abuse, improper payments, or related misconduct.

(4) 5 U.S.C. 552a(e)(4)(G), (H), and (I) and 5 U.S.C. 552a(f) require an agency to publish procedures whereby individuals can determine whether a system contains records pertaining to them, gain access to such records, contest their contents, and identify categories of sources of records in the system. Exemption from these requirements is appropriate because this system is exempt from the access and amendment provisions of subsection (d). Publication of such procedures could undermine the purpose of the exemption by revealing investigatory interests, law enforcement-sensitive information, or the existence of ongoing referral or investigatory activities.

Any records from another Treasury system of records or another Executive Branch agency's system of records for which an exemption is claimed under 5 U.S.C. 552a(j) or (k) that may also be included in this system of records retain the same exempt status as such records have in the system for which the exemption is claimed.

Regulatory Analysis

This final rule is not a ''significant regulatory action'' under Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* it is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. This rule, issued pursuant to 5 U.S.C. 552a(k)(2), is to exempt certain information maintained by Treasury in the above-referenced system of records from certain provisions of the Privacy Act. Small entities, as defined in the RFA, are not provided rights under the Privacy Act and are outside the scope of this regulation.

List of Subjects in 31 CFR Part 1

Courts, Freedom of Information, Government Employees, Privacy.

For the reasons stated in the preamble, part 1 of title 31 of the Code of Federal Regulations is amended as follows:

PART 1—DISCLOSURE OF RECORDS

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

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 301, 321; 31 U.S.C. 3717.

■ 2. Amend § 1.36 in table 10 to paragraph (g)(1)(i) by adding, in alphanumeric order, an entry for ''Treasury .032'' to read as follows:

§ 1.36 Systems exempt in whole or in part from provisions of the Privacy Act and this part.

(g) * * *
(1) * * *
(i) * * *

TABLE 10 TO PARAGRAPH (g)(1)(i)

No.	Name of system
* *	* * *
Treasury .032 ..	Federal Program Waste, Fraud, and Abuse Tip Intake and Referral Records.

Ryan Law,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

[FR Doc. 2026–20469 Filed 10–5–26; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2026–1287]

RIN 1625–AA87

Security Zone; Patapsco River, Baltimore, MD

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone for certain navigable waters of the Patapsco River. The security zone is needed to protect persons, including those under the protection of the United States Secret Service (USSS), and property from terrorist acts and incidents and to prevent terrorist acts or incidents during a high-ranking public official visit. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Maryland-National Capital Region or a designated representative.

DATES: This rule is effective from 1 p.m. until 7 p.m. on October 6, 2026.

ADDRESSES: To view available documents, go to *https://www.regulations.gov* and search for USCG–2026–1287.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, contact Lieutenant Commander Randy Johnston, Sector Maryland-National Capital Region, Waterways Management Division, U.S. Coast Guard: telephone 410–576–2519, or email *Randy.L.johnston@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
MD Maryland
NCR National Capital Region
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code
USSS United States Secret Service

II. Background Information and Authority

The Coast Guard received notification that persons under the protection of the United States Secret Service (USSS) will conduct a visit to Baltimore, MD, during the afternoon of October 6, 2026. The nationally publicized event is being held in Baltimore, MD, in close proximity to navigable waterways within the Captain of the Port (COTP) Maryland-National Capital Region's (MD-NCR) Area of Responsibility, as set forth at 33 CFR 3.25–15. The COTP MD-NCR has determined that potential hazards associated with the high-ranking official public visit are a safety and security concern for anyone within 1,000 yards of their location. Therefore, the COTP is issuing this rule under the authority in 46 U.S.C. 70051 and 70124, which is needed to protect personnel, vessels, and the marine environment in the navigable waters within the security zone.

Because of risks associated with these potential hazards, the Coast Guard is issuing this rule without prior notice and comment. As is authorized by 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard was notified of this event on September 29, 2026, but we must establish this security zone by October 6, 2026, to protect personnel, vessels, and the marine environment. Therefore, we have do not have enough time to solicit and respond to comments.

For the same reason, the Coast Guard finds that under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

III. Discussion of the Rule

This rule establishes a security zone from 1 p.m. until 7 p.m. on October 6, 2026. The zone will cover navigable waters on the Patapsco River within 1,000 yards of Sparrows Point and Bear Creek. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or their designated representative.

IV. Regulatory Analyses

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

A. Impact on Small Entities

The regulatory flexibility analysis provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to rules that are not subject to notice and comment. Because the Coast Guard has, for good cause, waived the notice and comment requirement that would otherwise apply to this rulemaking, the Regulatory Flexibility Act's flexibility analysis provisions do not apply here.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), if this rule will affect your small business, organization, or governmental jurisdiction and you have questions, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Small businesses may send comments to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards by calling 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

B. Collection of Information

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

C. Federalism and Indian Tribal Governments

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in that Order.

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

D. Unfunded Mandates Reform Act

As required by The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Coast Guard certifies that this rule will not result in an annual expenditure of $100,000,000 or more (adjusted for inflation) by a State, local, or tribal government, in the aggregate, or by the private sector.

E. Environment

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

This rule is a security zone. It is categorically excluded from further review under paragraph L60 (c) emergency situation less than a week for a high-ranking public official visit under the protection of the USSS of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.4.

■ 2. Add 165.T05–1287 to read as follows:

§ 165.T05–1287 Security Zone; Patapsco River, Baltimore, MD.

(a) *Location.* The following area is a security zone: All navigable waters of the Patapsco River, within 1,000 yards of Sparrows Point and Bear Creek.

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

(c) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, you may not enter the security zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative on VHF–FM channel 16 or by telephone at (410) 576–2693. Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 1 p.m. until 7 p.m. on October 6, 2026.

Patrick C. Burkett,

Captain, U.S. Coast Guard, Captain of the Port Sector Maryland-National Capital Region.

[FR Doc. 2026–20477 Filed 10–5–26; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 26–1040; MB Docket No. 26–152; FR ID 370282]

Radio Broadcasting Services; Whitehall, Michigan

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Table of FM Allotments, of the Federal Communications Commission's (Commission) rules, by substituting Channel 258A for vacant Channel 248A at Whitehall, Michigan. A staff engineering analysis determines that Channel 258A can be allotted to Whitehall consistent with the Commission's minimum distance separation requirements, with a site restriction of 13 kilometers (8.1 miles) northwest of the community. The reference coordinates are 43–28–30 NL and 86–27–38 WL. The window period for filing applications for Channel 258A at Whitehall, Michigan will not be opened at this time. Instead, the issue of opening this allotment for filing will be addressed by the Commission in subsequent order. *See* **SUPPLEMENTARY INFORMATION**.

DATES: Effective November 12, 2026.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2054, *Rolanda-Faye.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* adopted September 25, 2026, and released September 28, 2026. The full text of this Commission decision is available online at *https://apps.fcc.gov/ecfs/.* The full text of this document can also be downloaded in Word or Portable Document Format (PDF) at *https://www.fcc.gov/edocs.* This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

On March 16, 2026, the Audio Division cancelled the license and deleted the callsign of Station WLAW–FM, Whitehall, Michigan (DWLAW–FM) at the licensee's request. *See* Application File No. 0000290925. As a result, Channel 248A at Whitehall became a vacant FM allotment following the cancellation of the Station DWLAW–FM license. Channel 248A at Whitehall is not currently listed in the FM Table since it was occupied by DWLAW–FM.

The Commission will send a copy of this *Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.202(b), amend table 1 (Table of FM Allotments) under Michigan by adding the entry for ''Whitehall'' in alphabetical order.

The addition reads as follows:

§ 73.202 Table of Allotments.

* * * * *

(b) * * *

TABLE 1 TO PARAGRAPH (b)

[U.S. States]

	Channel No.
* * * * *	
Michigan	
* * * * *	
Whitehall	258A.
* * * * *	

[FR Doc. 2026–20463 Filed 10–5–26; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 26–1039; MB Docket No. 26–113; FR ID 370283]

Radio Broadcasting Services; Selmer, Tennessee

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Table of FM Allotments, of the Federal Communications Commission's (Commission) rules, by deleting vacant Channel 288A at Selmer, Tennessee, because it does not comply with the minimum distance separation requirements of the Commission's rules. Channel 288A at Selmer, Tennessee is short-spaced to Station WVNA–FM by nine kilometers, and there are no alternate channels available to alleviate the existing spacing conflict that would comply with the Commission's spacing requirements. The deletion of vacant Channel 288A at Selmer is consistent with the Commission's policy that we will not retain a vacant FM channel that does not comply with the Commission's spacing requirements.

DATES: Effective November 12, 2026.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2054, *Rolanda-Faye.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* adopted September 25, 2026, and released September 28, 2026. The full text of the Commission decision is available online at *https://www.fcc.gov/ecfs.* The full text of this decision can also be downloaded in Word or Portable Document Format (PDF) at *https://www.fcc.gov/edocs.* This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will send a copy of this *Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

§ 73.202 [Amended]

■ 2. In § 73.202(b), amend table 1 (Table of FM Allotments) under Tennessee by removing the entry for ''Selmer''.

[FR Doc. 2026–20464 Filed 10–5–26; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

47 CFR Chapter IV

[Docket ID 260108–0020]

RIN 0660–AA40; 2127–AN06

Eliminating Obsolete Regulations Related to the 911 Grant Program

AGENCY: National Telecommunications and Information Administration (NTIA), Department of Commerce; National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Final rule.

SUMMARY: In this action, NTIA and NHTSA are removing regulations related to the 911 Grant Program because the program is no longer active and there have been no new appropriations to revive or extend it. This removal is intended to eliminate obsolete regulatory language, ensure that the Code of Federal Regulations is accurate and up-to-date, and minimize the risk of confusion regarding the availability of grant funds.

DATES: The rule is effective October 6, 2026.

FOR FURTHER INFORMATION CONTACT:

For legal issues (Department of Transportation): Megan Brown, Attorney-Advisor, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; Email: *megan.brown@dot.gov.*

For legal issues (Department of Commerce): Daniel Sweeney, Deputy General Counsel for Economic, Statistical, and Regulatory Affairs, Office of the General Counsel, at (240) 474–3619 and *dsweeney@doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

NTIA and NHTSA are eliminating the regulations at 47 CFR part 400, which pertain to the 911 Grant Program jointly administered by NTIA and NHTSA.

The 911 Grant Program was originally established under the Ensuring Needed Help Arrives Near Callers Employing 911 (ENHANCE 911) Act of 2004, codified at 47 U.S.C. 942. Through a final rule published on August 3, 2018 (83 FR 38059), the agencies revised the program's implementing regulations as required by the Next Generation 911 Advancement Act of 2012, which was part of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96) and modernized the program to support the nationwide transition from legacy 911 systems to Next Generation 911 (NG911) services. The 2018 final rule updated the program's structure and broadened the eligible uses for grant funds to include NG911 technologies.

As of 2026, the 911 Grant Program is no longer active. Authorization for the program expired on October 1, 2022 (47 U.S.C. 942(d)(2)), and the Public Safety Trust Fund that funded the program was not extended past fiscal year 2022 (47 U.S.C. 1457(a)(2)). All projects funded by the program have been closed out and no open grants or applications exist.

II. Description of Regulatory Sections

Part 400 consists of eleven sections: §§ 400.1–400.11. Section 400.1 establishes the purpose of part 400. Section 400.2 provides definitions for various terms used throughout part 400. Section 400.3 addresses who may apply for a grant under part 400. Section 400.4 sets forth the application requirements. Section 400.5 addresses the review and approval of applications. Section 400.6 sets forth the framework for the distribution of grant funds. Section 400.7 establishes restrictions on how grant funds may be used. Section 400.8 sets forth continuing compliance requirements. Section 400.9 sets forth financial and administrative requirements, including reporting requirements related to performance and finances. Section 400.10 establishes the applicable closeout procedures. Section 400.11 addresses the authority of the 911 Implementation Coordination Office to waive the provisions of part 400 in extraordinary circumstances.

III. Discussion

NTIA and NHTSA are eliminating 47 CFR part 400 in its entirety. The ENHANCE 911 Act of 2004, as amended by the Next Generation 911 Advancement Act of 2012, appropriated a limited amount of funding for the 911 Grant Program, and all those funds have been allocated and awarded. No new appropriations have been made to revive or extend the program. Indeed, as stated on the program's website (*https://www.911.gov/projects/federal-funding/*), ''[t]here are currently no 911 Grants open for application.'' Because the program is now obsolete, and all the language in part 400 is now functionally irrelevant, NTIA and NHTSA are removing and reserving part 400. The elimination of part 400 will remove obsolete language, simplify the Code of Federal Regulations, and reduce the possibility of confusion regarding the availability of 911 Grant Program funds.

NTIA and NHTSA will remain ready to promulgate new regulations in the event that the 911 Grant Program is revived or extended by Congress.

IV. Waiver of Notice and Comment

Administrative Procedure Act

NTIA and NHTSA find good cause to issue, without notice and comment, and to make effective immediately, this elimination of the 911 Grant Program regulations in their entirety, in accordance with 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3). The Administrative Procedure Act provides that when an agency, for good cause, finds that notice and comment are impracticable, unnecessary, or contrary to the public interest, the agency may issue a final rule without providing prior notice and an opportunity for public comment (5 U.S.C. 553(b)(B)). In addition, a substantive rule will be made effective at least 30 days after its publication unless an agency finds good cause to make the rule effective prior to that date. See 5 U.S.C. 553(d)(3).

The 911 Grant Program, which is the subject of the regulations eliminated by this action, is no longer active. Both the authorization and trust fund that provide funding for the 911 Grant Program expired at the end of fiscal year 2022. No funds have been appropriated for the 911 Grant Program since 2022. With these considerations in mind, NTIA and NHTSA find it unnecessary to provide prior notice and opportunity for public comment on this elimination of regulatory language related to the expired 911 Grant Program. For these same reasons, the agencies find good cause to make this amendment effective immediately.

V. Regulatory Analyses and Notices

A. Executive Order 12866 (Regulatory Planning and Review)

The Office of Management and Budget (OMB) has determined this rule to be significant for purposes of Executive Order (E.O.) 12866.

B. Executive Order 14192 (Unleashing Prosperity Through Deregulation)

This rule is an E.O. 14192 deregulatory action.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Section 605 of the RFA allows agencies to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–21, 110 Stat. 857) amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that an action would not have a significant economic impact on a substantial number of small entities.

Because a notice of proposed rulemaking and an opportunity for public participation are not required to be given for this rule by 5 U.S.C. 553(b)(B), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) are not applicable. *See Or. Trollers Ass'n* v. *Gutierrez,* 452 F.3d 1104, 1123–24 (9th Cir. 2006) (noting that the RFA does not apply when an agency validly invokes an exception to the public comment requirements of 5 U.S.C. 553).

D. Executive Order 13132 (Federalism)

This rule does not contain policies having federalism implications as the term is defined in E.O. 13132.

E. Executive Order 12988 (Civil Justice Reform)

This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of E.O. 12988 (February 5, 1996).

F. Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. The OMB Control Number for the information collection was 0660–0041; the information collection expired June 30, 2023. This rule contains no new information collection requirements under the Paperwork Reduction Act of 1995.

G. Unfunded Mandates Reform Act

The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of $100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of $100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

H. National Environmental Policy Act

NHTSA has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*). NHTSA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4). Categorical exclusions are categories of actions that the agency has determined normally do not significantly affect the quality of the human environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See DOT Order 5610.1D § 9. In analyzing the applicability of a categorical exclusion (CE), the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. Id. § 9(b). Each DOT Operating Administration (OA) may apply a CE established in another OA's procedures. Id. § 9(f). To do so, the OA ''must evaluate the action for extraordinary circumstances identified in the OA procedures in which the CE is established to determine if a normally excluded action may have a significant impact and coordinate with the originating OA to ensure that the CE is being applied correctly.'' Id.

This rulemaking eliminates regulatory provisions related to the 911 Grant Program, which is no longer operational, and is categorically excluded pursuant to 23 CFR 771.118(c)(4), ''Planning and administrative activities not involving or leading directly to construction, such as: Training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; engineering; and operating assistance to transit authorities to continue existing service or increase service to meet routine demand.'' NHTSA has coordinated with the Federal Transit Administration to ensure that this CE is being applied correctly. NHTSA does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

NTIA has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) and in accordance with its *Guidance on NTIA National Environmental Policy Act Compliance* to determine the potential environmental impacts of this rulemaking. NTIA has determined that this Proposed Action, which is a rulemaking to eliminate regulatory provisions for an obsolete grant program, qualifies for NTIA CE A–1, ''Personnel, fiscal, management, and administrative activities, including recruiting, processing, paying, recordkeeping, budgeting, personnel actions, contract administration, and travel.'' This action has no potential for extraordinary circumstances because the elimination of obsolete regulatory provisions would not result in any activities or follow-on actions and has no potential to impact the human environment.

I. Executive Order 13175 (Consultation and Coordination With Indian Tribes)

E.O. 13175 (65 FR 67249, Nov. 9, 2000) requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that 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. NTIA and NHTSA has assessed the impact of this rule on Indian tribes and determined that this action would not have Tribal implications that require consultation under E.O. 13175.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. NTIA and NHTSA 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 this rule in the **Federal Register**. Because this rule does not meet the criteria in 5 U.S.C. 804(2) for a major rule, it will be effective upon publication in the **Federal Register**.

L. Privacy Act

Anyone is able to 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.*

List of Subjects in 47 CFR Part 400

Administrative practice and procedure, Communications, Grant programs—social programs, Grants administration, Indians, Reporting and recordkeeping requirements, Telecommunications.

Dated: October 2, 2026.

David Brodian,

Chief Counsel, National Telecommunications and Information Administration.

Jonathan Morrison,

Administrator, National Highway Traffic Safety Administration.

CHAPTER IV—[REMOVED AND RESERVED]

■ Accordingly, for the reasons set forth above and under the authority of 47 U.S.C. 942 and 5 U.S.C. 301, chapter IV of title 47 of the Code of Federal Regulations is removed and reserved.

[FR Doc. 2026–20493 Filed 10–5–26; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 261001–0005]

RIN 0648–BO10

Reef Fish Fishery of the Gulf of America; Amendment 62

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in Amendment 62 to the Fishery Management Plan for the Reef Fish Resources of the Gulf (FMP), as prepared and submitted by the Gulf Council (Council). This final rule and Amendment 62 revise the catch limits and sector allocations for Gulf of America (Gulf) red grouper, based on the best scientific information available. Additionally, this final rule removes the shallow-water grouper (SWG) recreational seasonal closure, from February 1 through March 31, in Gulf Federal waters seaward of the 20-fathom boundary.

DATES: This final rule is effective October 2, 2026.

ADDRESSES: An electronic copy of Amendment 62 is available from *https://www.regulations.gov* or from the Southeast Regional Office website at: *https://www.fisheries.noaa.gov/action/amendment-62-gulf-red-grouper-management-measures.* Amendment 62 includes an environmental assessment, a Regulatory Flexibility Act (RFA) analysis, regulatory impact review, and fishery impact statement.

FOR FURTHER INFORMATION CONTACT: Daniel Luers, NMFS Southeast Regional Office, telephone: 727–824–5305, or email: *Daniel.Luers@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes red grouper, is managed under the FMP. The FMP was prepared by the Council and NMFS, approved by the Secretary of Commerce, and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*).

Background

The Magnuson-Stevens Act requires NMFS, with advice from the regional fishery management councils, to prevent overfishing and achieve, on a continuing basis, the optimum yield from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the Nation, particularly with respect to providing food production, recreational opportunities, and protecting marine ecosystems.

This action is taken under the statutory authority of Magnuson-Steven Act section 303(a)(15), which requires fishery management plans to establish annual catch limits (ACL) and accountability measures (AM) to prevent overfishing, and section 303(b)(2), which allows the designation of zones where, and periods when, fishing may be limited or not permitted.

On April 2, 2026, NMFS published a notice of availability for Amendment 62 and requested public comment (91 FR 16623). On July 7, 2026, NMFS published a proposed rule for Amendment 62 and requested public comment (91 FR 41611). NMFS approved Amendment 62 on June 26, 2026, pursuant to section 304(a)(3) of the Magnuson-Stevens Act. The proposed rule and Amendment 62 outline the rationale for the actions contained in this final rule. The management measures described in Amendment 62 and implemented by this final rule are summarized below.

Unless otherwise noted, all weights in this final rule are in pounds (lb) gutted weight.

The current catch limits for red grouper were set in 2022 (87 FR 40742, July 8, 2022). The current Gulf red grouper overfishing limit (OFL) and acceptable biological catch (ABC) are 5.99 million lb (2.72 million kilogram (kg)) and 4.96 million lb (2.25 million kg), respectively. The total ACL is set equal to the ABC and is allocated 59.3 percent to the commercial sector and 40.7 percent to the recreational sector. This allocation was specified in Amendment 53 to the FMP and is informed, in part, by Marine Recreation Information Program—Fishing Effort Survey (MRIP–FES) recreational data (84 FR 25573, May 2, 2022). The current maximum sustainable yield (MSY) proxy for red grouper is based on the yield associated with a fishing mortality rate (F) that would result in a spawning stock biomass (SSB) of 30 percent of the spawning potential ratio (SPR)($F_{30\%SPR}$), where SPR is the ratio of the SSB to its unfished state. A proxy for MSY is used when there are insufficient data to directly determine the MSY.

The most recent stock assessment for red grouper (Southeast Data, Assessment, and Review (SEDAR) 88) was completed in 2025. SEDAR 88 used updated recreational catch and effort data produced by the Florida State Reef Fish Survey (SRFS). To obtain complete estimates of recreational catch for the stock assessment, SRFS combined private recreational landings and discard estimates with charter vessel catch informed by estimates from MRIP–FES, as well as headboat catch informed by the Southeast Region Headboat Survey. Thus, when ''SRFS'' is referred to in this final rule with respect to management of the red grouper stock and SEDAR 88, it encompasses all of these sources of recreational data combined. The stock assessment results indicated an increase in the red grouper stock size relative to the previous assessment (SEDAR 61, 2019). Based on its review of SEDAR 88, the Council's Standing Scientific and Statistical Committee (SSC) determined that the Gulf red grouper stock was not overfished or undergoing overfishing and recommended increases to the OFL and ABC. However, because SEDAR 88 used different recreational data than the

previous assessment, the current and revised OFL and ABC are not directly comparable.

Based on the results of SEDAR 88 indicating the stock size has increased, the Council requested that NMFS take emergency action (based on social and economic justification) to increase the red grouper catch limits for the 2025 fishing season (90 FR 37804, August 6, 2025). Because initial projections from SEDAR 88 assumed that any management action initiated by the Council would begin in 2027, the assessment projections required updating to reflect management actions that would begin in 2025. Using these updated projections, the Council's SSC recommended an OFL of 10.64 million lb (4.83 million kg) and an ABC of 8.28 million lb (3.76 million kg).

The SSC's OFL recommendation is consistent with its recommendation to change the current MSY proxy to a more conservative value. As explained above, the current MSY proxy is the yield at $F_{30\%SPR}$. The SSC recommended a more conservative MSY proxy of the yield at $F_{40\%SPR}$. An SPR of 40 percent is more conservative than an SPR of 30 percent because it means that the spawning biomass is closer to the level of an unfished population (40 percent of the level of the unfished population as opposed to 30 percent). The SSC concluded that certain biological and ecological characteristics of red grouper support more conservative management. For example, red grouper undergoes ontogenetic spatial shifts from nearshore shallow habitats to offshore deep-water habitats; its large females transition to male based on environmental and social cues that are not completely understood; and its propensity to create unique habitats in the benthic substrate and territorial behavior may generate a carrying capacity issue that limits available space for other red grouper. The SSC determined that accounting for the complex life history of red grouper is imperative when recommending the revised F_{msy} proxy and thus the OFL. The SSC has, in recent years, recommended setting an MSY proxy of $F_{40\%SPR}$ for hermaphroditic groupers like gag, scamp, yellowmouth grouper and yellowedge grouper. Based on their recent management advice to the Council for grouper species with similar life history characteristics to red grouper, the SSC concluded that an $F_{40\%SPR}$ as the proxy for F_{MSY} was appropriate.

Commercial harvest of Gulf red grouper has been managed under the Grouper-Tilefish Individual Fishing Quota (IFQ) Program since 2010 (74 FR 44732, August 31, 2009). The IFQ program serves as the commercial AM for red grouper. The commercial quota for red grouper is set 5 percent less than the commercial ACL to allow for multi-use allocation with gag to reduce discards and allow commercial fishermen to better use the allocation they have in a given fishing year. Red grouper multi-use allocation can be used to possess, land, or sell red grouper after an IFQ account holder's (shareholder or associated vessel accounts) red grouper allocation has been landed and sold or transferred and to possess, land, or sell gag only after both gag and gag multi-use allocation have been landed and sold or transferred from all of the IFQ account holder's accounts. In other words, the combined red grouper and gag multi-use allocation allows fishing industry participants to land those species after their species-specific allocations have been exhausted, thus reducing discards and improving the economic results of the fishery. However, if gag is under a rebuilding plan, the percentage of red grouper multi-use allocation is equal to zero. Gag is currently under a rebuilding plan, and thus red grouper multi-use allocation is currently set to zero.

The recreational sector is managed using an ACL, an ACT, and both in-season and post-season AMs. The in-season AM for red grouper requires NMFS to close the recreational sector when red grouper landings reach or are projected to reach the recreational ACL. If landings exceed the red grouper recreational ACL in a fishing year, the post-season AM requires NMFS to maintain the recreational ACT and shorten the duration of the following fishing year by the amount necessary to ensure landings do not exceed the recreational ACT, unless NMFS determines that managing to the ACT in the following year is unnecessary. If red grouper is overfished and landings exceed the recreational ACL, then both the recreational ACL and ACT must be reduced in the following year by the amount of the previous year's recreational overage. This final rule and Amendment 62 will not revise the recreational AMs.

Recreational harvest triggered in-season closures of the red grouper recreational season in each year from 2021 through 2024. In each of those 4 years, both the recreational ACT and ACL were exceeded, resulting in implementation of the post-season AM in 3 of the 4 following years to shorten the red grouper season as required. The post-season AM for the 2025 recreational season, which was triggered by the 2024 overage of the recreational ACL, was not implemented because the emergency action increased the red grouper catch limits.

For the commercial sector, the 5 percent buffer between the commercial ACL and ACT is retained in this final rule to account for the gag multi-use allocation of the IFQ program. For the recreational sector, this final rule maintains the current 9 percent buffer between the recreational ACL and ACT that was set in Amendment 53. This recreational buffer is expected to prevent future recreational ACL overages considering the use of more precise SRFS data to monitor recreational landings and the substantial increase in the recreational ACL.

In 2013, NMFS implemented a framework action under the FMP that established the current SWG recreational seasonal closure (78 FR 33259, June 4, 2013). The seasonal closure is effective from February 1 through March 31, annually, in Gulf Federal waters seaward of a line approximating the 20-fathom boundary (50 CFR 622.34(d)). In the Gulf, the SWG species are gag, red grouper, black grouper, scamp, yellowfin grouper, and yellowmouth grouper. The closure was established to protect spawning SWG species in deeper Gulf waters while allowing recreational harvest to occur shoreward of the 20-fathom boundary. Although this final rule eliminates this closure, all SWG species except red grouper already have other seasonal closure regulations in effect during that same time period or they will have them by January 1, 2027. Gulf gag has a recreational seasonal closure in effect from January through August (50 CFR 622.34(e)). On June 17, 2026, NMFS published a final rule that creates a recreational seasonal closure for black grouper, yellowfin grouper, scamp, and yellowmouth grouper from January through June (91 FR 36545). When that final rule is effective on January 1, 2027, red grouper will be the only SWG species affected by the removal of the current SWG recreational seasonal closure. However, as described in Amendment 62, the current seasonal closure may be redirecting red grouper recreational effort inshore and therefore reducing the overall benefit of the closure to the red grouper stock. Additionally, red grouper that are shoreward of the current closure boundary are generally smaller in size and therefore discards may be increased due to the red grouper minimum size limit. The Council recommended, and NMFS agrees, that it is appropriate to remove the February through March recreational closure given the health of the red grouper stock as indicated by SEDAR 88.

Management Measures Contained in This Final Rule

This final rule revises the Gulf red grouper commercial and recreational ACLs, the commercial quota, and the recreational ACT. In addition, this final rule removes the February through March SWG recreational seasonal closure seaward of the 20-fathom boundary.

Catch Limits

This final rule increases the commercial ACL from 2.94 million lb (1.33 million kg) to 4.51 million lb (2.05 million kg) for 2026, 5.08 million lb (2.30 million kg) for 2027, and 5.65 million lb (2.56 million kg) for 2028 and subsequent years. The commercial quota increases from 2.79 million lb (1.27 million kg) to 4.28 million lb (1.94 million kg) for 2026, 4.83 million lb (2.19 million kg) for 2027, and 5.37 million lb (2.44 million kg) for 2028 and subsequent years.

This final rule increases the recreational ACL from 2.02 million lb (0.92 million kg) to 2.11 million lb (0.96 million kg) for 2026, 2.37 million lb (1.08 million kg) for 2027, and 2.63 million lb (1.19 million kg) for 2028 and subsequent years. The recreational ACT increases from 1.84 million lb (0.83 million kg) to 1.92 million lb (0.87 million kg) for 2026, 2.16 million lb (0.98 million kg) for 2027, and 2.39 million lb (1.08 million kg) for 2028 and subsequent years. The current and revised recreational catch limits are not directly comparable because of the recreational datasets used in the prior and current assessments, but the revised catch limits are increases from the current values.

SWG Recreational Seasonal Closure

This final rule removes the recreational seasonal closure from February through March for SWG species in Gulf Federal waters seaward of a line approximating the 20-fathom boundary. Although this final rule eliminates this closure, as previously noted, all SWG species except red grouper have other seasonal closure regulations in effect, or will have closure regulations in effect by January 1, 2027, which prohibit their recreational harvest during this time period.

Management Measures in Amendment 62 That Will Not Be Codified by This Final Rule

In addition to the measures that will be codified through this final rule, Amendment 62 updates the MSY proxy, the OFL, the ABC, and the sector allocations for Gulf red grouper.

MSY Proxy, OFL, and ABC

Amendment 62 revises the MSY proxy, OFL, and ABC for red grouper based on the Council's SSC recommendations and consistent with SEDAR 88. The MSY proxy will be defined as the yield at $F_{40\%SPR}$. The OFL will be 10.64 million lb (4.83 million kg), and the ABC will be 8.28 million lb (3.76 million kg). The total ACL will be 6.62 million lb (3.00 million kg) in 2026 (80 percent of the ABC), 7.45 million lb (3.38 million kg) in 2027 (90 percent of the ABC), and 8.28 million lb (3.76 million kg) in 2028 and subsequent years (100 percent of the ABC). The Council determined, and NMFS agrees, that a phase-in approach to increasing the total catch limits over several years is appropriate because the SSC receives an annual interim stock analysis for red grouper and could advise the Council if the increases to the total ACL were no longer warranted.

Sector Allocations

Currently, the commercial sector is allocated 59.3 percent, and the recreational sector is allocated 40.7 percent of the total ACL based on each sector's average landings from 1986 through 2005 (including MRIP–FES recreational harvest estimates). Amendment 53 set this allocation to maintain historical fishing practices. The allocation was based on the original reference years (1986 through 2005) for red grouper landings but with updated recreational landings using the MRIP–FES dataset, which was used in the stock assessment that informed the catch levels in Amendment 53. Amendment 62 updates the commercial-recreational allocation using the same reference period (1986–2005) but based on SRFS-estimated recreational harvest. This results in a commercial allocation of 68.2 percent and a recreational allocation of 31.8 percent of the total ACL. SRFS recreational landings estimates are lower than those produced by MRIP–FES. Continuing with the current allocation without accounting for the decrease in estimated catch and effort associated with the change to SRFS from MRIP–FES would result in a *de facto* reallocation from the commercial sector to the recreational sector.

Comments and Responses

NMFS received 50 public submissions from individuals or entities on the notice of availability and proposed rule for Amendment 62. NMFS thanks the individuals who commented in support of the management measures in this final rule for their comments. Four comments were not specific to Amendment 62 or the proposed rule, and therefore are not addressed in this final rule.

Specific comments that opposed or provided alternative suggestions for some or all of the measures proposed in Amendment 62 and the proposed rule are grouped as appropriate and summarized below, followed by NMFS' respective responses. There have been no changes to the proposed rule as a result of public comments.

Comment 1: The Gulf red grouper stock cannot support the large catch limit increases proposed in Amendment 62. The commercial sector has not been landing its full quota under the current catch limits. Gulf fishermen report that the stock is not healthy based on indicators such as low catch rates, fewer legal-sized fish, and difficulty locating concentrations of marketable red grouper. A more conservative management approach consisting of either no catch limit increases or smaller catch limit increases would be more appropriate.

Response: NMFS is required to rely on the best scientific information available when making management decisions, and the most recent Gulf red grouper stock assessment, SEDAR 88, indicates that the red grouper stock is not overfished or undergoing overfishing and can support substantially higher harvest rates and catch limits. The Council's SSC reviewed SEDAR 88 and the catch level projections based on the assessment and recommended the OFL and ABC adopted in Amendment 62. The Council and NMFS addressed the concerns about the health of the stock expressed by fishermen by phasing-in the increase of the total ACL over three years. This will allow the Council and NMFS to take action, if needed, to address any new information on the Gulf red grouper stock status before the full increase in ABC is available for harvest.

NMFS recognizes some fishermen are reporting difficulty in consistently catching legal-sized red grouper. However, this information does not necessarily indicate that the stock is unhealthy and cannot support increased catch limits. Fishermen have also commented at Council meetings and during the public comment periods for the Amendment 62 rulemaking that the population is healthy and that they are in support of catch limit increases. SEDAR 88 assessed red grouper populations across the entire Gulf. While there may be localized areas in the Gulf in which red grouper are less abundant, the assessment determined

that overall, the Gulf red grouper population is healthy.

Comment 2: The February through March recreational seasonal closure for SWG species should not be eliminated. The closure is intended to protect SWG species when they spawn and is necessary to protect some or all of these species at a vulnerable time. Removal of the closure will increase fishing pressure on red grouper as well as increasing discards of gag which may result in disproportionate fishing mortality on spawning aggregations of red grouper and gag.

Response: The removal of the February through March SWG recreational seasonal closure seaward of the 20-fathom boundary would only directly affect red grouper. As explained above, beginning in the 2027 fishing year, the SWG species of scamp, yellowmouth grouper, black grouper, and yellowfin grouper will have a Gulf-wide recreational seasonal closure in place from January 1 through June 30, each year (91 FR 36545, June 17, 2026). Gulf gag has a recreational seasonal closure in effect from January through August (50 CFR 622.34(e)). Therefore, beginning in 2027, red grouper will be the only SWG species allowed for harvest between January 1 and June 30.

The February through March spawning closure for SWG was implemented to protect these species during their spawning period when they may be more vulnerable. However, spawning season closures are generally most effective when they coincide with areas where the species aggregate to spawn, and thus they are vulnerable to mass harvest. As described in Amendment 62, while some SWG species (*e.g.,* gag) do aggregate to spawn, red grouper do not, as they display site fidelity throughout the year. In addition, there is no indication that the current spawning seasonal closure has a positive effect on red grouper as the stock population has fluctuated greatly both prior to and after implementation of the closure. Additionally, as described in Amendment 62, the current closure may be redirecting fishing effort into waters shoreward of the 20-fathom boundary, where the average size of fish is smaller and more interactions with undersize fish occur. This could lead to additional fishing effort (and discards) necessary to harvest the recreational bag limit, thereby potentially reducing the conservation benefit of this closure.

NMFS recognizes that when red grouper are targeted, other SWG species may also be caught, which would result in discards due to overlapping harvest closures for the rest of the SWG species. However, while the removal of the SWG recreational seasonal closure may slightly increase discards of SWG species, NMFS does not expect these discards to have significant effects on their populations, as there would be no incentive for fishermen to fish on aggregations of those SWG species. It is more likely that fishermen would move to an area and fish where red grouper are more prevalent. Therefore, for the SWG species, the removal of the February through March recreational closure is not expected to have significant negative ecological consequences.

Comment 3: In Amendment 62, the commercial allocation of the total ACL should be greater. Recreational data have high levels of uncertainty, and that should be accounted for by using a more precautionary approach in setting the allocations. Increasing the commercial allocation and reducing the recreational allocation compared to the preferred alternative in Amendment 62 would reduce the overall mortality of red grouper by reducing recreational dead discards and reduce the chances of the total ACL being exceeded and overfishing occurring. The proposed allocations also violate Magnuson-Stevens Act National Standard 2, which requires the use of the best scientific information available, because they are based on recreational data with high uncertainty.

Response: NMFS disagrees that the commercial sector should receive a greater allocation then selected in Amendment 62 and that the allocations are inconsistent with National Standard 2. The sector allocations approved in Amendment 62 are based on the red grouper landings estimates used in the most recent stock assessment (SEDAR 88). For the recreational sector, these landings estimates were produced by SRFS and are generally lower than those produced by MRIP–FES. Although there is uncertainty in the recreational landings estimates, the percent standard error (PSE) of SRFS estimates for Gulf red grouper between 2016 and 2022, fluctuated between about 18 percent and 27 percent for private recreational anglers. The higher an estimate's PSE, the larger the margin of error and uncertainty around the estimate. The PSEs for these SRFS estimates are within the range that NMFS considers to be acceptable for use. For more information on PSE see *https://www.fisheries.noaa.gov/recreational-fishing-data/recreational-fishing-data-glossary#percent-standard-error-pse.* Further, the SRFS landings estimates represent the best scientific information available for determining a commercial-recreational allocation that maintains the historical split between the sectors after accounting for change from MRIP–FES data to SRFS data. No public comments were received that identified a more accurate or otherwise preferable data source.

NMFS does not expect that further increasing the commercial allocation of red grouper would reduce recreational discards. Decreasing the recreational catch limits by allocating more of the total ACL to the commercial sector could reduce recreational discards as a result of a decrease in red grouper recreational fishing opportunities if NMFS needed to implement an AM closure during the fishing year. However, any reduction in discards as result of less directed fishing pressure would likely be offset by discards that occur during the recreational AM closure. The allocation approved in Amendment 62, in combination with the increase in the total ACL, results in recreational catch limits that reduce the probability of AM-based closed seasons (only a predicted short closed season in 2027, none thereafter), which is expected to reduce discards.

Comment 4: In Amendment 62, the recreational allocation of the total ACL should be greater. The distribution of the increasing ACLs to the sectors is not proportional and heavily favors the commercial sector over the recreational sector. This results in limiting access for recreational fishermen. Recreational anglers, charter vessel and headboat (for-hire) operators, and coastal tourism economies depend on access to fishing opportunities, and reducing the recreational allocation percentage threatens those opportunities.

Response: NMFS disagrees that the recreational sector should receive a greater allocation of the total ACL then selected in Amendment 62. As explained in the preamble of this final rule, the sector allocations approved in Amendment 62 and implemented through this final rule will maintain the historical split between the sectors after accounting for change from MRIP–FES data to SRFS data. Although the recreational allocation decreases in Amendment 62, the decrease is consistent with the SRFS estimates used to monitor recreational harvest, which are lower than the estimates produced by MRIP–FES. Further, NMFS expects the red grouper recreational ACL and ACT increases implemented through this final rule to allow the fishing season to remain open until late in 2026 and throughout all of 2027 and 2028. Therefore, NMFS does not expect the change in the recreational allocation to limit access for recreational anglers and

for-hire operators relative to the current sector allocation percentages.

Comment 5: The lack of a sufficient recreational data collection system for private anglers when compared to commercial and for-hire data collection systems results in data being used that is highly distorted. Recreational fishing pressure has increased dramatically but recreational data still have high PSEs, indicating they are highly uncertain.

Response: NMFS recognizes that any data collection system used to estimate recreational harvest will have some level of associated error. As explained in response to *Comment 3,* the PSEs for SRFS estimates for Gulf red grouper between 2016 and 2022, are within the acceptable range. Further, consistent with National Standard 2, NMFS uses the best available data to develop management measures and the SRFS data used to develop Amendment 62 is the best available. To specifically account for uncertainty in recreational harvest estimates, there is a 9 percent buffer between the recreational ACT and ACL, which reduces the probability of exceeding the recreational ACL.

Comment 6: Given that the last year of data included in SEDAR 88 was 2022, a new full interim assessment for Gulf red grouper should be done prior to implementation of Amendment 62 to ensure the increased catch limits are still appropriate.

Response: NMFS has determined that SEDAR 88, which was used to inform the catch limits in Amendment 62, is the best scientific information available. In January 2026, the NMFS Southeast Fisheries Science Center (SEFSC) presented an informal interim assessment, or health check, to the Council's SSC. This health check supports the SEDAR 88 findings, showing an increasing trend in the relative abundance of red grouper through 2025. More information on the 2025 health check can be found at *https://gulf-council-media.s3.amazonaws.com/uploads/2026/01/05a-SEDAR-88_2026_IA.pdf.* The next Gulf red grouper stock assessment is scheduled for 2028.

Comment 7: There are indications that the red grouper stock has declined since 2022, which is the last year of data included in SEDAR 88. It is unclear what mathematical formula or variance factor was applied in the Stock Synthesis model to discount for the gap in timing between the data included in the assessment and implementation of the catch limits in this final rule. By allowing an increase in harvest based on lagged stock assessment data that fail to account for the current mortality conditions of the stock, Amendment 62 and the final rule are not based on the best scientific information available as required by National Standard 2 and do not adequately address the risk of overfishing as required by National Standard 1.

Response: NMFS recognizes that catch limits set in this final rule are supported by an assessment that included data only through 2022. NMFS did not use, or have available, a formula or factor to apply to the Stock Synthesis model to address the gap in timing from the assessment until implementation of Amendment 62. However, as explained in response to *Comment 6,* SEDAR 88 is the best scientific information available to inform the current Gulf red grouper stock status and the catch limits in Amendment 62 and this final rule, and the health check presented to the Council's SSC in January 2026 supports the SEDAR 88 results. Further, the new catch limits include a large buffer between the OFL and ABC to account for scientific uncertainty associated with SEDAR 88 and reduce the likelihood of overfishing. Therefore, NMFS has determined that Amendment 62 and this final rule are consistent with both National Standards 1 and 2.

Comment 8: The proposed catch limits are inconsistent with National Standard 6 because they fail to take into account variations and contingencies in fishery resources, ecosystems, and catches by omitting adaptive buffers for localized environmental events and real-time commercial catch data.

Response: NMFS disagrees that catch limits implemented through this final rule are inconsistent with National Standard 6. National Standard 6 requires conservation and management measures to take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. The catch limits adopted in Amendment 62 and this final rule provide the flexibility to respond to uncertainties or unpredictable events by providing a large buffer between the OFL and ABC, and adopting a phase-in approach for increasing the total ACL over three years. The phase-in approach will allow the SSC to review the annual interim stock analysis for red grouper as the catch limits are increased and allow the Council and NMFS to respond to any new advice from the SSC, as appropriate.

Comment 9: Commercial fishermen have produced years of catch-per-unit-effort (CPUE) data that have not been incorporated into stock assessments for IFQ species such as red grouper. The use of electronic logbooks and electronic monitoring is also expanding and will soon provide more timely fishery-dependent data. NMFS and the Council should consider the most current commercial CPUE information before increasing catch limits to ensure that the increases are sustainable.

Response: NMFS does not currently have a method to incorporate CPUE analyses into stock assessments or to analyze CPUE trends after the completion of a stock assessment. CPUE indices (trends), which had been used prior to the implementation of the commercial Grouper/Tilefish IFQ program, were not updated for SEDAR 88 because the implementation of the IFQ system has changed fishing behavior and catchability compared to earlier years. Prior to implementation of the IFQ, CPUE was used as one of several indices in assessing red grouper abundance. Now that fishing industry participants can choose when to fish, higher CPUE may reflect other variables and CPUE indices developed for IFQ years may not represent the relative abundance of the stock.

The Council asked NMFS to create CPUE indices for the commercial vertical line and longline fleets pursuing red grouper for review by the SSC. In support of this request, at the August 2026 Gulf Council meeting, the SEFSC provided the Council with a CPUE index based on logbook data for IFQ years (2010–2025). Although this index likely provides a useful qualitative indicator of the commercial sector's ability to harvest red grouper, the index includes the caveat that it did not attempt to disentangle the effects of fisher behavior, regulatory actions, and population abundance on observed catch per unit effort, and that it was not feasible for the SEFSC to provide that information given current resources and priorities. Further, at the same meeting, the SEFSC explained why using CPUE as a proxy for relative abundance (as under the current IFQ) can lead to improper conclusions and thus management decisions that do not reflect stock status. Since the red grouper CPUE index is not intended to estimate fish abundance, NMFS has determined that it is not appropriate to incorporate this CPUE data into the next stock assessment or to use it as an indication of the trends in red grouper stock health. Given the resources that would be needed to conduct the necessary research and the existence of two reliable fishery-independent resource surveys of red grouper (G–FISHER and the NMFS bottom longline) that are already available, the SEFSC does not plan to address this request to use CPUE provided by commercial fisherman as an index of stock abundance in the near future. The

SEFSC is currently working to make fishery independent survey data available more rapidly.

Comment 10: Red tide blooms and benthic hypoxia in the eastern Gulf create unquantified localized mortality of red grouper that has occurred since SEDAR 88 and needs to be accounted for in the catch limit increases in Amendment 62.

Response: While SEDAR 88 accounted for red tide-related mortality through 2022, there is no process currently in place to incorporate real-time data into previously completed stock assessments to account for more recent non-fishery related mortality events. These events are not predictable, and the effects of these events are often unknown until years after they occur. However, scientific uncertainty, which includes the impact of these events, is accounted for by the 2.68 million lb (1.22 million kg) buffer between the OFL and the ABC.

Comment 11: The catch limit increases in Amendment 62 are contrary to the mandates of Executive Order 14276 ''Restoring American Seafood Competitiveness.'' Executive Order 14276 directs NMFS to improve fisheries science, incorporate more reliable technology and cooperative research, modernize data collection, and make fisheries management more responsive to real-time ocean conditions. Given the 2022 terminal year in SEDAR 88, before the automatic red grouper ACL increases in Amendment 62 occur each year up until 2028, more current indicators, fishery-dependent data, and catch rate information should be considered. These more recent data sources would demonstrate that the future catch limit increases are not appropriate and that catch limit decreases should occur. The red grouper catch limit changes in Amendment 62 will result in weakening and not strengthening the domestic seafood industry.

Response: NMFS disagrees that the final rule is contrary to the mandates of Executive Order 14726. SEDAR 88 has been determined to be the best scientific information available and was used to develop the catch levels being implemented in Amendment 62 and this final rule. NMFS does not currently have an index to incorporate current commercial catch rate information into management decisions post-stock assessment. Similarly, NMFS did not have the capability to include red grouper commercial catch rate information into SEDAR 88 or analyze red grouper stock size after the completion of SEDAR 88 using this information. In addition, as explained in the response to *Comment 9* above, NMFS has provided a CPUE index to the Council but determined that this index does provide reliable evidence of actual trends in overall red grouper abundance and therefore does not intend to incorporate these data into the next stock assessment. NMFS is working on process improvements to make fishery independent survey data available more rapidly. NMFS has determined that this final rule is consistent with Executive Order 14276 because it is expected to increase red grouper harvest opportunity, enhance economic profitability for commercial fishermen, stabilize seafood markets, improve fishing access, and reduce the risk of recreational fishery closures impacting the for-hire component.

Comment 12: The sector allocations adopted through Amendment 53 to the FMP were remanded by the U.S. Court of Appeals for the District of Columbia Circuit for additional analysis. To date, neither the Council nor NMFS has completed the Court-directed economic analysis or revisited the red grouper allocation decision through a subsequent amendment before proposing additional changes to red grouper management. Amendment 62 changes the recreational data used in the allocation calculation, but it does not provide a complete reassessment of the distributional and economic consequences of Amendment 53. NMFS should therefore avoid characterizing Amendment 62 as fully resolving the allocation concerns or remedying the economic harm experienced by commercial fishing businesses. NMFS should also acknowledge that the allocation formula in Amendment 62 does not constitute the Court-directed economic reassessment of Amendment 53 or fully remedy the resulting economic harm to the commercial sector.

Response: In *A.P. Bell Fish Co.* v. *Raimondo,* 94 F.4th 60 (D.C. Cir. 2024), the Court of Appeals for the District of Columbia Circuit reversed the lower court's order granting summary judgment to NMFS on claims related to economic analysis in Amendment 53 to the FMP and compliance with National Standards 4 and 9 and remanded to NMFS to provide further explanation. The response to the remand order is provided in Appendix F to Amendment 62. Consistent with the Court's order, Appendix F includes an evaluation of the economic effects analysis included in Amendment 53, concluding that the analysis was consistent with other peer-reviewed analyses and provided the best available scientific information when conducting the benefit-cost analysis required or recommended by various authorities, including Executive Order 12866 and the Magnuson-Stevens Act. Appendix F also addresses the Court's order with respect to National Standards 4 and 9, concluding that the analyses in the final rule implementing Amendment 53 were appropriate.

Comment 13: It is not clear in Amendment 62 how red grouper recreational quota overages can be prevented. Recreational quota overages jeopardize the security of the red grouper commercial quota.

Response: Amendment 62 does not change the current recreational AMs, which are used to constrain recreational harvest of red grouper to the recreational ACL. Recreational harvest has exceeded the recreational ACL in the past because landings exceeded NMFS' projections. NMFS expects the increase in the catch limits to substantially increase the length of the recreational season, which will reduce the likelihood of exceeding the ACL. The analysis in Amendment 62 projects that a recreational closure may be necessary late in the year to constrain landings to the recreational ACL in 2026. However, preliminary 2025 landings data indicate that recreational harvest was below the 2026 recreational ACT and ACL implemented through this final rule. If similar landings occur in 2026, the recreational season would remain open until the end of the year. After 2026, the recreational ACT or ACL are not expected to be harvested by the recreational sector as a result of the catch limit increases. However, consistent with the current AMs, NMFS will continue to use projections to determine whether the recreational sector needs to close during the fishing year. Therefore, NMFS does not expect recreational harvest to threaten the health of the red grouper stock or the security of the commercial quota.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Amendment 62, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be significant for purposes of Executive Order 12866. This final rule is expected to be an Executive Order 14192 deregulatory action.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting or recordkeeping compliance requirements

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

A Tribal summary impact statement under section (5)(b)(2)(B) and (c)(2) of Executive Order 13175 was not required for this final rule because this action does not impose substantial direct compliance costs on Indian Tribal Governments and this action does not preempt Tribal law. A Tribal summary impact statement is not required and has not been prepared.

The Senior Lead Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No public comments were received specifically regarding this certification; however, two of the comments related to the potential impacts on small businesses and the economic analysis for Amendment 62 and are addressed in the responses to *Comment 4* and *Comment 12* in the Comments and Responses section of this final rule. No changes to this final rule were made in response to public comments. As a result, a regulatory flexibility analysis was not required and none was prepared.

Because this rule relieves a restriction by allowing additional commercial and recreational harvest of red grouper and removing the SWG recreational seasonal closure, it is not subject to the 30-day delayed effectiveness provision of the Administrative Procedure Act pursuant to 5 U.S.C. 553(d)(1). This final rule will increase the catch limits for both the commercial and recreational sectors, distributing additional allocation to IFQ shareholders and extending the length of the 2026 recreational fishing season. This final rule will also remove the SWG recreational seasonal closure, allowing recreational fishing for red grouper that was previously prohibited from February 1 through March 31 each year, in Gulf Federal waters seaward of the 20-fathom boundary.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Gulf, Recreational, Red grouper, Reef fish.

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

Dated: October 2, 2026.

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 622 as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF AMERICA, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

§ 622.34 [Amended]

■ 2. In § 622.34, remove Table 4 to paragraph (d) and remove and reserve paragraph (d).

■ 3. In § 622.39, revise paragraph (a)(1)(iii)(C) to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(iii) * * *

(C) *Red grouper.*

(*1*) For fishing year 2026—4.28 million lb (1.94 million kg).

(*2*) For fishing year 2027—4.83 million lb (2.19 million kg).

(*3*) For fishing year 2028 and subsequent years—5.37 million lb (2.44 million kg).

* * * * *

■ 4. In § 622.41, revise paragraph (e)(1) and (e)(2)(iv) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(e) * * *

(1) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of America serves as the accountability measure for commercial red grouper. The commercial ACT for red grouper is equal to the applicable quota specified in § 622.39(a)(1)(iii)(C). The commercial ACL for red grouper, in gutted weight, is 4.51 million lb (2.05 million kg) for 2026, 5.08 million lb (2.30 million kg) for 2027, and 5.65 million lb (2.56 million kg) for 2028 and subsequent years.

(2) * * *

(iv) The recreational ACL for red grouper, in gutted weight, is 2.11 million lb (0.96 million kg) for 2026, 2.37 million lb (1.08 million kg) for 2027, and 2.63 million lb (1.19 million kg) for 2028 and subsequent years. The recreational ACT for red grouper, in gutted weight, is 1.92 million lb (0.87 million kg) for 2026, 2.16 million lb (0.98 million kg) for 2027, and 2.39 million lb (1.08 million kg) for 2028 and subsequent years.

* * * * *

[FR Doc. 2026–20435 Filed 10–2–26; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 91, No. 192
Tuesday, October 6, 2026

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 71

[Docket No. FAA–2026–7241; Airspace Docket No. 26–ANM–13]

RIN 2120–AA66

Modification of Class E Airspace; Gunnison-Crested Butte Regional Airport, Gunnison, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E airspace designated as a surface area, the Class E airspace area designated as an extension to a Class E surface area, and the Class E airspace area extending upward from 700 feet above the surface at Gunnison-Crested Butte Regional Airport, Gunnison, CO. These actions would support the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before November 20, 2026

ADDRESSES: Send comments identified by FAA Docket No. FAA–2026–7241 and Airspace Docket No. 26–ANM–13 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 W58–213, West Building, 5th Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W58–213 of the West Building, 5th 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 W58–213 of the West Building, 5th 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 7400.11M, 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 20597; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Bryantjay T. Toves, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3465.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies Class E airspace to support IFR operations at Gunnison-Crested Butte Regional Airport, Gunnison, CO.

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 Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Incorporation by Reference

Class E2, E4, and E5 airspace designations are published in paragraphs 6002, 6004, and 6005,

respectively, 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 7400.11M, dated July 30, 2026, and effective September 15, 2026. These updates would be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11M, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly available as listed in the **ADDRESSES** section of this document.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 that would modify the Class E airspace designated as a surface area, the Class E airspace area designated as an extension to a Class E surface area, and the Class E airspace area extending upward from 700 feet above the surface at Gunnison-Crested Butte Regional Airport, Gunnison, CO.

The current lateral boundary of the Class E airspace area designated as a surface area should be expanded to more appropriately contain IFR arrival operations between the surface and 1,000 feet above the surface and IFR departure operations between the surface and the base of adjacent controlled airspace. The eastern portion should be expanded approximately (~)1.4 miles to more appropriately contain the Area Navigation (RNAV) (Required Navigation Performance [RNP]) M Runway (RWY) 25, RNAV (RNP) RWY 25, GUNNISION ONE DEPARTURE (OBSTACLE), and the LISSA ONE DEPARTURE (RNAV) instrument flight procedures (IFP). The western boundary should be expanded ~2.4 miles to more appropriately contain the RNAV (RNP) RWY 7, GUNNISION ONE DEPARTURE (OBSTACLE), GYLES ONE DEPARTURE (RNAV), Instrument Landing System (ILS) or Localizer (LOC) RWY 7, RNAV (RNP) RWY 7, and the RNAV (RNP) RWY 25 IFPs. The northern boundary should be expanded by ~0.35 miles and the southern boundary by ~0.7 miles to more appropriately contain the Visual Climb Over Airport departure procedure until reaching the base of adjacent airspace.

The Class E airspace area southwest of the airport designated as an extension to a surface area should be widened by ~8 miles to more appropriately contain arriving IFR operations when less than 1,000 feet above the surface while executing the VOR–A or RNAV (GPS) M RWY 7 IFPs. An additional extension to the Class E surface area should be established east of the airport, one mile either side of KGUC's 099° bearing extending from the airport's 6.1-mile radius to the airport's 8.6-mile radius to contain the point at which IFR arrivals are expected to descend to less than 1,000 feet above the surface while executing the RNAV (RNP) M RWY 25 approach procedure.

The current lateral boundary of the Class E airspace area extending upward from 700 feet above the surface should be expanded and extended in most directions to more appropriately contain arriving IFR aircraft below 1,500 feet above the surface and departing IFR aircraft until reaching 1,200 feet above the surface when executing the RNAV (GPS)-B, RNAV (RNP) RWY 7, RNAV (RNP) RWY 7 MAP, RNAV (RNP) RWY 25, RNAV (RNP) M RWY 25, RNAV (RNP) M RWY 25 MAP, VOR–A, GYLES ONE DEPARTURE (RNAV), or the LISSA ONE DEPARTURE (RNAV) IFPs. The western portion of the Class E airspace area extending upward from 700 feet above the surface is no longer needed to contain the VOR–A procedure turn maneuvering area, as such, the far west portion measuring approximately 9 by 12 miles should be removed.

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 Order 2100.6B, ''Rulemaking and Guidance Procedure'' (March 10, 2025); and (3) is expected to result in, at most, de minimis costs from compliance with applicable operating requirements or minor flight rerouting for operators choosing to navigate around the controlled airspace. Since these proposed amendments are routine and the expected impact to operators is de minimis, the FAA certifies 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 1050.1G, ''FAA National Environmental Policy Act Implementing 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 7400.11M, Airspace Designations and Reporting Points, dated July 30, 2026 and effective September 15, 2026, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

ANM CO E2 Gunnison, CO [Amended]

Gunnison-Crested Butte Regional Airport, CO
(Lat. 38°32′04″ N, long. 106°55′54″ W)

That airspace extending upward from the surface bounded by a line beginning at the airport's 017° bearing at 7.2 miles, thence clockwise via its 7.2-mile radius to its 138° bearing, thence to its 205° bearing at 7.2 miles, thence clockwise to its 300° bearing at 7.2 miles, thence to the point of beginning.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to Class D or Class E Surface Area.

* * * * *

ANM CO E4 Gunnison, CO [Amended]

Gunnison-Crested Butte Regional Airport, CO
(Lat. 38°32′04″ N, long. 106°55′54″ W)

That airspace extending upward from the surface within one mile of either side of the airport's 099° bearing extending from the airport's 6.1-mile radius to the airport's 8.4-mile radius; that airspace within an area bounded by a line beginning at the airport's 271° bearing at 7.2 miles, thence counterclockwise via the airport's 7.2-mile radius to its 205° bearing, thence to lat. 38°20′02″ N, long. 107°06′12″ W, to lat. 38°24′24″ N, long. 107°11′35″ W, to lat. 38°30′32″ N, long. 107°12′00″ W, thence to the point of beginning.

* * * * *

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

* * * * *

ANM CO E5 Gunnison, CO [Amended]

Gunnison-Crested Butte Regional Airport, CO
(Lat. 38°32′04″ N, long. 106°55′54″ W)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 38°39′30″ N, long. 106°46′44″ W, to lat. 38°35′22″ N, long. 106°41′25″ W, to lat. 38°30′14″ N, long. 107°41′40″ W, to lat. 38°20′02″ N, long. 107°06′12″ W, to lat. 38°23′59″ N, long. 107°10′55″ W, to lat. 38°33′18″ N, long. 107°14′22″ W, thence to the point of beginning.

* * * * *

Issued in Des Moines, Washington, on October 2, 2026.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2026–20473 Filed 10–5–26; 8:45 am]

BILLING CODE 4910–13–P

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 410

Basin Regulations; Water Code

AGENCY: Delaware River Basin Commission.

ACTION: Notice of proposed rulemaking; public hearing.

SUMMARY: The Commission proposes to amend its *Water Code* and Comprehensive Plan to require water supply systems serving the public (purveyors) to report water use by their largest customers.

DATES:

Written comments: Written comments will be accepted through 5:00 p.m. EST on Friday, December 4, 2026.

Public hearing: A public hearing will be held remotely *via* Zoom on Wednesday, November 4, 2026, beginning at 1:30 p.m. and ending no later than 3:00 p.m. EST. Details about accessing the hearing are available on the Commission's website, *www.drbc.gov.*

ADDRESSES:

To submit written comments: Written comments will be accepted until 5:00 p.m. EST on Friday, December 4, 2026, through the Commission's online public comment collection system at: *https://hearing.drbc.commentinput.com?id=T95htQGAg.* To request an exception from use of the online system based on lack of access to the internet, please submit your request, along with your comment, to: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628.

To register to speak at the public hearing: Those who wish to provide oral comment at a hearing must register in advance to do so. Registration will be through Zoom. A link to the Zoom registration for the public hearing is posted at *www.drbc.gov.* Online registration will remain open until 5:00 p.m. on the day prior to the hearing date or until all available speaking slots have been filled, whichever is earlier. Each person who wishes to provide oral comment may do so at only one public hearing. Registrations will be monitored, and if capacity is not adequate to accommodate all who wish to speak, additional opportunities may be added.

See **SUPPLEMENTARY INFORMATION** for details regarding the substance of written comments.

FOR FURTHER INFORMATION CONTACT: For information regarding the public hearing and submission of written comments, contact Kate Schmidt, Communications Specialist, at *contact@drbc.gov* (preferred) or 609–477–7205. For information concerning the substance of the proposed amendments, contact Chad Pindar, Manager of Water Resource Planning, at *chad.pindar@drbc.gov* (preferred) or 609–477–7248.

SUPPLEMENTARY INFORMATION: The Delaware River Basin Commission (''DRBC'' or ''Commission'') is a Federal-interstate compact agency formed by the enactment of concurrent legislation by four states and the United States in 1961 [1] to manage the water resources of the Delaware River Basin (the ''Basin'') without regard to political boundaries. The Commission's members are, *ex officio,* the governors of the basin states (Delaware, New Jersey, New York, and Pennsylvania) and the Division Engineer of the U.S. Army Corps of Engineers North Atlantic Division, who represents the United States.

Background

Water use data are critical for effective management of the Basin's water resources. They are needed to develop consumptive use estimates, project water use trends, establish water budgets, assess water resource needs, and evaluate the effectiveness of water conservation programs. The Commission established annual reporting requirements for water supply systems serving the public (also herein, ''purveyors'') in 1986 and updated them in 2001 and 2009. The requirements apply to ''source data,'' consisting of monthly withdrawal or bulk purchase information for each system, and ''service area data,'' which identify water uses by category as residential, commercial, institutional, industrial, bulk sale, non-revenue, unaccounted for, or other. *See* Delaware River Basin Water Code (hereinafter, ''Water Code''), secs. 2.50.3 A.1.a.–b.

The proposed amendments would require water supply systems serving the public to furnish the Commission with a third class of supplemental water use data—large customer data. These data would help DRBC characterize the water needs of the largest users that obtain their water from purveyors rather than withdrawing it directly from a surface water or ground water source. The data would contribute to a clearer picture of how the Basin's water resources are used.

Because the proposed amendments include a new section 2.50.1, ''Definitions,'' current sections 2.50.1 through 2.50.3 are to be re-numbered 2.50.2 through 2.50.4. The substantive new requirements appear in proposed new subsection 2.50.4 A.1.c. Additional non-substantive amendments are proposed to the introductory paragraphs of current subsections 2.50.3 A.1., ''Annual Reporting Requirements—Water Supply Systems Serving the Public'' and A.2., ''Annual Reporting Requirements—Other Withdrawals,'' and to current subsection 2.50.3 B., solely for purposes of consistency and clarification. Changes to the latter subsection, in particular, are proposed to continue to ensure that DRBC's annual reporting requirements do not compel entities to submit the same data to both DRBC and state agencies.

Currently, approximately 300 purveyors in the Basin report source and service area water use to Basin state agencies in accordance with the Water Code provisions cited above. Working closely with our member state agencies, the Commission is able to access, compile, and analyze approximately 30 years of source and service area data from each state for purposes of identifying and projecting water use trends Basin-wide. The Commission now seeks to better understand the role of large customers of water supply systems serving the public in water use across the Basin. It also wishes to better quantify consumptive uses of water—those uses that do not involve return of the water to a surface or ground water source after its use but instead involve evaporative loss or export of the water from the Basin.

[1] United States Public Law 87–328, Approved Sept. 27, 1961, 75 Statutes at Large 688; 53 Delaware Laws, Ch. 71, Approved May 26, 1961; New Jersey Laws of 1961, Ch. 13, Approved May 1, 1961; New York Laws of 1961, Ch. 148, Approved March 17, 1961; Pennsylvania Acts of 1961, Act. No. 268, Approved July 7, 1961; commonly known as the ''Delaware River Basin Compact,'' and referred to hereinafter as the ''Compact.''

Excluding out-of-basin diversions, withdrawals by purveyors in 2024 comprised the second largest water use and second largest consumptive water use in the Delaware River Basin, equal to approximately 15 percent (833 million gallons per day (''mgd'')) of total water use and 28.5 percent (83 mgd) of consumptive water use.[2] For decades, the Commission has applied a consumptive use coefficient of ten percent (10%) to water withdrawn from the Basin by most water supply systems serving the public. Data obtained as a result of the proposed amendments would help the Commission determine whether its consumptive use coefficient for water supply systems serving the public remains accurate.

A clearer understanding of water use by large customers of water supply systems serving the public is particularly important in helping develop a more accurate profile of consumptive use in the Basin and evaluating whether current drought management measures and contingency plans will be adequate in the future.

The Commission expects that under the amended rule, a subset of the approximately 300 water supply systems serving the public that are subject to the rule will be required to identify large customers supplied by their systems. The incremental burden on these purveyors is expected to be manageable, as most are already accustomed to furnishing source and service area data electronically to the Commission's respective member states in accordance with subsections 2.50.3 A.1.a. and b. of the Water Code, adopted in 1986, and to providing DRBC with an annual ''water audit'' report in accordance with section 2.1.8 of the Water Code, adopted in 2012. Data collected pursuant to the proposed amendments would be reported electronically in a manner similar to that currently used by purveyors to report water audit data to the Commission.

Specifically, the proposed amendments would require the owner or operator of each water supply system serving the public with a withdrawal of 100,000 gallons per day (''gpd'') or more as an average during any 30-day period to report the following data for each customer to which the system supplies an amount greater than or equal to 50,000 gpd as a 30-day average through one or more proximate connections: the calendar year for which the data are reported; the DRBC docket number and state permit number for the reporting entity; the identification number assigned by the reporting entity to the customer served by the connection(s); the amount of water supplied monthly to the customer for each of the twelve months for which data are reported; the type or sector to which the customer belongs; and the NAICS code.

The Commission proposes to collect monthly data for large customers beginning with calendar year 2026 data, to be submitted in June 2027. If a purveyor's practice is to bill less frequently than monthly, then less frequent use data for 2026 and any portion of 2027 that precedes the effective date of the final rule would be accepted. Regardless of their current billing practices, all purveyors subject to the rule would be required to report monthly large customer water use for each month following the rule's effective date. Accordingly, if the rule becomes effective in May 2027, the purveyor's report for 2026 (to be submitted in June 2027) may include less-than-monthly data for all of 2026. The purveyor's report for 2027 (to be submitted in 2028) may include less-than-monthly water use data for the months of January through April of 2027 but must include monthly data for each large customer for the months of May through December 2027.

The text of the proposed amendments is available on the Commission's website at *https://www.nj.gov/drbc/meetings/proposed/notice_water-reporting.html.*

Incorporation by Reference

The entirety of the Water Code, including section 2.50, is incorporated into the Code of Federal Regulations at 18 CFR 410.1 and was last approved for incorporation by reference by the Office of the Federal Register (''OFR'') on March 6, 2023. In accordance with OFR's regulations concerning incorporation by reference, the preamble summarizes the proposed amendments to section 2.50 of the Water Code.

The Commission further proposes to amend section 410.1(c) of title 18 of the Code of Federal Regulations by replacing the date of incorporation by reference there with respect to the Water Code (March 6, 2023) with the date on which the Commission adopts a final rule pursuant to this proposal.

Interested persons may obtain or inspect copies of the Water Code at the Delaware River Basin Commission, 25 Cosey Road, West Trenton, New Jersey, 08628–0360 or on the Commission's website, *https://www.nj.gov/drbc/library/documents/watercode.pdf.*

Public Process

Substance of comments. The Commission welcomes and will consider comments that concern the potential impacts of the proposed amendments on the conservation, utilization, development, management and control of the water and related resources of the Delaware River Basin and on public participation in the Commission's water resource management activities. In particular, the Commission seeks comment on the burden the proposed rule would impose on water supply systems serving the public and large customers.

Non-digitized, voluminous materials such as books, journals and collections of documents will not be accepted. Digital submissions of articles and websites must be accompanied by a statement containing citations to the specific findings or conclusions the commenter wishes to reference.

Submission of written comments. Written comments along with any attachments should be submitted through the Commission's web-based comment system (*https://drbc.commentinput.com/?id=kciDptC8h*) until 5 p.m. on Friday, December 4, 2026. All materials should be provided in searchable formats, preferably in .pdf searchable text. Notably, a picture scan of a document may not result in searchable text. Comments received through any method other than the designated on-line method, including *via* email, fax, postal/delivery services or hand delivery, will not be considered or included in the rulemaking record unless accompanied by a written request for an exception based on lack of access to the web-based comment system. Such requests and accompanying materials may be sent to: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628.

Public hearing. To ensure an orderly process and to provide access to interested parties regardless of their geographic location, the Commission is conducting its public hearing virtually. Attendance at the hearing is not limited and requires no registration. However, to eliminate uncertainty on the part of attendees about whether they will have an opportunity to provide oral comment, those who wish to speak at a hearing must register in advance to do so, using the link on the Commission's website. Registrations will be monitored, and if capacity is not adequate to accommodate all who wish to speak, additional opportunities may

[2] Delaware River Basin Commission. (June 2026). Water Resources Program FY 2027–2029. Sec. 1.2.2. Available at: *https://www.nj.gov/drbc/library/documents/WRPFY27-29.pdf.*

be added. Key elements of the procedure are as follows:

- Online registration to speak at a public hearing will remain open until 5 p.m. on the day immediately before each hearing date.
- Each person who wishes to provide oral comment may do so at only one public hearing.
- Speaking time will be limited to approximately three minutes per speaker.
- Elected government officials and their staff members will have the opportunity to identify themselves when registering to attend a hearing.
- Attendance at the public hearing is not limited and requires no advance registration.
- Written and oral comments will receive equal consideration.

The Commission appreciates the public's participation and input on this matter.

Translation Services for Rulemaking Materials. The Commission will consider requests for translation of this document and the proposed rule text into languages other than English. To request translation of documents related to this rulemaking, please send an email to *translate@drbc.gov.* Please specify both the requested language and the requested documents.

More Information. Detailed and up-to-date information about the rulemaking, including proposed rule text, a frequently asked questions document, public notices, and links for submitting written comments and for registering online to speak at the scheduled public hearing can be found on the Commission website, *www.drbc.gov.*

List of Subjects in 18 CFR Part 410

Incorporation by reference, Water pollution control, Water resources, Water supply.

For the reasons set forth in the preamble, the Delaware River Basin Commission proposes to amend title 18, chapter III, subchapter A of the Code of Federal Regulations as follows:

PART 410—BASIN REGULATIONS; WATER CODE AND ADMINISTRATIVE MANUAL—PART III WATER QUALITY REGULATIONS

■ 1. The authority citation for part 410 continues to read as follows:

Authority: Delaware River Basin Compact, 75 Stat. 688.

■ 2. Amend § 410.1 by revising paragraph (c) to read as follows.

§ 410.1 Basin regulations—Water Code and Administrative Manual—Part III Water Quality Regulations.

* * * * *

(c) Work, services, activities and facilities affecting the conservation, utilization, control, development or management of water resources within the Delaware River Basin are subject to regulations contained within the Delaware River Basin Water Code with Amendments through [EFFECTIVE DATE OF FINAL RULE], and the Administrative Manual—Part III Water Quality Regulations with Amendments through December 7, 2022. Both the Delaware River Basin Water Code and the Administrative Manual—Part III Water Quality Regulations are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain or inspect this material at the Delaware River Basin Commission (DRBC), 25 Cosey Road, West Trenton, New Jersey 08628–0360, 609–883–9500, *www.drbc.gov.*

Dated: September 29, 2026.

Naomi Mendelsohn,

Commission Secretary/Assistant General Counsel.

[FR Doc. 2026–20480 Filed 10–5–26; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506–AB47

Proposal of Special Measure Regarding Convertible Virtual Currency Mixing, as a Class of Transactions of Primary Money Laundering Concern; Withdrawal

AGENCY: Financial Crimes Enforcement Network (FinCEN).

ACTION: Withdrawal of finding and notice of proposed rulemaking.

SUMMARY: FinCEN is withdrawing its finding and proposed rulemaking, pursuant to section 311 of the USA PATRIOT Act, that international Convertible Virtual Currency (CVC) mixing is a class of transactions of primary money laundering concern and that a special measure requiring enhanced recordkeeping and reporting requirements should be imposed regarding this class of transactions.

DATES: FinCEN is withdrawing the proposed rulemaking published at 88 FR 72701 (October 23, 2023), as of October 6, 2026.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section by submitting an inquiry at *www.fincen.gov/contact.*

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions

Section 311 of the USA PATRIOT Act [1] (section 311), codified at 31 U.S.C. 5318A, grants the Secretary of the Treasury (Secretary) the authority to make a finding that ''reasonable grounds exist for concluding'' that any of the following ''is of primary money laundering concern'':

(i) A jurisdiction outside of the United States;

(ii) One or more financial institutions operating outside of the United States;

(iii) One or more classes of transactions within, or involving, a jurisdiction outside of the United States; or

(iv) One or more types of accounts.[2]

Upon making such a finding, the Secretary is authorized to require domestic financial institutions and domestic financial agencies—collectively, ''covered financial institutions''—to take certain ''special measures.'' Specifically, pursuant to section 311, the Secretary may impose one or more of five possible special measures as safeguards to defend the U.S. financial system from money laundering and terrorist financing risks. Through special measures one through four, the Secretary may impose additional recordkeeping, information collection, and reporting requirements on covered financial institutions.[3] Through special measure five, the Secretary may ''prohibit, or impose conditions upon, the opening or maintaining in the United States of a correspondent account or payable-through account'' for or on behalf of a foreign banking institution, if such correspondent account or payable-through account involves the financial institution operating outside of the United States found to be of primary money laundering concern.[4]

The authority of the Secretary to administer the Bank Secrecy Act (BSA) [5]

[1] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56, 115 Stat. 272 (Oct. 26, 2001) (USA PATRIOT Act).

[2] 31 U.S.C. 5318A(a)(1).

[3] 31 U.S.C. 5318A(b)(1)–(4).

[4] 31 U.S.C. 5318A(b)(5).

[5] The BSA, as amended, is the popular name for a collection of statutory authorities that FinCEN administers that is codified at 12 U.S.C. 1829b, 1951–1960 and 31 U.S.C. 5311–5314, 5316–5336,

Continued

and its implementing regulations, including the authority under section 311 to make such a finding and to impose special measures, has been delegated to FinCEN.[6]

II. Finding and Notice of Proposed Rulemaking

On October 23, 2023, FinCEN published a proposed rule that, if finalized, would impose recordkeeping and reporting obligations on covered financial institutions to report certain information when they know, suspect, or have reason to suspect a CVC transaction involves the use of CVC mixing within or involving a jurisdiction outside of the United States.[7] Under the proposed rule, FinCEN defined the term ''CVC Mixing'' as activity that entailed the facilitation of CVC transactions in a manner that obfuscates the source, destination, or amount involved in one or more transactions regardless of the type of protocol or service used, such as: (1) pooling or aggregating CVC from multiple persons, wallets, addresses, or accounts; (2) using programmatic or algorithmic code to coordinate, manage, or manipulate the structure of a transaction; (3) splitting CVC for transmittal and transmitting the CVC through a series of independent transactions; (4) creating and using single-use wallets, addresses, or accounts, and sending CVC through such wallets, addresses, or accounts through a series of independent transactions; (5) exchanging between types of CVC or other digital assets; or (6) facilitating user-initiated delays in transactional activity.[8] Additionally, FinCEN proposed a definition for services called ''CVC Mixers'' as ''any person, group, service, code, tool, or function that facilitates CVC mixing.''[9] The proposed rule would have required covered financial institutions to file a report with FinCEN containing certain information related to CVC Mixing transactions, such as the amount of CVC transferred, CVC type, CVC mixer used, CVC wallet address associated with customers, relevant transaction hashes, date of transactions, IP addresses, and a description of activity through a narrative. The proposed rule would have also required covered financial institutions to keep records of customers associated with covered transactions to include the customer's full identity, date of birth, address, email address, or unique identifying numbers.

As stated in the July 2025 report by the President's Working Group on Digital Asset Markets established by Executive Order 14178 (E.O. 14178), *Strengthening American Leadership in Digital Financial Technology,* ''the Trump Administration supports the ability of lawful users of digital assets to privately transact on a public blockchain.''[10] The report also acknowledged that although illicit actors ''use mixers to obfuscate and launder funds . . . lawful users of digital assets may leverage mixers to enable financial privacy when transacting through public blockchains.''[11] The report recommended that Treasury should consider next steps regarding its proposed rulemaking concerning CVC mixing.[12]

FinCEN is withdrawing its finding that international CVC Mixing is a class of transactions of primary laundering concern, and the proposed rule, published on October 23, 2023, seeking to impose special measure one regarding international CVC Mixing. While FinCEN maintains that illicit actors continue to use mixers and other tools and methods to hinder law enforcement investigations, this withdrawal is informed by the concerns from commentors that the expansive definition of CVC mixing in the proposed rule could have a chilling effect on legitimate activity and place a large reporting burden on covered financial institutions. However, FinCEN will continue to monitor activity involving CVC mixers for indicia of money laundering, terrorist financing, or other illicit finance activity, and may take appropriate steps in the future to mitigate any such activity.

Jimmy L. Kirby,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2026–20429 Filed 10–5–26; 8:45 am]

BILLING CODE 4810–02–P

and includes other authorities reflected in notes thereto. Regulations implementing the BSA appear at 31 CFR Chapter X.

[6] *See* Treasury Order 180–01 (Jan. 14, 2020).

[7] FinCEN, *Proposal of Special Measure Regarding Convertible Virtual Currency Mixing, as a Class of Transactions of Primary Money Laundering Concern,* 88 FR 72701 (Oct. 23, 2023).

[8] *Id.*

[9] *Id.*

[10] *See White House, Strengthening American Leadership in Digital Financial Technology,* p. 100 (July 2025), *https://www.whitehouse.gov/wp-content/uploads/2025/07/Digital-Assets-Report-EO14178.pdf; see also* Executive Order 14178, 90 FR 8647 (Jan. 31, 2025).

[11] *Id.* at p. 107.

[12] *Id.*

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Parts 1010, 1020, and 1022

RIN 1506–AB47

Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets; Withdrawal

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Proposed rule; withdrawal.

SUMMARY: FinCEN is withdrawing a notice of proposed rulemaking (NPRM) that proposed requiring banks and money service businesses (MSBs) to submit reports, keep records, and verify the identity of customers in relation to transactions involving convertible virtual currency (CVC) or digital assets with legal tender status (LTDA) held in unhosted wallets or in wallets hosted in a jurisdiction identified by FinCEN. FinCEN will not take any further action on this NPRM.

DATES: FinCEN is withdrawing the proposed rule published at 85 FR 83840 (December 23, 2020), as of October 6, 2026.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section by submitting an inquiry at *www.fincen.gov/contact.*

SUPPLEMENTARY INFORMATION: On December 23, 2020, FinCEN published an NPRM that proposed adopting recordkeeping, verification, and reporting requirements for certain deposits, withdrawals, exchanges, or other payments or transfers of CVC or LTDA by, through, or to a bank or MSB that involve an unhosted or otherwise covered wallet.[1] Under the proposal, the term ''unhosted wallet'' described ''when a financial institution is not required to conduct transactions from the wallet.''[2] FinCEN proposed defining otherwise covered wallets as those wallets that are held at a financial institution that is not subject to the Bank Secrecy Act and is located in a foreign jurisdiction identified by FinCEN.[3] The NPRM proposed requiring banks and MSBs to file a report with FinCEN containing certain information related to a customer's CVC or LTDA transaction and counterparty, and to verify the identity of their customer, if a counterparty to the transaction is using an unhosted or

[1] FinCEN, *Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets,* 85 FR 83840 (Dec. 23, 2020).

[2] *Id.* at 83843.

[3] *Id.*

otherwise covered wallet and the transaction is greater than $10,000, or multiple transactions that aggregate to greater than $10,000 in 24 hours. The NPRM also proposed requiring banks and MSBs to keep records of a customer's CVC or LTDA transaction and counterparty, including verifying the identity of their customer, if a counterparty is using an unhosted or otherwise covered wallet and the transaction is greater than $3,000.

As stated in the report issued by the President's Working Group on Digital Asset Markets established by Executive Order 14178, ''Strengthening American Leadership in Digital Financial Technology,'' FinCEN is withdrawing the NPRM as part of the Trump Administration's ongoing efforts to ensure digital asset regulations are fit-for-purpose.[4] FinCEN will take no further action on this NPRM.

Jimmy L. Kirby,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2026–20430 Filed 10–5–26; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2026–1057]

RIN 1625–AA00

Safety Zone; Red Bull Flugtag, Intercoastal Waterway, Biscayne Bay, Miami, FL

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain navigable waters on the Intercoastal Waterway portion of Biscayne Bay in Miami, FL. The safety zone is needed to protect spectators, vessels, and the marine environment from potential hazards associated with event proceedings. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless specifically authorized by the Captain of the Port, Sector Miami. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before October 21, 2026.

ADDRESSES: To submit comments and view available documents, go to *https://www.regulations.gov* and search for USCG–2026–1057.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rule, contact MST2 Elliot Cortes, Sector Miami Waterways Management Division, U.S. Coast Guard; telephone 786–295–9051, or email *SectorMiamiWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background and Authority

On May 21, 2026, Red Bull North America notified the Coast Guard that they will be hosting a homemade flying machine contest. Thirty teams will build crafts that cannot use stored energy for flight. They will launch off a 22 feet deck built above the water to see how far they can fly on the intercoastal waters of Biscayne Bay, Miami, FL on October 31st from 10 a.m. to 5 p.m. Hazards from the flying machines breaking apart mid-flight or debris drifting unpredictably threaten persons, vessels, and the marine environment. The Captain of the Port Sector Miami (COTP) has determined that potential hazards associated with event are a safety concern for anyone within 200 feet. Therefore, the COTP is proposing this rule under the authority in 46 U.S.C. 70034, which is needed to protect spectators, vessels, and the marine environment in the navigable waters within the safety zone.

III. Discussion of the Rule

This proposed rule would establish a safety zone from 10 a.m. until 5 p.m. on October 31, 2026. The safety zone would cover all navigable waters within 200 feet of the event stage. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or their designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders.

A. Impact on Small Entities

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

Vessel traffic will be able to safely transit around this regulated area. This regulation will only impact a small area for a few hours. The enforcement period is during a time when vessel traffic is higher than normal. In addition, the Coast Guard will issue a Broadcast Notice to Marines via VHF FM marine channel 16, which will allow small entities to adjust their transit plans.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), if this proposed rule will affect your small business, organization, or governmental jurisdiction and you have questions, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Small businesses may send comments to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards by calling 1–888–REG–FAIR (1–888–734–3247).

B. Collection of Information

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

[4] *See* White House, *Strengthening American Leadership in Digital Financial Technology,* p. 100 (July 2025), *https://www.whitehouse.gov/wp-content/uploads/2025/07/Digital-Assets-Report-EO14178.pdf; see also* Exec. Order 14178, 90 FR 8647 (Jan. 31, 2025).

C. Federalism and Indian Tribal Governments

We have analyzed this proposed rule under Executive Order 13132, Federalism, and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in that Order.

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

D. Unfunded Mandates Reform Act

As required by The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Coast Guard certifies that this proposed rule will not result in an annual expenditure of $100,000,000 or more (adjusted for inflation) by a State, local, or tribal government, in the aggregate, or by the private sector.

E. Environment

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

This proposed rule is a safety zone. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this will be in the docket.

V. Public Participation and Request for Comments

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

Submitting comments. We encourage you to submit comments at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2026–1057 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in the docket. To view available documents, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. We will post public comments in our online docket. Additional information is on the *https://www.regulations.gov* Frequently Asked Questions web page.

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

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.4.

■ 2. Add § 165.T07–1057 to read as follows:

§ 165.T07–1057 Safety Zone; Bayfront Park, Miami, FL

(a) *Location.* The following area is a safety zone: All waters of Biscayne Bay, from surface to bottom, encompassed by a line connecting the following points beginning at 25°46.56174′ N, 80°11.00034′ W, thence to 25°46.33974′ N, 80°10.9881′ W, thence to 25°46.31904′ N, 80°11.09454′ W, thence to 25°46.52172′ N, 80°11.09376′ W. These coordinates are based on the World Geodetic System (WGS 84).

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

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

(2) To seek permission to enter, contact the COTP or the COTP's representative on VHF–FM channel 16 or by telephone at (305) 535–4472. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 10 a.m. to 5 p.m. on October 31, 2026.

F.J. Florio,

Captain, U.S. Coast Guard, Captain of the Port Sector Miami.

[FR Doc. 2026–20491 Filed 10–5–26; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2024–0078; FRL–11650–03–OAR]

RIN 2060–AW33

Initial Air Quality Designations for the 2024 Revised Primary Annual Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is providing notice of the Agency's intended approach for area designations for the 2024 primary annual fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) (the 2024 annual $PM_{2.5}$ NAAQS) under Clean Air Act (CAA) section 107(d). Details regarding these designations, as well as the EPA's notifications to States, territories, and Tribes regarding their initial area designations are accessible via the Agency's website and public electronic docket. With this notice, the EPA is providing an opportunity for public comment on its intended approach for finalizing area designations during the comment period

specified in the **DATES** section. The EPA sent notifications directly to applicable States, territories, and Tribes regarding their initial area designations on or about October 2, 2026, and anticipates promulgating final designations consistent with CAA requirements.

DATES: Comments must be received on or before November 5, 2026.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2024–0078, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (the EPA's preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2024–0078 in the subject line of the message.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations 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 information on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: For information on this notice of data availability, contact Gabrielle Deabler, U.S. Environmental Protection Agency, Office of State Air Partnerships, Air Quality Planning Division, P.O. Box 12055, Mail Code: C541G, Research Triangle Park, NC 27709; telephone number: (919) 541–5766; email address: *deabler.gabrielle@epa.gov* or Andrew Leith, U.S. Environmental Protection Agency, Office of State Air Partnerships, Air Quality Planning Division, P.O. Box 12055, Mail Code: C541D, Research Triangle Park, NC 27709; telephone number: (919) 541–1069; email address: *leith.andrew@epa.gov.*

Regional Office Contacts

The following serve as points of contact for inquiries related to specific areas within the respective EPA Regional offices. The information can also be reviewed online at *https://www.epa.gov/particle-pollution-designations* and in the public docket for these 2024 annual $PM_{2.5}$ NAAQS designations at *https://www.regulations.gov* under Docket ID No. EPA–HQ–OAR–2024–0078.

EPA regional office contacts	Affected states
EPA Region 1, Lynne Hamjian, *Hamjian.Lynne@epa.gov*	CT, ME, MA, NH, RI, VT.
EPA Region 2, Richard Ruvo, *Ruvo.Richard@epa.gov*	NJ, NY, Puerto Rico, U.S. Virgin Islands.
EPA Region 3, Michael Dunn, *Dunn.Michael@epa.gov*	DE, DC, MD, PA, VA, WV.
EPA Region 4, Denisse Diaz, *Diaz.Denisse@epa.gov*	AL, FL, GA, KY, MS, NC, SC, TN.
EPA Region 5, John Mooney, *Mooney.John@epa.gov*	IL, IN, MI, MN, OH, WI.
EPA Region 6, James McDonald, *McDonald.James@epa.gov*	AR, LA, NM, OK, TX.
EPA Region 7, Dana Skelley, *Skelley.Dana@epa.gov*	IA, KS, MO, NE.
EPA Region 8, Adrienne Sandoval, *Sandoval.Adrienne@epa.gov*	CO, MT, ND, SD, UT, WY.
EPA Region 9, Anita Lee, *Lee.Anita@epa.gov*	AZ, CA, HI, NV, American Samoa, Commonwealth of the Northern Mariana Islands, Guam.
EPA Region 10, Angeles Herrera, *Herrera.Angeles@epa.gov*	AK, ID, OR, WA.

SUPPLEMENTARY INFORMATION:

Docket. The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2024–0078. 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 the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available as PDF versions that can only be accessed on the EPA computers in the docket office reading room. Certain databases and physical items cannot be downloaded from the docket but may be requested by contacting the docket office at (202) 566–1744. With the exception of such material, publicly available docket materials and a plain language summary of the action are available electronically at *https://www.regulations.gov.*

Written Comments. Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2024–0078, at *https://www.regulations.gov* (the EPA's preferred method) or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA will publish any comment received to the Agency's public docket. Do not submit to the EPA's docket at *https://www.regulations.gov* any information you consider to be CBI, Proprietary Business Information (PBI), or other information the disclosure of which is restricted by statute. This type of information should be submitted as discussed below. 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). Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

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 *Written Comments* section 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 electronic transmission 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 Office of State Air Partnerships (OSAP) CBI Office at the email address *osapcbi@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 *osapcbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: U.S. Environmental Protection Agency, Attn: OSAP Document Control Officer, Mail Drop: C404–02, 109 T.W. Alexander Drive, P.O. Box 12055, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2024–0078. 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
CFR Code of Federal Regulations
DV Design Value
EPA Environmental Protection Agency
FR Federal Register
FTP File Transfer Protocol
NAAQS National Ambient Air Quality Standard or Standards
OSAP Office of State Air Partnerships
PBI Proprietary Business Information
PM Particulate Matter
SIP State Implementation Plan
TAS Treatment in a Similar Manner as a State
U.S.C. United States Code

Table of Contents

I. Overview of Action
II. Legal Authority
III. The EPA's Intended Approach to Area Designations

I. Overview

Under CAA section 107(d), the EPA is to issue area designations upon promulgation of a new or revised NAAQS. On February 7, 2024, the EPA promulgated revisions to the primary annual $PM_{2.5}$ NAAQS to a level of 9.0 micrograms per cubic meter ($\mu g/m^3$) as described in 40 CFR 50.20.[1] On July 17, 2026, the Northern District Court of California ordered the EPA to publish final designations for all areas of the country no later than February 6, 2027.[2] Although EPA is appealing the order, EPA is also moving forward in the absence of action from the judiciary, to complete the designations.

As a general matter, the first step in the designations process is for the Governors of States and territories, and Tribes, if they so choose, to submit initial area designations to the EPA. Whenever the EPA intends to modify a Governor's initial designation, the Agency must notify the State, territory, or Tribe no later than 120 days prior to promulgating final designations.[3] These notifications are informally referred to as 120-day letters.

This notice of availability provides notice of the EPA's intended approach for designations for the 2024 annual $PM_{2.5}$ NAAQS under CAA section 107(d)(1)(B). The EPA invites public input regarding area designations during the 30-day comment period announced in this notice. To receive full consideration, input from the public must be submitted to the docket by the date provided in the **DATES** section of this document. This notice and opportunity for public comment does not affect any rights or obligations of any State, territory, or Tribe, or of the EPA, which might otherwise exist pursuant to CAA section 107(d).

II. Legal Authority

Following promulgation of a new or revised NAAQS, CAA section 107(d) requires the EPA to designate areas of the country as attainment, nonattainment, or unclassifiable for that NAAQS. CAA section 107(d)(1)(A)(i)–(iii) defines: (i) nonattainment, as any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the NAAQS; (ii) attainment, as any area (other than an area identified in clause (i)) that meets the NAAQS; and (iii) unclassifiable, as any area that cannot be classified on the basis of available information as meeting or not meeting the NAAQS. Generally, the designations process involves identifying areas of the country that either meet or do not meet the NAAQS, along with any nearby areas that are causing or contributing to NAAQS violations. The EPA calculates design values (DVs) at monitors to determine whether a given area has met the 2024 annual $PM_{2.5}$ NAAQS, based on procedures outlined in 40 CFR part 50, Appendix N.[4] The 2024 annual $PM_{2.5}$ NAAQS is met at an ambient air quality monitoring site when the annual arithmetic mean, averaged over three years (*i.e.,* the DV) is less than or equal to 9.0 $\mu g/m^3$.

In accordance with the statutory timeline prescribed under CAA section 107(d)(1)(A), Governors of each State or territory were required to submit a list of initial designations for all areas of their State or territory by February 7, 2025. Though not required, Tribal governments were encouraged to submit initial designations for their respective areas of Indian Country.[5] These submissions generally relied on the 2021–2023 DVs and other information relevant to that time period. When promulgating final designations, the EPA will use the most recently available ambient air monitoring data and other information. The EPA intends to rely on DVs from the 2023–2025 period for promulgating final area designations.

The EPA evaluates the initial area designation submissions from States,

[1] 89 FR 16202 (Mar. 6, 2024).

[2] *All. of Nurses for Healthy Env'ts* v. *Zeldin,* No. 26–cv–03118–HSG (N.D. Cal. July 17, 2026).

[3] The EPA notified Tribes that have obtained treatment in a similar manner as a state (TAS) under CAA section 301(d) and 40 CFR part 49 for purposes of CAA section 107(d), and those Tribes that may be affected by a nonattainment designation in the relevant State.

[4] In accordance with 40 CFR part 50 Appendix N, $PM_{2.5}$ measurements from the primary monitor and suitable collocated $PM_{2.5}$ Federal Reference Method (FRM) or Federal Equivalent Method (FEM) may be used in a ''combined site data record'' to establish a $PM_{2.5}$ design value to determine whether the NAAQS is met or not met at a particular $PM_{2.5}$ monitoring site. For final area designations, the EPA intends to rely on Air Quality System (AQS) data from 2023–2025.

[5] After promulgation of a new or revised NAAQS, each Governor or Tribal leader has an opportunity to submit initial area designations to the EPA. Consistent with the approach outlined in the EPA's 2011 Policy for Establishing Separate Air Quality Designations for Areas of Indian Country, in circumstances in which the Agency either does not receive an initial area designation letter from a Tribe, or receives a letter that does not specify designation of a separate area, the Agency intends to designate the relevant Tribe's Indian country as part of the surrounding multi-jurisdictional area. See memorandum from Stephen D. Page to Regional Air Directors, Regions 1–10, *https://www.epa.gov/sites/default/files/2015-09/documents/20120117indiancountry.pdf.*

the District of Columbia, territories, and Tribes as part of the Agency's duty to promulgate final designations for a new or revised NAAQS. CAA section 107(d)(1)(B)(ii) provides that, whenever the EPA intends to modify an initial designation for a State, territory, or Tribe, the Agency must notify the State, territory, or Tribe no later than 120 days before the date the Administrator promulgates final designations. CAA section 107(d)(1)(B)(ii) further requires the EPA to provide such State with an opportunity to demonstrate why any potential modification is inappropriate. Although not required by the CAA, the EPA has issued letters notifying all States, the District of Columbia territories, and certain Tribes of EPA's intended approach for finalizing designations, including instances where the State, territory, or Tribe declined to submit an initial area designation. The EPA's 120-day letters requested that the States provide additional information to the Agency within 30 days of receipt of the letters.

III. The EPA's Intended Approach to Area Designations

A. What is the EPA's intended approach for area designations?

Consistent with CAA section 107(d)(1), the EPA has conducted an evaluation of the most recent and relevant air quality information available. This includes evaluation of the complete and certified $PM_{2.5}$ ambient air quality monitoring data, including the 2021–2023 DVs on which States, the District of Columbia, territories, and Tribes, based their initial designation submissions. Additionally, the EPA evaluated and utilized the most recent complete and certified $PM_{2.5}$ air quality monitoring data, including the 2023–2025 DVs, and other available technical information pertinent to these designations. Furthermore, the EPA considered the information submitted from States, the District of Columbia, territories, and Tribes in their initial area designations.

On or about October 2, 2026, in accordance with CAA section 107(d)(1)(B)(ii), the EPA completed its obligation to notify States of any intended modification to initial designations no later than 120-days prior to promulgating final designations. The EPA notified all States, the District of Columbia, territories, and certain Tribes as to whether the EPA intends to modify aspects of the State's initial designations for the 2024 annual $PM_{2.5}$ NAAQS. With respect to State initial designations that indicated ''attainment,'' and where the EPA functionally agrees with the State recommendation, the Agency intends to designate those States as ''attainment/unclassifiable.'' As a functional matter, there is no change for those States; the statutory and regulatory burdens of ''attainment'' and ''attainment/unclassifiable'' are the same.

Information may be submitted to the EPA's public docket regarding these intended designations at EPA–HQ–OAR–2024–0078, available at *www.regulations.gov.* Pursuant to CAA section 107(d)(1)(B) and following consideration of any additional information the EPA receives, the Agency anticipates completing final designations consistent with CAA requirements and in a timely manner commensurate with any applicable court order. The EPA is available to assist States, the District of Columbia, territories, and Tribes with any outstanding matters concerning appropriate designations for all remaining areas.

B. Where can I find information related to these designations?

Information is provided in the individual 120-day letters themselves and the dataset(s) included in the docket. The relevant datasets, technical assistance documents, applicable EPA guidance memoranda, and copies of correspondence regarding this process between the Agency and the States, along with other parties, are available for review at the public docket for these 2024 annual $PM_{2.5}$ NAAQS designations at *http://www.regulations.gov* under Docket ID No. EPA–HQ–OAR–2024–0078, at the EPA Docket Center listed in the **FOR FURTHER INFORMATION CONTACT** section of this document, and on the Agency's Particulate Matter Designations website at *https://www.epa.gov/particle-pollution-designations.*

Aaron Szabo,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2026–20468 Filed 10–5–26; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 91, No. 192
Tuesday, October 6, 2026

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are required regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by November 5, 2026 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.

Farm Service Agency

Title: Emergency Conservation Program and Biomass Crop Assistance Program.

OMB Control Number: 0560–0082.

Summary of Collection: The Farm Service Agency (FSA), in cooperation with the Natural Resources Conservation Service, the Forest Service, and other agencies and organizations, provides eligible producers and landowners cost-share incentives and technical assistance through several conservation and environmental programs to help farmers, ranchers, and other eligible landowners and operators conserve soil, improve water quality, develop forests, and rehabilitate farmland severely damaged by natural disasters authorized under the Agricultural Credit Act of 1978 (16 U.S.C. 2201–2205). FSA provides emergency funds for sharing with agricultural producers the cost of rehabilitating farmland damaged by natural disaster, and for carrying out emergency water conservation measures during periods of severe drought.

FSA is also managing the Biomass Crop Assistance Program (BCAP) authorized by Section 9010 of the Agricultural Act of 2014 (Pub. L. 113–79), which amends Title 1X of the Food, Conservation and Energy Act of 2008. BCAP regulations outlined the legislations parameters, program definitions and process for: (1) Establishing BCAP project areas; (2) Matching payment opportunity for eligible material owners and qualifying biomass conversion facilities; (3) Contracting acreage for producers in BCAP project areas; and (4) Establishment and annual production payments for producers in BCAP projects areas.

Need and Use of the Information: FSA will collect information using several forms. The collected information will be used to determine if the person, land, and practices are eligible for participation in the respective program and to receive cost-share assistance. Also, information collection from eligible biomass owners, biomass conversion facilities, and producers meeting the requirements for matching payments, annual production payment assistance, establishment payments and BCAP project area designation is necessary in order to ensure the financial accountability needed to operate and administer the BCAP. Without the information, FSA will not be able to make eligibility determinations and compute payments in a timely manner.

Description of Respondents: Farms; Business or other for profit.

Number of Respondents: 10,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 12,427.

Rachelle Ragland-Greene,

Departmental Information Collection Clearance Officer.

[FR Doc. 2026–20449 Filed 10–5–26; 8:45 am]

BILLING CODE 3410–05–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 and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are required regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by November 5, 2026 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.

Farm Service Agency

Title: Farm Loan Program, General Program Administration.

OMB Control Number: 0560–0238.

Summary of Collection: Farm Loan Program (FLP) in the Farm Service Agency provides loans to family farmers to purchase real estate and equipment and finance agricultural production to comply the regulation of 7 CFR part 761, General Program Administration.

Need and Use of the Information: Information collections are submitted by applicants and borrowers to the local FSA office serving the county in which their business is headquartered. The information is necessary to provide supervised credit as legislatively mandated and is used by FSA to:

- Ensure that when loan funds or insurance proceeds are used for construction and development projects, work is completed according to applicable State and local requirements, and in a manner that protects the Government's financial interest.
- Ensure that the loan repayment plan is developed using realistic data, based on the operation's actual history and any planned improvements.
- Identify potential concerns limiting the success of the operation and develop a loan assessment outlining the course of action to be followed, to improve the operation so that commercial credit is available.

The general nature of a loan from FSA is very similar to that of any conventional commercial creditor. However, FSA applicants and borrowers tend to pose more of an economic risk of loss than those operations financed by commercial credit sources, as applicants must document that no other source of credit is available at the time of application. Legislation requires FSA to actively supervise these borrowers and provide credit counseling, management advice, and financial guidance. Also, FLP provides either a prompt payment or standard guarantee plan to sellers who enter a land contract with a beginning or socially disadvantaged farmers to comply with the regulation of 7 CFR part 763, Land Contract Guarantee Loan but have not received any requests for land contract.

FLP is mandated to provide supervised credit; therefore, failure to collect the information, or collecting it less frequently, could result in the failure of the farm operation or loss of agency security property.

Description of Respondents: Business or other for-profit; farms.

Number of Respondents: 66,041.

Frequency of Responses: Reporting: On occasion; annually.

Total Burden Hours: 158,263.

Rachelle Ragland-Greene,

Departmental Collection Clearance Officer.

[FR Doc. 2026–20457 Filed 10–5–26; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

International Trade Administration

New Mexico Institute of Mining and Technology et.al, Notice of Decision on Application for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). On August 25, 2026, the Department of Commerce published a notice in the **Federal Register** requesting public comment on whether instruments of equivalent scientific value, for the purposes for which the instruments identified in the docket(s) below are intended to be used, are being manufactured in the United States. *See New Mexico Institute of Mining and Technology et al.; Application(s) for Duty-Free Entry of Scientific Instruments* 91 FR 54847, August 25, 2026. We received no public comments.

Comments: None received. Decision: Approved. We know of no instrument of equivalent scientific value to the foreign instrument described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order.

Docket No.	Applicant	Instrument
25–067	New Mexico Institute of Mining and Technology	JXA–IHP200F Field Emission Electron Probe MicroAnalyzer (EPMA).
25–074	University of Illinois	FaunaScan MR2 Portable Radar System.
26–003	Washington University in St. Louis	Externally Adjustable Four-Probe Stage.
26–004	University of Washington	Walk Away Specimen Professor (WASP).
26–005	University of Illinois	Pico Emerald Laser System with Laser Head, Control Unit and Chiller.
26–006	Washington State University	JEOL F–200 STEM featuring dual EDS detectors, a Gatan ClearView 16MP Camera, a Gatan Alpine Direct Electron Detector.
26–007	University of Iowa	Zantiks MWP Z2S.
26–015	Rector & Visitors of the University of Virginia	Transmission Electron Microscope with Lorentz lens and Bi-Prism.
26–016	University of Illinois	Multimesh Terahertz Filter System.
26–020	University of Chicago	ASWAXS Flight Tube.
26–024	University of Buffalo	Transmission Electron Microscope—Thermo Scientific FEI Talos F200i.
26–025	University of Alaska	MICADAS.
26–028	Wesleyan University	High Performance Photoluminescence Lifetime and Steady-State Spectrometer.
26–030	The Board of Trustees of the University of Illinois	Side Bounce Monochromator (SBM).
26–033	Virginia Commonwealth University	Cryo-System for Kerr Microscopy and Heating System.
26–038	University of Nevada at Reno	CytoSub Deep.
26–043	Rush University Medical Center	Laser Microtome.
26–045	Battelle Memorial Institute, Pacific Northwest Division	Treble+ Distributed Acoustic Sensing (DAS) Interrogator.
26–046	The Board of Trustees of the University of Illinois	Surface Diffractometer with Double Crystal Deflector (DCD).

Docket No.	Applicant	Instrument
26–048	Murray State University	Bruker Avance NEO 400 MHz NMR Nanobay Spectrometer.
26–050	Michigan Technological University	Dielectrophoresis Instrument.
26–053	Applicant: Battelle Memorial Institute	Tunable Laser System.
26–056	Rochester Institute of Technology	Ultrafast Ti: Sapphire Laser.
26–058	Fermi Forward Discovery Group, LLC	Two Low-Voltage, High-Current Switch Mode Power Supply (SMPS) Systems.
26–060	University of Pennsylvania	Optical Amplifier ORPHEUS.
26–061	Washington University in St. Louis	Biospec 15.2–Tesla Pre-Clinical MRI System.
26–062	University of Pennsylvania	Electrochemical Mass Spectrometry (EC–MS) System with Integrated Microchip Inlet.
26–065	University of Southern Indiana	Bruker Avance NEO Nanobay 400 MHz NMR.
26–067	State University of Iowa	HE–TOPAS–PrimePlus OPA System.
26–069	Syracuse University	KiwiSat Argos Satellite Marker.
26–071	Hobart and William Smith Colleges	JNM–ECZL 500G: 500MHz 11.7 T NMR Spectrometer.
26–074	Colorado State University	Compact Ultra High Contrast OPCPA Laser.
26–082	Yale University	Satsuma HP^2 High Power Femtosecond Laser.
26–088	Northwestern University	CARBIDE pump laser with iOPA–F tunable-wavelength optical parametric amplifier.
26–089	Children's Mercy Hospital	SKYSCAN 1273.
26–090	University of Illinois, Urbana-Champaign	Cytomat 24C Automated Incubator.
26–096	Wesleyan University	Nuclear Magnetic Resonance Spectroecopy magnet (NMR Magnet).
26–097	Trustees of Dartmouth College	nanoindenter.
26–098	Fermi Forward Discovery Group, LLC	40kW 650 MHz RF Amplifier.
26–101	University of Washington	FetchAZA HP Rel 504 Pressure Recorder with Acoustic Release.
26–103	Indiana University Bloomington	IBEX Clumped Isotope sample preparation system V2.
26–110	Battelle Memorial Institute, Pacific Northwest Division	RT6–1000 Acoustic Release Transponders.
26–114	University of Louisville	NMRSpectrometer Instrument.

Dated: October 2, 2026.

Lana Nigro,

Acting Director, Subsidies Enforcement, Enforcement and Compliance.

[FR Doc. 2026–20490 Filed 10–5–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–471–807]

Certain Uncoated Paper From Portugal: Final Results of Antidumping Duty Administrative Review; 2024–2025

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that The Navigator Company, S.A (Navigator), the only producer/exporter subject to this review, made sales of subject merchandise at less than normal value (NV) during the period of review (POR), March 1, 2024, through February 28, 2025.

DATES: Applicable October 6, 2026.

FOR FURTHER INFORMATION CONTACT: Monica Gillis, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6384.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 2026, Commerce published the *Preliminary Results* of this administrative review in the **Federal Register** and invited interested parties to comment.[1] No interested party submitted comments on the *Preliminary Results.* Accordingly, the final results remain unchanged from the *Preliminary Results,* the *Preliminary Results* are hereby adopted as these final results, and no decision memorandum accompanies this notice. Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [2]

The merchandise subject to the *Order* is certain uncoated paper products from Portugal. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

[1] *See Certain Uncoated Paper from Portugal: Preliminary Results of Antidumping Duty Administrative Review; 2024–2025,* 91 FR 33145 (June 3, 2026) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (Preliminary Decision Memorandum).

[2] *See Certain Uncoated Paper from Australia, Brazil, Indonesia, the People's Republic of China, and Portugal: Amended Final Affirmative Antidumping Determinations for Brazil and Indonesia and Antidumping Duty Orders,* 81 FR 11174 (March 3, 2016) (*Order*).

Final Results of Review

For these final results, we determine that the following estimated weighted-average dumping margin exists for the period March 1, 2024, through February 28, 2025:

Producer/exporter	Weighted-average dumping margin (percent)
The Navigator Company, S.A	2.70

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 from the *Preliminary Results,* there are no new calculations to disclose.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the

final results of this review. Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount on estimated entered values. Because Navigator's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we calculated importer-specific assessment rates based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). Where an importer-specific assessment rate is zero or *de minimis* (*i.e.,* less than 0.5 percent), the entries by that importer will be liquidated without regard to antidumping duties.[3]

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by Navigator for which it did not know that the merchandise was destined for the United States, we intend to instruct CBP to liquidate those entries at the all-others rate calculated in the less-than-fair-value (LTFV) investigation if there is no rate for the intermediate company(ies) involved in the transaction.[4]

Commerce intends to issue assessment instructions to CBP regarding Navigator no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for subject merchandise exported by Navigator will be equal to the weighted-average dumping margin established in these final results of this administrative review; (2) for previously investigated or reviewed companies not covered by this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 7.80 percent, the all-others rate established in the LTFV 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 this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order (APO)

This notice also serves as a preliminary reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: October 1, 2026.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2026–20484 Filed 10–5–26; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See* 19 CFR 351.106(c)(2); *see also Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[4] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[5] *See Order.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–984]

Drawn Stainless Steel Sinks From the People's Republic of China: Final Results of the Expedited First and Second Sunset Reviews of the Countervailing Duty Order; 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 25, 2018 and October 20, 2023 in which Commerce announced the final results of the first and second sunset reviews of the countervailing duty (CVD) order on drawn stainless steel sinks from the People's Republic of China (China). These notices incorrectly stated an all-others rate of 8.61 percent.

FOR FURTHER INFORMATION CONTACT: Sarah Keith, 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) 482–0264.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 2018, Commerce published in the **Federal Register** the *Final Results* of the first CVD sunset review of drawn stainless steel sinks from China.[1] On October 20, 2023, Commerce published in the **Federal Register** the *Final Results* of the second CVD sunset review of drawn stainless steel sinks from China.[2] We incorrectly stated in both notices that the all-others rate is 8.61 percent.

Correction

In the **Federal Register** of July 25, 2018, in FR Doc 2018–15883 on page 35213, in the first column, correct the final line of the ''Net subsidy rate %'' table (*i.e.,* All Others) to state: ''8.51.''

In the **Federal Register** of October 20, 2023, in FR Doc 2023–23269 on page 72429, in the second column, correct the final line of the ''Subsidy rate (percent *ad valorem*)'' table (*i.e.,* All Others) to state: ''8.51.''

[1] *See Drawn Stainless Steel Sinks From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 83 FR 35212 (July 25, 2018).

[2] *See Drawn Stainless Steel Sinks From the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order,* 88 FR 72428 (October 20, 2023).

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351. 221(b)(4).

Dated: October 1, 2026.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2026–20481 Filed 10–5–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–834]

Large Diameter Welded Pipe From the Republic of Türkiye: Final Results of Countervailing Duty Administrative Review; 2024

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines countervailable subsidies were provided to HDM Çelik Boru Sanayi Ve Ticaret A.S. (HDM Çelik), a producer/exporter of large diameter welded pipe (welded pipe) from the Republic of Türkiye (Türkiye) during the period of review, January 1, 2024, through December 31, 2024.

DATES: Applicable October 6, 2026.

FOR FURTHER INFORMATION CONTACT: Maria Papakostas, 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) 482–0086.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 2026, Commerce published the *Preliminary Results* and invited comments from interested parties.[1] No interested party submitted comments on the *Preliminary Results.* Accordingly, the final results remain unchanged from the *Preliminary Results,* except as noted below, and there is no decision memorandum accompanying this notice. Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [2]

The merchandise covered by the *Order* is welded pipe from Türkiye. For a complete description of the scope of the *Order, see* the *Preliminary Results* PDM.

Changes Since the Preliminary Results

We revised our calculations for HDM Çelik to incorporate the minor corrections from HDM Çelik's verification.[3]

Final Results of Review

We determine that, for the period, January 1, 2024, through December 31, 2024, the following total net countervailable subsidy rate exists:

Company	Subsidy rate (percent *ad valorem*)
HDM Çelik Boru Sanayi Ve Ticaret A.S.[4]	3.34 [5]

Disclosure

Commerce intends to disclose its calculations performed in connection with the final results of review to interested parties within five days of 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).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For HDM Çelik, we intend to instruct CBP to assess countervailing duties at the *ad valorem* subsidy rate listed in the table above. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.107(e), Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review, as follows: (1) the cash deposit rate for the company listed above will be equal to the company-specific estimated individual countervailable subsidy rates determined in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) if both the producer and exporter of the subject merchandise have company-specific estimated subsidy rates assigned, and their rates differ, then the applicable cash deposit rate will be the higher of these two rates; (3) if either the producer or the exporter, but not both, of the subject merchandise has a company-specific estimated subsidy rate assigned, the applicable cash deposit rate will be that company's company-specific rate; and (4) the cash deposit rate for all other producers and exporters will continue to be 3.72 percent, the all-others subsidy rate established in the investigation.[6] These cash deposit instructions, when imposed, shall remain in effect until further notice.

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

[1] *See Large Diameter Welded Pipe from the Republic of Türkiye: Preliminary Results and Rescission, in Part, of Countervailing Duty Administrative Review; 2024,* 91 FR 33693 (June 4, 2026) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 90 FR 26967 (June 25, 2025); *see also Large Diameter Welded Pipe from the Republic of Turkey: Countervailing Duty Order,* 84 FR 18771 (May 2, 2019) (*Order*).

[3] *See* Memorandum, ''Verification of the Questionnaire Responses of HDM Çelik Boru Sanayi ve Ticaret A.S.,'' dated September 15, 2026; *see also* Memorandum, ''Final Results Calculation for HDM Çelik Boru Sanayi Ve Ticaret A.S.,'' dated concurrently with this memorandum (HDM Çelik's Final Calculation Memorandum).

[4] This rate also applies to HDM Spiral Kaynakli Çelik Boru A.S., the English name of which is HDM Spirally Welded Steel Pipe Inc.

[5] This subsidy rate calculated for HDM Çelik includes export subsidies of 0.61 percent. *See* HDM Çelik's Final Calculation Memorandum at 2.

[6] *See Order.*

Notification to Interested Parties

These final results are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: October 1, 2026.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2026–20482 Filed 10–5–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–807]

Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2023–2024

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that producers/exporters subject to this review made sales of subject merchandise at less than normal value (NV) during the period of review (POR), December 1, 2023, through November 30, 2024.

DATES: Applicable October 6, 2026.

FOR FURTHER INFORMATION CONTACT: Rebecca Janz, 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) 482–2972.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 2026, Commerce published in the **Federal Register** the *Preliminary Results* of this administrative review and invited interested parties to comment.[1] The deadline for these final results is October 1, 2026.

For a complete description of the events since the *Preliminary Results, see* the Issues and Decision Memorandum.[2] 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), which is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/frnotices.*

Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [3]

The merchandise subject to the *Order* is circular welded carbon-quality steel pipe from the United Arab Emirates. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by interested parties are addressed in the Issues and Decision Memorandum and listed in the appendix to this notice.

Changes Since the Preliminary Results

Based on our analysis of the comments received from interested parties regarding the *Preliminary Results,* we made certain changes to the weighted-average dumping margin calculations for THL Tube and Pipe Industries LLC; KHK Scaffolding and Formwork LLC; and Universal Tube and Pipe Industries FZE (collectively, Universal).[4] For a discussion of these changes, *see* the Issues and Decision Memorandum.

Rates for the Non-Individually Examined Companies

The Act does not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. However, 19 CFR 351.109(g) states that Commerce will determine the rate for non-selected companies by applying the methodology set forth in 19 CFR 351.109(f)(1)–(2), which generally parallels the methodology for determining the all-others rate in an investigation under section 735(c)(5) of the Act. Under 19 CFR 351.109(f)(1) and section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this administrative review, we calculated weighted-average dumping margins for the individually investigated respondents, Conares Metal Supply Limited (Conares) and Universal, that are not zero, *de minimis,* or based entirely on facts otherwise available. Accordingly, we are assigning to the companies under review that were not selected for individual examination a weighted-average dumping margin equal to the weighted average of the estimated weighted-average dumping margins calculated for Conares and Universal, weighted by the mandatory respondents' publicly ranged total sales values, consistent with the guidance in section 735(c)(5)(A) of the Act.[5]

Final Results of Review

Commerce determines that the following estimated weighted-average dumping margins exist for the period December 1, 2023, through November 30, 2024:

[1] *See Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review; 2023–2024,* 91 FR 33142 (June 3, 2026) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Circular Welded Carbon-Quality Steel Pipe from United Arab Emirates; 2023–2024,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, and the United Arab Emirates: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Orders,* 81 FR 91906 (December 19, 2016) (*Order*).

[4] *See* Issues and Decision Memorandum.

[5] With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the dumping margins calculated for the examined respondents; (B) a simple average of the dumping margins calculated for the examined respondents; and (C) a weighted-average of the dumping margins calculated for the examined respondents using each company's publicly ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010); *see also* Memorandum, ''Calculation of the Preliminary Weighted-Average Dumping Margin for the Companies Not Selected for Individual Examination,'' dated concurrently with this notice.

Producer/exporter	Weighted-average dumping margin (percent)
Conares Metal Supply Limited	3.15
THL Tube and Pipe Industries LLC; KHK Scaffolding and Formwork LLC; Universal Tube and Pipe Industries FZE	5.11
Ajmal Steel Tubes & Pipes Ind. L.L.C.–Branch–1; Ajmal Steel Tubes & Pipes Ind. L.L.C	4.68
K.D. Industries Inc	4.68
TSI Metal Industries L.L.C	4.68

Disclosure

Commerce intends to disclose the calculations and analysis performed in connection with the final results of this administrative review to interested parties within five days of any public announcement or, if there is no public announcement, within five days of the publication date of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), because Conares and Universal reported the entered value of their U.S. sales, we calculated importer-specific *ad valorem* antidumping duty assessment rates on the basis of the ratio of the total amount of dumping calculated for an importer's examined sales to the total entered value of those sales. Where either the respondent's weighted-average dumping margin is zero or *de minimis,* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[6]

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by Conares or Universal for which the company did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate calculated in the less-than-fair-value (LTFV) investigation if there is no rate for the intermediate company(ies) involved in the transaction.[7]

For the companies listed above of that were not selected for individual examination, we will instruct CBP to assess antidumping duties on all appropriate entries at the review-specific rate, calculated as noted in the ''Rate for Non-Individually Examined Companies'' section, above.[8]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in the final results of this review; (2) for previously investigated or reviewed companies not listed above, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the producer is, the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 5.95 percent, the all-others rate established in the LTFV investigation.[9] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: October 1, 2026.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Changes Since the *Preliminary Results*
V. Discussion of Issues
Comment 1: Whether the Price Difference Test's Two-Percent Threshold is Appropriate
Comment 2: Whether to Include International Freight Expenses in Universal's U.S. Freight Revenue Cap
Comment 3: Whether to Remove the Cap Applied to Universal's Cutting Revenue

[6] *See* 19 CFR 351.106(c)(2); *see also Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[7] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[8] *See* section 735(c)(5)(A) of the Act.

[9] *See Order,* 81 FR at 91908.

Comment 4: Whether Universal's Prime and Non-Prime Sales are Correctly Matched
VI. Recommendation

[FR Doc. 2026–20489 Filed 10–5–26; 8:45 am]
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DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–822]

Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2024–2025

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain producers/exporters subject to this administrative review made sales of certain frozen warmwater shrimp (shrimp) from Thailand at less than normal value during the period of review (POR), February 1, 2024, through January 31, 2025.

DATES: Applicable October 6, 2026.

FOR FURTHER INFORMATION CONTACT: Gregory Taushani, 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) 482–1012.

SUPPLEMENTARY INFORMATION:

Background

On May 14, 2026, Commerce published the *Preliminary Results* in the **Federal Register**, and invited interested parties to comment.[1] Commerce made no changes from the *Preliminary Results,* which are herein adopted as the final results of review. On September 8, 2026, Commerce extended the deadline for these final results to October 1, 2026.[2]

For a complete description of the events that occurred since Commerce published the *Preliminary Results, see* the Issues and Decision Memorandum.[3] Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [4]

The merchandise covered by the *Order* is frozen warmwater shrimp from Thailand. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by interested parties in this review are addressed in the Issues and Decision Memorandum and are listed in Appendix I to this notice. Additionally, a full discussion of the issues raised by parties for these final results are discussed in the Issues and Decision Memorandum. 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), which 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/frnotices.*

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* and for the reasons explained in the Issues and Decision Memorandum, Commerce made no changes to the weighted-average dumping margin calculations for Thai Union Group Public Co., Ltd. (Thai Union),[5] Thai Royal Frozen Food Co., Ltd. (Thai Royal), and the non-selected companies.[6]

Determination of No Shipments

In the *Preliminary Results,* we determined that the Rubicon Group,[7] Marine Gold Products Ltd. (Marine Gold); and Thai Union Manufacturing Company Limited (Thai Union Manufacturing) had no shipments during the POR.[8] Following publication of the *Preliminary Results,* we received no comments from interested parties with respect to our determination. Therefore, for the final results, we continue to find that the Rubicon Group, Marine Gold, and Thai Union Manufacturing had no shipments of subject merchandise to the United States during the POR and we will issue appropriate instructions to U.S. Customs and Border Protection (CBP) based on the final results.

Rate for Non-Selected Companies

The Act does not address the establishment of a rate to apply to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. However, Commerce's regulation at 19 CFR 351.109(g) states that Commerce will determine the rate for non-selected companies by following the process set forth in 19 CFR 351.109(f)(1)–(2), which generally parallels the process for determining the all-others rate in an investigation under section 735(c)(5) of the Act. Section 735(c)(5)(A) of the Act and 19 CFR 351.109(f) state that for companies not investigated, in general, we will determine an all-others rate by weight averaging the antidumping duty rates established for each of the companies individually investigated, excluding zero and de *minimis* rates or any rates based entirely on facts available. Where the estimated weighted-average dumping margin for each of the individually examined companies is zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method to establish the estimated all-

[1] *See Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results of Antidumping Duty Administrative Review; Rescission of Review, in Part, and Preliminary Determination of No Shipments; 2024–2025,* 91 FR 27255 (May 14, 2026) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Extension of Deadline for Final Results of the 2024–25 Antidumping Duty Administrative Review,'' dated September 8, 2026.

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from Thailand; 2024–2025,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Thailand,* 70 FR5145 (February 1, 2005) (*Order*).

[5] In the 2012–2013 administrative review, Commerce found that the following companies comprised a single entity: Thai Union Frozen Products Public Co. Ltd.; Thai Union Seafood Co., Ltd.; Pakfood Public Company Limited; Asia Pacific (Thailand) Co., Ltd; Chaophraya Cold Storage Co., Ltd.; Okeanos Co., Ltd; Okeanos Food Co., Ltd.; Takzin Samut Co., Ltd. *See Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306 (August 28, 2014) (*Shrimp from Thailand 2012–2013*). Further, on January 5, 2016, Commerce found that Thai Union Group Public Co., Ltd. is the successor-in-interest to Thai Union Frozen Products Public Co., Ltd. *See Notice of Final Results of Antidumping Changed Circumstances Review: Certain Frozen Warmwater Shrimp from Thailand,* 81 FR 222 (January 5, 2016). Therefore, absent information to the contrary, we are treating these companies as a single entity for the purposes of this administrative review.

[6] *See* Issues and Decision Memorandum.

[7] The Rubicon Group is a single entity comprised of the following companies: Andaman Seafood; Chanthaburi Seafoods Co., Ltd.; Chanthaburi Frozen Food Co., Ltd.; Phatthana Seafood Co., Ltd.; Thai International Seafood Co., Ltd.; Thailand Fishery Cold Storage Public Co., Ltd.; Wales & Company Universe Ltd.; S.C.C. Frozen Seafood Co., Ltd.; Intersia Foods Co., Ltd.; Phatthana Frozen Food Co., Ltd., and Sea Wealth Frozen Food Co, Ltd.

[8] *See Preliminary Results,* 91 FR at 27256.

others rate for exporters and producers not individually investigated, including averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated.''

In this review, we calculated estimated weighted-average dumping margins of zero percent for Thai Royal and 1.76 percent for Thai Union. Section 735(c)(5)(A) of the Act states that ''{t}he estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776.'' Consistent with section 735(c)(5)(A) of the Act, we assigned the companies not selected for individual examination in this review a weighted-average dumping margin based on the rate of 1.76 percent calculated for Thai Union. The companies not selected for individual examination are listed in Appendix II.

Final Results of Administrative Review

We determine that the following estimated weighted-average dumping margins exist for the period February 1, 2024, through January 31, 2025:

Exporter/producer	Weighted-average dumping margin (percent)
Thai Union Group Public Co., Ltd.; Thai Union Seafood Co., Ltd.; Pakfood Public Company Limited; Asia Pacific (Thailand) Co. Ltd.; Chaophraya Cold Storage Co., Ltd.; Takzin Samut Co., Ltd	1.76
Thai Royal Frozen Foods Co., Ltd	0.00
Review-Specific Rate for Non-Examined Companies[9]	1.76

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 final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because we have made no changes from the *Preliminary Results,* there are no calculations to disclose.[10]

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those sales. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is *de minimis* (*i.e.,* less than 0.5 percent), we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this 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.[11]

Commerce's ''automatic assessment'' will apply to entries of subject merchandise during the POR produced or exported by Thai Royal and Thai Union for which it did not know that its merchandise they sold to the intermediary (*e.g.,* a reseller, trading company or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate the unreviewed entries at the all-others rate of 5.34 percent *ad valorem* made effective by the *Section 129 Determination,*[12] if there is no rate for the intermediate company(ies) involved in the transaction.

For the companies listed in Appendix II which were not selected for individual review, we will assign an assessment rate based on the review-specific rate, calculated as noted in the ''Rate for the Non-Selected Companies'' section above.

Commerce intends to issue assessment instructions to CBP regarding Thai Royal, Thai Union, the no shipment companies (the Rubicon Group, Marine Gold, and Thai Union Manufacturing), and the companies listed in Appendix II no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review in the **Federal Register**, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for companies subject to this review will be the rates established in these final results of the review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, then the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 5.34 percent, the all-others rate established in the *Section 129 Determination.*[13] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in

[9] *See* Appendix II for a list of the non-selected companies.

[10] *See Preliminary Results,* 91 FR at 27257.

[11] *See* section 751(a)(2)(C) of the Act.

[12] *See Implementation of the Findings of the WTO Panel in United States Antidumping Measure on Shrimp from Thailand: Notice of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Thailand,* 74 FR 5638 (January 30, 2009) (*Section 129 Determination*).

[13] *See Section 129 Determination.*

accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: October 1, 2026.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Discussion of the Issues
Comment 1: Whether to Grant Thai Union a Level of Trade Adjustment and/or a Constructed Export Price Offset
Comment 2: Whether the Price Difference Test's Two-Percent Threshold is Appropriate
V. Recommendation

Appendix II

Companies Not Selected for Individual Examination

1. B.S.A. Food Products Co., Ltd.
2. C.K. Frozen Fish and Food Co., Ltd.
3. Charoen Pokphand Petrochemical Co., Ltd.
4. CP Merchandising Company Limited; Charoen Pokphand Foods Public Co., Ltd.; Klang Co., Ltd; Seafoods Enterprise Co., Ltd.; Thai Prawn Culture Center Co., Ltd.
5. Good Luck Product Co., Ltd.
6. I.T. Foods Industries Co., Ltd
7. KF Foods; KF Foods Limited; Kingfisher Holdings Limited
8. Kitchens of the Ocean (Thailand) Company, Ltd.; Kitchens of the Ocean (Thailand) Ltd.
9. Kongphop Frozen Foods Co., Ltd.
10. Lee Heng Seafood Co., Ltd.
11. S & D Marine Products Co., Ltd.
12. Seafresh Industry Public Co., Ltd.; Seafresh Fisheries
13. Tey Seng Cold Storage Co., Ltd.; Chaiwarut Company Limited
14. Top Product Food Co., Ltd.
15. Yeenin Frozen Foods Co., Ltd.

[FR Doc. 2026–20488 Filed 10–5–26; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Patent and Trademark Resource Center Metrics

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of information collection; request for comments.

SUMMARY: The United States Patent and Trademark Office (hereafter ''USPTO'' or ''Agency''), as required by the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651–0068 (Patent and Trademark Resource Center Metrics). The purpose of this notice is to allow 60 days for public comments prior to submission of the information collection to the Office of Management and Budget (OMB).

DATES: To ensure consideration, you must submit comments regarding this information collection on or before December 7, 2026.

ADDRESSES: Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- *Email: InformationCollection@uspto.gov.* Include ''0651–0068 comment'' in the subject line of the message.
- *Federal eRulemaking Portal: https://www.regulations.gov.*
- *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Telephone:* Johnna Childs, Librarian, Patent and Trademark Resource Center Program, 571–270–3793.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Johnna Childs at: Patent and Trademark Resource Center Program, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; 571–270–3793; or *Johnna.Childs@uspto.gov* with ''0651–0068 comment'' in the subject line. Additional information about this information collection is also available at *https://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

The Patent and Trademark Resource Center (PTRC) Program is authorized under the provision of 35 U.S.C. 2(a)(2), which provides that the United States Patent and Trademark Office (USPTO) shall be responsible for disseminating information with respect to patents and trademarks to the public. The PTRC Program is comprised of public, state, and academic libraries. Each participating library designated as a PTRC must fulfill the following requirements: assist the public in the efficient use of patent and trademark resources; provide free access to patent and trademark resources provided by the USPTO; and send representatives to attend USPTO-hosted PTRC training seminars.

The USPTO collects information about the public's use of the PTRCs and training provided through the PTRC program. The PTRC Program requirements stipulate that all participating libraries must submit quarterly metrics for the public's use of PTRC services and public outreach efforts provided by the PTRCs. To facilitate that requirement, the USPTO electronically collects these metrics on a quarterly basis. This information collection enables the USPTO to see how stakeholders are being served by the PTRCs and to ascertain what changes may be needed in the types of services provided. These metrics also provide the PTRC Program Office with insight into the trainings it should offer to PTRC librarians.

II. Method of Collection

Items in this information collection must be submitted as electronic submissions.

III. Data

OMB Control Number: 0651–0068.

Forms:

- PTO–8601 (PTRC Metric Worksheet)

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: State, local, and tribal governments.

Respondent's Obligation: Mandatory.

Frequency: Quarterly.

Estimated Number of Annual Respondents: 150 respondents.

Estimated Number of Annual Responses: 600 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately 30 minutes (0.50 hours) to complete. This includes the time to gather the necessary

information, create the document, and submit the completed item to the USPTO.

Estimated Total Annual Respondent Burden Hours: 300 hours.

Estimated Total Annual Respondent Hourly Cost Burden: $12,186.

TABLE 1—TOTAL REPORTING BURDEN HOURS AND HOURLY COSTS TO STATE, LOCAL, AND TRIBAL GOVERNMENT RESPONDENTS

Item no.	Item	Estimated annual respondents (a)	Responses per respondent (b)	Estimated annual responses (a) × (b) = (c)	Estimated time for response (hours) (d)	Estimated burden (hour/year) (c) × (d) = (e)	[1] Rate ($/hour) (f)	Estimated annual respondent cost burden (e) × (f) = (g)
1	PTRC Metric Worksheet. PTO–8601	150	4	600	0.50 ..... (30 minutes)	300	$40.62	$12,186
.....	Totals	150	.....	600	.....	300	.....	$12,186

[1] The USPTO uses the Bureau of Labor Statistics (BLS) Occupation Employment Statistics wage category 25–4022 (Librarians and Media Collections Specialists) to represent an estimated wage of respondents. The USPTO estimates that the hourly wage rate will be in the 75th percentile, as respondents will likely be living in metropolitan areas; *https://data.bls.gov/oesprofile/?major_group=250000&occupation=254022&measure=01&areas=INDUSTRY,STATE,MSA.*

Estimated Total Annual Respondent Non-hourly Cost Burden: $0. There are no capital start-up costs, maintenance costs, recordkeeping costs, filing fees, or postage costs associated with this information collection.

IV. Request for Comments

The USPTO is soliciting public comments to:

(a) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

All comments submitted in response to this notice are a matter of public record. The USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personally identifiable information (PII) in a comment, be advised that the entire comment—including PII—may be made publicly available at any time. While one may request in a comment to withhold PII from public view, the USPTO cannot guarantee that it will be able to do so.

Justin Isaac,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2026–20470 Filed 10–5–26; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Global Intellectual Property Academy (GIPA) Surveys

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of information collection; request for comments.

SUMMARY: The United States Patent and Trademark Office (hereafter ''USPTO'' or ''Agency'') 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. The USPTO invites comments on the information collection renewal of 0651–0065, which helps the USPTO assess the impact of its information collection requirements and minimize the reporting burden to the public. Public comments were previously requested via the **Federal Register** on April 20, 2026, during a 60-day comment period (91 FR 20984). This notice allows for an additional 30 days for public comments.

DATES: To ensure consideration, you must submit comments regarding this information collection on or before November 5, 2026.

ADDRESSES: Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website, *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number, 0651–0065. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT:

- This information collection request may be viewed at *https://www.reginfo.gov.* Follow the instructions to view the Department of Commerce, USPTO information collections currently under review by OMB.
- *Email: InformationCollection@uspto.gov.* Include ''0651–0065 information request'' in the subject line of the message.
- *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Telephone:* Kortney Hammonds, 571–272–1626.

SUPPLEMENTARY INFORMATION:

Title: Global Intellectual Property Academy (GIPA) Surveys.

OMB Control Number: 0651–0065.

Abstract: The Global Intellectual Property Academy (GIPA) was established in 2006 and is a critical resource of the United States Patent and Trademark Office (USPTO) for encouraging the development of effective and balanced intellectual property (IP) systems around the world. Through targeted international technical assistance activities, GIPA helps to promote both domestic and international IP rights. GIPA's activities cover every aspect of intellectual property law and policy, including patents, trademarks, copyrights, trade secrets, commercialization, and enforcement. By participating in GIPA courses, foreign government officials learn about global intellectual property rights protection and enforcement and

discuss strategies to handle the protection and enforcement issues in their respective countries. GIPA is an important tool the USPTO uses to achieve its objective of halting intellectual property theft and advancing intellectual property right policies.

The surveys in this information collection are conducted to measure the effectiveness of each activity or intervention. Specifically, the GIPA surveys help to demonstrate the impact of the specific activity on each participant's work and the relevance of each activity to the country's efforts to improve systems for protecting and enforcing IP rights. The survey information is then used to further tailor and improve future interventions. The data captured is also used to help meet organizational performance and accountability goals through the following legislative mandates and performance:

- Government Performance and Results Act of 1993; [1]
- Government Performance and Results Modernization Act of 2010 (GPRMA); [2]
- President's Management Agenda (PMA); [3] and
- Foundations for Evidence-Based Policy Making Act of 2018.[4]

Evaluations and measurement efforts provide methodologically rigorous data activity and analyses in lieu of more subjective, ad hoc, non-standardized anecdotal material.

These voluntary surveys support various business goals developed by the USPTO to fulfill customer service and performance goals; to assist the USPTO in strategic planning for future initiatives; to verify existing service standards, and to establish new ones. The USPTO also uses these surveys to implement Executive Order 12862 of September 11, 1993, *Setting Customer Service Standards,* published in the **Federal Register** on September 14, 1993 (58 FR 48257).[5]

Forms: None.

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Indivdiuals or households.

Respondent's Obligation: Voluntary.

Frequency: On occasion.

Estimated Number of Annual Respondents: 14,508 respondents.

Estimated Number of Annual Responses: 14,508 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately 15 minutes (0.25 hours) to complete. This includes the time to gather the necessary information, create the document, and submit the completed item to the USPTO.

Estimated Total Annual Respondent Burden Hours: 3,627 hours.

Estimated Total Annual Respondent Non-hourly Cost Burden: $0.

Justin Isaac,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2026–20471 Filed 10–5–26; 8:45 am]

BILLING CODE 3510–16–P

[1] *https://www.congress.gov/103/statute/STATUTE-107/STATUTE-107-Pg285.pdf.*

[2] *https://www.congress.gov/111/plaws/publ352/PLAW-111publ352.pdf.*

[3] *https://www.performance.gov/blog/2025-pma-impact-report/.*

[4] *https://www.congress.gov/115/plaws/publ435/PLAW-115publ435.pdf.*

[5] *https://tile.loc.gov/storage-services/service/ll/fedreg/fr058/fr058176/fr058176.pdf.*

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (''PRA''), this notice announces that the Information Collection Request (''ICR'') abstracted below has been forwarded to the Office of Information and Regulatory Affairs (''OIRA''), of the Office of Management and Budget (''OMB''), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before November 5, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by any of the following methods:

- *Regulations.gov:* Go to *https://www.regulations.gov* and press the ''Search'' button, then proceed as follows:

1. Under Refine Documents Results—check the box to ''Only show documents open for comment'';

2. Under Agency—select ''See More'' and check the box for ''Commodity Futures Trading Commission,'' then press the Apply button;

3. Identify this notice in the list of CFTC documents open for comment, press the ''Comment'' button to open the submission form, and follow the instructions on the form.

Alternatively, if you are viewing this notice on *www.federalregister.gov,* click the ''Submit A Public Comment'' button at the top of the page to open the comment form. Follow the instructions on the form to submit your comment to *Regulations.gov.*

- *Mail:* Send to—Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Address to—CFTC Comment Submission, Attn: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through *Regulations.gov* are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Do not include in your comment text or attachments any personal identifying information or business information that you do not want published online. Comments (regardless of submission method) will be published without review for, and without removal of, any personal identifying information or information your business may consider confidential.

If you wish to submit confidential information for the Commission's consideration, please contact the CFTC personnel listed in this Notice under **FOR FURTHER INFORMATION CONTACT**

before making any submission. Please also carefully review the Commission's procedures in 17 CFR 145.9 for requesting confidential treatment under the Freedom of Information Act (FOIA) of information submitted to the Commission.

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, or redact all or any part of your comment submission. The CFTC also reserves the right, without further notification, to refuse to publish or to remove from public view all or any part of your submission to the extent it contains content inappropriate for publication in a comment file, such as—without limitation—obscene language, threats of violence, solicitations for commercial sales or illegal activity, or obvious spam. If a submission that is refused for or withdrawn from publication because of inappropriate content also contains comments on the merits of this notice, such submission will be retained in the record for the matter and will be considered as required under the Administrative Procedure Act, the Paperwork Reduction Act, and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Paul Chaffin, Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 (202) 418–5185; email: *pchaffin@cftc.gov,* and refer to OMB Control No. 3038–0096.

SUPPLEMENTARY INFORMATION:

Title: Swap Data Recordkeeping and Reporting Requirements (OMB Control No. 3038–0096). This is a request for revision of a currently approved information collection.

Abstract: The collection of information is needed to ensure that the CFTC and other regulators have access to swap data as required by the Commodity Exchange Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). The Dodd-Frank Act directed the CFTC to adopt rules providing for the reporting of data relating to swaps. In 2012, the CFTC adopted part 45, which imposes recordkeeping and reporting requirements relating to swaps. In 2020, a final rule adopting modifications to part 45 was adopted by the Commission.[1]

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. On June 16, 2026, the Commission published in the **Federal Register** notice of the proposed revision of this information collection and provided 60 days for public comment on the proposed revision, 91 FR 36122 (''60-Day Notice''). The Commission received two comments that addressed its PRA burden estimates. First, a commenter asserted that the Commission's burden estimates are inaccurate because those estimates are premised on the assumption that reported data are truthful which, according to the commenter, they are not.[2] A second commenter purports to examine evidence provided in the first comment letter and asserts, based on that examination, that swap data lacks practical utility.[3] However, neither comment letter provides any information to demonstrate any swap data are inaccurate. The second commenter also questions the Commission's capital costs estimate and operating and maintenance costs estimate, and asserts that the Commission underestimates average annual burden hours. However, that commenter did not provide any analysis to support these assertions or provide any alternative estimates. Accordingly, the Commission has chosen to maintain the updated estimates described in the 60-Day Notice.

Burden Statement: Part 45 of the Commission's regulations establishes swap reporting and recordkeeping requirements for swap execution facilities (''SEFs''), designated contract markets (''DCMs''), swap data repositories (''SDRs''), derivatives clearing organizations (''DCOs''), swap dealers (''SDs''), major swap participants (''MSPs''), and non-SD/MSP/DCO counterparties (''non-SD/MSP counterparties''). The Commission estimates the burden of the collection of information as set out below.

Respondents/Affected Entities: Swap Dealers, Major Swap Participants, SEFs, DCMs, DCOs, and other counterparties to a swap transaction (*i.e.,* end-user, non-SD/non-MSP counterparties).

Estimated number of respondents: 1,732.

Estimated average burden hours per respondent: 839 hours (rounded).

Estimated total annual burden hours on respondents: 1,452,730 hours.

Frequency of collection: Ongoing.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: October 2, 2026.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2026–20446 Filed 10–5–26; 8:45 am]

BILLING CODE 6351–01–P

[1] Final Rule, Swap Data Recordkeeping and Reporting Requirements, 85 FR 75503 (Nov. 25, 2020).

[2] ''APES TOGETHER STRONG'' Letter at 3.

[3] Anonymous Commenter Letter at 1.

DEPARTMENT OF ENERGY

[Docket No. 26–127–LNG]

Freedom LNG LLC; Application for Long-Term, Multi-Contract Authorization To Export U.S.-Sourced Natural Gas to Mexico and To Re-Export Liquefied Natural Gas From Mexico to Non-Free Trade Agreement Countries

AGENCY: Hydrocarbons and Geothermal Energy Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: The Hydrocarbons and Geothermal Energy Office (HGEO) of the Department of Energy (DOE) gives notice (Notice) of receipt of an application (Application), filed by Freedom LNG LLC (Freedom LNG) on September 11, 2026. Freedom LNG requests long-term, multi-contract authorization to export U.S.-sourced natural gas by pipeline to Mexico in a volume up to approximately 343 billion cubic feet (Bcf) per year (Bcf/yr), and to re-export 307 Bcf/yr of this natural gas as liquefied natural gas (LNG). Freedom LNG seeks to re-export this LNG by vessel from its proposed LNG production, storage, and export facility, the BRAVO LNG Project (Project), to be located nearshore the Port of Matamoros in the State of Tamaulipas, Mexico, on the Gulf Coast. Freedom LNG filed the Application under the Natural Gas Act (NGA).

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed electronically as detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern Time, December 7, 2026.

ADDRESSES:

Electronic Filing by Email (Strongly Encouraged): fergas@hq.doe.gov.

Postal Mail, Hand Delivery, or Private Delivery Services (*e.g.,* FedEx, UPS, etc.), U.S. Department of Energy (EX–31), Office of Global Energy Security, Hydrocarbons and Geothermal Energy Office, Forrestal Building, Room 3E–056, 1000 Independence Avenue SW, Washington, DC 20585.

Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we

encourage respondents to submit filings electronically to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT:
Jennifer Wade or Peri Ulrey, U.S. Department of Energy (EX–31) Office of Global Energy Security, Office of Strategic Resources, Hydrocarbons and Geothermal Energy Office, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–4749 or (202) 586–7893, *jennifer.wade@hq.doe.gov* or *peri.ulrey@hq.doe.gov.*
Cassandra Bernstein, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Energy Delivery and Resilience, Forrestal Building, Room 6D–033, 1000 Independence Avenue SW, Washington, DC 20585, (240) 780–1691, *cassandra.bernstein@hq.doe.gov*

SUPPLEMENTARY INFORMATION: Freedom LNG states that it is filing the Application in connection with the development of the BRAVO LNG Project, which will be located nearshore within the port (land and marine) concessions allocated to the Port of Matamoros in the State of Tamaulipas, Mexico. According to Freedom LNG, the Project will be developed in a modular configuration consisting of one liquefaction train with a nominal capacity of approximately 6 million tons per annum of LNG (equivalent to 307 Bcf/day of natural gas). Freedom LNG states that the Project is being developed by its affiliate LNG Alliance Pte. Ltd., a Singapore private limited company. Freedom LNG further states that the Project will be owned and operated by BRAVO LNG S.A. de C.V., which is Freedom LNG's affiliate through common ownership.[1]

Freedom LNG requests long-term authorization to export domestically produced natural gas to Mexico via the existing offshore Sur de Texas-Tuxpan pipeline system to the Project. Freedom LNG seeks authorization to export this natural gas for both consumption in Mexico and to convert the natural gas, as well as U.S.-sourced natural gas volumes for which it acquires title in Mexico, to LNG for re-export to: (i) any nation with which the United States has entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA nations), and (ii) any other nation with which trade is not prohibited by U.S. law or policy (non-FTA nations). This Notice applies only to the portion of the Application requesting authority to re-export LNG produced from U.S.-sourced natural gas to non-FTA countries pursuant to section 3(a) of the NGA.[2] DOE will review Freedom LNG's request for an FTA export authorization separately pursuant to NGA section 3(c).[3]

Freedom LNG seeks this authorization on its own behalf and as agent for other entities that will hold title to the natural gas or LNG at the point of export or re-export, respectively. Freedom LNG requests authorization for a term of 20 years after commercial exports under the requested authorization begin.

Additional details can be found in Freedom LNG's Application, posted on the DOE website at: *https://www.energy.gov/sites/default/files/2026-09/Freedom%20LNG%20LLC%2010SEP2026%20CV%20and%20Application_REDACTED.pdf.*

DOE Evaluation

In reviewing the Application, DOE will consider any issues required by law or policy under NGA section 3(a), DOE's regulations, and any other documents deemed appropriate.

Parties that may oppose the Application should address these issues and documents in their comments and/or protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable, addressing the Application. Interested parties will be provided 60 days from the date of publication of this Notice in the **Federal Register** in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to this proceeding evaluating the Application must file a motion to intervene or notice of intervention.[4] The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to this proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by DOE's regulations in 10 CFR part 590, including the service requirements.

Filings may be submitted using one of the following methods:

(1) Submitting the filing electronically at *fergas@hq.doe.gov;*

(2) Mailing the filing to the Office of Global Energy Security at the address listed in the **ADDRESSES** section; or

(3) Hand delivering the filing to the Office of Global Energy Security at the address listed in the **ADDRESSES** section.

For administrative efficiency, DOE prefers filings to be filed electronically. All filings must include a reference to ''Docket No. 26–127–LNG'' or ''Freedom LNG LLC Application'' in the title line. Filings must be submitted in English to be considered.[5]

For electronic submissions: Please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner.

The Application, and any filed protests, motions to intervene, notices of intervention, and comments will be available electronically on the DOE website at *www.energy.gov/hgeo/regulation.*

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this Notice, in accordance with 10 CFR 590.316.

[1] Specifically, the Project will be owned and operated by BRAVO LNG through its subsidiaries BRAVO FLNG Barge Facility S.A. de C.V., BRAVO LNG Storage S.A. de C.V., BRAVO Maritime Facilities S.A. de C.V., and BRAVO LNG Operations S.A. de C.V., as described in the Application.

[2] 15 U.S.C. 717b(a).

[3] 15 U.S.C. 717b(c).

[4] 10 CFR 590.303.

[5] *See* Executive Order 14224 of March 1, 2025, *Designating English as the Official Language of the United States,* 90 FR 11363 (Mar. 6, 2025).

Signed in Washington, DC, on October 2, 2026.

Amy Sweeney,

Director, Office of Global Energy Security, Office of Strategic Resources.

[FR Doc. 2026–20467 Filed 10–5–26; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Revision

AGENCY: U.S. Department of Energy.

ACTION: Notice of request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to revise and extend for three years, an information collection request with the Office of Management and Budget (OMB). The information collection requests a three-year revision of its collection, titled State Energy Program, OMB Control Number 1910–5126.

DATES: Comments regarding this proposed information collection must be received on or before November 5, 2026. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 881–9493.

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 information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Gregory Davoren, CM–5SCP, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585–0121 or by email or telephone at *gregory.davoren@doe.gov,* (202) 287–1706.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains:

(1) *OMB No.:* 1910–5126;

(2) *Information Collection Request Titled:* State Energy Program (SEP);

(3) *Type of Review:* Revision of a Currently Approved Collection;

(4) *Purpose:* To collect information on the status of grantee activities related to the SEP Annual Appropriations and SEP funding appropriated under the Infrastructure and Jobs Act (IIJA)—total activities funded with grant funds; expenditures; and results, to ensure that program funds are being used appropriately, effectively, and expeditiously;

(5) *Annual Estimated Number of Respondents:* 56;

(6) *Annual Estimated Number of Total Responses:* 744;

(7) *Annual Estimated Number of Burden Hours:* 12,056;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $1,002,456.

Statutory Authority: Title 42, Chapter 77, Subchapter III, Part B of the United States Code (U.S.C.), (42 U.S.C. 6321 *et seq.*). All grant awards made under this program shall comply with applicable laws including, but not limited to, the SEP statutory authority (42 U.S.C. 6321 *et seq.*), 10 CFR part 420, and 2 CFR part 200 as amended by 2 CFR part 910.

Signing Authority

This document of the Department of Energy was signed on, by September 30, 2026, Audrey Robertson, Assistant Secretary of Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on October 2, 2026.

Treena V. Garrett,

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

[FR Doc. 2026–20459 Filed 10–5–26; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP26–572–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Evergy McNew Power Plant Delivery Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Evergy McNew Power Plant Delivery Project involving construction and operation of facilities by Southern Star Central Gas Pipeline, Inc. (Southern Star) in Reno, Harvey, and Stafford counties, Kansas. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on

November 2, 2026. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission *before* the opening of this docket on August 31, 2026, you will need to file those comments in Docket No. CP26–572–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Southern Star provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas, Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP26–572–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov.*

Summary of the Proposed Project

Southern Star proposes to construct and operate approximately 1.6 miles of new 30-inch-diameter natural gas pipeline, a new compressor station, and associated appurtenant facilities in Reno County, Kansas; and modify two existing compressor stations in Harvey and Stafford counties, Kansas. According to Southern Star, the project is designed to provide up to 710 megawatts per day of firm natural gas transportation service from Southern Star's existing mainline facilities to Evergy Kansas Central, Inc.'s new combined cycle gas turbine plant (McNew Power Plant) in Reno County. The additional firm transportation capacity would support the McNew Power Plant's planned conversion to a natural gas-fueled electric generation facility, enhancing regional electric reliability and supporting the transition from coal-fired generation.

Specifically, the project would consist of the following, all in Kansas:

- Construction and operation of:
  - a new 1.6-mile-long 30-inch-diameter natural gas pipeline (Line RE) extending from a new, greenfield compressor station (Hutchinson Compressor Station) to the new Evergy Meter Station at the McNew Power Plant in Reno County;
  - the new Hutchinson Compressor Station and associated infrastructure along Southern Star's existing 26-inch-diameter Hugoton Loop Line RA in Reno County;
  - a new measurement and flow control station (Evergy Meter Station) and associated infrastructure at the McNew Plant in Reno County;
- Modifications within the existing Hesston Compressor Station in Harvey County and the existing Stafford Compressor Station in Stafford County;
- Installation of:
  - tie-in piping, a pig launcher, and associated infrastructure at the connection to the existing Southern Star mainline system in Reno County;
  - a new pig receiver and associated infrastructure at the Evergy Meter Station in Reno County.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 74.23 acres of land.

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''*eLibrary.*'' For instructions on connecting to eLibrary, refer to the last page of this notice. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

Following construction, Southern Star would maintain about 53.11 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss effects that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- socioeconomics;
- land use;
- air quality and noise; and
- reliability and safety.

Commission staff have already identified a routing issue. It is unclear why the proposed Line RE is a circuitous route from near milepost 0.4 extending south parallel to S McNew Road, turning west parallel to E Morgan Ave., and then extending north parallel to S McNew Road to approximately milepost 1.2 instead of a more direct route. Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary [2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP26–572–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. *This email address is unable to accept comments.*

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is available from the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

(Authority: 18 CFR 2.1)

Dated: October 1, 2026.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2026–20453 Filed 10–5–26; 8:45 am]

BILLING CODE 6717–01–P

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] Cooperating agency responsibilities are addressed in Section 107(a)(3) of NEPA (42 U.S.C. 4336(a)(3)).

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP26–576–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Leidy Access Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental effects of the Leidy Access Expansion Project involving construction and operation of facilities by Transcontinental Gas Pipe Line Company, LLC (Transco) in Luzerne, Pennsylvania. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public interest and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental effects that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on November 2, 2026. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental effects. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission *before* the opening of this docket on September 4, 2026, you will need to file those comments in Docket No. CP26–576–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Transco provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas, Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is also on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP26–576–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov.*

Summary of the Proposed Project

Transco proposes to construct and operate the Diamond Loop to provide an incremental 183,100 dekatherms per day of year round for transportation from the Marcellus Shale production area in northeastern Pennsylvania to a

delivery point along Transco's Leidy Loop in Luzerne, Pennsylvania.[1]

The Leidy Access Expansion Project would consist of the following facilities:

- 3.38 miles of 42-inch-diameter pipeline (Diamond Loop), all of which would be collocated with Transco's Leidy Loop Lines B and C; [2]
- a pig launcher/receiver and tie-in facilities at Transco's existing Compressor Station 515; and [3]
- a new mainline valve site that includes a tie-in and pig launcher/receiver at the terminus of the proposed Diamond Loop at milepost 3.38.

Ancillary facilities, access roads, and contractor yards would also be constructed as part of the project. The general location of the project facilities is shown in appendix 1.[4]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 95 acres of land for the aboveground facilities, pipeline, access roads, and contractor yards. Following construction, Transco would maintain about 20 acres for permanent operation of the project's facilities (including about 0.3 acres for access roads); the remaining acreage would be restored and revert to former uses. All of the proposed pipeline route parallels existing pipeline rights-of-way.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss effects that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid effects on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/Notice of Schedule* will be issued, which will open an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary [5] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[6] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Offices, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[7] The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; Native American Tribes; environmental and public interest groups; other interested parties; and media outlets. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP26–576–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address

[1] All new proposed facilities are proposed in Luzerne County, Pennsylvania. However, a single contractor yard would be in Monroe County, Pennsylvania.

[2] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

[3] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes. A launcher/receiver is where pigs are inserted/retrieved into and from the pipeline.

[4] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary.'' For instructions on connecting to eLibrary, refer to the last page of this notice. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

[5] For instructions on connecting to eLibrary, refer to the last page of this notice.

[6] Cooperating agency responsibilities are addressed in Section 107(a)(3) of NEPA (42 U.S.C. 4336(a)(3)).

[7] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

as it appeared on this notice. *This email address is unable to accept comments.*

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is available from the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

(Authority: 18 CFR 2.1)

Dated: October 1, 2026.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2026–20450 Filed 10–5–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following Electric Corporate filings:

Docket Numbers: EC26–181–000.

Applicants: Rhode Island State Energy Center, LP, Constellation Energy Generation, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Rhode Island State Energy Center, LP, et al.

Filed Date: 9/30/26.

Accession Number: 20260930–5275.

Comment Date: 5 p.m. ET 11/30/26.

Take notice that the Commission received the following Electric Rate filings:

Docket Numbers: ER10–2437–026.

Applicants: Arizona Public Service Company.

Description: Supplement to 04/30/2026 Notice of Change in Status of Arizona Public Service Company.

Filed Date: 9/29/26.

Accession Number: 20260929–5203.

Comment Date: 5 p.m. ET 10/20/26.

Docket Numbers: ER19–2858–010.

Applicants: East Coast Power Linden Holding, L.L.C.

Description: Refund Report: Refund Report to be effective N/A.

Filed Date: 9/30/26.

Accession Number: 20260930–5229.

Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: ER22–2946–007.

Applicants: Red Oak Power, LLC.

Description: Refund Report: Refund Report to be effective N/A.

Filed Date: 10/1/26.

Accession Number: 20261001–5269.

Comment Date: 5 p.m. ET 10/22/26.

Docket Numbers: ER26–1487–002.

Applicants: Hecate Energy Cider Solar LLC.

Description: Notice of Non-Material Change in Status of Hecate Energy Cider Solar LLC.

Filed Date: 9/30/26.

Accession Number: 20260930–5265.

Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: ER26–1695–002.

Applicants: Big Muddy Solar Project, LLC.

Description: Notice of Non-Material Change in Status of Big Muddy Solar Project, LLC.

Filed Date: 9/30/26.

Accession Number: 20260930–5267.

Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: ER26–2638–002.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: Deficiency Response—Revisions to Adjust RUC Make Whole Payment Distribution to be effective 12/31/9998.

Filed Date: 10/1/26.

Accession Number: 20261001–5318.

Comment Date: 5 p.m. ET 10/22/26.

Docket Numbers: ER26–3241–001.

Applicants: Standard Power Co.

Description: Tariff Amendment: Standard Power Co. Deficiency Response—Docket No. ER26–3241–000 to be effective 10/1/2026.

Filed Date: 10/1/26.

Accession Number: 20261001–5284.

Comment Date: 5 p.m. ET 10/22/26.

Docket Numbers: ER26–3897–000.

Applicants: New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: Oct 2026 Membership Filing to be effective 10/1/2026.

Filed Date: 9/30/26.

Accession Number: 20260930–5206.

Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: ER26–3898–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Periodic Review of Default CONE and ACR Values to be effective 11/30/2026.

Filed Date: 9/30/26.

Accession Number: 20260930–5220.

Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: ER26–3899–000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: Ministerial Clean-Up Filing and Revision to Schedule 2 to be effective 11/30/2026.

Filed Date: 9/30/26.

Accession Number: 20260930–5226.

Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: ER26–3900–000.

Applicants: Northwest Power Pool.

Description: § 205(d) Rate Filing: Proposed Tariff Revisions to Establish PRM for Rockies Subregion to be effective 10/1/2026.

Filed Date: 9/30/26.

Accession Number: 20260930–5240.

Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: ER27–1–000.

Applicants: Wolverine Power Supply Cooperative, Inc.

Description: § 205(d) Rate Filing: Request for Change in Rates to Distribution Cooperative Member-Owners to be effective 1/1/2027.

Filed Date: 10/1/26.

Accession Number: 20261001–5005.

Comment Date: 5 p.m. ET 10/22/26.

Docket Numbers: ER27–2–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2026–10–01_SA 4873 Entergy Arkansas-New Madrid Energy GIA (S1117) to be effective 9/24/2026.

Filed Date: 10/1/26.

Accession Number: 20261001–5026.

Comment Date: 5 p.m. ET 10/22/26.

Docket Numbers: ER27–3–000.

Applicants: Commonwealth Edison Company.

Description: § 205(d) Rate Filing: ComEd Formula Revisions and Incentives Request for MISO Facilities to be effective 12/1/2026.

Filed Date: 10/1/26.

Accession Number: 20261001–5027.

Comment Date: 5 p.m. ET 10/22/26.

Docket Numbers: ER27–4–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2415R25 Kansas Municipal Energy Agency NITSA and NOA to be effective 9/1/2026.

Filed Date: 10/1/26.

Accession Number: 20261001–5086.

Comment Date: 5 p.m. ET 10/22/26.

Docket Numbers: ER27–5–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2026–10–01_SA 4869 METC–DTE GIA (S1130) to be effective 9/23/2026.

Filed Date: 10/1/26.
Accession Number: 20261001–5091.
Comment Date: 5 p.m. ET 10/22/26.
Docket Numbers: ER27–6–000.
Applicants: AEP Generating Company.
Description: § 205(d) Rate Filing: AEG Filing to Revise Depreciation Rates in Unit Power Service Agreement to be effective 1/1/2027.
Filed Date: 10/1/26.
Accession Number: 20261001–5116.
Comment Date: 5 p.m. ET 10/22/26.
Docket Numbers: ER27–7–000.
Applicants: Clermont Solar, LLC.
Description: Initial Rate Filing: Application for Blanket MBR Authorization w/Waivers & Expedited Treatment to be effective 11/20/2026.
Filed Date: 10/1/26.
Accession Number: 20261001–5148.
Comment Date: 5 p.m. ET 10/22/26.
Docket Numbers: ER27–8–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2026–10–01_24-Hour Lead Time in Accreditation to be effective 9/1/2027.
Filed Date: 10/1/26.
Accession Number: 20261001–5163.
Comment Date: 5 p.m. ET 10/22/26.
Docket Numbers: ER27–9–000.
Applicants: Anchor Point West, LLC.
Description: § 205(d) Rate Filing: Baseline new to be effective 12/1/2026.
Filed Date: 10/1/26.
Accession Number: 20261001–5167.
Comment Date: 5 p.m. ET 10/22/26.
Docket Numbers: ER27–10–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 7020; Queue No. AE1–209/AE1–210 to be effective 12/1/2026.
Filed Date: 10/1/26.
Accession Number: 20261001–5178.
Comment Date: 5 p.m. ET 10/22/26.
Docket Numbers: ER27–11–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 607R53 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2026.
Filed Date: 10/1/26.
Accession Number: 20261001–5190.
Comment Date: 5 p.m. ET 10/22/26.
Docket Numbers: ER27–12–000.
Applicants: AEP Texas Inc.
Description: Tariff Amendment: Cancel SA No. 902 Portside Energy Center Generation Interconnection Agreement to be effective 12/1/2026.
Filed Date: 10/1/26.
Accession Number: 20261001–5194.
Comment Date: 5 p.m. ET 10/22/26.
Docket Numbers: ER27–13–000.
Applicants: LRE Interconnection Manager, LLC.
Description: § 205(d) Rate Filing: Shared Facilities Common Ownership Agreement to be effective 10/2/2026.
Filed Date: 10/1/26.
Accession Number: 20261001–5208.
Comment Date: 5 p.m. ET 10/22/26.
Docket Numbers: ER27–14–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1630R14 The Empire District Electric Company NITSA and NOA to be effective 9/1/2026.
Filed Date: 10/1/26.
Accession Number: 20261001–5224.
Comment Date: 5 p.m. ET 10/22/26.
Docket Numbers: ER27–15–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: PJM Interconnection, L.L.C. submits tariff filing per 35.15: Notice of Cancellation of WMPA, SA Agreement. 6186; AF1–003 re: suspension to be effective 12/1/2026
Filed Date: 10/1/26.
Accession Number: 20261001–5226.
Comment Date: 5 p.m. ET 10/22/26.
Docket Numbers: ER27–16–000.
Applicants: Twelvemile Energy II, LLC.
Description: § 205(d) Rate Filing: Certificate of Concurrence to Shared Facilities Common Ownership Agreement to be effective 10/2/2026.
Filed Date: 10/1/26.
Accession Number: 20261001–5227.
Comment Date: 5 p.m. ET 10/22/26.
Docket Numbers: ER27–17–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: GIA SA 8058 Project ID Nos. Z1–052/AH1–744; ISA Cancel SA 3830 Queue No. Z1–052 to be effective 9/1/2026.
Filed Date: 10/1/26.
Accession Number: 20261001–5246.
Comment Date: 5 p.m. ET 10/22/26.
Docket Numbers: ER27–18–000.
Applicants: Otter Tail Power Company.
Description: § 205(d) Rate Filing: COC–JTIQ 345kV Transmission Project for Big Stone South—Hankinson—Bison JDA to be effective 7/16/2026.
Filed Date: 10/1/26.
Accession Number: 20261001–5247.
Comment Date: 5 p.m. ET 10/22/26.
Docket Numbers: ER27–19–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of ISA, SA No. 6849; Queue No. AE1–170 to be effective 10/30/2026.
Filed Date: 10/1/26.
Accession Number: 20261001–5319.
Comment Date: 5 p.m. ET 10/22/26.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov.*

Dated: October 1, 2026.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2026–20454 Filed 10–5–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP26–581–000]

Natural Gas Pipeline Company of America LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on September 17, 2026, Natural Gas Pipeline Company of America LLC (Natural), 3250 Lacey Road, Suite 700, Downers Grove, Illinois 60515–7918, filed an application under section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations requesting authorization for its Amarillo Expansion Project (Project). Natural proposes to construct (1) the new Compressor Station 112 comprised of four 5,500 horsepower (hp) (22,000 hp total) gas-fired compressor units in Moore County, Texas, (2) various auxiliary facilities in Moore County, Texas, and (3) a new delivery point in Deaf Smith County, Texas. The project is designed to create 321,200

dekatherms per day (Dth/d) of incremental firm natural gas transportation. The project will be combined with existing unsubscribed capacity to provide a total of 550,000 Dth/d of firm natural gas transportation service for electric power generation. Natural estimates the total cost of the Project to be $139 million, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

Any questions regarding the proposed project should be directed to Francisco Tarin, Director, Regulatory, Kinder Morgan, Inc., as Operator of Natural Gas Pipeline Company of America LLC, 2 North Nevada Avenue, Colorado Springs, Colorado 80903, by phone at (719) 667–7517 or by email at *francisco_tarin@kindermorgan.com.*

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file comments on the project, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on October 22, 2026. How to file protests, motions to intervene, and comments is explained below.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation (OPP) at (202) 502–6595 or *OPP@ferc.gov.*

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections, to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be.

Protests

Pursuant to sections 157.10(a)(4)[2] and 385.211[3] of the Commission's regulations under the NGA, any person[4] may file a protest to the application. Protests must comply with the requirements specified in section 385.2001[5] of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before 5:00 p.m. Eastern Time on October 22, 2026.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Project docket number CP26–581–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments or protests electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments or protests by mailing them to the following address below. Your written comments must reference the Project docket number (CP26–581–000).

To file via USPS: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[6] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently

[1] 18 CFR 157.9.

[2] 18 CFR 157.10(a)(4).

[3] 18 CFR 385.211.

[4] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[5] 18 CFR 385.2001.

[6] 18 CFR 385.102(d).

challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [7] and the regulations under the NGA [8] by the intervention deadline for the project, which is 5:00 p.m. Eastern Time on October 22, 2026. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP26–581–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP26–581–000.

To file via USPS: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail at: Francisco Tarin, Director, Regulatory, Kinder Morgan, Inc., as Operator of Natural Gas Pipeline Company of America LLC, 2 North Nevada Avenue, Colorado Springs, Colorado 80903, or by email (with a link to the document) at *francisco_tarin@kindermorgan.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed [9] motions to intervene are automatically granted by operation of Rule 214(c)(1).[10] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[11] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from OPP at (202) 502–6595 or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on October 22, 2026.

(Authority: 18 CFR 2.1)

Dated: October 1, 2026.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2026–20452 Filed 10–5–26; 8:45 am]

BILLING CODE 6717–01–P

[7] 18 CFR 385.214.

[8] 18 CFR 157.10.

[9] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[10] 18 CFR 385.214(c)(1).

[11] 18 CFR 385.214(b)(3) and (d).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 487–145]

BIF III Holtwood LLC; Notice of Application for Non-Project Use of Project Land and Waters Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 487–145.

c. *Date Filed:* March 10, 2026.

d. *Applicant:* BIF III Holtwood LLC.

e. *Name of Project:* Wallenpaupack Hydroelectric Project.

f. *Location:* The Wallenpaupack Hydroelectric Project is located in Pike and Wayne counties, Pennsylvania; the proposed docks would be located in Pike County.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r

h. *Applicant Contact:* Katie Lester, Brookfield Renewable, (570) 226–1371, *kathleen.lester@brookfieldrenewable.com.*

i. *FERC Contact:* Shawn Halerz, (202) 502–6360, *Shawn.Halerz@ferc.gov.*

j. *Cooperating agencies:* With this notice, the Commission is inviting federal, state, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item k below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. Deadline for filing comments, motions to intervene, and protests: October 30, 2026 5:00 p.m. Eastern Time.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit

brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include the docket number P–487–145. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Request:* The licensee requests Commission authorization to permit Escape Property Owners Association to modify existing community docks to accommodate an additional 47 watercraft, for a total watercraft capacity of 168. The proposed changes would conform to the project's approved Shoreline Management Plan and the Public Lake Use and Shoreline Use Permitting Policy for Lake Wallenpaupack.

m. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

q. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov.*

(Authority: 18 CFR 2.1)

Dated: September 30, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–20418 Filed 10–5–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8221–124]

Alaska Energy Authority Notice Soliciting Recommendations, Terms and Conditions, and Fishway Prescriptions for Application for Non-Capacity Amendment of License

On July 29, 2026, Commission staff issued a Notice of Application for Non-Capacity Amendment of License Accepted for Filing, Soliciting Comments, Motions to Intervene, and Protests for Alaska Energy Authority's Bradley Lake Project (No. 8221). The project is located on the Bradley River in Kenai Peninsula Borough, Alaska.

The July 29, 2026 Notice established a deadline for filing comments, motions to intervene, and protests as August 28, 2026. Based on our review of comments filed pursuant to the notice we are requesting recommendations, terms and conditions, and fishway prescriptions due by November 30, 2026, by 5:00 p.m. Eastern Time and reply comments are due by January 14, 2027, by 5:00 p.m. Eastern Time.

The Commission strongly encourages electronic filing. Please file recommendations, terms, conditions and fishway prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include the docket number P–8221–124. Responses emailed to Commission staff are not considered part of the Commission record.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov.*

(Authority: 18 CFR 2.1)

Dated: October 1, 2026.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2026–20451 Filed 10–5–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC26–33–000]

Commission Information Collection Activities (FERC–603); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection renewal and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is submitting its currently approved information collection, FERC–603: Critical Energy/Electric Infrastructure Information Data Request (OMB Control No 1902–0197), to the Office of Management and Budget (OMB) for review of the information collection requirements. There are no proposed changes to the reporting requirements.

DATES: Comments on the collection of information are due November 5, 2026.

ADDRESSES: Send written comments on FERC–603 to OMB through *https://www.reginfo.gov/public/do/PRA/icrPublicCommentRequest?ref_nbr=202608-1902-004.* You can also visit *https://www.reginfo.gov/public/do/PRAMain* and use the drop-down under ''Currently under Review'' to select the ''Federal Energy Regulatory Commission'' where you can see the open opportunities to provide comments. Comments should be sent within 30 days of publication of this notice.

Please submit a copy of your comments to the Commission via email to *DataClearance@FERC.gov.* You must specify the Docket No. (IC26–33–000) and the FERC Information Collection number (FERC–603) in your email. If you are unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:

- *Mail via U.S. Postal Service Only:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
- *All other delivery methods:* Federal Energy Regulatory Commission, Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Docket: To view comments and issuances in this docket, please visit *https://elibrary.ferc.gov/eLibrary/search.*

FOR FURTHER INFORMATION CONTACT: Kayla Williams, (202) 502–6468. *DataClearance@FERC.gov*

SUPPLEMENTARY INFORMATION:

Title: FERC–603, Critical Energy/Electric Infrastructure Information Data Request.

OMB Control No.: 1902–0197.

Type of Request: Three-year extension of the FERC–603 information collection requirements with no changes to the current reporting and recordkeeping requirements.[1]

Abstract: In accordance with section 215A(d) of the Federal Power Act [2] and 18 CFR 388.113, this collection of information provides that persons may seek Critical Energy/Electric Infrastructure Information (CEII). To receive CEII, they must show they have a legitimate need for such information, and they must submit a non-disclosure agreement that decreases the likelihood that such information could be used to plan or execute terrorist attacks.

This collection of information provides an alternative to seeking CEII in accordance with the Freedom of Information Act (FOIA).[3] That statute requires federal agencies to disclose the requested information unless one or more of several FOIA exemptions justifies withholding of the requested information. In the case of CEII, two FOIA exemptions are likely to apply,[4] and applying one of them frequently results in a decision to withhold the information from the FOIA requester. The Commission realizes that this process could prevent persons with a legitimate need for CEII from obtaining such information. For example, market participants seeking to develop new or expanded energy resources may have such a need.

In the aftermath of the September 11, 2001 terrorist attacks, the Commission determined that it was important to improve the appropriate treatment of CEII, both to assist requesters with a legitimate need for CEII, and to restrict access to the sensitive information due to the ongoing terrorism threat. The Commission promulgated 18 CFR 388.113 to achieve those goals.

Under 18 CFR 388.13(g)(5), a request for CEII must contain:

- The requester's name, title, address, and telephone number;
- The name, address, and telephone number of the person or entity on whose behalf the information is requested;
- A detailed Statement of Need; and
- An executed non-disclosure agreement.

Under 18 CFR 388.133(h)(2), the non-disclosure agreement indicates the individual's willingness to adhere to limitations on the use and disclosure of the information requested, and stipulates at minimum that the CEII:

- Will only be used for the purpose for which it was requested;
- May only be discussed with authorized recipients;
- Information utilized for modelling will not be disclosed;
- Must be kept in a secure place in a manner that would prevent unauthorized access;
- Must be destroyed or returned to the Commission upon request;
- Is strictly prohibited from disclosure to anyone outside the United States; and
- Is not subject to release under either FOIA or Sunshine Laws.

In addition, the non-disclosure agreement provides that the Commission may audit the recipient's compliance with the non-disclosure agreement; that a recipient is obligated to protect the CEII even after a designation has lapsed [5] until the CEII Coordinator [6] determines the information should no longer be designated as CEII; and the recipient is required to promptly report all unauthorized disclosures of CEII to the Commission.

Type of Respondents: Persons seeking access to CEII.

Estimate of Annual Burden: The Commission estimates the total annual

[1] The CEII request form and three versions of the non-disclosure agreement (General Non-Disclosure Agreement, Federal Agency Acknowledgement and Agreement, and State Agency Employee Non-Disclosure Agreement) are posted at *https://www.ferc.gov/legal/ceii-foia/ceii.asp.*

[2] 16 U.S.C. 824o–1(d).

[3] 5 U.S.C. 552 (2018).

[4] The relevant FOIA exemptions are Exemption 3, which allows the withholding of information prohibited from disclosure by another statute and Exemption 7, which protects from disclosure certain law enforcement information, including information the disclosure of which might jeopardize a person's life or safety.

[5] The Commission's regulation at 18 CFR 388.113 provides criteria and procedures to designate information as CEII. A designation may last for up to five years, unless it is re-designated. A designation may be removed at any time, in whole in part, if the Commission determines that the unauthorized disclosure of CEII can no longer be used to impair the security or reliability of the bulk-power system or distribution facilities or any other form of energy infrastructure.

[6] The regulation at 18 CFR 375.313 delegates authority to a CEII Coordinator to receive and review all requests for CEII, make determinations regarding such requests, establish reasonable conditions on the release of CEIII, and release CEII to requesters who agree in writing to abide by the conditions set forth by the Coordinator.

burden [7] and cost [8] for this information collection as follows.

(1) Number of respondents	(2) Annual number of responses per respondent	(3) Total number of responses (column 1 × Column 2)	(4) Average burden & cost per response	(5) Total annual burden hours & total annual cost (column 3 × column 4)	(6) Cost per respondent ($) (column 5 ÷ column 1)
100	1	100	0.3 hrs.; $30.60	30 hrs.; $3,060	$30.60

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: September 30, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–20416 Filed 10–5–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR26–81–000.
Applicants: Southern California Gas Company.
Description: § 284.123 Rate Filing: Offshore Delivery Service Rate Revision September 2026 to be effective 9/1/2026.
Filed Date: 9/30/26.
Accession Number: 20260930–5002.
Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: RP26–1303–000.
Applicants: ANR Pipeline Company.
Description: Compliance filing: Penalty Revenue Crediting Report 2026 to be effective N/A.
Filed Date: 9/29/26.
Accession Number: 20260929–5110.
Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: RP26–1304–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: A2M II Project CP22–486, CP25–24 Recourse Rate Compliance Filing to be effective 10/12/2026.
Filed Date: 9/29/26.
Accession Number: 20260929–5119.
Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: RP26–1305–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Exxon Oct–Nov 2026) to be effective 10/1/2026.
Filed Date: 9/29/26.
Accession Number: 20260929–5125.
Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: RP26–1306–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (SRP Oct 2026) to be effective 10/1/2026.
Filed Date: 9/29/26.
Accession Number: 20260929–5127.
Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: RP26–1307–000.
Applicants: Maritimes & Northeast Pipeline, L.L.C.
Description: § 4(d) Rate Filing: MNUS FRQ 2026 Filing to be effective 11/1/2026.
Filed Date: 9/29/26.
Accession Number: 20260929–5129.
Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: RP26–1308–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 9.30.26 Negotiated Rates—Spark Energy Gas, LLC R–3045–35 to be effective 11/1/2026.
Filed Date: 9/30/26.
Accession Number: 20260930–5040.
Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: RP26–1309–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 9.30.26 Negotiated Rates—Spark Energy Gas, LLC R–3045–36 to be effective 11/1/2026.
Filed Date: 9/30/26.
Accession Number: 20260930–5042.
Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: RP26–1310–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 9.30.26 Negotiated Rates—Twin Eagle Resource Management, LLC R–7300–33 to be effective 11/1/2026.
Filed Date: 9/30/26.
Accession Number: 20260930–5043.
Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: RP26–1311–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 9.30.26 Negotiated Rates—Twin Eagle Resource Management, LLC R–7300–34 to be effective 11/1/2026.
Filed Date: 9/30/26.
Accession Number: 20260930–5049.
Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: RP26–1312–000.
Applicants: Trunkline Gas Company, LLC.
Description: § 4(d) Rate Filing: Fuel Filing on 9–30–26 to be effective 11/1/2026.
Filed Date: 9/30/26.
Accession Number: 20260930–5057.
Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: RP26–1313–000.
Applicants: Trunkline Gas Company, LLC.
Description: Compliance filing: Annual Report of Flow Through filed 9–30–26 to be effective N/A.
Filed Date: 9/30/26.
Accession Number: 20260930–5069.
Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: RP26–1314–000.
Applicants: Panhandle Eastern Pipe Line Company, LP.
Description: § 4(d) Rate Filing: Fuel Filing on 9–30–26 to be effective 11/1/2026.
Filed Date: 9/30/26.
Accession Number: 20260930–5072.
Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: RP26–1315–000.

[7] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

[8] FERC estimates that industry hourly costs are similar to the Commission FY 2026 average salary plus benefits of $213,003 per year (or $102/hour).

Applicants: NEXUS Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates Various Releases eff 10–1–2026 to be effective 10/1/2026.

Filed Date: 9/30/26.

Accession Number: 20260930–5073.

Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: RP26–1316–000.

Applicants: Rover Pipeline LLC.

Description: § 4(d) Rate Filing: Fuel Filing on 9–30–26 to be effective 11/1/2026.

Filed Date: 9/30/26.

Accession Number: 20260930–5075.

Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: RP26–1317–000.

Applicants: Enable Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Fuel Tracker Filing—Effective November 1, 2026 to be effective 11/1/2026.

Filed Date: 9/30/26.

Accession Number: 20260930–5078.

Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: RP26–1318–000.

Applicants: Enable Mississippi River Transmission, LLC.

Description: § 4(d) Rate Filing: 2026 MRT Annual Fuel Filing to be effective 11/1/2026.

Filed Date: 9/30/26.

Accession Number: 20260930–5080.

Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: RP26–1319–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Remove Expired Negotiated Rate Agreement—11/1/2026 to be effective 9/30/2026.

Filed Date: 9/30/26.

Accession Number: 20260930–5081.

Comment Date: 5 p.m. ET 10/13/26.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP24–744–011.

Applicants: Southern Natural Gas Company, L.L.C.

Description: Compliance filing: SNG Rate Case Compliance Filing Phase 3 Settlement Rates Effective 11–01–2026 to be effective 11/1/2026.

Filed Date: 9/30/26.

Accession Number: 20260930–5079.

Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: RP25–989–010.

Applicants: Northern Natural Gas Company.

Description: Compliance filing: 2026 Compliance of Settlement to be effective 1/1/2026.

Filed Date: 9/30/26.

Accession Number: 20260930–5100.

Comment Date: 5 p.m. ET 10/13/26.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov.*

Dated: September 30, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–20420 Filed 10–5–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following Electric Corporate filings:

Docket Numbers: EC26–180–000.

Applicants: Hunlock Creek Generating LLC, Hunlock Energy, LLC, Castleton Commodities Merchant Trading L.P., Castleton Commodities Energy Services LLC, Castleton Commodities Energy Trading LLC, Rensselaer Generating LLC, Salem Harbor Power Development LP, Linden VFT, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Hunlock Creek Generating LLC, et al.

Filed Date: 9/30/26.

Accession Number: 20260930–5112.

Comment Date: 5 p.m. ET 10/21/26.

Take notice that the Commission received the following Exempt Wholesale Generator filings:

Docket Numbers: EG26–332–000.

Applicants: San Gabriel Project II LLC.

Description: San Gabriel Project II LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/24/26.

Accession Number: 20260924–5216.

Comment Date: 5 p.m. ET 10/15/26.

Docket Numbers: EG26–333–000.

Applicants: Sullivan County Power, LLC.

Description: Sullivan County Power, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/29/26.

Accession Number: 20260929–5201.

Comment Date: 5 p.m. ET 10/20/26.

Docket Numbers: EG26–334–000.

Applicants: Rock Rose Energy Storage LLC.

Description: Rock Rose Energy Storage LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/30/26.

Accession Number: 20260930–5082.

Comment Date: 5 p.m. ET 10/21/26.

Take notice that the Commission received the following Electric Rate filings:

Docket Numbers: ER26–2466–003.

Applicants: El Paso Electric Company.

Description: Compliance filing: Compliance Filing to be effective 7/6/2026.

Filed Date: 9/29/26.

Accession Number: 20260929–5158.

Comment Date: 5 p.m. ET 10/20/26.

Docket Numbers: ER26–2600–003.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 4618R1 Municipal Energy Agency of Nebraska NITSA and NOA to be effective 5/1/2026.

Filed Date: 9/30/26.

Accession Number: 20260930–5154.

Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: ER26–2994–001.

Applicants: Kentucky Utilities Company.

Description: Tariff Amendment: PJM AFS Study Agreement Depreciation Response to be effective 6/30/2026.

Filed Date: 9/30/26.

Accession Number: 20260930–5127.

Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: ER26–3610–001.

Applicants: Cheyenne Power Hub, LLC.

Description: Tariff Amendment: Response to Deficiency Letter ER26–3610- to be effective 1/1/2027.

Filed Date: 9/30/26.

Accession Number: 20260930–5186.
Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: ER26–3843–001.
Applicants: Roccasecca BESS LLC.
Description: Tariff Amendment: Supplement to Market-Based Rate Application to be effective 11/9/2026.
Filed Date: 9/30/26.
Accession Number: 20260930–5146.
Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: ER26–3880–000.
Applicants: Hashknife Energy Center LLC.
Description: § 205(d) Rate Filing: Shared Facilities Agreement to be effective 11/30/2026.
Filed Date: 9/29/26.
Accession Number: 20260929–5135.
Comment Date: 5 p.m. ET 10/20/26.

Docket Numbers: ER26–3881–000.
Applicants: Clearlight Energy Holdings, L.P.
Description: § 205(d) Rate Filing: Application for Market-Based Rate Authorization, Request for Related Waivers to be effective 11/29/2026.
Filed Date: 9/29/26.
Accession Number: 20260929–5157.
Comment Date: 5 p.m. ET 10/20/26.

Docket Numbers: ER26–3882–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 5005 Rabbit's Foot 2 Solar GIA to be effective 9/14/2026.
Filed Date: 9/30/26.
Accession Number: 20260930–5006.
Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: ER26–3883–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 8089; Queue No. AE2–221 to be effective 11/30/2026.
Filed Date: 9/30/26.
Accession Number: 20260930–5007.
Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: ER26–3884–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 8090; Queue No. AF1–328 to be effective 11/30/2026.
Filed Date: 9/30/26.
Accession Number: 20260930–5024.
Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: ER26–3885–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1628R34 Western Farmers Electric Cooperative NITSA NOAs to be effective 9/1/2026.
Filed Date: 9/30/26.
Accession Number: 20260930–5041.
Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: ER26–3886–000.
Applicants: Evergy Kansas Central, Inc.
Description: § 205(d) Rate Filing: GFR ARO 205 Filing to be effective 11/30/2026.
Filed Date: 9/30/26.
Accession Number: 20260930–5058.
Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: ER26–3887–000.
Applicants: Evergy Kansas Central, Inc.
Description: § 205(d) Rate Filing: McPherson ARO 205 Filing to be effective 11/30/2026.
Filed Date: 9/30/26.
Accession Number: 20260930–5062.
Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: ER26–3888–000.
Applicants: Evergy Kansas Central, Inc.
Description: § 205(d) Rate Filing: EKC TFR ARO 205 Filing to be effective 11/30/2026.
Filed Date: 9/30/26.
Accession Number: 20260930–5063.
Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: ER26–3889–000.
Applicants: Evergy Kansas Central, Inc., Southwest Power Pool, Inc. Evergy Kansas South, Inc. Evergy Metro, Inc. Evergy Missouri West, Inc., Prairie Wind Transmission LLC.
Description: § 205(d) Rate Filing: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: Evergy Companies Formula Rate Revisions to Exclude ARO-Related Costs to be effective 11/30/2026.
Filed Date: 9/30/26.
Accession Number: 20260930–5068.
Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: ER26–3890–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: DEA, SA No. 8000 between PJM and VEPCO to be effective 9/1/2026.
Filed Date: 9/30/26.
Accession Number: 20260930–5071.
Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: ER26–3891–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original NSA, SA No. 8061; Queue Nos. Y3–088/Y3–089/Y3–090/Y3–091 to be effective 11/30/2026.
Filed Date: 9/30/26.
Accession Number: 20260930–5102.
Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: ER26–3892–000.
Applicants: Puget Sound Energy, Inc.
Description: Notice of Cancellation of General Transmission Agreement between Puget Sound Energy, Inc. and Bonneville Power Administration.
Filed Date: 9/28/26.
Accession Number: 20260928–5206.
Comment Date: 5 p.m. ET 10/19/26.

Docket Numbers: ER26–3893–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: NYISO 205: Automatic Resale of Surplus Unforced Capacity to be effective 11/30/2026.
Filed Date: 9/30/26.
Accession Number: 20260930–5143.
Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: ER26–3894–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: TO: Revisions for Citizens Transaction to be effective 11/30/2026.
Filed Date: 9/30/26.
Accession Number: 20260930–5149.
Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: ER26–3895–000.
Applicants: Cheyenne Light, Fuel and Power Company.
Description: § 205(d) Rate Filing: Filing of Second Amended & Restated LGIA with NextEra Energy Resources to be effective 9/24/2026.
Filed Date: 9/30/26.
Accession Number: 20260930–5173.
Comment Date: 5 p.m. ET 10/21/26.

Docket Numbers: ER26–3896–000.
Applicants: San Diego Gas & Electric.
Description: § 205(d) Rate Filing: Revisions to Appendices VII and IX to be effective 1/1/2027.
Filed Date: 9/30/26.
Accession Number: 20260930–5176.
Comment Date: 5 p.m. ET 10/21/26.

The filings are accessible in the Commission's eLibrary system by clicking on the links or 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.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public

Participation at (202) 502–6595 or *OPP@ferc.gov*.

Dated: September 30, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–20419 Filed 10–5–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL26–108–000]

PJM Interconnection, L.L.C.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On September 29, 2026, the Commission issued an order in Docket No. EL26–108–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation to determine whether PJM Interconnection, L.L.C.'s submitted proposed changes to its Open Access Transmission Tariff and Reliability Assurance Agreement to establish the Reliability Backstop Procurement are considered unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *PJM Interconnection, L.L.C.,* 196 FERC ¶ 61,245 (2026).

The refund effective date in Docket No. EL26–108–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL26–108–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2025), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *mailto:ferconlinesupport@ferc.gov* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *mailto:OPP@ferc.gov*.

Dated: September 30, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–20421 Filed 10–5–26; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0669; FRL–9116–09–OAR]

Phasedown of Hydrofluorocarbons: Notice of 2027 Allowance Allocations for Production and Consumption of Regulated Substances Under the American Innovation and Manufacturing Act of 2020, and Notice of Final Actions Establishing Administrative Consequences

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has issued calendar year 2027 allowances for the production and consumption of hydrofluorocarbons in accordance with the Agency's regulations. This issuance of allowances is undertaken pursuant to the American Innovation and Manufacturing (AIM) Act, which directs the EPA by October 1 of each calendar year to determine the quantity of production and consumption allowances for the following calendar year. In this notice, the EPA is also providing notice of separate Agency actions taken to establish administrative consequences for specific entities. These finalized actions withheld or revoked the identified entities' newly issued calendar year 2027 allowances in accordance with the administrative consequence regulatory provisions.

FOR FURTHER INFORMATION CONTACT: Connor Henderson, Chemicals, Coatings, and Products Division, Office of Clean Air Programs, Mail Code 6205A, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2177; email address: *henderson.connor@epa.gov.* You may also visit the EPA's website at *https://www.epa.gov/hfcs* for further information.

SUPPLEMENTARY INFORMATION: Subsection (e)(2)(D)(i) of the American Innovation and Manufacturing Act of 2020 (AIM Act) directs the Environmental Protection Agency (EPA) to determine, by October 1 of each calendar year, the quantity of allowances for the production and consumption of regulated substances that may be used for the following calendar year. The EPA has codified the production and consumption baselines and phasedown schedules for regulated substances in 40 CFR 84.7. Under the phasedown schedule, for 2027, total production allowances may not exceed 229,521,263 metric tons of exchange value equivalent (MTEVe) and total consumption allowances may not exceed 181,522,990 MTEVe.

The EPA regulations at 40 CFR part 84, subpart A, outline the process by which the Agency determines the number of allowances each entity is allocated. The EPA allocated allowances for 2027 consistent with the regulatory requirements and has posted entity-specific allowance allocations on its website. An allowance allocated under the AIM Act does not constitute a property right and is a limited authorization for the production or consumption of a regulated substance. The EPA also tracks information on how those allowances are used. Reported information for calendar year 2025 HFC activity, including how many allowances were used and total U.S. production and consumption of HFCs in 2025, can be found on EPA's HFC Data Hub web page. Both allowance allocations and the HFC Data Hub can

be found by visiting *https://www.epa.gov/hfcs.*

Note that while allowances may be transferred or conferred once they are allocated, they can only be expended to cover imports and production in the calendar year for which they are allocated. In other words, calendar year 2027 allowances may only be expended for production and import of bulk HFCs between January 1, 2027, and December 31, 2027.

Application-Specific Allowances

The EPA established the methodology for issuing application-specific allowances in the 2021 final rule titled *Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act* [1] and updated this methodology in the final rule titled *Phasedown of Hydrofluorocarbons: Review and Renewal of Eligibility for Application-Specific Allowances*,[2] hereinafter referred to as the HFC Allocation Framework Rule and the 2025 Application-specific Allowance Review and Renewal Rule, respectively. The methodology for application-specific allowance allocations is codified in 40 CFR 84.13. Because application-specific allowances can be expended to either produce or import HFCs, and application-specific allowances must be provided from within the overall annual production and consumption caps, the EPA subtracts the amount of application-specific allowances allocated from both the production and consumption general allowance pools. The EPA issues application-specific allowances to end users in four applications: propellants in metered dose inhalers (MDIs), structural composite preformed polyurethane foam for marine use and trailer use, etching of semiconductor material or wafers and the cleaning of chemical vapor deposition chambers within the semiconductor manufacturing sector, and onboard aerospace fire suppression. Additionally, the EPA issues application-specific allowances to the U.S. Department of Defense for mission-critical military end uses.

Applying the methodology codified in 40 CFR 84.13, for 2027 the EPA allocated the number of application-specific allowances shown in Table 1.

TABLE 1—NUMBER OF CALENDAR YEAR 2027 APPLICATION-SPECIFIC ALLOWANCES ALLOCATED PER ENTITY

Entity	Application	Application-specific allowances allocated (MTEVe)
Analog Devices	Semiconductors	14,104.4
Applied Materials	Semiconductors	5,819.3
Armstrong Pharmaceuticals	Propellants in MDIs	200,085.6
AstraZeneca Pharmaceuticals	Propellants in MDIs	2,677.0
Aurobindo Pharma USA	Propellants in MDIs	19,441.8
Compsys	Structural Composite Preformed Polyurethane Foam.	13,585.0
Diodes Incorporated	Semiconductors	1,879.6
GlaxoSmithKline	Propellants in MDIs	351,567.8
GlobalFoundries	Semiconductors	151,208.2
Hitachi High-Tech America	Semiconductors	475.9
IBM Corporation	Semiconductors	407.9
Intel Corporation	Semiconductors	656,440.7
Invagen Pharmaceuticals	Propellants in MDIs	624,808.8
Jireh Semiconductor	Semiconductors	2,351.8
Keysight Technologies	Semiconductors	488.8
Kindeva Drug Delivery	Propellants in MDIs	1,542,817.3
Lam Research Corp	Semiconductors	35,459.2
Lupin	Propellants in MDIs	13,680.8
Magic Leap, Inc	Semiconductors	1,434.3
Medtronic Tempe Campus	Semiconductors	177.6
Microchip Technology	Semiconductors	15,475.0
Micron Technology	Semiconductors	168,032.3
Newport Fab DBA TowerJazz	Semiconductors	50,249.8
Northrop Grumman Corporation	Semiconductors	1,046.7
NXP Semiconductor	Semiconductors	44,476.7
Polar Semiconductor	Semiconductors	11,628.4
Qorvo Texas	Semiconductors	516.9
Renesas Electronics America	Semiconductors	1,409.7
Samsung Austin Semiconductor	Semiconductors	276,139.7
Seagate Technologies	Semiconductors	939.9
Semiconductor Components Industries DBA ON Semiconductor	Semiconductors	19,332.0
SkyWater Technology	Semiconductors	30,478.2
Skyworks Solutions	Semiconductors	939.8
Taiwan Semiconductor Manufacturing Company Arizona Corporation (TSMC Arizona Corporation).	Semiconductors	241,143.5
Texas Instruments	Semiconductors	208,998.1
The Research Foundation for The State University of New York at NY CREATES.	Semiconductors	4,502.8
Tokyo Electron U.S. Holdings	Semiconductors	1,251.4
Tower Semiconductor San Antonio	Semiconductors	29,214.6
TSMC Washington	Semiconductors	11,814.5
Wolfspeed	Semiconductors	11,456.6
X–FAB Texas	Semiconductors	1,577.6

[1] 86 FR 55116, 55148 (October 5, 2021).

[2] 90 FR 41676, 41707 (August 26, 2025).

TABLE 1—NUMBER OF CALENDAR YEAR 2027 APPLICATION-SPECIFIC ALLOWANCES ALLOCATED PER ENTITY—Continued

Entity	Application	Application-specific allowances allocated (MTEVe)
Department of Defense	Mission-critical Military End Uses	9,070,115.2
Total Issued	All	13,839,651.2

The EPA's 2025 Application-specific Allowance Review and Renewal Rule established an annual set-aside of 1,000,000 MTEVe allowances to accommodate unforeseen HFC needs resulting from a global pandemic, other public health emergency, or other healthcare system need (referred hereafter as the ''MDI set-aside''). The EPA has set aside 1,000,000 MTEVe allowances for that purpose from both the consumption and production pools. Entities that use HFCs as a propellant in MDIs have until April 30, 2027, to apply for these allowances. Once the deadline passes, the EPA will evaluate such requests and expects to issue allowances within 60 days. The EPA also intends to distribute any remaining set-aside allowances pro rata amongst general pool allowance holders within 60 days of the April 30 request date.[3]

General Pool Allowances

The EPA's 2023 final rule titled *Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years*[4] updated the methodology for how the Agency would issue production and consumption allowances for 2024 through 2028 for general pool allowance holders. These updates are codified in 40 CFR 84.9 (production) and 40 CFR 84.11 (consumption), and the EPA has issued allowances to entities who meet the criteria in the regulations, including those who were previously issued consumption allowances as new market entrants pursuant to 40 CFR 84.15.

The EPA also created a new form of allowances called ''production for export allowances'' in the 2025 Application-specific Allowance Review and Renewal Rule. In accordance with the provisions codified in that rule at 40 CFR 84.18, Iofina Chemical is allocated production for export allowances in the amount of 3,000.0 MTEVe on an annual basis for a five-year period starting calendar year 2026, to calendar year 2030. These allowances were set aside and allocated, respectively, prior to issuing general pool production allowances.

For 2027, the EPA allocated the number of production allowances shown in Table 2.

TABLE 2—NUMBER OF CALENDAR YEAR 2027 PRODUCTION ALLOWANCES ALLOCATED PER ENTITY

Entity	Production allowances allocated (MTEVe)
Arkema	25,904,001.0
Chemours	48,023,780.9
Iofina Chemical	1,113.9
Mexichem Fluor	32,034,436.3
Solstice Advanced Materials US (formerly known as Honeywell International)	108,715,279.7
Application-specific allowances[a]	13,839,651.2
Application-specific allowances: MDI set-aside	1,000,000.0
Production for export allowances	3,000.0
Total Issued	229,521,263.0

[a] See Table 1; this value corresponds to the total number of application-specific allowances allocated on October 1, 2026.

For 2027, the EPA allocated the number of consumption allowances shown in Table 3.

TABLE 3—NUMBER OF CALENDAR YEAR 2027 CONSUMPTION ALLOWANCES ALLOCATED PER ENTITY

Entity	Consumption allowances allocated (MTEVe)
A.C.S. Reclamation & Recovery (Absolute Chiller Services)	122,398.2
Ability Refrigerants	122,398.2
ACT Commodities	47.6
Advance Auto Parts	437,653.6
Advanced Specialty Gases	174,697.7
AFK & Co	118,319.8
AFS Cooling	122,398.2
A-Gas	2,087,407.3
Air Liquide USA	305,249.5

[3] For more information, see the 2025 Application-specific Allowance Review and Renewal Rule and 40 CFR 84.15.

[4] 88 FR 46836, 46840 (July 20, 2023).

TABLE 3—NUMBER OF CALENDAR YEAR 2027 CONSUMPTION ALLOWANCES ALLOCATED PER ENTITY—Continued

Entity	Consumption allowances allocated (MTEVe)
American Air Components	122,398.2
Arkema	19,027,484.4
Artsen	629,180.6
Automart Distributors DBA Refrigerant Plus	122,398.2
AutoZone Parts	1,237,384.9
AW Product Sales & Marketing	74,007.4
Bluon	20,487.5
CC Packaging	118,726.2
Chemours	20,985,557.4
Chemp Technology	122,398.2
ChemPenn	13,610.2
ComStar International	220,632.8
Cross World Group	122,398.2
Daikin America	1,910,943.0
EDX Industry	351,937.6
Electronic Fluorocarbons	63,856.0
Fireside Holdings DBA American Refrigerants	122,385.0
First Continental International	471,370.9
FluoroFusion Specialty Chemicals	1,562,912.5
Freskoa USA	122,398.2
GlaxoSmithKline	329,595.0
Golden Refrigerant	122,398.2
Harp USA	468,760.1
Hudson Technologies	2,061,319.1
Hungry Bear	122,398.2
ICool USA	2,086,099.5
IGas Holdings	15,986,181.2
Iofina Chemical	774.6
Kidde-Fenwal	122,398.2
Lenz Sales & Distribution	679,847.1
Lina Trade	122,398.2
Linde	326,054.4
Matheson Tri-Gas	20,890.9
MEK Chemical Corporation	50,835.6
Meraki Group	122,398.2
Metalcraft	98,530.5
Mexichem Fluor	15,601,302.5
Mondy Global	195,143.8
National Refrigerants	12,127,686.5
Nature Gas Import and Export	501,855.1
North American Refrigerants	122,398.2
O23 Energy Plus	122,398.2
Perfect Score Too DBA Perfect Cycle	23,179.8
Reclamation Technologies	365,970.6
Resonac America	40,662.0
RGAS	2,923,584.1
RMS of Georgia	1,009,127.6
Sciarra Laboratories	5,324.3
SDS Refrigerant Services	122,398.2
Solstice Advanced Materials US (formerly known as Honeywell International)	50,422,000.5
Solvay Fluorides	675,034.4
Summit Refrigerants	122,398.2
SynAgile Corporation	688.6
Technical Chemical	2,091,048.5
TradeQuim	122,398.2
Transocean Offshore Deepwater Drilling	10.3
Tulstar Products	449,495.3
Tyco Fire Products	122,398.2
USSC Acquisition Corp	80,446.8
Walmart	1,396,398.2
Waysmos USA	343,354.8
Wego Chemical Group	34,628.2
Weitron	3,880,960.7
Wesco HMB	122,398.2
Wilhelmsen Ships Service	24,732.3
Application-specific allowances [a]	13,839,651.2
Application-specific allowances: MDI set-aside	1,000,000.0
Total Issued	181,522,990.0

[a] See Table 1; this value corresponds to the total number of application-specific allowances allocated.

Administrative Consequences

Separate from the allocation of calendar year 2027 allowances, the EPA hereby provides notice that it also took final actions establishing administrative consequences for specific entities. Each action, which the EPA took through a letter issued to the relevant entity, is a separate final action informing the recipient entity of an administrative consequence. The requirements pertaining to administrative consequences are codified in 40 CFR 84.35. Under this provision, the EPA can retire, revoke, or withhold the allocation of allowances, or ban an entity from receiving, transferring, or conferring allowances. A retired allowance is one that must go unused and expire at the end of the year; a revoked allowance is one that the EPA takes back from an allowance holder and redistributes to all the other eligible allowance holders; and a withheld allowance is one that is retained by the Agency until an allowance holder that has failed to meet a regulatory requirement comes back into compliance, at which point the EPA allocates it to the allowance holder.[5]

The EPA finalized administrative consequences for two entities that were allocated application-specific allowances, listed in Table 1 for calendar year 2027. These entities failed to submit their auditing reports as required in 40 CFR 84.33 and therefore the EPA has withheld a portion of their allowances (if allowances were allocated to the entity) and will continue withholding these allowances until the missing reports are submitted and subsequently verified by the Agency: University of California (UC) San Diego and Wolfspeed. These final actions became effective on September 30, 2026, and are summarized below in Table 4.

TABLE 4—SUMMARY OF ADMINISTRATIVE CONSEQUENCES TAKEN PURSUANT TO 40 CFR 84.35 FOR CALENDAR YEAR 2027 APPLICATION-SPECIFIC ALLOWANCES, EFFECTIVE SEPTEMBER 30, 2026

Entity	Number of affected allowances (MTEVe)	Administrative consequence action	Reasoning
UC San Diego [a]	0.0	Withhold	Failure to submit auditing report as required in 40 CFR 84.33.
Wolfspeed	2,291.3	Withhold	Failure to submit auditing report as required in 40 CFR 84.33.

[a] The entity was not allocated calendar year 2027 application-specific allowances and as a result no allowances could be withheld.

The EPA finalized administrative consequences for certain entities that were allocated consumption allowances, as listed in Table 5 for calendar year 2027. These final actions affecting calendar year 2027 allowances became effective on either August 7, 2026, or September 30, 2026. The following entities imported regulated HFCs without expending the requisite number of consumption allowances at the time of import and therefore the EPA has revoked consumption allowances commensurate with the quantities of regulated substances imported without allowances: Solstice Advanced Materials US and FluoroFusion Specialty Chemicals. A summary of these administrative consequences is included in Table 5.

TABLE 5—SUMMARY OF ADMINISTRATIVE CONSEQUENCES PURSUANT TO 40 CFR 84.35 FOR CALENDAR YEAR 2027 CONSUMPTION ALLOWANCES, EFFECTIVE AUGUST 7, 2026, OR SEPTEMBER 30, 2026

Entity	Effective date	Number of affected allowances (MTEVe)	Administrative consequence action and effective date	Reasoning
FluoroFusion Specialty Chemicals.	September 30, 2026	[a] 1,841.2	Revoke	Imported regulated HFCs without expending requisite number of allowances.
Solstice Advanced Materials US.	August 7, 2026	[b] 1,144,200.0	Revoke	Imported regulated HFCs without expending requisite number of allowances.

[a] As stated in the HFC Allocation Framework Rule (86 FR 55116, Oct. 5, 2021), the EPA explained it can take a 20 to 200 percent premium for repeat instances of administrative consequences. This value corresponds to 100 percent of the full amount of consumption without requisite allowances at the time of import given this is the second administrative consequence issued to FluoroFusion Specialty Chemicals.

[b] As stated in the HFC Allocation Framework Rule (86 FR 55116, Oct. 5, 2021), the EPA explained it would take a 50 percent premium in first instances of administrative consequences. This value corresponds to 50 percent of the full amount of consumption without requisite allowances at the time of import.

In addition to the administrative consequences listed in Tables 4 and 5 that were finalized in the past year, 61,751.9 MTEVe of 2027 consumption allowances were retired and 1,388,004.3 MTEVe were revoked, consistent with administrative consequences finalized in prior years and described in *Phasedown of Hydrofluorocarbons: Notice of 2024 Allowance Allocations for Production and Consumption of Regulated Substances Under the American Innovation and Manufacturing Act of 2020, and Notice of Final Administrative Consequences,*[6] hereafter referred to as the 2024 Notice of HFC Allowance Allocations. The entities subject to those prior year actions include Bluon, Honeywell International (now known as Solstice

[5] More information on the EPA's approach to administrative consequences can be found at 86 FR 55168 (October 23, 2024).

[6] 88 FR 72060, 72064 (Oct. 19, 2023).

Advanced Materials US), and Resonac America.

Adjustments to Application-Specific Allowances

As described above, certain entities listed in Table 1 have had a portion of their calendar year 2027 allowances withheld for not submitting the auditing report required in 40 CFR 84.33. These allowances will be withheld until the missing reports are submitted and subsequently verified by the EPA. Accordingly, Table 7 shows the number of application-specific allowances available to each entity as a result of finalized administrative consequences.

TABLE 7—NUMBER OF CALENDAR YEAR 2027 APPLICATION-SPECIFIC ALLOWANCES AVAILABLE TO EACH ENTITY AS OF OCTOBER 1, 2026, ADJUSTED FOR ADMINISTRATIVE CONSEQUENCES

Entity	Application	Available application-specific allowances, adjusting for administrative consequences (MTEVe)
Analog Devices	Semiconductors	14,104.4
Applied Materials	Semiconductors	5,819.3
Armstrong Pharmaceuticals	Propellants in MDIs	200,085.6
AstraZeneca Pharmaceuticals	Propellants in MDIs	2,677.0
Aurobindo Pharma USA	Propellants in MDIs	19,441.8
Compsys	Structural Composite Preformed Polyurethane Foam.	13,585.0
Diodes Incorporated	Semiconductors	1,879.6
GlaxoSmithKline	Propellants in MDIs	351,567.8
GlobalFoundries	Semiconductors	151,208.2
Hitachi High-Tech America	Semiconductors	475.9
IBM Corporation	Semiconductors	407.9
Intel Corporation	Semiconductors	656,440.7
Invagen Pharmaceuticals	Propellants in MDIs	624,808.8
Jireh Semiconductor	Semiconductors	2,351.8
Keysight Technologies	Semiconductors	488.8
Kindeva Drug Delivery	Propellants in MDIs	1,542,817.3
Lam Research Corp	Semiconductors	35,459.2
Lupin	Propellants in MDIs	13,680.8
Magic Leap, Inc	Semiconductors	1,434.3
Medtronic Tempe Campus	Semiconductors	177.6
Microchip Technology	Semiconductors	15,475.0
Micron Technology	Semiconductors	168,032.3
Newport Fab DBA TowerJazz	Semiconductors	50,249.8
Northrop Grumman Corporation	Semiconductors	1,046.7
NXP Semiconductor	Semiconductors	44,476.7
Polar Semiconductor	Semiconductors	11,628.4
Qorvo Texas	Semiconductors	516.9
Renesas Electronics America	Semiconductors	1,409.7
Samsung Austin Semiconductor	Semiconductors	276,139.7
Seagate Technologies	Semiconductors	939.9
Semiconductor Components Industries DBA ON Semiconductor	Semiconductors	19,332.0
SkyWater Technology	Semiconductors	30,478.2
Skyworks Solutions	Semiconductors	939.8
Taiwan Semiconductor Manufacturing Company Arizona Corporation (TSMC Arizona Corporation).	Semiconductors	241,143.5
Texas Instruments	Semiconductors	208,998.1
The Research Foundation for The State University of New York at NY CREATES	Semiconductors	4,502.8
Tokyo Electron U.S. Holdings, Inc	Semiconductors	1,251.4
Tower Semiconductor San Antonio	Semiconductors	29,214.6
TSMC Washington	Semiconductors	11,814.5
Wolfspeed	Semiconductors	9,165.3
X–FAB Texas	Semiconductors	1,577.6
Department of Defense	Mission-critical Military End Uses	9,070,115.2
Total Available	All	13,837,359.9

Adjustments to Consumption Allowances

An entity is eligible to receive redistributed allowances if they were not subject to administrative consequences that took effect on the same day (except entities that had allowances withheld). For example, if the EPA revoked 50 MTEVe allowances from company A and 50 MTEVe allowances from company B, effective on the same day, the EPA's redistribution of that single pool of 100 MTEVe allowances would go to all general pool allowances holders except company A and company B. This applies regardless of whether the revocation happens in one year or over

multiple years. However, entities who only had allowances withheld by the Agency, *e.g.,* as a result of failure to comply with the auditing requirements as contained in 40 CFR 84.33, were eligible to receive allowances that were redistributed.

For 2027, the total number of revoked and redistributed allowances is 2,534,045.5 MTEVe, which are being apportioned to eligible consumption allowance holders based on their relative market share, and the total number of retired allowances in 2027 is 61,751.9 MTEVe. These amounts are the result of administrative consequences with various effective dates. For more information on the administrative consequences finalized in 2023 that impact calendar year 2027 consumption allowances, see the 2024 Notice of HFC Allowance Allocations.

Table 8 reflects the 2027 consumption allowance totals available to each entity as of October 1, 2026, after taking into account the administrative consequences and eligibility described elsewhere in this notice.

TABLE 8—TOTAL NUMBER OF CALENDAR YEAR 2027 CONSUMPTION ALLOWANCES AVAILABLE TO EACH ENTITY AS OF OCTOBER 1, 2026, ADJUSTED FOR ADMINISTRATIVE CONSEQUENCES

Entity	Available consumption allowances, adjusted for all administrative consequences (MTEVe)
A.C.S. Reclamation & Recovery (Absolute Chiller Services)	125,098.3
Ability Refrigerants	125,098.3
ACT Commodities	48.7
Advance Auto Parts	447,308.2
Advanced Specialty Gases	178,551.5
AFK & Co	119,485.6
AFS Cooling	125,098.3
A-Gas	2,133,455.6
Air Liquide USA	311,983.3
American Air Components	123,604.2
Arkema	19,447,230.6
Artsen	635,379.8
Automart Distributors DBA Refrigerant Plus	125,098.3
AutoZone Parts	1,264,681.7
AW Product Sales & Marketing	75,640.0
Bluon[a]	0.0
CC Packaging	121,345.3
Chemours	21,448,498.7
Chemp Technology	125,098.3
ChemPenn	13,910.4
ComStar International	225,499.9
Cross World Group	125,098.3
Daikin America	1,953,098.4
EDX Industry	359,701.3
Electronic Fluorocarbons	64,485.1
Fireside Holdings DBA American Refrigerants	125,084.9
First Continental International	481,769.3
FluoroFusion Specialty Chemicals	1,576,452.9
Freskoa USA	125,098.3
GlaxoSmithKline	336,865.9
Golden Refrigerant	125,098.3
Harp USA	479,101.0
Hudson Technologies	2,106,791.8
Hungry Bear	125,098.3
ICool USA	2,132,118.8
IGas Holdings	16,338,836.2
Iofina Chemical	791.7
Kidde-Fenwal	125,098.3
Lenz Sales & Distribution	694,844.6
Lina Trade	125,098.3
Linde	333,247.1
Matheson Tri-Gas	21,351.7
MEK Chemical Corporation	51,957.0
Meraki Group	125,098.3
Metalcraft	100,704.1
Mexichem Fluor	15,945,467.1
Mondy Global	199,448.7
National Refrigerants	12,395,223.2
Nature Gas Import and Export	512,926.1
North American Refrigerants	125,098.3
O23 Energy Plus	125,098.3
Perfect Score Too DBA Perfect Cycle	23,691.2
Reclamation Technologies	374,043.9
Resonac America[a]	0.0

TABLE 8—TOTAL NUMBER OF CALENDAR YEAR 2027 CONSUMPTION ALLOWANCES AVAILABLE TO EACH ENTITY AS OF OCTOBER 1, 2026, ADJUSTED FOR ADMINISTRATIVE CONSEQUENCES—Continued

Entity	Available consumption allowances, adjusted for all administrative consequences (MTEVe)
RGAS	2,988,078.4
RMS of Georgia	1,031,388.9
Sciarra Laboratories	5,441.8
SDS Refrigerant Services	125,098.3
Solstice Advanced Materials (formerly known as Honeywell International) [a]	47,890,358.4
Solvay Fluorides	689,925.6
Summit Refrigerants	125,098.3
SynAgile Corporation	703.8
Technical Chemical	2,137,177.0
TradeQuim	125,098.3
Transocean Offshore Deepwater Drilling	10.5
Tulstar Products	459,411.2
Tyco Fire Products	125,098.3
USSC Acquisition Corp	82,221.4
Walmart	1,427,202.8
Waysmos USA	350,929.2
Wego Chemical Group	35,392.1
Weitron	3,966,574.7
Wesco HMB	125,098.3
Wilhelmsen Ships Service	25,277.9
Application-specific allowances [b]	13,837,359.9
Application-specific allowances: MDI set-aside	1,000,000.0
Total Available	181,458,946.8

[a] While these entities were eligible for revoked and redistributed consumption allowances with an effective date of September 30, 2025, the Agency has previously finalized administrative consequences for them stating that EPA ''[w]ill retire and revoke allowances until the full administrative consequence is covered,'' (88 FR 72060, Oct. 19, 2023).

[b] See Table 7; this value corresponds to the total number of application-specific allowances available on October 1, 2026, after adjusting for administrative consequences.

Judicial Review

The AIM Act provides that certain sections of the Clean Air Act (CAA) ''shall apply to'' the AIM Act and actions ''promulgated by the Administrator of [the EPA] pursuant to [the AIM Act] as though [the AIM Act] were expressly included in title VI of [the CAA].'' [7] Among the applicable sections of the CAA is section 307, which includes provisions governing judicial review.[8] CAA section 307(b)(1) provides, in part, that petitions for review must only be filed in the United States Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, but ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

The issuance of calendar year 2027 allowances for the production and consumption of hydrofluorocarbons herein noticed is ''nationally applicable'' within the meaning of CAA section 307(b)(1). The AIM Act imposes a national cap on the total number of allowances available for each year for all entities nationwide.[9] For 2027, there was a national pool of 229,521,263 MTEVe production allowances and 181,522,990 MTEVe consumption allowances available to distribute. The allocation action noticed herein distributed that finite set of allowances consistent with the methodology the EPA established in the nationally applicable HFC Allowance framework rule and updated in the *Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years* rule. As such, the allowance allocation is the division and assignment of a single, nationwide pool of HFC allowances to entities across the country according to the uniform, national methodology established in EPA's regulations. Each entity's allowance allocation is a relative share of that pool; thus, any additional allowances awarded to one entity directly affects the allocations to others. For these reasons, the final action of the Agency allocating hydrofluorocarbon allowances to entities located throughout the country is nationally applicable.

Under CAA section 307(b)(1), petitions for judicial review of this allocation action must be filed in the United States Court of Appeals for the District of Columbia Circuit by December 7, 2026.

As described, in this notice the EPA is also publishing notice of adjudicatory actions establishing administrative consequences that took effect August 7, 2026, and September 30, 2026. Under CAA section 307(b)(1), any petition for judicial review of such a final action must be filed in the United States Court of Appeals for the appropriate circuit by December 7, 2026.

Filing a petition for reconsideration by the Administrator does not affect the finality of any action noticed herein for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and

[7] 42 U.S.C. 7675(k)(1)(C).

[8] 42 U.S.C. 7607(b)(1).

[9] 42 U.S.C. 7675(e)(2)(B)–(D).

shall not postpone the effectiveness of such action. The final actions described herein may not be challenged later in proceedings to enforce their requirements.[10]

(Authority: 40 CFR Part 84.)

Cynthia Newberg,

Director, Chemicals, Coatings, and Products Division.

[FR Doc. 2026–20389 Filed 10–5–26; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2026–1849; FRL–13203–06–OCSPP]

Certain New Chemicals or Significant New Uses; Statements of Findings—June 2026

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of certain TSCA submissions when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA. This document presents statements of findings made by EPA on such submissions during the period from June 1, 2026, to June 30, 2026.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2026–1849, is available online at *https://www.regulations.gov.* Additional information about dockets generally, along with instructions for visiting the docket in person, is available at *https://www.epa.gov/*dockets.

FOR FURTHER INFORMATION CONTACT:

For technical information: Rebecca Edelstein, New Chemical Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–1667; email address: *edelstein.rebecca@epa.gov.*

For general information: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action provides information that is directed to the public in general.

B. What action is the Agency taking?

This document lists the statements of findings made by EPA after review of submissions under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the applicable period.

C. What is the Agency's authority for taking this action?

TSCA section 5(a)(3) requires EPA to review a submission under TSCA section 5(a) and make specific findings pertaining to whether the substance may present unreasonable risk of injury to health or the environment. Among those potential findings is that the chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment per TSCA Section 5(a)(3)(C).

TSCA section 5(g) requires EPA to publish in the **Federal Register** a statement of its findings after its review of a submission under TSCA section 5(a) when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of ''not likely to present an unreasonable risk of injury to health or the environment'' may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

II. Statements of Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA identifies the PMNs, MCANs and SNUNs for which EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. For the findings made during this period, the following list provides the EPA case number assigned to the TSCA section 5(a) submission and the chemical identity (generic name if the specific name is claimed as confidential).

- J–25–0012, Strain of *Streptomyces cyaneofuscatus* modified with genetically stable, DNA insertion responsible for the production of a modified enzyme (Generic Name).

To access EPA's decision document describing the basis of the ''not likely to present an unreasonable risk'' finding made by EPA under TSCA section 5(a)(3)(C), lookup the specific case number at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/chemicals-determined-not-likely.*

Authority: 15 U.S.C. 2601 *et seq.*

Dated: September 30, 2026.

Shari Z. Barash,

Director, New Chemicals Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2026–20436 Filed 10–5–26; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0180; FR ID 370441]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's

[10] 42 U.S.C. 7607(b)(2).

burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before December 7, 2026. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

OMB Control Number: 3060–0180.

Title: Section 73.1610, Equipment Tests.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 50 respondents; 50 responses.

Estimated Hours per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 25 hours.

Total Annual Cost: No cost.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Needs and Uses: The information collection requirements contained in 47 CFR 73.1610 require the permittee of a new broadcast station to notify the FCC of its plans to conduct equipment tests for the purpose of making adjustments and measurements as may be necessary to assure compliance with the terms of the construction permit and applicable engineering standards. FCC staff use the data to assure compliance with the terms of the construction permit and applicable engineering standards.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2026–20485 Filed 10–5–26; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1275; OMB 3060–1281; FR ID 370421]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before December 7, 2026. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

OMB Control Number: 3060–1275.

Title: Upper C-band Clearinghouse; Upper C-band Relocation Coordinator; 3.7 GHz Band Space Station Operators.

Form Number: N/A.

Type of Review: Revision of a currently approved information collection.

Respondents: Business or other for-profit entities; Not for profit institutions; State, Local or Tribal Government.

Estimated Number of Respondents and Responses: 16,512 respondents and 34,871 responses.

Estimated Time per Response: 0.5 hours–64 hours.

Frequency of Response: Recordkeeping requirement; on occasion, weekly, monthly, quarterly, semi-annual, and annual reporting requirements; third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 1, 2, 4(i), 4(j), 5(c), 201, 302, 303, 304, 307(e), 309, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 201, 302, 303, 304, 307(e), 309, and 316.

Estimated Total Annual Burden: 123,465 hours.

Total Annual Costs: $10,705,353.

Needs and Uses: On July 22, 2026, in furtherance of the goal of releasing more mid-band spectrum into the market to support and enable next-generation wireless networks, the Commission adopted a Report and Order, Order of Proposed Modification, and Order on Reconsideration, FCC 26–46 (*Upper C-band R&O*). The *Upper C-band R&O* calls for the relocation of existing FSS operations in the Upper C-band, making 160 megahertz (3.98–4.14 GHz) available for flexible-use terrestrial wireless service throughout the contiguous United States through a Commission-administered public auction of licenses that must be completed by July 4, 2027, pursuant to a mandate in the One Big Beautiful Bill Act.

The Commission adopted a robust transition schedule to achieve an expeditious clearing and relocation of FSS operations and ensure that a significant amount of spectrum is made available quickly for next-generation

wireless deployments, while also ensuring effective accommodation of relocated incumbent users. Pursuant to the *Upper C-band R&O,* all incumbent FSS operations in the contiguous United States must clear the 4.0–4.16 GHz portion of the C-band by December 30, 2030, or June 30, 2031, to ensure a timely transition process.

To facilitate an efficient transition, the Commission adopted a process for reimbursing eligible space station operators for the reasonable and necessary costs of the relocation and for offering incentive payments in the event of a timely transition. New flexible-use licensees in the Upper C-band from 3.98–4.14 GHz (Upper C-band Licensees) will be required to reimburse eligible space station operators, as well as incumbent earth station operators, for their reasonable and necessary relocation costs associated with clearing 4.0–4.16 GHz. Incumbent earth station operators will also have the option to elect a lump sum reimbursement option in lieu of actual cost reimbursement.

Upper C-band Licensees must also provide rebates to defined classes of eligible aircraft owners and operators to facilitate their compliance with the Federal Aviation Administration's radio altimeter retrofit requirements. These requirements are designed to foster a successful coexistence environment between new Upper C-band wireless operations and radio altimeters in the adjacent 4.2–4.4 GHz band. The *Upper C-band R&O* establishes an Upper C-band Clearinghouse to oversee the cost-related aspects of the transition, including administration of actual cost reimbursement, lump sum, and incentive payments, as well as radio altimeter rebates. The *Upper C-band R&O* also establishes a Relocation Coordinator to take actions necessary to facilitate the migration of incumbent earth stations to ensure uninterrupted service during and following the transition.

The Commission concluded in the *Upper C-band R&O* that the Upper C-band Clearinghouse and Relocation Coordinator are critical to ensuring that the band reconfiguration is administered in a fair, transparent manner and that the transition occurs as expeditiously as possible. To accomplish these goals most effectively, the Commission is seeking approval for this revised information collection to collect information from the Upper C-band Clearinghouse, the Relocation Coordinator, and eligible space station operators, and to allow the Upper C-band Clearinghouse and Relocation Coordinator to collect information, as described below:

Upper C-Band Clearinghouse

The Commission concluded in the *Upper C-band R&O* that an independent Upper C-band Clearinghouse is necessary to administer the cost-related aspects of the transition in a fair, transparent manner and, pursuant to Commission rules and oversight, to mitigate financial disputes among stakeholders, and to collect and distribute payments in a timely manner. The clearinghouse will be responsible for collecting and distributing actual cost reimbursement. lump sum, and incentive payments, collecting and distributing radio altimeter retrofit rebate payments, auditing incoming and outgoing invoices, mitigating disputes among parties, and generally acting as a clearinghouse.

To that end, the *Upper C-band R&O* calls for the clearinghouse to create and submit the following information: (1) quarterly reports that detail the status of reimbursement funds available, the payments issued, the amounts collected from the Upper C-band Licensees, and similar information for the adjacent band radio altimeter retrofit rebates, account for all funds spent in both contexts, and include the descriptions of any disputes and the manner in which they were resolved; (2) 30 days' notice to Upper C-band Licensees of the additional pro-rata shares they must contribute; (3) requests for additional documentation from claimants to determine whether their claims are reasonable and to ensure they comply with the requirements adopted in section 27.1416(a) of the Commission's rules; (4) notice to a claimant that the amount sought is unreasonable, and notice of the amount the clearinghouse deems eligible for payment; (5) following a determination on a reimbursement, lump sum, or rebate claim, invoices of approved claims, which it shall issue to each relevant licensee indicating the amount to be paid; (6) when referring an unresolved issue to the Chief of the Wireless Telecommunications Bureau, the entire record on any disputed issues, including such dispositions thereof; and (7) prompt notice to Upper C-band Licensees following validation of the Certification of Completion set forth in section 27.1412(b) of the Commission's rules.

The Upper C-band Clearinghouse will also collect the following information from claimants and Upper C-band Licensees, as required by the *Upper C-band R&O:* documentation of claims, including where appropriate actual expenses, and objections by parties disputing a cost estimate, approved claim invoice, or payment or cost-sharing obligation. The clearinghouse will collect payments from Upper C-band Licensees to replenish the reimbursement and rebate funds and will notify licensees when eligible space station operators' Certifications of Completion are validated in connection with incentive payments. Finally, the Upper C-band Clearinghouse must file a request with the Wireless Telecommunications Bureau to wind down and suspend operations.

Relocation Coordinator

The *Upper C-band R&O* sets forth specific obligations, filing requirements, and deadlines for eligible space station operators that must clear by the Transition Deadlines in order to ensure that incumbent earth station operators, other C-band satellite customers, and prospective Upper C-band Licensees are adequately informed and accommodated throughout the transition.

The Commission found that making each eligible space station operator responsible for its clearing obligations would promote an efficient and effective transition process. Nevertheless, in light of the complicated interdependencies involves in transitioning incumbent earth station operations out of 4.0–4.16 GHz, as well as the extensive number of incumbent earth stations, the Commission determined that a Relocation Coordinator is necessary to ensure that all eligible space station operators relocate in a timely manner.

The Relocation Coordinator will be responsible for performing several duties, which include:

(1) coordinating the schedule for clearing the band; (2) performing engineering analysis, as necessary, to determine necessary earth station migration actions; (3) assigning obligations, as necessary, for earth station migrations; (4) coordinating with the Upper C-band Licensees throughout the transition process; (5) assessing and tracking the completion of the transition in each PEA and determining the Upper C-band wireless licensees' ability to commence operations; and (6) mediating scheduling disputes. In short, the Relocation Coordinator may establish a timeline and take actions necessary to migrate incumbent earth stations to ensure uninterrupted service during and following the transition.

Accordingly, the *Upper C-band R&O* requires that the Relocation Coordinator create, collect, and/or provide the following: (1) financial information as requested by the Wireless Telecommunications Bureau to satisfy the Commission's oversight

responsibilities and/or agency specific/government-wide reporting obligations; (2) receive and review the Transition Plans filed by all eligible space station operators and recommend any changes to those plans to the Commission to the extent needed to ensure a timely transition; (3) receive notice from incumbent earth station operators or other satellite customers of any disputes related to comparability of facilities, workmanship, or preservation of service during the transition, which it shall notify to the Wireless Telecommunications Bureau and provide recommendation for resolution; (4) status reports on the overall status of clearing efforts, on a quarterly basis, beginning after the Wireless Telecommunications Bureau confirms its selection; and (5) additional information requested by the Wireless Telecommunications Bureau.

Each eligible space station operator shall be eligible to appoint one member to a selection committee that will seek proposals for an entity with technical experience in understanding and working on earth stations to serve as a Relocation Coordinator. The committee should proceed by consensus; however, if a vote on selection of a Relocation Coordinator is required, it shall be by a majority. In the event that the search committee fails to select a Relocation Coordinator and to notify the Commission by January 1, 2027, the search committee will be dissolved without further action by the Commission, and the Commission will initiate a procurement of a Relocation Coordinator to facilitate the transition.

Eligible Space Station Operators

The *Upper C-band R&O* establishes rules to transition incumbent FSS C-band users out of 4.0–4.16 GHz. The Commission's approach requires eligible space station operators to lead this transition process and, if they complete the requisite clearing process by each Transition Deadline, they will become eligible for incentive payments. To this end, the Commission requires the following information from each eligible space station operator: (1) status of its clearing efforts on a quarterly basis, beginning March 31, 2027; (2) a timely Certification of Completion that certifies it has completed the necessary clearing actions to satisfy the relevant Transition Deadline. The certification must be filed once the eligible space station operator completes its obligations but no later than the relevant Transition Deadline referenced in section 27.1412(a) of the Commission's rules. The Wireless Telecommunications Bureau will prescribe the form of such certification; and (3) notice of any incumbent earth station transition delays, which must be submitted to the Wireless Telecommunications Bureau within seven days of discovering an inability to accomplish the assigned earth station transition task. Such a request must include supporting documentation to allow for resolution as soon as practicable and must be submitted before the relevant Transition Deadline.

OMB Control Number: 3060–1281.

Title: 3.7 GHz Service Licensee and Earth Station Operator Agreements; 3.7 GHz Service Licensee Engineering Analysis.

Form Number: N/A.

Type of Review: Revision of a currently approved information collection.

Respondents: Business or other for-profit entities; Not for profit institutions; State, Local or Tribal Government.

Estimated Number of Respondents and Responses: 30 respondents and 30 responses.

Estimated Time per Response: 2 hours–5 hours.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement; third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 1, 2, 4(i), 4(j), 5(c), 201, 302, 303, 304, 307(e), 309, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 201, 302, 303, 304, 307(e), 309, and 316.

Estimated Total Annual Burden: 120 hours.

Total Annual Costs: No costs.

Needs and Uses: On February 28, 2020, in furtherance of the goal of releasing more mid-band spectrum into the market to support and enable next-generation wireless networks, the Commission adopted a Report and Order, FCC 20–22 (*3.7 GHz Report and Order),* in which it reallocated the use of the 3.7–4.2 GHz band, also known as the C-band. Prior to the *3.7 GHz Report and Order,* the 3.7–4.2 GHz band was allocated in the United States exclusively for non-Federal use on a primary basis for Fixed Satellite Service (FSS) and Fixed Service. Domestically, space station operators used the entire 3.7–4.2 GHz band to provide downlink signals of various bandwidths to licensed transmit-receive, registered receive-only, and unregistered receive-only earth stations throughout the United States.

The *3.7 GHz Report and Order* called for the relocation of existing FSS operations in the band into the upper 200 megahertz of the band (4.0–4.2 GHz) and made available the lower 280 megahertz (3.7–3.98 GHz) for flexible use terrestrial wireless services throughout the contiguous United States through a Commission-administered public auction of overlay licenses. The Commission adopted a robust transition schedule to facilitate the prompt relocation of FSS operations so that a significant amount of spectrum could be made available quickly for next-generation wireless deployments.

On July 22, 2026, once again in furtherance of the goal of releasing more mid-band spectrum into the market to support and enable next-generation wireless networks, the Commission adopted a Report and Order, FCC 26–46 (*Upper C-band R&O*), in which it further reallocated the use of the 4.0–4.2 GHz portion of the C-Band. The 4.0–4.2 GHz band currently is allocated in the United States exclusively for non-Federal use on a primary basis for Fixed Satellite Service (FSS) and Fixed Service. Domestically, eligible space station operators use the 4.0–4.2 GHz band to provide downlink signals of various bandwidths to licensed transmit-receive, registered receive-only, and unregistered receive-only earth stations throughout the United States.

The *Upper C-band R&O* again calls for the relocation of existing FSS operations in the C-band, making an additional 160 megahertz (3.98–4.14 GHz) available for flexible-use terrestrial wireless service throughout the contiguous United States through a Commission-administered public auction of licenses that must be completed by July 4, 2027, pursuant to a mandate in the One Big Beautiful Bill Act. As before, the Commission adopted a robust transition schedule to achieve an expeditious clearing and relocation of FSS operations and ensure that a significant amount of spectrum is made available quickly for next-generation wireless deployments, while also ensuring effective accommodation of relocated incumbent users. Pursuant to the *Upper C-band R&O,* all incumbent FSS operations in the contiguous United States must clear the 4.0–4.16 GHz portion of the C-band by December 30, 2030, or June 30, 2031, to ensure a timely transition process. Some residual incumbent FSS links or services will remain in the 4.16–4.2 GHz portion of the band, while others will be relocated to other spectrum bands.

In both the *3.7 GHz Report and Order* and *Upper C-band R&O,* the Commission concluded that, once the transitions are complete, coordination measures are needed to protect any incumbent FSS operations that remain in the C-band. To accomplish this goal

most effectively, the Commission is seeking approval for a revised information collection to collect information from existing and new 3.7 GHz Service licensees as described below:

3.7 GHz Service Licensee and Earth Station Operator Agreements—(47 CFR 27.1424)

The Commission determined that 3.7 GHz Service licensees are required to comply with certain technical rules and coordination practices designed to reduce the risk of interference to incumbent operations. Specifically, 3.7 GHz Service licensees are required to comply with specific power flux density (PFD) limits to protect incumbent earth stations from out-of-band emissions and blocking and to coordinate frequency usage with incumbent Telemetry, Tracking, and Command (TT&C) earth stations. The *3.7 GHz Report and Order* and the *Upper C-band R&O* allow 3.7 GHz Service licensees and FSS C-Band earth station operators to modify these PFD limits, but they require a 3.7 GHz Service licensee that is a party to such an agreement to maintain a copy of the agreement in its station files and disclose it, upon request, to prospective license assignees, transferees, or spectrum lessees, and to the Commission. This information collection promotes safety of operations in the band and ensures that all relevant stakeholders have access to important coordination and technical aspects of the transition.

3.7 GHz Service Licensee Engineering Analysis—(3.7 GHz Report and Order at Paragraph 384, Upper C-Band R&O at Paragraph 86)

The Commission concluded in the *3.7 GHz Report and Order* and the *Upper C-band R&O* that 3.7 GHz Service licensees shall be required, post-transition, to comply with certain rules to coordinate operations, minimize interference, and protect C-band incumbents. To that end, the *3.7 GHz Report and Order* and the *Upper C-band R&O* required any 3.7 GHz Service licensee with base stations located within the appropriate coordination distance to provide upon request an engineering analysis to the TT&C operator to demonstrate their ability to comply with the applicable −6 dB I/N criteria.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2026–20486 Filed 10–5–26; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1322; FR ID 370492]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before December 7, 2026. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

OMB Control Number: 3060–1322.

Title: Targeting and Eliminating Unlawful Text Messages, Implementation of the Telephone Consumer Protection Act of 1991.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit entities, and state, local or tribal governments.

Number of Respondents and Responses: 1,184 respondents; 14,208 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information is contained in sections 4(i), 4(j), 154(i), 154(j), 227, 301, 303, 307, and 316.

Total Annual Burden: 14,208 hours.

Total Annual Cost: No cost.

Needs and Uses: Text message-based scams can include links to well-designed phishing websites that appear identical to the website of a legitimate company and can fool a victim into providing personal or financial information. Texted links can also load unwanted software onto a device, including malware that steals passwords, credentials, or other personal information. The FCC is therefore requiring all mobile wireless providers to block certain text messages that are highly likely to be illegal.

In the Text Blocking Report and Order, 88 FR 21497, April 11, 2023, the FCC is requiring mobile wireless providers to block certain text messages that are highly likely to be illegal. The Commission is requiring mobile wireless providers to block—at the network level—texts purporting to be from North American Numbering Plan (NANP) numbers on a reasonable Do-Not-Originate (DNO) list, which include numbers that purport to be from invalid, unallocated, or unused numbers, and NANP numbers for which the subscriber to the number has requested that texts purporting to originate from that number be blocked. These are texts that no reasonable consumer would wish to receive because they are highly likely to be illegal.

The FCC is also ensuring that any erroneous blocking can be quickly remedied by requiring mobile wireless providers and other entities to maintain a point of contact for texters to report erroneously blocked texts.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2026–20487 Filed 10–5–26; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974; System of Records

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Rescindment of systems of records notice.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is rescinding two systems of records from its existing inventory of systems of records subject to the Privacy Act of 1974. The FDIC systems of records titled FDIC–001, Honors Attorney Applicant Records, and FDIC–011, Corporate Applicant Recruiting, Evaluating, and Electronic Referral Records, were established to support the recruiting and evaluating of applicants for FDIC employment. FDIC–001 and FDIC–011 are being rescinded because they have been identified as duplicative of a government-wide system of records notice published by the U.S. Office of Personnel Management.

DATES: This action is effective on October 6, 2026.

ADDRESSES: Interested parties are invited to submit written comments identified by Privacy Act System of Records (FDIC–001/011) by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications.* Follow the instructions for submitting comments on the FDIC website.
- *Email: comments@fdic.gov.* Include ''Comments—SORN (FDIC–001/011)'' in the subject line of communication.
- *Mail:* Jennifer M. Jones, Deputy Executive Secretary, Attention: Comments SORN (FDIC–001/011), Legal Division, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications.* Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this document will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act (FOIA).

FOR FURTHER INFORMATION CONTACT: Claire Stapleton, Acting Assistant Director, Privacy, 703–516–5500, *privacy@fdic.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, the FDIC is rescinding two systems of records: FDIC–001, Honors Attorney Applicant Records, and FDIC–011, Corporate Applicant Recruiting, Evaluating, and Electronic Referral Records. These systems of records are being rescinded because the underlying records within each are covered by an existing government-wide system of records notice (SORN) established by the U.S. Office of Personnel Management (OPM) titled OPM/GOVT–5, Recruiting, Examining, and Placement Records (last republished in full 79 FR 16834, March 26, 2014). Going forward, FDIC will rely on OPM/GOVT–5 alone as the governing SORN for these records.

A Government-wide system of records is one where a single agency has regulatory authority over records in the custody of multiple agencies, and the agency with regulatory authority publishes a SORN that applies to all of the records regardless of their custodial location. In such cases, all agencies—not just the agency with government-wide responsibilities—are responsible for complying with the terms of the SORN. *See* Office of Management and Budget Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.'' By rescinding FDIC–001 and FDIC–011 in favor of OPM/GOVT–5, the FDIC is seeking to ensure that its internal privacy practices for these records are consistent with the rules of OPM and that individuals whose data is maintained in these records are not confused by multiple notices describing the same set of records.

OPM/GOVT–5 was last republished in full in the **Federal Register** on March 26, 2014 (79 FR 16834). It was further modified on December 1, 2021 (86 FR 68291) and February 2, 2022 (87 FR 5874). Links to this and other Government-wide SORNs as well as FDIC SORNs may be found on FDIC's Privacy Program website at *https://www.fdic.gov/privacy.*

The rescinded systems of records will be removed from FDIC's inventory of record systems.

SYSTEM NAME AND NUMBER:

FDIC–001, Honors Attorney Applicant Records.

HISTORY:

84 FR 35184 (July 22, 2019), 90 FR 51316 (November 17, 2025).

SYSTEM NAME AND NUMBER:

FDIC–011, Corporate Applicant Recruiting, Evaluating, and Electronic Referral Records.

HISTORY:

84 FR 35184 (July 22, 2019), 90 FR 51316 (November 17, 2025).

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on October 2, 2026.

Jennifer M. Jones,

Deputy Executive Secretary.

[FR Doc. 2026–20433 Filed 10–5–26; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Applications for Employment with the Board of Governors of the Federal Reserve System (FR 28; OMB No. 7100–0181).

DATES: The revisions are effective October 5, 2026.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements (which contain more detailed information about the information collections and burden estimates than this notice), and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportingforms/review* or may be requested from the agency clearance officer, whose name appears above. On the page displayed at the link above, you can find the supporting information by referencing the collection identifier, FR 28.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collections

Collection title: Applications for Employment with the Board of Governors of the Federal Reserve System.

Collection identifier: FR 28.

OMB control number: 7100–0181.

General description of collection: The FR 28 consists of the following information collections:

The Application for Employment (FR 28a), which collects information to determine the qualifications of applicants for employment with the Board (such as education and training, employment records, and other general background information since the time the applicant left high school), the Applicant's Voluntary Self-Identification (FR 28s), which is an optional form that collects information on the applicant's sex, race, and ethnicity, the Research Assistant Application (FR 28i), which collects contact information, information on a Research Assistant (RA) applicant's level of interest in various economic topics and experience in different data analytics/programs, and application documentation (including resume, cover letter, transcripts, and letter(s) of recommendation), the Pre-Hire Conflict of Interest Screening Form (FR 28c), which collects information from external applicants after they have been selected for an interview at the Board regarding certain financial interests that could pose a conflict of interest based on the Board's supplemental ethics regulations and/or the duties of the position for which they are applying, and the Reference Check Form (FR 28r), which captures information from professional references when the Board conducts reference checks for external applicants who have received a verbal offer of employment.

Frequency: Event-generated.

Respondents: Individuals seeking employment with the Board.

Total estimated number of respondents: FR 28a (LinkedIn), 14,076; FR 28a (Resume Parsing), 18,098; FR 28a (Manual Application), 4,021; FR 28a (Use Last Application), 4,021; FR 28a (Interview Selection), 1,129; FR 28a (PDF), 238; FR 28s, 40,216; FR 28i, 800; FR 28c, 1,547; and FR 28r, 273.

Estimated average hours per response: FR 28a (LinkedIn), 0.46; FR 28a (Resume Parsing), 0.44; FR 28a (Manual Application), 0.69; FR 28a (Use Last Application), 0.26; FR 28a (Interview Selection), 0.71; FR 28a (PDF), 1.69; FR 28s, 0.02; FR 28i, 0.91; FR 28c, 0.62; and FR 28r, 0.34.

Total estimated change in burden: (1,950).

Total estimated annual burden hours: 22,045.

Current actions: On July 9, 2026, the Board published a notice in the **Federal Register** (91 FR 42441) requesting public comment for 60 days on the extension, with revision, of the FR 28. The Board proposed to revise the FR 28 by changing the collection platform of the FR 28a and FR 28s from Taleo to Workday, which will allow for three new submission methods in the Workday system (applying through LinkedIn, applying with resume parsing, and applying with previous application); the FR 28c, which is currently sent out via email, will also transition into Workday. The platform change will result in several data field changes for the FR 28a to (1) align with the configuration of Workday as the Board's new applicant tracking system (ATS) and (2) remove fields that are no longer necessary. By Fall 2028, the FR 28i will also be transitioned from ServiceNow to Workday. Before the transition of the FR 28i into Workday, one additional data field will be added in order to link applicants between ServiceNow and Workday; once the FR 28i is also in Workday, the data field will be removed. There were no proposed changes to the FR 28r as part of this clearance. The comment period for this notice expired on September 8, 2026. The Board did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, October 2, 2026.

Erin M. Cayce,

Assistant Secretary of the Board.

[FR Doc. 2026–20478 Filed 10–5–26; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2026–P–3632]

Determination PRALIDOXIME CHLORIDE (Autoinjector) (Pralidoxime Chloride) Solution, 600 Milligrams/2 Milliliters (300 Milligrams/Milliliter), Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) has determined that PRALIDOXIME CHLORIDE (AUTOINJECTOR) (pralidoxime chloride) solution, 600 milligrams (mg)/2 milliliters (mL) (300 mg/mL), was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for pralidoxime chloride solution, 600 mg/2 mL (300 mg/mL), if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Awo Archampong-Gray, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6243, Silver Spring, MD 20993–0002, 301–796–0110, *Awo.Archampong-Gray@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved, and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain

approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

PRALIDOXIME CHLORIDE (AUTOINJECTOR) (pralidoxime chloride) solution, 600 mg/2 mL (300 mg/mL), is the subject of NDA 018986, held by Meridian Medical Technologies, Inc., and initially approved on April 26, 1983. PRALIDOXIME CHLORIDE (AUTOINJECTOR) is indicated for intramuscular use as an adjunct to atropine in the treatment of poisoning by nerve agents having anticholinesterase activity.

PRALIDOXIME CHLORIDE (AUTOINJECTOR) (pralidoxime chloride) solution, 600 mg/2 mL (300 mg/mL), is currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Premier Research International, LLC, submitted a citizen petition dated March 25, 2026 (Docket No. FDA–2026–P–3632), under 21 CFR 10.30, requesting that the Agency determine whether PRALIDOXIME CHLORIDE (AUTOINJECTOR) (pralidoxime chloride) solution, 600 mg/2 mL (300 mg/mL), has been voluntarily withdrawn for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that PRALIDOXIME CHLORIDE (AUTOINJECTOR) (pralidoxime chloride) solution, 600 mg/2 mL (300 mg/mL), was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that PRALIDOXIME CHLORIDE (AUTOINJECTOR) (pralidoxime chloride) solution, 600 mg/2 mL (300 mg/mL), was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of PRALIDOXIME CHLORIDE (AUTOINJECTOR) (pralidoxime chloride) solution, 600 mg/2 mL (300 mg/mL), from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list PRALIDOXIME CHLORIDE (AUTOINJECTOR) (pralidoxime chloride) solution, 600 mg/2 mL (300 mg/mL), in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to this drug product may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–20442 Filed 10–5–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2026–N–10429]

Design and Safety Considerations for Clinical Trials Involving Ibogaine Drug Products; Request for Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for information; establishment of a public docket.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is describing the approaches it is considering for the design of early-phase clinical trials of ibogaine drug products and is opening a public docket to receive comments. The Department of Health and Human Services (HHS) is funding clinical development of ibogaine, and the first federally supported trials are expected to study ibogaine in adults with opioid use disorder (OUD) and adults with post-traumatic stress disorder (PTSD). FDA is building on the guidance for industry entitled ''Psychedelic Drugs: Considerations for Clinical Investigations'' by seeking comments, data, and information from the public on protocol elements relevant to ibogaine development—including dose selection and escalation, care setting, safety monitoring, eligibility criteria, stopping rules, and safety oversight, in part, because the Federal Government is funding work in this area. FDA will consider all information provided in response to this Request for Information (RFI) to inform whether and how these specific elements should be considered in its review of Investigational New Drug Applications (INDs) involving ibogaine.

DATES: Submit either electronic or written comments, data, or information by November 20, 2026.

ADDRESSES: You may submit comments, data, and information as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 20, 2026. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you

do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2026–N–10429 for ''Design and Safety Considerations for Clinical Trials Involving Ibogaine Drug Products; Request for Information.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Bernard Fischer, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4208, Silver Spring, MD 20993–0002, 855–543–3784, *IbogaineRFI@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is responsible under the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 301 *et seq.*) and the Public Health Service Act for protecting and promoting the public health through the regulation of human drugs, biological products, medical devices, foods, and other products. FDA's oversight of drug products—including ibogaine drug products and other psychedelic drugs—spans preclinical investigation through the full lifecycle of an approved product. FDA remains committed to innovation and recognizes the potential of psychedelic drugs to treat substance use disorders and certain psychiatric and neurologic conditions, while upholding its public health mission to ensure that drugs are safe, effective, and of high quality.

Consistent with this commitment, FDA has taken significant steps to support implementation of Executive Order 14401 of April 18, 2026, ''Accelerating Medical Treatments for Serious Mental Illness'' (91 FR 21709, April 22, 2026). Executive Order 14401 establishes a policy of accelerating innovative research models and appropriate drug approvals to help increase access to psychedelic drugs for serious mental illness, and it specifically notes that ibogaine compounds show potential in clinical studies to address serious mental illnesses for patients whose conditions persist after completing standard therapy.

On July 14, 2026, FDA issued the final guidance for industry entitled ''Psychedelic Drugs: Considerations for Clinical Investigations'' (Psychedelics Guidance) (91 FR 43101). The guidance provides general considerations for sponsors developing psychedelic drugs for the treatment of certain medical conditions and discusses recommendations for clinical investigations using psychedelic drugs. The Agency has also allowed an early-phase clinical study of noribogaine hydrochloride, a derivative of ibogaine, to proceed under an IND as a potential treatment for alcohol use disorder. Consistent with Executive Order 14401, FDA is coordinating with other components of HHS to support the development of ibogaine drug products under appropriate safeguards, including gathering data that bears on the considerations described below.

Federal Support for Ibogaine Clinical Development

HHS, through the Advanced Research Projects Agency for Health (ARPA–H), is funding a program to collect safety and efficacy data through early-phase clinical trials. HHS, through the National Institute on Drug Abuse (NIDA), is also funding research on ibogaine for the potential treatment of OUD. Data collected through these federally funded programs, which will be made available publicly to investigators and sponsors, may support future later-stage studies to develop ibogaine under an IND.

FDA has identified serious safety risks with ibogaine drug products that have the potential for exposing human subjects to an unreasonable and significant risk of illness or injury (see 21 CFR 312.42(b)(1)(i)), including prolongation of the heart rate-corrected QT (QTc) interval and the associated risk of life-threatening arrhythmia, neurotoxicity in nonclinical studies, and uncertainty regarding an appropriate starting dose for humans. The approaches under consideration in section II are intended to address these risks to the extent possible. To accelerate development of ibogaine drug products across development programs, FDA is describing the approaches it is considering and seeking comment on each before taking any additional action, such as issuing guidance. The elements described below provide further detail of one possible approach and are consistent with the recommendations in Psychedelics Guidance. The Agency asks clinicians, researchers, prospective sponsors, patients, and the public to provide feedback.

In determining whether a proposed investigation would expose participants to an unreasonable and significant risk of illness or injury, FDA considers the seriousness of the condition, the adequacy of available therapy, and the safeguards built into the trial. FDA's

review of any IND, including an IND supported by federal funds, remains governed by the FD&C Act and FDA's regulations, and nothing in this RFI predetermines FDA's action on any submission.

Research on Ibogaine Drug Products

While published reports suggest potential benefits of ibogaine for treatment of substance use disorders and certain psychiatric and neurologic conditions—including mood disorders, PTSD, and traumatic brain injury—ibogaine also has serious known risks. Clinical data have shown that ibogaine has serious cardiovascular risks and commonly causes substantial QTc interval prolongation, which has been associated with life-threatening ventricular arrhythmias and death. Commonly reported non-cardiac adverse events include changes in perception, impaired cognition, and impaired coordination and balance (ataxia). Published nonclinical toxicology studies in rodent and non-rodent species have reported dose-dependent neurotoxicity, ranging from tremors and ataxia at lower doses to neuronal degeneration, neuroinflammation, convulsions, and death at higher doses.

The published literature on ibogaine also has significant limitations, particularly the detail needed to characterize the investigational drug product adequately (*e.g.,* dose, quality, purity, and potency). Most studies also lack participant-level data and reliable summary-level safety, efficacy, and pharmacokinetic data.

Uncertainty about the benefit-risk profile of ibogaine drug products and evidence limitations of studies involving ibogaine is not new. In 1993, FDA convened the Drug Abuse Advisory Committee to discuss an ibogaine IND for potential treatment of cocaine dependence, focusing specifically on whether sufficient safety data existed to allow testing of ibogaine in human volunteers (58 FR 38773, July 20, 1993). The discussion centered on the challenge of establishing a meaningful therapeutic window between efficacious and toxic doses. Committee members highlighted data on neurotoxicity, difficulties in appropriately characterizing risks to enable informed consent, the need for additional preclinical data, as well as the significant unmet need for treatments for cocaine use disorder.

The questions raised at that Advisory Committee meeting remain relevant today. However, ibogaine's association with QTc interval prolongation and torsades de pointes (TdP) was identified after the Advisory Committee met in 1993, so the Committee did not address strategies to mitigate this particular life-threatening risk. FDA also recognizes, notwithstanding the various known risks, the seriousness of the health conditions at issue and the severity of unmet need that patients seeking ibogaine treatments face. Given this reality, FDA seeks information that might inform selection of populations and use cases for clinical research with ibogaine drug products under an IND where the potential risks may be acceptable. Through its current research funding, and based on available data supporting potential for a favorable benefit-risk assessment, HHS is prioritizing two initial populations, adults with OUD and adults with PTSD, in which the seriousness of the condition and the limits of available therapy may justify the known risks of ibogaine in a closely monitored early-phase trial conducted under an IND.

How FDA Evaluates Drugs That Prolong the QTc Interval

Some drugs delay cardiac repolarization, which manifests on the surface electrocardiogram as prolongation of the QTc interval. QTc prolongation increases the risk of TdP, a life-threatening ventricular arrhythmia. After several drugs were withdrawn from the market because of TdP between 1991 and 2003, the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH) guidance ''E14 Clinical Evaluation of QT/QTc Interval Prolongation and Proarrhythmic Potential for Non-Antiarrhythmic Drugs'' (ICH E14 guidance) (October 2005) was developed to address this critical safety risk. The ICH E14 guidance is applicable to chronically administered, single-dose, and episodically administered drugs. Potent QTc-prolonging drugs (*e.g.,* sotalol, dofetilide) are initiated in the hospital setting and discontinued if the QTc interval exceeds 500 milliseconds (ms), the threshold above which the overwhelming majority of drug-induced TdP cases occur. Similarly, the 500 ms threshold (marked QTc prolongation) is used as a stopping criterion in drug development. This threshold for drug discontinuation is primarily intended to prevent further drug exposure outside the hospital setting and is therefore most applicable to chronically administered drugs. Ibogaine, however, is typically administered as a single dosage regimen or occasional intermittent dosing. Because TdP occurs in a minority of patients with a QTc-interval >500 msec and can be terminated (drug infusions, direct current cardioversion, temporary transvenous pacing, etc.), it is conceivable that the benefit-risk balance of repeat ibogaine exposure could still be favorable if administered in an intensively monitored setting. Accordingly, the FDA seeks input on what data could potentially allow for repeated dosing despite known risks of TdP and corresponding established precedent for drug discontinuation among patients. FDA's preliminary thinking is that an initial trial could administer a single dose in an intensively monitored inpatient setting, as described in section II, and that data from such a trial could inform whether, and under what conditions, repeat dosing could be studied.

Experience with FDA-approved drugs may inform cardiac safety monitoring for ibogaine drug products. For example, ibutilide is an approved antiarrhythmic drug given by brief intravenous infusion to convert atrial fibrillation or atrial flutter to sinus rhythm, and it causes TdP in about 1.7 percent of patients. It should be administered by personnel trained to treat acute ventricular arrhythmias and requires continuous electrocardiographic monitoring for at least 4-hours (based on its short half-life) until the QTc-interval normalizes. Thus, while ibogaine has an active metabolite and likely would require more prolonged monitoring, the general safety monitoring approach for administration of ibutilide could be informative.

Under section 505(d) of the FD&C Act (21 U.S.C. 355(d)), for a new drug to be approved for marketing in the United States, FDA must determine that the drug is safe and effective for use under the conditions prescribed, recommended, or suggested in the product's labeling. Demonstrating effectiveness under this standard requires substantial evidence that the drug will have the effect it purports or is represented to have (see section 505(d) of the FD&C Act). Because all drugs can have adverse effects, the demonstration of safety requires a showing that the benefits of the drug outweigh its risks. Risks, such as substantial QTc prolongation, can be a basis for not approving a drug, or for placing an investigation on clinical hold, where the risk cannot feasibly be managed or outweighs the benefit, especially where the drug offers no clear advantage over available therapy and the available therapy appears to meet the needs of most patients. The benefit-risk assessment may take into consideration how serious the untreated

condition is and what benefit the drug has shown compared with existing options. Whether the risk can realistically be managed through labeling or other mechanisms is also a factor. Thus, FDA seeks input on considerations for patient safety that could help inform the Agency's evaluation of the overall benefit-risk profile of ibogaine drug products.

Other Safety Considerations for Ibogaine Drug Products

As described above, published studies in animals have reported that ibogaine can cause injury to the brain, including to the cerebellum. The 1993 Advisory Committee focused on whether a dose exists that is high enough to help patients, but low enough to avoid that injury. That question remains unresolved, and its answer depends on several issues that the published studies leave uncertain.

The most critical challenge is defining a threshold at which brain injury would be predicted to occur in humans based upon nonclinical data. If brain injury occurs only when drug exposure rises above a certain threshold, the goal would be to identify a therapeutic dose that keeps exposure below that threshold. Because neurotoxicity has been reported in several animal species, it is critical to gather nonclinical data on the blood concentrations that not only do not produce brain injury but also show no adverse effects. Comparing studies by dose alone can be misleading, because the same milligram (mg)-per-kilogram (kg) dose can result in very different blood levels depending on the animal species and how the drug is administered. FDA encourages the use of new approach methodologies in place of animal testing where appropriate.

Transient neurologic effects, particularly ataxia, are common after ibogaine administration; in one prospective study of patients with OUD who received a single 10 mg/kg dose, all participants experienced severe transient ataxia (Knuijver 2022). Whether ibogaine causes persistent neurologic or cognitive injury in humans at clinically used doses, however, has not been systematically studied, and the available reports generally lack the product characterization, exposure data, and structured follow-up needed to answer that question.

II. FDA's Initial Considerations on Trial Design for Ibogaine Drug Products

FDA welcomes INDs for ibogaine drug products and encourages sponsors to request a pre-IND meeting to discuss a specific proposed design. FDA has made no final determination as to the characteristics that would allow a trial of an ibogaine drug product to proceed, and it must evaluate whether each IND is supported by adequate scientific justification. However, based on a thorough review of available information, FDA has developed preliminary thinking [1] on a design for an initial, open-label trial in which small groups of participants each receive a single dose of ibogaine, with the dose increasing from one group to the next. This section describes that thinking and requests comments, data, and information from interested parties to facilitate the initiation of clinical trials for ibogaine drug products. This RFI does not establish legally enforceable requirements or regulatory expectations, nor does it represent FDA's final views.

Several of the elements described below apply existing requirements and recommendations to ibogaine drug products, including the informed consent requirements of 21 CFR part 50, the QTc evaluation principles in the ICH E14 guidance and FDA's guidance entitled ''E14 and S7B Clinical and Nonclinical Evaluation of QT/QTc Interval Prolongation and Proarrhythmic Potential—Questions and Answers'' (E14/S7B Q&A guidance) (August 2022), the dose-selection principles in FDA's guidance on estimating the maximum safe starting dose, and the monitoring recommendations in the Psychedelics Guidance. Other elements are not derived from existing guidance and are described here for public comment. FDA will evaluate INDs on an individual basis and consider the applicability of these (and other) elements in the context of each sponsor's unique development plan. FDA will consider the comments submitted in response to this RFI and may issue new guidance or update existing guidance in accordance with 21 CFR 10.115, or take another action, as appropriate.

A. Trial Design and Dose

An initial trial could assess whether ibogaine can be given safely under close monitoring and test whether the monitoring plan works. The main goals could be to measure how the body processes ibogaine and its active metabolite, noribogaine, in terms of both pharmacokinetics (PK) and pharmacodynamics (PD), how both ibogaine and noribogaine affect the heart, and how well participants tolerate ibogaine and noribogaine.

In initial trials, participants could be enrolled in sequential dose ascending groups, starting with an initial dose justified by the published literature and not exceeding 10 mg/kg. Within each group, participants could be dosed one at a time. A potential increase in dose for the next group could be considered after appropriate review, which may be conducted by a safety review committee (SRC), a data and safety monitoring board (DSMB), and the FDA.

CYP2D6 is the main enzyme that converts ibogaine to noribogaine, so participants could be genotyped for it, with only fast and intermediate metabolizers included, and doses adjusted if needed. Sponsors could also study whether pretreatment, such as with intravenous magnesium, reduces the magnitude of QTc-interval prolongation. The ibogaine used must be well characterized, with a certificate of analysis and the chemistry, manufacturing, and controls information required under 21 CFR 312.23(a)(7).

B. Care Setting and Monitoring

In study designs FDA is contemplating, the care setting should be an inpatient unit equipped to manage a life-threatening arrhythmia, which would likely include continuous heart rhythm monitoring, a physician-led team trained in advanced cardiac life support, a defibrillator at the bedside, drugs to treat TdP, emergency cardiac pacing, and ventilator support.

A recording before dosing (*e.g.,* 24-hour recording) should be considered to establish each participant's baseline heart rhythm. Continuous monitoring should begin at dosing, ending when there are no abnormal rhythms and the QTc interval has returned to near its pre-dose value, which could be as long as 36 hours.

More broadly, at least two staff members should monitor each participant during the drug's acute effects, including one that is a licensed mental health professional (Psychedelics Guidance). Participants should be assessed for potential adverse events, which may include ataxia, seizures, suicidal thoughts, psychosis, and other psychiatric symptoms. Cognitive testing at baseline and repeated at intervals through 12 months after dosing may help distinguish short-term effects on cognition from lasting ones.

[1] This includes review of published literature on ibogaine, regulatory experience with drugs presenting similar safety profiles, review of information regarding ibogaine administration in settings outside the United States and other information available to the Agency, and consultation with other components of the Department.

C. Medications

Before dosing, participants should stop medications that prolong the QTc-interval, slow the heart rate, interact with CYP2D6, or raise serotonin levels. These include but are not limited to opioid agonist medications (*e.g.,* methadone and buprenorphine), antipsychotics, antiemetics, and selective serotonin reuptake inhibitors (*e.g.,* paroxetine, sertraline). Any medications used to treat side effects during the trial, such as antiemetics and sleep aids, should not prolong the QTc interval.

D. Study Stopping Rules

In the scenario FDA is considering, dosing should be paused for appropriate review, which may be conducted by an SRC, a DSMB, and the FDA, if any of the following occurs:

- a participant has a sustained ventricular arrhythmia or a seizure;
- a participant's QTc prolongation above 500 ms persists more than two days;
- a participant develops new suicidal thoughts or behavior after the acute effects wear off, or lasting perceptual disturbances;
- a death or serious adverse event possibly related to ibogaine occurs; or
- two or more participants in a group have severe adverse events.

E. Safety Oversight

In the trial FDA is envisioning, the SRC should include a cardiologist. The trial should also be overseen by an independent DSMB that includes a cardiologist, a neurologist, a psychiatrist, and a biostatistician. For trials enrolling participants with OUD, both bodies should include an addiction medicine physician. FDA could also request to review the trial data in certain circumstances, which may include the occurrence of an adverse event meeting the study stopping rules or prior to allowing dose escalation in a trial cohort.

F. Discharge and Follow-Up

FDA is also envisioning that the trial would have participants stay in the telemetry monitored unit for an appropriate amount of time (*e.g.,* at least 36 hours after dosing). They should leave after meeting predetermined discharge criteria, *e.g.,* a 48-hour 12-lead ECG without QTc prolongation. Upon physician discharge approval, the patient may be escorted home by a trusted adult.

G. Who Can Enroll

Potential participants could be adults 18 to 55 years old who have stopped taking psychiatric medications. Likely exclusion criteria may include any of the following:

- structural cardiovascular disease, a baseline QTcF of 430 ms or greater, or abnormal heart rate or blood pressure;
- a personal or family history of arrhythmia or sudden cardiac death;
- a history of seizures, psychosis, or bipolar disorder;
- recent suicidal thoughts or behavior;
- a neurodegenerative or balance disorder;
- significant liver or kidney impairment; or
- pregnancy or breastfeeding.

Low serum potassium, calcium, or magnesium levels should be corrected before dosing.

H. Potential Study Populations

One prospective study population could include participants with moderate-to-severe PTSD for at least 6 months. For example, participants might have PTSD that has not responded to at least one adequate course of a selective serotonin reuptake inhibitor and one full course of PTSD-focused psychotherapy, with at least 12 months since the most recent course.

A second prospective study population could include participants with moderate or severe OUD. For example, participants might want to stop using opioids and have not achieved sustained remission in the years preceding study participation despite adequate treatment with an FDA-approved medication for OUD, including opioid agonist treatment, as well as multiple treatment attempts (outpatient, residential, inpatient).

I. Important Study Documents

FDA guidance documents, including two guidances for industry, ''E6(R3) Good Clinical Practice'' (September 2025) and ''Informed Consent Guidance for IRBs, Clinical Investigators, and Sponsors'' (August 2023), identify several essential documents that are fundamental to the planning, conduct, oversight, and evaluation of clinical trials. For this notice, the Agency highlights the following and requests comment on how these concepts should be applied in the context of ibogaine trials:

1. Informed consent. Participants must be given adequate information regarding the serious, potentially life-threatening risks of ibogaine drug products to provide informed consent for treatment.

2. Investigator's brochure. The investigator's brochure should provide an up-to-date summary of information on the investigational product and clinical and nonclinical data on the ibogaine drug product. The investigator's brochure should provide sufficient information to facilitate an understanding of the rationale for the key elements of the protocol specific to the proposed use in the clinical trial (*e.g.,* population, dosing, safety monitoring).

III. Topics for Public Input

FDA invites comment on every element described in section II. Comments are most useful if they identify the specific element addressed, state whether it should continue to be part of FDA's thinking, be modified, or if FDA should change its thinking about that element. Comments should also provide the data or clinical experience that supports that view. In addition to the preliminary thinking described above, FDA is particularly interested in comments on the following questions:

(1) General Study Design Considerations

a. Are there study populations for which a strong potential for benefit may justify the known risks of ibogaine drug products?

b. For trials enrolling participants with OUD, what approaches to discontinuing opioid agonist medications before dosing (including setting, duration, and measures to mitigate risks from loss of opioid tolerance) would best manage associated risks?

(2) Dose Selection and Escalation

a. Is a maximum dose of 10 mg/kg, reached through small, stepwise cohorts, appropriate for identifying a minimum pharmacologically active dose and an approximate MTD? Doses ranging from 5 to 20 mg/kg have been described in published clinical reports; however, these doses lack adequate safety margins based on available nonclinical data. Should dosing be based on total body weight, lean body weight, or a target exposure? Commenters are encouraged to consider the following:

i. What animal pharmacokinetic data, if any, are available or can be produced to correlate with no observed adverse effect levels in animal studies from published literature in order to determine whether adequate safety margins exist relative to anticipated human exposures to mitigate neurotoxicity risks?

ii. What threshold for neurotoxicity can be identified from animal studies across multiple species following both single and repeated dosing, and what role noribogaine, the metabolite of

ibogaine, may be playing in contributing to or modulating such effects?

iii. Given the significant limitations of published literature on clinical investigations with ibogaine, including inadequate characterization of the drug product and dose, how can clinical experience, which may include clinical neurological assessments, cognitive testing, brain imaging, or laboratory testing, be used in conjunction with animal study findings to inform appropriate monitoring strategies that would help detect, and ideally mitigate, neurotoxicity risks in clinical trials?

(3) Safety Considerations

a. Cardiac Safety Considerations. As ibogaine may have effects that last several days, it is anticipated that a multi-day cardiac safety monitoring period involving inpatient observation may be required. Potential safety monitoring requirements may include but are not limited to: (i) continuous cardiac rhythm monitoring; (ii) direct access to cardiac resuscitation; (iii) duration of electrocardiographic monitoring, given that ibogaine and its metabolite, noribogaine, are cleared slowly; and (iv) managing QTc prolongation when the full dose has already been given. Additional considerations include:

i. Given cardiac safety requirements (*e.g.,* continuous electrocardiogram monitoring, staff trained to provide advanced cardiac life support interventions, resuscitation equipment), what care setting (*e.g.,* intensive care unit or hospital telemetry) and safeguards would be needed to conduct an early phase trial of an ibogaine drug product in the United States?

ii. How should QTc prolongation be managed for a drug given as a single dose, and what potential pre-treatment to mitigate QTc prolongation and monitoring measures might inform dosing?

iii. What study design would best quantify and distinguish the effects on QTc interval change from baseline of ibogaine alone and ibogaine administered with pre-treatment with magnesium or other products intended to minimize delayed repolarization?

iv. What upper pre-treatment QTc threshold as an exclusion criterion for enrollment (*e.g.,* greater than 430 ms) would best minimize the proportion of patients who experience marked QTc prolongation of greater than 500 ms?

v. What participant-level and study-wide stopping rules would best mitigate cardiac arrythmia risks?

vi. What enrollment criteria would best minimize risk of cardia arrhythmia in early-stage trials based on the known risk factors for TdP (*e.g.,* low serum potassium, calcium, or magnesium, bradycardia, structural heart disease, other QTc-prolonging medications, a personal or family history suggesting congenital long QT syndrome, and populations with known susceptibility to arrhythmia, including women)?

b. Central Nervous System Safety Considerations. Potential safety monitoring requirements may include but are not limited to: (i) monitoring for seizures and cerebellar abnormalities, such as ataxia; (ii) precautions to minimize risk of falls; (iii) assessment of the duration and persistence of neurologic and cognitive effects; and (iv) criteria for safe discharge.

i. What clinical safety outcomes or assessments are needed to inform acute neurologic and cognitive risks?

ii. What duration of follow-up and assessments are needed to characterize long-term neurologic and cognitive sequelae to inform benefit-risk assessment?

(4) Ethical and Oversight Considerations

a. What informed consent information would ensure prospective research participants understand the serious, potentially life-threatening risks of ibogaine drug products?

b. What factors might DSMBs and Institutional Review Boards need to consider?

c. What would make data from treatment settings outside the United States useful in designing a trial, including the individual-level pharmacokinetic, electrocardiographic, and product information that would be needed to interpret it?

FDA is not seeking comments on the following topics: (1) the safety or effectiveness of any specific ibogaine drug product, or the merits of any pending or anticipated application before the Agency; (2) the scheduling status of ibogaine drug products under the Controlled Substances Act, which is addressed through separate statutory processes; (3) the legalization or decriminalization of psychedelic substances, or the merits of state or local programs authorizing their use, although FDA welcomes input on data collection from such programs as described above; (4) religious, ceremonial, or personal (non-medical) use of psychedelic substances; or (5) individual disputes, enforcement matters, or complaints regarding specific practitioners or entities. Comments addressing these topics may not be considered.

FDA will review the comments received and expects to reflect them, as appropriate, in regulatory activities, including review of protocols for federally supported and other clinical trials of ibogaine drug products and future guidance on their development.

IV. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. Although FDA verified the website addresses in this document, please note that websites are subject to change over time.

1. Alper, K.R., Stajić, M., and J.R. Gill, ''Fatalities temporally associated with the ingestion of ibogaine,'' *J. Forensic Sci.,* 57(2):398–412 (2012), available at doi:10.1111/j.1556-4029.2011.02008.x.
2. * Brunt, T.M., ''Rare but relevant: ibogaine and cardiovascular complications—prolonged QT interval and ventricular arrhythmias,'' *Addiction,* 121(6):1616–1621 (2026), available at doi:10.1111/add.70319.
3. * Knuijver, T., Schellekens, A., Belgers, M., Donders, R., van Oosteren, T., et al., ''Safety of ibogaine administration in detoxification of opioid-dependent individuals: a descriptive open-label observational study,'' *Addiction,* 117(1):118–128 (2022), available at doi:10.1111/add.15448.
4. * Knuijver, T., ter Heine, R., Schellekens, A.F.A., Heydari, P., Lucas, L., et al., ''The pharmacokinetics and pharmacodynamics of ibogaine in opioid use disorder patients,'' *J. Psychopharmacol.,* 38(5):481–488 (2024), available at doi:10.1177/02698811241237873.
5. * Köck, P., Froelich, K., Walter, M., Lang, U., and K.M. Dürsteler, ''A systematic literature review of clinical trials and therapeutic applications of ibogaine,'' *J. Subst. Abuse Treat.,* 138:108717 (2022), available at doi:10.1016/j.jsat.2021.108717.
6. Ona, G., Rocha, J.M., Bouso, J.C., Hallak, J.E.C., Borràs, T., et al., ''The adverse events of ibogaine in humans: an updated systematic review of the literature (2015–2020),'' *Psychopharmacology,* 239(6):1977–1987 (2022), available at doi:10.1007/s00213-021-05964-y.
7. Roden, D.M., ''Drug-induced prolongation of the QT interval,'' *N. Engl. J. Med.,* 350(10):1013–1022 (2004), available at doi:10.1056/NEJMra032426.
8. Rocha, J.M., Reis, J.A.S., Bouso, J.C.,

Hallak, J.E.C., and R.G. Dos Santos, ''Identifying setting factors associated with improved ibogaine safety: a systematic review of clinical studies,'' *Eur. Arch. Psychiatry Clin. Neurosci.,* 273(7):1527–1542 (2023), available at doi:10.1007/s00406-023-01590-1.

9. * U.S. Food and Drug Administration guidance for industry ''E14 and S7B Clinical and Nonclinical Evaluation of QT/QTc Interval Prolongation and Proarrhythmic Potential—Questions and Answers'' (August 2022), available at *https://www.fda.gov/media/161198/download.*
10. * U.S. Food and Drug Administration guidance for industry ''Informed Consent Guidance for IRBs, Clinical Investigators, and Sponsors'' (August 2023), available at *https://www.fda.gov/media/88915/download.*
11. * U.S. Food and Drug Administration guidance for industry ''E6(R3) Good Clinical Practice'' (September 2025), available at *https://www.fda.gov/media/169090/download.*
12. * U.S. Food and Drug Administration guidance for industry ''Estimating the Maximum Safe Starting Dose in Initial Clinical Trials for Therapeutics in Adult Healthy Volunteers'' (July 2005), available at *https://www.fda.gov/media/72309/download.*
11. * U.S. Food and Drug Administration guidance for industry ''QTc Information in Human Prescription Drug and Biological Product Labeling'' (December 2025), available at *https://www.fda.gov/media/170814/download.*

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–20427 Filed 10–5–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2026–N–4291]

Teva Pharmaceuticals USA, Inc., et al.; Withdrawal of Approval of 15 Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** on May 7, 2026. The document announced the withdrawal of approval of 15 abbreviated new drug applications (ANDAs) from multiple applicants, withdrawn as of June 8, 2026. The document indicated that FDA was withdrawing approval of ANDA 210285 for dimethyl fumarate delayed-release capsule, 120 milligrams (mg) and 240 mg, held by Upsher-Smith Laboratories, LLC., U.S. Agent for Sawai USA, Inc., 6701 Evenstad Dr. N, Suite 300, Maple Grove, MN 55369. Before FDA withdrew the approval of this ANDA, Upsher-Smith Laboratories, LLC., U.S. Agent for Sawai USA, Inc., informed FDA that they did not want the approval of the ANDA withdrawn. Because Upsher-Smith Laboratories, LLC., U.S. Agent for Sawai USA, Inc., timely requested that approval of the ANDA not be withdrawn, the approval is still in effect. This notice removes the entry for ANDA 210285.

FOR FURTHER INFORMATION CONTACT: Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676, Silver Spring, MD 20993–0002, 301–796–3471, *Martha.Nguyen@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Thursday, May 7, 2026 (91 FR 24879), appearing on page 24879 in FR Doc. 2026–09012, the following correction is made:

On page 24879, in the table, the entry for ANDA 210285 is removed.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–20460 Filed 10–5–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2026–N–11259]

Issuance of Priority Review Voucher; Rare Pediatric Disease Product; FAYUVI (rebisufligene etisparvovec-hopf)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of a priority review voucher to the sponsor of a rare pediatric disease product application. The Federal Food, Drug, and Cosmetic Act (FD&C Act) authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the award of the priority review voucher. FDA has determined that FAYUVI (rebisufligene etisparvovec-hopf), approved on September 17, 2026, manufactured by Ultragenyx Pharmaceutical Inc., meets the criteria for a priority review voucher.

FOR FURTHER INFORMATION CONTACT: Myrna Hanna, Center for Biologics Evaluation and Research, Food and Drug Administration, *industry.biologics@fda.hhs.gov,* 240–402–7911.

SUPPLEMENTARY INFORMATION: FDA is announcing the issuance of a priority review voucher to the sponsor of an approved rare pediatric disease product application. Under section 529 of the FD&C Act (21 U.S.C. 360ff), FDA will award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA has determined that FAYUVI (rebisufligene etisparvovec-hopf), manufactured by Ultragenyx Pharmaceutical Inc., meets the criteria for a priority review voucher. FAYUVI (rebisufligene etisparvovec-hopf) is an adeno-associated virus (AAV) vector-based gene therapy indicated for the treatment of neurologic manifestations of mucopolysaccharidosis type IIIA (MPS IIIA, Sanfilippo syndrome type A) in pediatric patients with preserved neurodevelopmental function.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to *https://www.fda.gov/industry/developing-products-rare-diseases-conditions/rare-pediatric-disease-rpd-designation-and-voucher-programs.* For further information about FAYUVI (rebisufligene etisparvovec-hopf), go to the Center for Biologics Evaluation and Research's Approved Cellular and Gene Therapy Products website at *https://www.fda.gov/vaccines-blood-biologics/cellular-gene-therapy-products/approved-cellular-and-gene-therapy-products.*

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–20434 Filed 10–5–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be held as a virtual meeting and will be open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed by clicking on the links below.

Name of Committee: President's Cancer Panel.

Date: October 15, 2026.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: Opportunities to Reduce Obesity-Related Cancer Risk: GLP–1 Medications.

Address: National Institutes of Health, 31 Center Drive, Room 11A30B, Bethesda, MD 20892.

Meeting Format: Virtual Meeting. Access to Meeting: *https://cbiit.webex.com/weblink/register/r8def1cffd7e6e17a9b599f8f3c6e9441.*

Contact Person: Samantha L. Finstad, Ph.D., Executive Secretary, President's Cancer Panel, Office of the Director, National Cancer Institute, NIH, 31 Center Drive, Room 11A30B, MSC 2590, Bethesda, MD 20892, 240–276–6460, *samantha.finstad@nih.gov.*

Registration is not required to attend this meeting.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the PCP website: *https://prescancerpanel.cancer.gov/,* where an agenda, instructions for accessing the virtual meeting, and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 1, 2026.

Kuleni D. Onnen,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–20424 Filed 10–5–26; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2026–0003; OMB No. 1660–0072]

Agency Information Collection Activities: Submission for OMB Review, Comment Request; Hazard Mitigation Grant Programs

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. FEMA invites the general public to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, this notice seeks comments concerning the information collection instruments for Hazard Mitigation Grant Programs (HMA).

DATES: Comments must be submitted on or before November 5, 2026.

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: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or H-Camille Crain, Deputy Director, Documents, Design, Program Effectiveness Branch, FEMA, at 202–212–4871 or via email at *H-Camille.Crain@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: This collection of information is necessary for eligibility determinations, grants management, and compliance with other Federal laws and regulations for HMA's financial and technical assistance programs. HMA programs included in this information collection are the Flood Mitigation Assistance (FMA) program and FMA Swift Current (Swift Current), the Building Resilient Infrastructure and Communities (BRIC) program, BRIC Direct Technical Assistance (DTA), the Pre-Disaster Mitigation (PDM) program, the Safeguarding Tomorrow Revolving Loan Fund (RLF) Program, the Rehabilitation of High Hazard Potential Dams (HHPD), and the National Dam Safety Program (NDSP).

The FMA program and FMA's Swift Current is authorized by section 1366 of the National Flood Insurance Act of 1968, as amended (Pub. L. 90–448, 42 U.S.C. 4104c); the Flood Disaster Protection Act of 1973 (Pub. L. 93–234, 42 U.S.C. 4001 *et seq.*); and the National Flood Insurance Reform Act of 1994 (Pub. L. 103–325, 42 U.S.C. 4001). FMA under 44 CFR part 77 (October 1, 2021) (previously located at 44 CFR part 79) provides funding for measures taken to reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other structures insured under the National Flood Insurance Program (NFIP).

The BRIC program is authorized by section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended (Pub. L. 93–288, 42 U.S.C. 5133). The BRIC program seeks to fund effective and innovative activities that will reduce risk, increase resilience, and serve as a catalyst to encourage the whole community to invest in and adopt hazard mitigation policies. BRIC is designed to promote a national culture of preparedness and public safety by encouraging investments to protect our communities and infrastructure and strengthen our national hazard mitigation capabilities to foster resilience.

BRIC DTA provides non-financial direct technical assistance as authorized by section 203 of the Stafford Act (42 U.S.C. 5133) to eligible communities, helping them reduce risks from natural disasters and build resilience. The program offers hands-on guidance for developing and implementing mitigation projects, navigating funding opportunities, and strengthening local capability and capacity to address natural hazards. BRIC DTA focuses on ensuring communities can access resources and expertise to enhance disaster preparedness and resilience.

The PDM grant program is authorized under section 203 of the Stafford Act (42 U.S.C. 5133). PDM makes Federal funds available to State, local, Tribal, and territorial governments to plan for and implement sustainable cost-effective

measures designed to reduce the risk to individuals and property from future natural hazards, while also reducing reliance on federal funding from future disasters.

The NDSP is authorized under section 215 of the Water Resources Development Act of 1996 (Pub. L. 104–303, 33 U.S.C. 467f). The NDSP was most recently reauthorized in the Water Resources Reform and Development Act of 2024 (Pub. L. 118–272, 33 U.S.C. 467j). The NDSP enhances dam safety across the United States by reducing risks to life and property associated with dam failures through coordinated efforts among federal and state agencies to improve dam safety practices, promote public awareness, and support the development and implementation of safety programs.

The HHPD program, established under section 5006 of the Water Infrastructure Improvements for the Nation Act (Pub. L. 114–332, 33 U.S.C. 467f–2) signed on December 16, 2016, is a grant program under the NDSP. The HHPD program provides technical, planning, design, and construction assistance through grants to support the rehabilitation of eligible high hazard potential dams. 33 U.S.C. 467f–2(f) mandates the development of a risk-based priority system to identify eligible high hazard potential dams for grant funding. Applicants must coordinate with the State Dam Safety offices and State Hazard Mitigation Officer to meet grant requirements, including NFIP participation, hazard mitigation plans, floodplain management plans, risk prioritization, and state dam safety agency approval.

The Safeguarding Tomorrow RLF program, authorized under section 205 of the Stafford Act (42 U.S.C. 5135), is a competitive grant program providing capitalization grants to States, eligible Federally recognized Tribes, territories, and the District of Columbia to establish revolving loan funds that provide hazard mitigation assistance for local governments to reduce risks from natural hazards and disasters.

In accordance with 2 CFR 200.204, FEMA requires that all parties interested in receiving FEMA mitigation grants submit an application package for grant assistance. Applications and subapplications for BRIC and FMA are submitted via FEMA Grants Outcomes (FEMA GO). FEMA GO was developed to meet the intent of the e-Government initiative, authorized by Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107, 31 U.S.C. 6101). This initiative requires that all Government agencies both streamline grant application processes and provide for the means to electronically create, review, and submit a grant application via the internet.

FEMA is revising this information collection by adding four new instruments for the Safeguarding Tomorrow RLF Grant (the Grants Capitalization Form, Project Proposal List, Intended Use Plan, and Environmental and Historic Preservation Checklist) and removing one instrument for the BRIC program (the BRIC National Review Panel Solicitation). The new instruments for the Safeguarding Tomorrow RLF Grant will facilitate program administration, track proposed projects, outline intended use of funds, and identify information that may be needed for an EHP review. Revisions were made to the existing EHP review instrument. FEMA is removing the BRIC National Review Panel Solicitation from this information collection to streamline the application review process. Because the application review process is now conducted entirely by internal FEMA personnel, this shift eliminates the need for external data collection, thereby reducing the regulatory burden on respondents.

This proposed information collection previously published in the **Federal Register** on February 11, 2026, at 91 FR 6238 with a 60-day public comment period. No comments were received. Two changes from the previously published notice are that FEMA is no longer adding FEMA Form FF–206–FY–26–106, HHPD Prioritization Tool to this information collection, but is adding FEMA Form FF–206–FY–26–110, Safeguarding Tomorrow Through Ongoing Risk Mitigation Revolving Loan Fund (RLF) Environmental and Historic Preservation (EHP) Checklist. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Hazard Mitigation Grant Programs.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0072.

FEMA Forms: FEMA Form FF–206–FY–22–151, Quarterly Progress Report (QPR); FEMA Form FF–206–FY–22–155, Building Resilient Infrastructure and Communities (BRIC) Direct Technical Assistance (DTA) Request Form; FEMA Form FF–206–FY–22–156, Model Statement of Assurances for Property Acquisition Projects; FEMA Form FF–206–FY–22–157, FEMA Model Deed Restriction; FEMA Form FF–206–FY–22–158, Acknowledgement of Conditions For Properties Using FEMA Hazard Mitigation Assistance Grant Funds; FEMA Form FF–206–FY–26–100, Benefit Cost Analysis (BCA) Toolkit; FEMA Form FF–206–FY–26–101, Safeguarding Tomorrow Revolving Loan Fund (RLF) Grant Capitalization Application; FEMA Form FF–206–FY–26–102 Safeguarding Tomorrow Revolving Loan Fund (RLF) Project Proposal List (PPL); FEMA Form FF–206–FY–26–103, Safeguarding Tomorrow Revolving Loan Fund (RLF) Intended Use Plan (IUP); FEMA Form FF–206–FY–26–104, FEMA Go Project Narrative Subgrant Application; FEMA Form FF–206–FY–26–109, Environmental and Historic Preservation (EHP) Review; and FEMA Form FF–206–FY–26–110, Safeguarding Tomorrow Through Ongoing Risk Mitigation Revolving Loan Fund (RLF) Environmental and Historic Preservation (EHP) Checklist.

Abstract: HMA's financial and technical assistance programs use an automated grant application and management system called FEMA GO to collect information for eligibility determinations, grants management, and compliance with other Federal laws and regulations. The FEMA GO system includes application information needed to apply for funding under these grant programs. These programs seek to reduce or eliminate risk to insured structures, increase resilience, invest in community hazard mitigation policies, and strengthen local capability and capacity to address natural hazards.

Affected Public: State, local or Tribal Governments.

Estimated Number of Respondents: 705.

Estimated Number of Responses: 25,949.

Estimated Total Annual Burden Hours: 129,858.

Estimated Total Annual Respondent Cost: $9,582,221.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $8,403,640.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the Agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Nigel S. Allicock,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2026–20458 Filed 10–5–26; 8:45 am]

BILLING CODE 9111–BW–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0082]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application To Replace Permanent Resident Card

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-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 extension 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 60 days until December 7, 2026.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0082 in the body of the letter, the agency name and Docket ID USCIS–2009–0002. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2009–0002.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 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

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–2009–0002 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:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application To Replace Permanent Resident Card.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–90; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Form I–90 is used by USCIS to determine eligibility to replace a Lawful Permanent Resident Card.

(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–90 (paper) is 444,601 and the estimated hour burden per response is 1.82 hours; the estimated total number of respondents for the information collection I–90 (electronic) is 296,400 and the estimated hour burden per response is 1.59 hours; and the estimated total number of respondents for the information collection biometrics is 741,001 and the estimated hour burden per response is 1.17 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 2,146,087 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 $254,163,343.

Dated: October 1, 2026.

John R. Pfirrmann-Powell,

Acting Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2026–20422 Filed 10–5–26; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6565–N–02]

Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for 2027

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: This document designates ''Difficult Development Areas'' (DDAs) and ''Qualified Census Tracts'' (QCTs) for purposes of the Low-Income Housing Tax Credit (LIHTC). The United States Department of Housing and Urban Development (HUD) makes new DDA and QCT designations annually.

ADDRESSES: *Copies Available Electronically:* This notice and additional information about DDAs and QCTs, including the lists of DDAs and QCTs, are available electronically on the internet at *https://www.huduser.gov/portal/datasets/qct.html.*

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions, contact Richard Duckworth, Economist, Public Finance and Regulatory Analysis Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW, Room 8216, Washington, DC 20410–6000; telephone number 202–402–3685, or send an email to *Richard.Duckworth@hud.gov.* For specific legal questions pertaining to Internal Revenue Code (IRC) Section 42, Office of the Associate Chief Counsel, Passthroughs and Special Industries, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224; telephone number 202–317–4137. For questions about the ''HUBZone'' program, contact the Office of Government Contracting and Business Development, U.S. Small Business Administration, 409 Third Street SW, Suite 8800, Washington, DC 20416; telephone number 1–866–443–4110, or send an email to *certifications@sba.gov*. Additional copies of this notice are available through HUD User at, toll-free, 800–245–2691 for a small fee to cover duplication and mailing costs. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION:

I. This Notice

Under IRC Section 42(d)(5)(B)(iii)(I),[1] for purposes of the LIHTC, the Secretary of HUD must designate DDAs, which are areas with high construction, land, and utility costs relative to area median gross income (AMGI). This notice designates DDAs for each of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. HUD makes the designations of DDAs in this notice based on modified Fiscal Year (FY) 2026 Small Area Fair Market Rents (Small Area FMRs, SAFMRs), FY 2026 nonmetropolitan county FMRs, FY 2026 income limits, and 2020 Census population counts, as explained below.

Similarly, under IRC Section 42(d)(5)(B)(ii)(I), the Secretary of HUD must designate QCTs, which are areas where either 50 percent or more of the households have an income less than 60 percent of the AMGI or have a poverty rate of at least 25 percent. This notice designates QCTs based on new income and poverty data released in the American Community Survey (ACS). Specifically, HUD relies on the most recent three sets of ACS data to ensure that anomalous estimates, due to sampling error, do not affect the QCT status of tracts.

II. Data Used To Designate DDAs

HUD uses data from the 2020 Census on total population of metropolitan areas, metropolitan ZIP Code Tabulation Areas (ZCTAs), and nonmetropolitan areas in the designation of DDAs. The Office of Management and Budget (OMB) published updated metropolitan areas in OMB Bulletin No. 23–01 on July 21, 2023.[2] FY 2026 FMRs and FY 2026 income limits HUD uses to designate DDAs are based on these metropolitan statistical area (MSA) definitions, with modifications to account for substantial differences in rental housing markets (and, in some cases, median family income levels) within MSAs. HUD calculates Small Area FMRs for the ZCTAs, or portions of ZCTAs within the metropolitan areas defined by OMB Bulletin 23–01.

III. Data HUD Uses To Designate QCTs

HUD uses data from the 2020 Census on total population of census tracts, metropolitan areas, and the nonmetropolitan parts of states in the designation of QCTs. The FY 2026 income limits HUD uses to designate QCTs are based on these MSA definitions with modifications to account for substantial differences in rental housing markets (and in some cases median family income levels) within MSAs. In this QCT designation, HUD uses the OMB metropolitan area definitions published in OMB Bulletin No. 23–01, without modification, for purposes of evaluating how many census tracts can be designated under the population cap but uses the HUD-modified definitions and their associated area median family incomes for determining QCT eligibility.

Because the 2020 Decennial Census did not include questions on respondent household income, HUD uses ACS data to designate QCTs. The ACS tabulates data collected over 5 years to provide estimates of socioeconomic variables for small areas containing fewer than 65,000 persons, such as census tracts. Due to sample-related anomalies in estimates from year to year, HUD uses three sets of ACS tabulations to minimize the effect of anomalous estimates on QCT status.

IV. Background

The U.S. Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) are authorized to interpret and enforce the provisions of IRC Section 42 (26 U.S.C. 42). In order to assist in understanding HUD's mandated designation of DDAs and QCTs for use in administering IRC Section 42, a summary of the section is provided below. The following summary does not purport to bind Treasury or the IRS in any way, nor does it purport to bind HUD, since HUD has authority to interpret or administer the IRC only in instances where it receives explicit statutory delegation.

V. Summary of the Low-Income Housing Tax Credit

A. Determining Eligibility

The LIHTC is a tax incentive intended to increase the availability of low-income rental housing. IRC Section 42 provides an income tax credit to certain owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (credit ceiling) is limited by population. Section 42 allows each state a credit ceiling based on a statutory formula indicated at IRC Section 42(h)(3). States may carry forward unallocated credits derived from the credit ceiling for one year;

[1] 26 U.S.C. 42(d)(5)(B)(iii)(I),

[2] Available at: *https://www.whitehouse.gov/wp-content/uploads/2023/07/OMB-Bulletin-23-01.pdf.*

however, to the extent such unallocated credits are not used by then, the credits go into a national pool to be allocated to qualified states as additional credit. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit. Besides IRC Section 42 credits derived from the credit ceiling, states may also provide IRC Section 42 credits to owners of buildings based on the percentage of certain building costs financed by tax-exempt bond proceeds. Credits provided based on the use of tax-exempt bond proceeds do not reduce the credits available from the credit ceiling. *See* IRC Section 42(h)(4).

The credits allocated to a building are based on the cost of units placed in service as low-income units under particular minimum occupancy and maximum rent criteria. Prior to the enactment of the Consolidated Appropriations Act, 2018 (the 2018 Act), Public Law 115–141, under IRC Section 42(g), a building was required to meet one of two tests to be eligible for the LIHTC; either: (1) 20 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of AMGI, or (2) 40 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. A unit is ''rent-restricted'' if the gross rent, including an allowance for tenant-paid utilities, does not exceed 30 percent of the imputed income limitation (*i.e.,* 50 percent or 60 percent of AMGI) applicable to that unit. The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low-income character of the building for at least an additional 15 years.

The 2018 Act added a third test, the average income test. *See* IRC Section 42(g)(1) as amended by Public Law 115–141, Division T, Section 103(a) (March 23, 2018). A building meets the minimum requirements of the average income test if 40 percent or more (25 percent or more in the case of a project located in a high-cost housing area as described in IRC Section 142(d)(6)) of the residential units in such project are both rent-restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit. The taxpayer designates the imputed income limitation for each unit. The designated imputed income limitation of any unit is determined in 10-percentage-point increments, and may be designated as 20, 30, 40, 50, 60, 70, or 80 percent of AMGI. The average of the imputed income limitations designated must not exceed 60 percent of AMGI. *See* IRC Section 42(g)(1)(C).

B. Calculating the LIHTC

The LIHTC reduces income tax liability dollar-for-dollar. It is taken annually for a term of 10 years and is intended to yield a present value of either: (1) 70 percent of the ''qualified basis'' for new construction or substantial rehabilitation expenditures that are not federally subsidized (as defined in IRC Section 42(i)(2)), or (2) 30 percent of the qualified basis for the cost of acquiring certain existing buildings or projects that are federally subsidized. The tax credit rates are determined monthly under procedures specified in IRC Section 42 and cannot be less than 9 percent for new buildings that are not federally subsidized, and cannot be less than 4 percent for buildings that are federally subsidized. Individuals can use the credits up to a deduction equivalent of $25,000 (the actual maximum amount of credit that an individual can claim depends on the individual's marginal tax rate). For buildings placed in service after December 31, 2007, individuals can use the credits against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credits against ordinary income tax, and, for buildings placed in service after December 31, 2007, against the alternative minimum tax. These corporations also can deduct losses from the project.

The qualified basis represents the product of the building's ''applicable fraction'' and its ''eligible basis.'' The applicable fraction is based on the number of low-income units in the building as a percentage of the total number of units, or based on the floor space of low-income units as a percentage of the total floor space of residential units in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to a capital account that are incurred prior to the end of the first taxable year in which the qualified low-income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated DDAs or designated QCTs, or for credits awarded from the state's per capita allocation, to buildings designated by the state agency, eligible basis may be increased up to 130 percent from what it would otherwise be. This means that the available credits also may be increased by up to 30 percent. For example, if a 70 percent credit is available, it effectively could be increased to as much as 91 percent (70 percent × 130 percent).

C. Defining Difficult Development Areas (DDAs) and Qualified Census Tracts (QCTs)

As stated above, IRC Section 42 defines a DDA as an area designated by the Secretary of HUD that has high construction, land, and utility costs relative to the AMGI. All designated DDAs in metropolitan areas (taken together) may not contain more than 20 percent of the aggregate population of all metropolitan areas, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all nonmetropolitan areas. *See* IRC Section 42(d)(5)(B)(iii).

Similarly, IRC Section 42 defines a QCT as an area designated by the Secretary of HUD where, for the most recent year for which census data are available on household income in such tract, either 50 percent or more of the households in the tract have an income which is less than 60 percent of the AMGI or the tract's poverty rate is at least 25 percent. All designated QCTs in a single metropolitan area or nonmetropolitan area (taken together) may not contain more than 20 percent of the population of that metropolitan or nonmetropolitan area. Thus, unlike the restriction on DDA designations, QCTs are restricted by the total population of each individual area as opposed to the aggregate population across all metropolitan areas and nonmetropolitan areas. *See* IRC Section 42(d)(5)(B)(ii).

IRC Section 42(d)(5)(B)(v) allows states to award an increase in basis up to 30 percent to buildings located outside of federally designated DDAs and QCTs if the increase is necessary to make the building financially feasible. This state discretion applies only to buildings allocated credits under the state housing credit ceiling and is not permitted for buildings receiving credits in connection with tax-exempt bonds. Rules for such designations shall be set forth in the LIHTC-allocating agencies' qualified allocation plans (QAPs). *See* IRC Section 42(m).

VI. Explanation of HUD Designation Method

A. 2027 Difficult Development Areas

In developing the 2027 list of DDAs, as required by IRC Section 42(d)(5)(B)(iii), HUD compared housing costs with incomes. HUD used 2020

Census population for ZCTAs, and nonmetropolitan areas, and the MSA definitions, as published in OMB Bulletin 23–01 on July 21, 2023. In keeping with past practice of basing the coming year's DDA designations on data from the preceding year, the basis for these comparisons is the FY 2026 HUD income limits for very low-income households (very low-income limits, or VLILs), which are based on 50 percent of AMGI, and modified FMRs based on the FY 2026 FMRs used for the Housing Choice Voucher (HCV) program. For metropolitan DDAs, HUD used Small Area FMRs based on three annual releases of ACS data, to compensate for statistical anomalies which affect estimates for some ZCTAs. For nonmetropolitan DDAs, HUD used the FY 2026 FMRs published on August 22, 2025, and effective on October 1, 2025 (90 FR 41096), as updated by the April 21, 2026, publication effective May 21, 2026 (91 FR 21301).

In formulating the FY 2026 FMRs and VLILs, HUD modified the current OMB definitions of MSAs to account for differences in rents among areas within each current MSA that were in different FMR areas under definitions used in prior years. HUD formed these ''HUD Metro FMR Areas'' (HMFAs) in cases where one or more of the parts of newly defined MSAs were previously in separate FMR areas. All counties added to metropolitan areas are treated as HMFAs with rents and incomes based on their own county data, where available. All HMFAs are contained entirely within MSAs. (Complete details on HUD's process for determining FY 2026 FMR areas and FMRs are available at *https://www.huduser.gov/portal/datasets/fmr.html#2026.* Complete details on HUD's process for determining FY 2026 income limits are available at *https://www.huduser.gov/portal/datasets/il.html#2026*).

HUD's unit of analysis for designating metropolitan DDAs consists of ZCTAs, whose Small Area FMRs are compared to metropolitan VLILs. For purposes of computing VLILs in metropolitan areas, HUD considers entire MSAs in cases where these were not broken up into HMFAs; and HMFAs within the MSAs that were broken up for such purposes. Hereafter in this notice, the unit of analysis for designating metropolitan DDAs will be called the ZCTA, and the unit of analysis for nonmetropolitan DDAs will be the nonmetropolitan county or county equivalent area. The procedure used in making the DDA designations follows:

1. *Calculate FMR-to-Income Ratios.* For each metropolitan ZCTA and each nonmetropolitan county, HUD calculated a ratio of housing costs to income. HUD used a modified FY 2026 two-bedroom Small Area FMR for ZCTAs, a modified FY 2026 two-bedroom FMR for nonmetropolitan counties, and the FY 2026 four-person VLIL for this calculation.

The modified FY 2026 two-bedroom Small Area FMRs for ZCTAs differ from the FY 2026 Small Area FMRs in four ways. First, HUD did not limit the Small Area FMR to 150 percent of its metropolitan area FMR. Second, HUD did not limit annual decreases in Small Area FMRs to ten percent, which was first applied in the FY 2018 FMR calculations. Third, HUD adjusted the Small Area FMRs in New York City using the New York City Housing and Vacancy Survey, which is conducted by the U.S. Census Bureau, to adjust for the effect of local rent control and stabilization regulations. No other jurisdictions have provided HUD with data that could be used to adjust Small Area FMRs for rent control or stabilization regulations.[3] Finally, the Small Area FMRs are not limited to the State nonmetropolitan minimum FMR.

The FY 2026 two-bedroom FMR for nonmetropolitan counties was modified only by removing the state nonmetropolitan minimum FMR.

The numerator of the ratio, representing the development cost of housing, was the area's modified FY 2026 FMR, or modified Small Area FMR in metropolitan areas. In general, the FMR is based on the 40th-percentile gross rent paid by recent movers to live in a standard quality two-bedroom rental unit.

The denominator of the ratio, representing the maximum income of eligible tenants, was the monthly LIHTC income-based rent limit, which was calculated as 1/12 of 30 percent of 120 percent of the area's 4-person VLIL (where the VLIL was rounded to the nearest $50).

2. *Sort Areas by Ratio and Exclude Unsuitable Areas.* The ratios of the FMR, or Small Area FMR, to the LIHTC income-based rent limit were arrayed in descending order, separately, for ZCTAs and for nonmetropolitan counties. ZCTAs with populations less than 100 were excluded in order to avoid designating areas unsuitable for residential development, such as ZCTAs containing airports.

3. *Select Areas With Highest Ratios and Exclude QCTs.* The DDAs are those areas with the highest ratios that cumulatively comprise 20 percent of the 2020 population of all metropolitan areas and all nonmetropolitan areas. For purposes of applying this population cap, HUD excluded the population in areas designated as 2027 QCTs. Thus, an area can be designated as a QCT or DDA, but not both.

B. Application of Population Caps to DDA Determinations

In identifying DDAs, HUD applied caps, or limitations, as noted above. The cumulative population of metropolitan DDAs cannot exceed 20 percent of the cumulative population of all metropolitan areas, and the cumulative population of nonmetropolitan DDAs cannot exceed 20 percent of the cumulative population of all nonmetropolitan areas.

In applying these caps, HUD established procedures to deal with small overruns of the caps. The remainder of this section explains those procedures. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio, as described above, was identical (to four decimal places) to the last area selected, and its inclusion resulted in only a minor overrun of the cap. Thus, for both the designated metropolitan and nonmetropolitan DDAs, there may be minimal overruns of the cap. HUD believes the designation of additional areas in the above examples of minimal overruns is consistent with the intent of the IRC. As long as the apparent excess is small due to measurement errors, some latitude is justifiable, because it is impossible to determine whether the 20 percent cap has been exceeded. Despite the care and effort involved in a Decennial Census, the Census Bureau and all users of the data recognize that the population counts for a given area and for the entire country are not precise. Therefore, the extent of the measurement error is unknown. There can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting small variances above the 20 percent limit.

B. Qualified Census Tracts

In developing the list of QCTs, HUD used 2020 Census 100-percent count

[3] HUD encourages other jurisdictions with rent control laws that affect rents paid by recent movers into existing units to contact HUD about what data might be provided or collected to adjust Small Area FMRs in those jurisdictions.

data on total population, total households, and population in households; the median household income and poverty rate as estimated in the 2018–2022, 2019–2023 and 2020–2024 ACS tabulations; the FY 2026 Very Low-Income Limits (VLILs) computed at the HMFA level to determine tract eligibility; and the MSA definitions published in OMB Bulletin No. 23–01 on July 21, 2023, for determining how many eligible tracts can be designated under the statutory 20 percent population cap.

HUD uses the HMFA-level AMGIs to determine QCT eligibility because the statute, specifically IRC Section 42(d)(5)(B)(iv)(II), refers to the same section of the IRC that defines income for purposes of tenant eligibility and unit maximum rent, specifically IRC Section 42(g)(4). By rule, the IRS sets these income limits according to HUD's VLILs, which, starting in FY 2006 and thereafter, are established at the HMFA level. HUD uses the entire MSA to determine how many eligible tracts can be designated under the 20 percent population cap as required by the statute (IRC Section 42(d)(5)(B)(ii)(III)), which states that MSAs should be treated as singular areas.

HUD determined the QCTs as follows:

1. *Calculate 60 percent AMGI.* To be eligible to be designated a QCT, a census tract must have 50 percent of its households with incomes below 60 percent of AMGI or have a poverty rate of 25 percent or more. Due to potential statistical anomalies in the ACS 5-year estimates, one of these conditions must be met in at least 2 of the 3 ACS 5-year tabulations for a tract to be considered eligible for QCT designation. HUD calculates 60 percent of AMGI by multiplying by a factor of 1.2 the HMFA or nonmetropolitan county FY 2026 VLIL adjusted for inflation to match the ACS estimates, which are adjusted to the value of the dollar in the last year of the 5-year group.

2. *Determine Whether Census Tracts Have Less than 50 percent of Households Below 60 percent AMGI.* For each census tract, whether or not 50 percent of households have incomes below the 60 percent income standard (income criterion) was determined by: (a) calculating the average household size of the census tract, (b) adjusting the income standard to match the average household size, and (c) comparing the average-household-size-adjusted income standard to the median household income for the tract reported in each of the three years of ACS tabulations (2018–2022, 2019–2023 and 2020–2024). HUD did not consider estimates of median household income to be statistically reliable unless the margin of error was less than half of the estimate (or a Margin of Error Ratio, MoER, of 50 percent or less). If at least two of the three estimates were not statistically reliable by this measure, HUD determined the tract to be ineligible under the income criterion due to lack of consistently reliable median income statistics across the three ACS tabulations. Since 50 percent of households in a tract have incomes above and below the tract median household income, if the tract median household income is less than the average-household-size-adjusted income standard for the tract, then more than 50 percent of households have incomes below the standard.

3. *Estimate Poverty Rate.* For each census tract, HUD determined the poverty rate in each of the three releases of ACS tabulations (2018–2022, 2019–2023 and 2020–2024) by dividing the population with incomes below the poverty line by the population for whom poverty status has been determined. As with the evaluation of tracts under the income criterion, HUD applies a data quality standard for evaluating ACS poverty rate data in designating the 2027 QCTs. HUD did not consider estimates of the poverty rate to be statistically reliable unless both the population for whom poverty status has been determined and the number of persons below poverty had MoERs of less than 50 percent of the respective estimates. If at least two of the three poverty rate estimates were not statistically reliable, HUD determined the tract to be ineligible under the poverty rate criterion due to lack of reliable poverty statistics across the ACS tabulations.

4. *Designate QCTs Where 20 percent or Less of Population Resides in Eligible Census Tracts.* QCTs are those census tracts in which 50 percent or more of the households meet the income criterion in at least two of the three years evaluated, or 25 percent or more of the population is in poverty in at least two of the three years evaluated, such that the population of all census tracts that satisfy either one or both of these criteria does not exceed 20 percent of the total population of the respective area.

5. *Designate QCTs Where More than 20 percent of Population Resides in Eligible Census Tracts.* In areas where more than 20 percent of the population resides in eligible census tracts, census tracts are designated as QCTs in accordance with the following procedure:

a. The statistically reliable income and poverty criteria are each averaged over the three ACS tabulations (2018–2022, 2019–2023 and 2020–2024). Statistically reliable values that did not exceed the income and poverty rate thresholds were included in the average.

b. Eligible tracts are placed in one of two groups based on the averaged values of the income and poverty criteria. The first group includes tracts that satisfy both the income and poverty criteria for QCTs for at least two of the three evaluation years; a different pair of years may be used to meet each criterion. The second group includes tracts that satisfy either the income criterion in at least two of the three years, or the poverty criterion in at least two of three years, but not both. A tract must qualify by at least one of the criteria in at least two of the three evaluation years to be eligible.

c. HUD ranked tracts in the first group from highest to lowest by the average of the ratios of the tract average-household-size-adjusted income limit to the median household income. Then, HUD ranked tracts in the first group from highest to lowest by the average of the poverty rates. HUD averaged the two ranks to yield a combined rank. HUD then sorted the tracts on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In the event of a tie, HUD ranked more populous tracts above less populous ones.

d. HUD ranked tracts in the second group from highest to lowest by the average of the ratios of the tract average-household-size-adjusted income limit to the median household income. Then, HUD ranked tracts in the second group from highest to lowest by the average of the poverty rates. HUD then averaged the two ranks to yield a combined rank. HUD then sorted the tracts on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In the event of a tie, HUD ranked more populous tracts above less populous ones.

e. HUD stacked the ranked first group on top of the ranked second group to yield a single, concatenated, ranked list of eligible census tracts.

f. Working down the single, concatenated, ranked list of eligible tracts, HUD identified census tracts as designated until the designation of an additional tract would cause the 20 percent limit to be exceeded. If HUD does not designate a census tract because doing so would raise the percentage above 20 percent, HUD then considers subsequent eligible census tracts to determine whether one or more eligible census tract(s) with smaller

population(s) could be designated without exceeding the 20 percent limit.

C. Exceptions to OMB Definitions of MSAs and Other Geographic Matters

As stated in OMB Bulletin 23–01, defining metropolitan areas:

> OMB establishes and maintains the delineations of Core Based Statistical Areas solely for statistical purposes. . . . OMB does not take into account or attempt to anticipate any non-statistical uses that may be made of the delineations[.] . . . In cases where . . . an agency elects to use the Core Based Statistical Area definitions in non-statistical programs, it is that agency's responsibility to ensure that the delineations are appropriate for such use. . . . [A]n agency using the statistical delineations in a non-statistical program may modify the delineations; however, such potential modification would apply only to the purposes of that program. In such cases, any deviations from the Core Based Statistical Areas delineated by OMB should be clearly identified as such, in order to avoid confusion.

Following OMB guidance, HUD's estimation procedure for the FMRs and income limits incorporates the OMB definitions of metropolitan Core-Based Statistical Areas (CBSAs) based on the CBSA standards, but makes adjustments to the definitions, in order to separate subparts of these areas in cases where counties were added to an existing or newly defined metropolitan area. In CBSAs where HUD establishes subareas, it is HUD's view that the geographic extent of the housing markets is not the same as the geographic extent of the CBSAs.

In the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), HUD defines HMFAs according to county subdivisions or minor civil divisions (MCDs), rather than county or county-equivalent boundaries. However, since no part of an HMFA is outside an OMB-defined, county-based MSA, all New England nonmetropolitan counties are kept intact for purposes of designating Nonmetropolitan DDAs.[4]

VII. Future Designations

HUD designates DDAs annually as updated HUD income limit and FMR data are made public. HUD designates QCTs annually as new income and poverty rate data are released.

A. Effective Date

The 2027 lists of QCTs and DDAs are effective:

(1) for allocations of credit after December 31, 2026; or

(2) for purposes of IRC Section 42(h)(4), if the bonds are issued and the building is placed in service after December 31, 2026.

If an area is not on a subsequent list of QCTs or DDAs, the 2027 lists are effective for the area if:

(1) the allocation of credit to an applicant is made no later than the end of the 730-day period after the applicant submits a complete application to the LIHTC-allocating agency, and the submission is made before the effective date of the subsequent lists; or

(2) for purposes of IRC Section 42(h)(4), if:

(a) the bonds are issued or the building is placed in service no later than the end of the 730-day period after the applicant submits a complete application to the bond-issuing agency, and

(b) the submission is made before the effective date of the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

An application is deemed to be submitted on the date it is filed if the application is determined to be complete by the credit-allocating or bond-issuing agency. A ''complete application'' means that no more than de minimis clarification of the application is required for the agency to make a decision about the allocation of tax credits or issuance of bonds requested in the application.

In the case of a ''multiphase project,'' the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the project received its first allocation of LIHTC. For purposes of IRC Section 42(h)(4), the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the first of the following occurred: (a) the building(s) in the first phase was (were) placed in service, or (b) the bonds were issued.

For purposes of this notice, a ''multiphase project'' is defined as a set of buildings to be constructed or rehabilitated under the rules of the LIHTC and meeting the following criteria:

(1) the multiphase composition of the project (*i.e.,* total number of buildings and phases in the project, with a description of how many buildings are to be built in each phase and when each phase is to be completed, and any other information required by the agency) is made known by the applicant in the first application of credit for any building in the project, and that the applicant identifies the buildings in the project for which credit is (or will be) sought;

(2) the aggregate amount of LIHTC applied for on behalf of, or that would eventually be allocated to, the buildings on the site exceeds the one-year limitation on credits per applicant, as defined in the QAP of the LIHTC-allocating agency, or the annual per-capita credit authority of the LIHTC allocating agency, and is the reason the applicant must request multiple allocations over 2 or more years; and

(3) all applications for LIHTC for buildings on the site are made in immediately consecutive years.

Members of the public are hereby reminded that the Secretary of Housing and Urban Development, or the Secretary's designee, has legal authority to designate DDAs and QCTs, by publishing lists of geographic entities as defined by, in the case of DDAs, the Census Bureau, the several states and the governments of the insular areas of the United States and, in the case of QCTs, by the Census Bureau; and to establish the effective dates of such lists. The Secretary of the Treasury, through the IRS thereof, has sole legal authority to interpret, and to determine and enforce compliance with the IRC and associated regulations, including **Federal Register** notices published by HUD for purposes of designating DDAs and QCTs. Representations made by any other entity as to the content of HUD notices designating DDAs and QCTs that do not precisely match the language published by HUD should not be relied upon by taxpayers in determining what actions are necessary to comply with HUD notices.

B. Interpretive Examples of Effective Date

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose QCT or DDA status. The examples covering DDAs are equally applicable to QCT designations.

(Case A) Project A is located in a 2027 DDA that is NOT a designated DDA in 2028 or 2029. A complete application for tax credits for Project A is filed with the allocating agency on November 15, 2027. Credits are allocated to Project A on October 30, 2029. Project A is eligible for the increase in basis

[4] In five of the six New England states, metropolitan and nonmetropolitan areas comprise towns instead of counties. The sixth, Connecticut, officially changed their county-equivalent geographic units from towns to planning regions (see 87 FR 34235). This change was incorporated for the first time in the 2023 American Community Survey (ACS) data and the FY2025 HUD income limits. For more information on the effect of the Connecticut geography change on HUD's Income Limits, see: *https://www.huduser.gov/portal/datasets/il.html#faq_2025.*

accorded a project in a 2027 DDA because the application was filed BEFORE January 1, 2028 (the assumed effective date for the 2028 DDA lists), and because tax credits were allocated no later than the end of the 730-day period after the filing of the complete application for an allocation of tax credits.

(Case B) Project B is located in a 2027 DDA that is NOT a designated DDA in 2028 or 2029. A complete application for tax credits for Project B is filed with the allocating agency on December 1, 2027. Credits are allocated to Project B on March 30, 2030. Project B is NOT eligible for the increase in basis accorded a project in a 2027 DDA because, although the application for an allocation of tax credits was filed BEFORE January 1, 2028 (the assumed effective date of the 2028 DDA lists), the tax credits were allocated later than the end of the 730-day period after the filing of the complete application.

(Case C) Project C is located in a 2027 DDA that was not a DDA in 2026. Project C was placed in service on November 15, 2026. A complete application for tax-exempt bond financing for Project C is filed with the bond-issuing agency on January 15, 2027. The tax-exempt bonds that will support the permanent financing of Project C are issued on September 30, 2027. Project C is NOT eligible for the increase in basis otherwise accorded a project in a 2027 DDA, because the project was placed in service BEFORE January 1, 2027.

(Case D) Project D is located in an area that is a DDA in 2027 but is NOT a DDA in 2028 or 2029. A complete application for tax-exempt bond financing for Project D is filed with the bond-issuing agency on October 30, 2027. Tax-exempt bonds are issued for Project D on April 30, 2029, but Project D is not placed in service until January 30, 2030. Project D is eligible for the increase in basis available to projects located in 2027 DDAs because: (1) one of the two events necessary for triggering the effective date for buildings described in Section 42(h)(4)(B) of the IRC (the two events being tax-exempt bonds issued and buildings placed in service) took place on April 30, 2029, within the 730-day period after a complete application for tax-exempt bond financing was filed, (2) the application was filed during a time when the location of Project D was in a DDA, and (3) both the issuance of the tax-exempt bonds and placement in service of Project D occurred after the application was submitted.

(Case E) Project E is a multiphase project located in a 2027 DDA that is NOT a designated DDA or QCT in 2028. The first phase of Project E received an allocation of credits in 2027, pursuant to an application filed March 15, 2027, which describes the multiphase composition of the project. An application for tax credits for the second phase of Project E is filed with the allocating agency by the same entity on March 15, 2028. The second phase of Project E is located on a contiguous site. Credits are allocated to the second phase of Project E on October 30, 2028. The aggregate amount of credits allocated to the two phases of Project E exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP and is the reason that applications were made in multiple phases. The second phase of Project E is, therefore, eligible for the increase in basis afforded a project in a 2027 DDA, because it meets all of the conditions to be a part of a multiphase project.

(Case F) Project F is a multiphase project located in a 2027 DDA that is NOT a designated DDA in 2028 or 2029. The first phase of Project F received an allocation of credits in 2027, pursuant to an application filed March 15, 2027, which does not describe the multiphase composition of the project. An application for tax credits for the second phase of Project F is filed with the allocating agency by the same entity on March 15, 2029. Credits are allocated to the second phase of Project F on October 30, 2029. The aggregate amount of credits allocated to the two phases of Project F exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP. The second phase of Project F is, therefore, NOT eligible for the increase in basis accorded a project in a 2027 DDA, since it does not meet all of the conditions for a multiphase project, as defined in this notice. The original application for credits for the first phase did not describe the multiphase composition of the project. Also, the application for credits for the second phase of Project F was not made in the year immediately following the first phase application year.

(Case G) Project G is located in an area that is NOT a DDA in 2027 or 2029, but is in a DDA in 2028. A complete application for tax-exempt bond financing for Project G is filed with the bond-issuing agency on October 30, 2027. Project G is placed in service on November 15, 2028 and the bonds are issued on February 20, 2029. Property G is eligible for the increase in basis available to projects located in 2028 DDAs because one of the two necessary actions (the two events being tax-exempt bonds issued and buildings placed in service) occur when the property is in a DDA and both events occur after January 1, 2028, the assumed effective date of the 2028 DDAs.

VIII. Findings and Certifications

A. Environmental Impact

This notice involves the statutorily required establishment of fiscal requirements or procedures that are related to rate and cost determinations and do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6) of HUD's regulations, this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*).

B. Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any policy document that has federalism implications if the document either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the document preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This notice merely designates DDAs and QCTs as required under IRC Section 42, as amended, for the use by political subdivisions of the states in allocating the LIHTC. This notice also details the technical methods used in making such designations. As a result, this notice is not subject to review under the order.

Reid Wilson,

Deputy Chief of Staff to the Secretary, Performing the Delegable Duties of the Principal Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2026–20390 Filed 10–5–26; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[2560102DM; DS6CS00000; DLSN00000.000000; OMB Control Number 1090–0012]

Agency Information Collection Activities; Submission to the Office of Management and Budget; Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

AGENCY: Department of the Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Department of the Interior are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before November 5, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Jeffrey Parrillo, Departmental Information Collection Clearance Officer, 1849 C Street NW, Washington, DC 20240; or by email to *DOI-PRA@ios.doi.gov*. Please reference OMB Control Number 1090–0012 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Jeffrey Parrillo, Departmental Information Collection Clearance Officer, by email at *DOI-PRA@ios.doi.gov,* or by telephone at (202) 208–7072. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the information collection request at *https://www.reginfo.gov/public/do/PRAMain*.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA; 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320, all information collections require approval under the PRA. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

On April 9, 2026, we published in the **Federal Register** (91 FR 17984) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on June 8, 2026. We did not receive any comments in response to that notice.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again inviting the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comments addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency 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 response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment—including your personally identifiable information—may be publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

Abstract: A modern, streamlined and responsive customer experience means: raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership.

This information collection activity provides a means to garner customer and stakeholder feedback in an efficient, timely manner in accordance with the Administration's commitment to improving customer service delivery as discussed in Section 280 of OMB Circular A–11 at *https://www.whitehouse.gov/wp-content/uploads/2025/08/a11.pdf*.

As discussed in OMB guidance, agencies should identify their highest impact customer journeys (using customer volume, annual program cost, and/or knowledge of customer priority as weighting factors) and select touchpoints/transactions within those journeys to collect feedback.

These results will be used to improve the delivery of Federal services and programs. It will also provide government-wide data on customer experience that can be displayed on *www.performance.gov* to help build transparency and accountability of Federal programs with the customers they serve.

As a general matter, these information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

The Department of the Interior will only submit collections if they meet the following criteria.

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are noncontroversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted at the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used for general service improvement and program management purposes
- Upon agreement between OMB and the agency, all or a subset of information may be released as part of A–11, Section 280 requirements on performance.gov. Summaries of customer research and user testing activities may be included in public-facing customer journey maps.
- Additional release of data must be done in coordination with OMB.

These collections will allow for ongoing, collaborative and actionable communications between the Agency, its customers and stakeholders, and OMB as it monitors agency compliance on Section 280. These responses will inform efforts to improve or maintain the quality of service offered to the public. If this information is not

collected, vital feedback from customers and stakeholders on services will be unavailable.

Title of Collection: Improving Customer Experience (OMB Circular A–11, Section 280 Implementation).

OMB Control Number: 1090–0012.

Form Number: None.

Type of Review: Extension without change of a currently approved collection.

Respondents/Affected Public: Individuals/Households, Private Sector, and State/local/Tribal Governments.

Total Estimated Number of Annual Respondents: 146,384.

Total Estimated Number of Annual Responses: 146,384.

Estimated Completion Time per Response: Varied, dependent upon the possible response time to complete a questionnaire or survey may be 3 minutes up to 90 minutes to participate in an interview based on the data collection method used.

Total Estimated Number of Annual Burden Hours: 13,876.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Jeffrey Parrillo,

Departmental Information Collection Clearance Officer.

[FR Doc. 2026–20397 Filed 10–5–26; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0008]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection; Title—Monthly Return of Arson Offenses Known to Law Enforcement

AGENCY: FBI, Department of Justice (DOJ).

ACTION: 60-Day notice.

SUMMARY: The DOJ, FBI, Criminal Justice Information Services (CJIS) Division, is submitting the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act (PRA) of 1995.

DATES: DOJ encourages public comment and will accept input until December 7, 2026.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Matthew B. Fancher, Crime and Law Enforcement Statistics Unit Chief, FBI, CJIS Division, Module D–1, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, 304–625–4830.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

➢ Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the FBI, including whether the information will have practical utility;

➢ Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

➢ Evaluate whether, and if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

➢ Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Abstract: Under 34 United States Code 41303, Uniform Federal Crime Reporting Act of 1988; the Anti-Arson Act of 1982; and FBI, General Functions, 28 Code of Federal Regulations § 0.85 (f); this collection requests the number of reported arson offenses from federal, state, local, tribal, and territorial LEAs in order for the FBI's Uniform Crime Reporting (UCR) Program to serve as the national clearinghouse for the collection and dissemination of arson data and to publish these statistics.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Monthly Return of Arson Offenses Known to Law Enforcement.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1–725. The applicable component within DOJ is the CJIS Division in the FBI.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal, state, local, tribal, and territorial law enforcement agencies (LEAs).

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated number of LEAs submitting arson data to the UCR Program monthly is 3,671. The estimated time it takes for an average respondent to respond is 9 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection: Annually,* the estimated 3,671 LEAs submit an estimated 44,052 responses (3,671 LEAs × 12 months = 44,052 responses). Therefore, the estimated annual public burden is 6,607 hours. ([44,052 annual responses × 9 minutes per response]/60 minutes per hour = 6,607 total annual hours.]

7. According to the U.S. Bureau of Labor Statistics for 2023, the mean hourly wage of law enforcement officers is $36.80. An estimate of the total annual cost burden associated with the collection: $243,137.06 (6,607 annual hours × $36.80).

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency (annually)	Total annual responses	Time per response (minutes)	Total annual burden (hours)
UCR Participation Burden Estimation	3,671	12	44,052	9	6,607
Unduplicated Totals	3,761		44,052		6,607

If additional information is required contact: Darwin Arceo, DOJ Clearance Officer, United States Department of Justice, Justice Management Division, Enterprise Portfolio Management, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: October 2, 2026.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2026–20462 Filed 10–5–26; 8:45 am]

BILLING CODE 4410–02–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2027–001]

Privacy Act of 1974; System of Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice revising a system of records.

SUMMARY: We propose to revise a system of records in our existing inventory of systems subject to the Privacy Act of 1974. The system is NARA 44, Reasonable Accommodation Request Records. We are updating the new system manager and system location due to organizational changes at the agency. NARA also proposes to expand the system to include requests for reasonable accommodations involving pregnancy or childbirth and the associated authority for collecting this information. Further, NARA proposes to use an internal web-based application and database for some of the records in this system to modernize the agency's receipt, processing, and monitoring reasonable accommodation requests and maintaining the associated records. In this notice, we publish the system of records notice in full for public notice and comment.

DATES: Submit comments on this system of records by November 5, 2026. This revised systems of records, NARA 44, is effective on November 16, 2026 unless we receive comments that necessitate revising the SORN.

ADDRESSES: You may submit comments, identified by ''SORN NARA 44'' by email to *regulation_comments@nara.gov.* Include ''SORN NARA 44'' in the subject line of the message.

Instructions: All submissions must include SORN NARA 44 so we can identify what the comment is responding to. We may publish any comments we receive without changes, including any personal information you include.

FOR FURTHER INFORMATION CONTACT: Courtney Whatley, Agency Accommodation Program Manager, by email at *courtney.whatley@nara.gov.*

SUPPLEMENTARY INFORMATION: Our Reasonable Accommodation Request Records system of records (NARA 44) includes records of requests, processing, and decisions for reasonable accommodations submitted by current and former NARA employees and applicants. It specifically mentions accommodations for employees and applicants with disabilities and for religious reasons. NARA proposes to expand the system to include requests for reasonable accommodations involving pregnancy or childbirth under the Pregnant Workers Fairness Act (PWFA), Public Law 117–328, and citing this authority for collecting this information. NARA is also updating the new system manager and system location due to organizational changes at the agency. Further, NARA proposes to use an internal web-based application and database for some of the records in this system to modernize the agency's receipt, processing, and monitoring reasonable accommodation requests and maintaining the associated records.

The Privacy Act of 1974, as amended (5 U.S.C. 552a) (''Privacy Act''), provides certain safeguards for an individual against an invasion of personal privacy. It requires Federal agencies that disseminate any record of personally identifiable information to do so in a manner that assures the action is for a necessary and lawful purpose, the information is current and accurate for its intended use, and the agency provides adequate safeguards to prevent misuse of such information. NARA intends to follow these principles when transferring information to another agency or individual as a ''routine use,'' including assuring that the information is relevant for the purposes for which it is transferred.

Bradford P. Wilson

Archivist of the United States.

NARA 44

SYSTEM NAME AND NUMBER:

Reasonable Accommodation Request Records, NARA 44.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The Office of the Chief of Management and Administration at the National Archives in College Park maintains reasonable accommodation request files. The system address is the same as the system manager address.

SYSTEM MANAGER:

For these case files, the system manager is the Chief of Management and Administration Officer. The business addresses for system managers are listed in Appendix B, last republished September 27, 2018 (*83 FR 48869*). As system manager contact information is subject to change, for the most up-to-date information, visit our website at *www.archives.gov/privacy/inventory.*

AUTHORITY FOR MAINTAINING THE SYSTEM:

5 U.S.C. 552a(a)(3), as amended.

44 U.S.C. 2104(a), as amended.

The Americans with Disabilities Act of 1990, as amended.

Title VII of the Civil Rights Act of 1964, as amended.

29 U.S.C. 791.

Executive Order 13164.

29 CFR part 1614.

The Pregnant Workers Fairness Act (PWFA), Public Law 117–328.

PURPOSE OF THE SYSTEM:

We use the information in this system to process and implement employee reasonable accommodation requests and any resulting accommodation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include current and former NARA employees and applicants who have requested accommodation pursuant to NARA policy for processing reasonable accommodation requests. This includes accommodations for employees and applicants who have requested accommodations related to: disability, religion, pregnancy, childbirth, or related medical conditions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reasonable accommodation request records may contain some or all of the following records: Requests for reasonable accommodation including medical records or religious information, notes or records made during consideration of requests, and decisions on requests. These records may contain: The employee or applicant's name, email address, mailing address, phone number, medical information, information on their religious beliefs and practices, and any additional information provided by the employee related to the processing of the request. If an accommodation request is made by a family member, health professional, or representative of a NARA employee or applicant, the records may also contain that

requestor's name, email address, mailing address, phone number, and any additional information provided by the requestor relating to the processing of the request.

RECORD SOURCE CATEGORIES:

NARA obtains information in these files from employees, applicants, and any family members, health professionals, or representatives of a NARA employee or applicant, who request reasonable accommodation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

We maintain reasonable accommodation request files to (or for):

(a) Process and implement employee requests for reasonable accommodations, including manager review, reasonable accommodation staff review, medical or health staff review, and sharing with other people necessary to process or implement the request and any resulting accommodation;

(b) disclosures generally permitted under *5 U.S.C. 552a(b)* of the Privacy Act; and

(c) routine uses A, B, C, D, E, F, G, H, and I listed in Appendix A apply to this system. Appendix A was last republished on December 20, 2013 (*78 FR 77255, 77287*). For the most up-to-date information, see the Appendix on our website at *www.archives.gov/privacy/inventory.*

POLICIES AND PRACTICES FOR STORING RECORDS:

Paper and electronic records.

POLICIES AND PRACTICES FOR RETRIEVING RECORDS:

Staff may retrieve information in these case files by the name of the employee or applicant, or by request number.

POLICIES AND PRACTICES FOR RETAINING AND DISPOSING OF RECORDS:

Reasonable accommodation request records are temporary records and we destroy them in accordance with disposition instructions in the NARA Records Schedule (a supplement to the NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer (at the address listed in Appendix B).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records are stored within NARA's secure cloud-based system. All data is encrypted in transit and at rest in storage. In addition to other electronic records in this Privacy Act system, NARA operates an internal web application and database to receive, monitor, and maintain data on employee requests for reasonable accommodation. This application and database can only be accessed through NARA's internal private network, and users of this internal application must have a NARA authorized account. Access to the data within the web application and database is restricted to authorized employees and contractors. Other employees and contractors may be granted access on a need-to-know basis.

All electronic files and records in this system are protected by NARA privacy safeguards and security protocols designed to meet Federal cybersecurity and privacy standards, including those required by the Federal Information Security Modernization Act of 2014 (FISMA), OMB, and the National Institute of Standards and Technology (NIST). Authorized NARA personnel access electronic records via workstations and laptops located in attended offices or through NARA's secure remote-access capabilities.

During normal hours of operation, we maintain paper records in areas accessible only by authorized NARA personnel. After business hours, buildings have security guards and secured doors, and electronic surveillance equipment monitors all entrances.

RECORDS ACCESS PROCEDURES:

People who wish to access their records should submit a request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORDS PROCEDURES:

NARA's rules for contesting the contents of a person's records and appealing initial determinations are in *36 CFR part 1202.*

NOTIFICATION PROCEDURES:

People inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Last republished as a full notice on January 28, 2022 (87 FR 4661).

Bradford P. Wilson,

Archivist of the United States.

[FR Doc. 2026–20428 Filed 10–5–26; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of Government Information Services

[NARA–2027–002]

Meeting of the Chief Freedom of Information Act Officers Council

AGENCY: Office of Government Information Services (OGIS), National Archives and Records Administration (NARA) and Office of Information Policy (OIP), U.S. Department of Justice (DOJ).

ACTION: Notice of meeting.

SUMMARY: We are announcing a meeting of the Chief Freedom of Information Act (FOIA) Officers Council, co-chaired by the Director of OGIS and the Director of OIP.

DATES: The meeting will be on Thursday, October 22, 2026, from 10:00 a.m. to 12:30 p.m. ET. You must register to attend. (See registration information below.)

ADDRESSES: This meeting will be a virtual meeting. We will send access instructions for the meeting to those who register according to the instructions below.

FOR FURTHER INFORMATION CONTACT: Martha Murphy, by email at *ogis@nara.gov* with the subject line ''Chief FOIA Officers Council,'' or by telephone at 202–741–5770.

SUPPLEMENTARY INFORMATION: This meeting is open to the public in accordance with the Freedom of Information Act (5 U.S.C. 552(k)). Additional details about the meeting, including the agenda, will be available on the Chief FOIA Officers Council website at *https://www.foia.gov/chief-foia-officers-council.*

Procedures: The virtual meeting is open to the public. If you wish to offer oral public comments during the public comments periods of the meeting, you must register in advance at *https://nara.zoomgov.com/webinar/register/WN_nmDV4ldSTCO54EFeDjxWDw.* You will be provided with information to access the meeting online. Public comments will be limited to three minutes per individual. We will also live-stream the meeting on the National Archives YouTube channel, *https://www.youtube.com/live/JkcgAHqoSps,* and include a captioning option. To request additional accommodations (*e.g.,* a transcript), email *ogis@nara.gov* or call 202–741–5770. Members of the media who wish to register, those who are unable to register online, and those who require special accommodations,

should contact Martha Murphy (contact information listed above).

Dated: October 1, 2026.

Alina M. Semo,

Director, Office of Government Information Services.

[FR Doc. 2026–20423 Filed 10–5–26; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2026–4291]

Applications for Amendments to Facility Operating Licenses Involving Proposed No Significant Hazards Consideration Determination and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; notice of opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC, the Commission) received, and is considering approval of, two requests to amend three licenses. The license amendment requests are for Cooper Nuclear Station and Vogtle Electric Generating Plant, Units 1 and 2. For each license amendment request, the NRC proposes to determine that it involves no significant hazards consideration (NSHC). Because each amendment request contains sensitive unclassified non-safeguards information (SUNSI), the NRC is issuing an order imposing procedures to obtain access to SUNSI for contention preparation by persons who file a hearing request or petition for leave to intervene.

DATES: Comments must be filed by November 5, 2026. A request for a hearing or petitions for leave to intervene must be filed by December 7, 2026. Any potential party as defined in section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR) who believes access to SUNSI is necessary to respond to this notice must request document access by October 16, 2026.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website.

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2026–4291. Address questions about Docket IDs in *Regulations.gov* to Bridget Curran; telephone: 301–415–1003; email: *Bridget.Curran@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Nuclear Material Safety and Safeguards, Mail Stop: TWFN–5–A85, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Guidance and Publications Branch.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Susan Lent, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1365; email: *Susan.Lent@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2026–4291, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2026–4291.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin ADAMS Public Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2026–4291, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to section 189a.(1)–(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves NSHC, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve NSHC. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or

consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown as follows.

The Commission is seeking public comments on these proposed determinations. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue any of these license amendments before expiration of the 60-day period provided that its final determination is that the amendments involves no significant hazards consideration. In addition, the Commission may issue any of these amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action on any of these amendments prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. If the Commission makes a final no significant hazards consideration determination for any of these amendments, any hearing on those amendments will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration, which will serve to establish when the hearing is held. If the final determination is that the license amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the license amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and the NRC's public website (*https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate*).

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056), and on the NRC's public website (*https://www.nrc.gov/site-help/e-submittals.html*).

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to: (1) request a digital identification (ID) certificate, which allows the participant (or their counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or their counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website (*https://www.nrc.gov/site-help/e-submittals/getting-started.html*). After a digital ID certificate is obtained and a docket is created, the participant must submit adjudicatory documents in the Portable Document Format. Guidance on submissions is available on the NRC's public website (*https://www.nrc.gov/site-help/electronic-sub-ref-mat.html*). A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed in order to obtain

access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website (*https://www.nrc.gov/site-help/e-submittals.html*), by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available on the NRC's public website (*https://ehd.nrc.gov*), unless otherwise excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing docket where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The following table provides the plant name(s), docket number(s), date of application, ADAMS accession number, and location in the application of the licensee's proposed NSHC determination. For further details with respect to these license amendment applications, see the applications for amendment, publicly available portions of which are available for public inspection in ADAMS. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Nebraska Public Power District; Cooper Nuclear Station; Nemaha County, NE

Docket No	50–298.
Application Date	July 8, 2026.
ADAMS Accession No	ML26189A402.
Location in Application of NSHC	Pages 6–8 of Attachment 1.
Brief Description of Amendment	The proposed amendment would modify technical specification (TS) requirements to permit the use of Risk-Informed Completion Times in accordance with Technical Specifications Task Force (TSTF) Traveler TSTF–505, Revision 2, ''Provide Risk-Informed Extended Completion Times—RITSTF [Risk-Informed TSTF] Initiative 4b'' (ML18183A493). The proposed amendment would incorporate NRC-approved Traveler TSTF–591, Revision 0, ''Revise the Risk Informed Completion Time (RICT) Program'' (ML22081A224). Lastly, the proposed amendment would adopt TSTF–439, Revision 2, ''Eliminate Second Completion Times Limiting Time from Discovery of Failure to Meet an LCO [Limiting Condition for Operation]'' (ML051860296), which involves the elimination of second Completion Times currently specified in the TS. Adopting TSTF–439 is a prerequisite to applying a risk-informed Completion Time to certain TS Required Actions.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	John C. McClure, Executive Vice President, External Affairs and General Counsel, Nebraska Public Power District, P.O. Box 499, Columbus, NE 68601.
NRC Project Manager, Telephone Number	Thomas Byrd, 301–415–3719.

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 1 and 2; Burke County, GA

Docket Nos	50–424, 50–425.
Application Date	July 17, 2026.
ADAMS Accession No	ML26198A221.
Location in Application of NSHC	Pages E2–57—E2–59, of Enclosure 2.
Brief Description of Amendments	The proposed amendments would extend the use of lead test assemblies (LTAs) to demonstrate operating characteristics for accident-tolerant fuel (ATF). The proposed amendment request proposes to change Technical Specifications 2.1.1.2 and 4.2.1 to authorize the operation of four ATF LTAs for a third cycle.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P.O. Box 1295, Birmingham, AL 35201–1295.
NRC Project Manager, Telephone Number	John Lamb, 301–415–3100.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation; Nebraska Public Power District; Cooper Nuclear Station; Nemaha County, NE; Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 1 and 2; Burke County, GA

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing or opportunity for hearing, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Licensing, Hearings, and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email addresses for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgc MailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2), the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or proposed Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012, 78 FR 34247, June 7, 2013) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

Authority: 42 U.S.C. 2011 *et seq.*

Dated: October 2, 2026.

For the Nuclear Regulatory Commission.

Jody Martin,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing or opportunity for hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: (i) supporting the standing of a potential party identified by name and address; and (ii) describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requestor to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and proposed Non-Disclosure Agreement or Affidavit. Deadline for applicant/licensee to file proposed Non-Disclosure Agreement or Affidavit for SUNSI.
A	If access is granted: issuance of presiding officer or other designated officer decision on motion for Protective Order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Agreements or Affidavits. Access provided to SUNSI consistent with decision issuing the Protective Order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or notice of opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2026–20432 Filed 10–5–26; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2026–2311]

Privacy Act of 1974; Systems of Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of modified systems of records; request for comment.

SUMMARY: Pursuant to the Privacy Act of 1974 and the Office of Management and Budget (OMB) Circular A–108, the U.S. Nuclear Regulatory Commission (NRC) is republishing 13 Privacy Act systems of records notices (SORNs) following a comprehensive review. Eight notices include only minor administrative updates, one is unchanged, and four systems—NRC 27, NRC 36, NRC 39, and NRC 40—contain substantive revisions requiring a 30-day public comment period. The updates modernize system descriptions, clarify authorities and system locations, and update categories of records and safeguards.

DATES: Submit comments on revisions and changes by November 5, 2026. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2026–2311. Address questions about Docket IDs in *Regulations.gov* to Bridget Curran; telephone: 301–415–1003; email: *Bridget.Curran@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Nuclear Material Safety and Safeguards, Mail Stop: TWFN–5–A85, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Guidance and Publications Branch.
- *Obtaining Information and Submitting Comments:* Please refer to Docket ID NRC–2026–2311 when contacting the NRC about the availability of information for this action. The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2026–2311 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the

comment submissions into Agencywide Documents Access and Management System (ADAMS). The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from others for submission to the NRC, then you should inform them not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2026–2311.
- *ADAMS:* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin ADAMS Public Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.*
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sally Hardy, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–5607; email: *Sally.Hardy@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC has conducted a comprehensive review of 13 of its Privacy Act systems of records in accordance with the Privacy Act of 1974 and OMB Circular A–108. As a result of this review, the NRC is republishing all 13 SORNs. Eight SORNs include only minor or administrative updates that do not meet the threshold for a new or altered system, and one SORN is being republished without changes. Four SORNs—NRC 27, NRC 36, NRC 39, and NRC 40—contain substantive revisions that meet the criteria for an altered system of records and are therefore being published for a 30-day public comment period.

The proposed updates modernize system descriptions, clarify authorities, update system locations to reflect current organizational structures and cloud environments, revise categories of records and sources, and update administrative, technical, and physical safeguards. The changes also ensure each SORN is in alignment with current NRC operations, cybersecurity requirements, and applicable National Archives and Records Administration records schedules.

A report on these revisions has been sent to OMB, the Committee on Homeland Security and Governmental Affairs of U.S. Senate, and the Committee on Oversight and Accountability of the U.S. House of Representatives, as required by the Privacy Act.

If changes are made, based on the NRC's review of comments received, the NRC will publish a subsequent notice.

The text of the report, in its entirety, is attached.

(Authority: 42 U.S.C. 2011 *et seq.*)

Dated: October 1, 2026.

For the Nuclear Regulatory Commission.

Garo Nalabandian,

Senior Agency Official for Privacy, Office of the Chief Information Officer.

Attachment—U.S. Nuclear Regulatory Commission Privacy Act Systems of Records

NRC Systems of Records

25 Oral History Program
26 Transit Subsidy Benefits Program
27 Radiation Exposure Information and Reporting System
33 Special Inquiry Records
35 Drug Testing Program Records
36 Employee Locator Records
37 Information Security Files and Associated Records
38 Mailing Lists
39 Personnel Security Files and Associated Records
40 Facility Security Access Control Records
44 Employee Fitness Center Records
45 Electronic Credentials for Personal Identity Verification
46 Health Emergency Records

These systems of records are maintained by the NRC and contain personal information about individuals that is retrieved by an individual's name or identifier.

The notice for each system of records states the name and location of the record system, the authority for and manner of its operation, the categories of individuals that it covers, the types of records that it contains, the sources of information in those records, and the routine uses of each system of records. Each notice also includes the business address of the NRC official who will inform interested persons of the procedures whereby they may gain access to and request amendment of records pertaining to them.

The Privacy Act provides certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies to protect records contained in an agency system of records from unauthorized disclosure and to ensure that information is current and accurate for its intended use and that adequate safeguards are provided to prevent misuse of such information.

SYSTEM NAME AND NUMBER:

Oral History Program—NRC 25.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of the Secretary, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2161(b) and 44 U.S.C. 3301.

PURPOSE(S) OF THE SYSTEM:

Recorded interviews and transcribed scripts of interviews for providing a history of the nuclear regulatory program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who volunteer to be interviewed for the purpose of providing information for a history of the nuclear regulatory program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of recorded interviews and, as needed, transcribed scripts of the interviews.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from interviews granted on a voluntary basis to the Historian.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the other types of disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. For incorporation in publications on the history of the nuclear regulatory program;

b. To provide information to historians and other researchers;

c. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) the NRC suspects or has confirmed that there has been a breach of the system of records, (2) the NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

d. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Maintained on electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information is accessed by the name of the interviewee.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Narrative Histories will be retained under NRC's approved schedule found in the NUREG 0910 version 4 at 2.22.7.a(1): Record copy maintained by the NRC Deputy Secretary. Permanent. Transfer to the National Archives when 20 years old. (Paper records created before 4/1/2000. ADAMS PDF files and TIFF files (2.22.7.a(4)) are cutoff at the close of the fiscal year. Transfer to the National Archives 5 years after cutoff.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Maintained on an access-restricted SharePoint page. Access to and use of these records is limited to those authorized by the Historian or a designee.

SYSTEM MANAGER(S):

Deputy Secretary, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

89 FR 58780 (July 19, 2024).

SYSTEM NAME AND NUMBER:

Transit Subsidy Benefits Program Records—NRC 26.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Facility, Logistics and Support Branch, Office of Administration, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

SYSTEM MANAGER(S):

Chief, Facility, Logistics and Support Branch, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7905; 26 U.S.C. 132; 31 U.S.C. 3511; 41 CFR 102–74.210; 41 CFR subtitle F; 41 CFR 102–71.20; Executive Order (E.O.) 9397, as amended by E.O. 13478; E.O. 13150.

PURPOSE(S) OF THE SYSTEM:

The information contained in this system is used to enroll employees in the Transit Subsidy Program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees who apply for subsidized mass transit costs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records consist of an individual's application to participate in the program which includes, but is not limited to, the applicant's name, home address, office telephone number, and information regarding the employee's commuting schedule and mass transit system(s) used.

RECORD SOURCE CATEGORIES:

NRC employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the other types of disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To provide statistical reports to city, county, State, and Federal government agencies;

b. To provide the basis for program approval and issue monthly subsidies;

c. A record from this system of records which indicates a violation of civil or criminal law, regulation, or order may be referred as a routine use to a Federal, State, local, or foreign agency that has authority to investigate, enforce, implement, or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

d. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

e. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

f. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

g. A record from this system of records may be disclosed as a routine

use to appropriate agencies, entities, and persons when (1) the NRC suspects or has confirmed that there has been a breach of the system of records, (2) the NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

h. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Accessed by name and SmarTrip card.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained under the National Archives and Records Administration's General Records Schedule 2.4: Employee Compensation and Benefit Records, Item 130, Transportation subsidy program administrative records. Destroy when 3 years old, but longer retention is authorized if required for business use. Records are also retained under General Records Schedule 2.4, item 131, Transportation subsidy program individual case files. Destroy 2 years after employee participation concludes, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Computer files are maintained on a hard drive, access to which is password-protected. Access to and use of these records is limited to those persons whose official duties require access.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

89 FR 58781 (July 19, 2024).

SYSTEM NAME AND NUMBER:

Radiation Exposure Information and Reporting System (REIRS) Records-NRC 27.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Oak Ridge Associated Universities (ORAU), Oak Ridge, Tennessee (or current contractor facility).

SYSTEM MANAGER(S):

REIRS Project Manager, Radiation Protection Branch, Division of Systems Analysis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2051, 2073, 2093, 2095, 2111, 2133, 2134, and 2201(o); 10 CFR Parts 20 and 34; Executive Order (E.O.) 9397, as amended by E.O. 13478.

PURPOSE(S) OF THE SYSTEM:

REIRS serves as the central repository for all NRC radiation exposure monitoring records that are recorded and reported pursuant to part 20 of title 10 of the *Code of Federal Regulations* (10 CFR) and Regulatory Guide 8.7. This central repository is used for the oversight of radiation protection policies and practices at NRC-licensed facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals monitored for radiation exposure while employed by, visiting, or temporarily assigned to certain NRC-licensed facilities; individuals who are exposed to radiation or radioactive materials in incidents required to be reported under 10 CFR 20.2201–20.2204 and 20.2206 by all NRC licensees; individuals who may have been exposed to radiation or radioactive materials offsite from a facility, plant installation, or other place of use of licensed materials, or in unrestricted areas, as a result of an incident involving byproduct, source, or special nuclear material.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to an individual's name, sex, social security number, birth date, place and period/date of exposure; name and license number of individual's employer; name and number of licensees reporting the information; radiation doses or estimates of exposure received during this period, type of radiation, part(s) or organ(s) exposed, and radionuclide(s) involved.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from licensees; the subject individual; the individual's employer; the person in charge of the facility where the individual has been assigned; NRC Form 5, ''Occupational Exposure Record for a Monitoring Period,'' or equivalent; contractor reports; and Radiation Safety Officers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the other types of disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To provide data to other Federal and State agencies involved in monitoring and/or evaluating radiation exposure received by individuals as enumerated in the paragraph ''Categories of individuals covered by the system;''

b. To return data provided by licensee upon request;

c. A record from this system of records which indicates a violation of civil or criminal law, regulation, or order may be referred as a routine use to a Federal, State, local, or foreign agency that has authority to investigate, enforce, implement, or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

d. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant, or other benefit;

e. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

f. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

g. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

h. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

i. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) the NRC suspects or has confirmed that there has been a breach of the system of records, (2) the NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

j. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper and electronic media. The electronic records maintained in Oak Ridge, TN, are in a centralized database management system that is password protected. Backup tapes of the database are generated and maintained at a secure, off-site location for disaster recovery purposes. During the processing and data entry, paper records are temporarily stored in designated business offices that are locked when not in use and are accessible only to authorized personnel. Upon completion of data entry and processing, the paper records are stored in an offsite security storage facility accessible only to authorized personnel.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are accessed by individual name, social security number, date of birth, and/or by licensee name or number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records managed using REIRS are scheduled under NRC's NUREG–0910, Revision 4. Transfer a copy of REIRS data to the National Archives and Records Administration every 5 years (2.19.16). Retain Personnel monitoring reports and personnel overexposure reports entered into REIRS. Paper records are retained under 2.19.14.a(1). Destroy 2 years after data are input into REIRS. ADAMS PDF files, TIFF files, ADAMS document profiles, and ADAMS digital signature and concurrence data are retained under 2.19.14.a(4) and are cut off at the end of the fiscal year and destroyed 2 years after cutoff. Personnel monitoring reports and personnel overexposure reports of which only selected data are entered into REIRS, records are retained under 2.19.14.b(1). Cut off at end of fiscal year. Transfer to National Archives and Records Administration (NARA) when 20 years old.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Information maintained at ORAU is accessible by the Office of Nuclear Regulatory Research (RES) and individuals that have been authorized access by NRC, including all NRC Radiation Safety Officers and ORAU employees that are directly involved in the REIRS project. Reports received and reviewed by the NRC's RES, Office of Nuclear Reactor Regulation (NRR), Office of Nuclear Material Safety and Safeguards (NMSS), and Regional offices are in lockable file cabinets and bookcases in secured buildings. A log is maintained of both telephone and written requests for information.

The data maintained in the REIRS database are protected from unauthorized access by several means. The database server resides in a protected environment with physical security barriers under keycard access control. Accounts authorizing access to the server and databases are maintained by the ORAU REIRS system administrator. In addition, ORAU maintains a computer security firewall that further restricts access to the ORAU computer network. Authorization for access must be approved by NRC, ORAU project management, and ORAU computer security. Transmittal of data via the internet is protected by data encryption.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

89 FR 58782 (July 19, 2024).

SYSTEM NAME AND NUMBER:

Special Inquiry Records—NRC 33.

SECURITY CLASSIFICATION:

Classified and Unclassified.

SYSTEM LOCATION:

Special Inquiry Group, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

SYSTEM MANAGER(S):

Records Manager, Special Inquiry Group, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2051, 2052, 2201(c), (i), and (o).

PURPOSE(S) OF THE SYSTEM:

Investigation material for potential or actual concerns in connection with investigations of accidents or incidents at nuclear power plants or other nuclear facilities or involving nuclear materials, or allegations regarding public health and safety.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals possessing information regarding or having knowledge of matters of potential or actual concern to the Commission in connection with the investigation of an accident or incident at a nuclear power plant or other nuclear facility, or an incident involving nuclear materials or an allegation regarding the public health and safety related to the NRC's mission responsibilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of an alphabetical index file bearing individual names. The index provides access to associated records which are arranged by subject matter, title, or identifying number(s) and/or letter(s). The system incorporates the records of all Commission correspondence, memoranda, audit reports and data, interviews, questionnaires, legal papers, exhibits, investigative reports and data, and other material relating to or developed as a result of the inquiry, study, or investigation of an accident or incident.

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from sources including, but not limited to, NRC officials and employees; Federal, State, local, and foreign agencies; NRC licensees; nuclear reactor vendors and architectural engineering firms; other organizations or persons knowledgeable about the incident or activity under investigation; and relevant NRC records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the other types of disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To provide information relating to an item which has been referred to the Commission or Special Inquiry Group for investigation by an agency, group, organization, or individual. A record from this system may be disclosed as a routine use to notify the referring agency, group, organization, or individual of the status of the matter or of any decision or determination that has been made;

b. To disclose a record as a routine use to a foreign country under an international treaty or convention entered into and ratified by the United States;

c. To provide records relating to the integrity and efficiency of the Commission's operations and management. A record from this system may be disseminated outside the Commission as part of the Commission's responsibility to inform the Congress and the public about Commission operations;

d. A record from this system of records which indicates a violation of civil or criminal law, regulation, or order may be referred as a routine use to a Federal, State, local, or foreign agency that has authority to investigate, enforce, implement, or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

e. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant, or other benefit;

f. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

g. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

h. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

i. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) the NRC suspects or has confirmed that there has been a breach of the system of records, (2) the NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

j. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper in file folders and electronic media. Documents are maintained in secured vault facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Accessed by name (author or recipient), corporate source, title of document, subject matter, or other identifying document or control number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Permanent Records retained as General Program Correspondence Files (Subject Files) at the Office Director Level are scheduled under NUREG 0910 rev 4–2.18.5.a(1). Cut off at close of fiscal year. Transfer to the National Archives and Records Administration when 20 years old. Permanent Nuclear Power Plant Docket Files are scheduled

under NUREG 0910 Rev 4–2.18.11.a(1). Cut off files upon license termination following completion of decommissioning procedure. Closing date is the termination date following completion of decommissioning procedure. Transfer to the National Archives and Records Administration 20 years after termination of license.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

These records are located in locking filing cabinets or safes in a secured facility and are available only to authorized personnel whose duties require access.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.'' Information classified under Executive Order 12958 will not be disclosed. Information received in confidence will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

HISTORY:

89 FR 58786 (July 19, 2024).

SYSTEM NAME AND NUMBER:

Drug Testing Program Records—NRC 35.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Division of Facilities and Security, Office of Administration, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

SYSTEM MANAGER(S):

Director, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 7301; 5 U.S.C. 7361–7363; 42 U.S.C. 2165; 42 U.S.C. 290dd; Executive Order (E.O.) 12564; 9397, as amended by E.O. 13478.

PURPOSE(S) OF THE SYSTEM:

This record system will maintain information gathered by and in the possession of NRC Drug Testing Program, used in verifying positive test results for illegal use of controlled substances, as well as collecting and maintaining evidence of possession, distribution, or trafficking of controlled substances.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees, applicants, consultants, licensees, and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information regarding the drug testing program; requests for and results of initial, confirmatory and follow-up testing, if appropriate; additional information supplied by NRC employees, employment applicants, consultants, licensees, or contractors in challenge to positive test results; and written statements or medical evaluations of attending physicians and/or information regarding prescription or nonprescription drugs.

RECORD SOURCE CATEGORIES:

NRC employees, employment applicants, consultants, licensees, and contractors who have been identified for drug testing who have been tested; physicians making statements regarding medical evaluations and/or authorized prescriptions for drugs; NRC contractors for processing including, but not limited to, specimen collection, laboratories for analysis, and medical evaluations; and NRC staff administering the drug testing program to ensure the achievement of a drug-free workplace.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the other types of disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To identify substance abusers within the agency;

b. To initiate counseling and/or rehabilitation programs;

c. To take personnel actions;

d. To take personnel security actions;

e. For statistical reporting purposes. Statistical reporting will not include personally identifiable information;

f. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

g. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) the NRC suspects or has confirmed that there has been a breach of the system of records, (2) the NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

h. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper and electronic media. Specimens are maintained in appropriate environments.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are indexed and accessed by name, social security number, testing position number, specimen number, drug testing laboratory accession number, or a combination thereof.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Employee drug test plans, procedures, and scheduling records are retained under the National Archives and

Records Administration's General Records Schedule 2.7: Employee Health and Safety Records, item 100. Destroy when 3 years old or when superseded or obsolete. Employee drug test acknowledgement of notice forms are retained under General Records Schedule 2.7, item 110. Destroy when employee separates from testing-designated position. Employee drug testing specimen records are retained under General Records Schedule 2.7, item 120. Destroy 3 years after date of last entry or when 3 years old, whichever is later. Employee drug test results (Positive Results) are retained under General Records Schedule 2.7, item 130. Destroy when employee leaves agency or when 3 years old, whichever is later. Employee drug test results (Negative results) are retained under General Records Schedule 2.7, item 131. Destroy when 3 years old.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in use are protected to ensure that access is limited to those persons whose official duties require such access. Unattended records are maintained in NRC-controlled space in locked offices, locked desk drawers, or locked file cabinets. Stand-alone and network processing systems are password protected and removable media is stored in locked offices, locked desk drawers, or locked file cabinets when unattended. Network processing systems have roles and responsibilities protection and system security plans. Records at laboratory, collection, and evaluation facilities are stored with appropriate security measures to control and limit access to those persons whose official duties require such access.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f)

HISTORY:

89 FR 58787 (July 19, 2024).

SYSTEM NAME AND NUMBER:

Employee Locator Records—NRC 36.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained in a Federal Risk and Authorization Management Program (FedRAMP)-authorized cloud environment hosted by Amazon Web Services (AWS) within U.S. regions. System infrastructure is located in AWS U.S. East and U.S. West regions. Supporting system administration and operational activities may occur at contractor facilities in Vienna, Virginia, and Pasadena, California.

SYSTEM MANAGER(S):

Branch Chief, Security Operations Branch, Cyber and Information Security Division, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 3301; Executive Order (E.O.) 9397, as amended by E.O. 13478; and E.O. 12656.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to provide a platform for the NRC to notify employees and contractors of important events such as office or building closures, weather-related events, or other emergencies requiring notification. The system also supports personnel accountability during emergencies by allowing employees and contractors to report their status in response to system notifications.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include, but are not limited to, an individual's name, home address, personal email address, office organization and location (building, room number, mail stop), telephone number (home, business, and cell), person to be notified in case of emergency (name, address, telephone number), and other related records.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained; Enterprise Identity Hub (EIH), and other related records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the other types of disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To contact the subject individual's designated emergency contact in the case of an emergency;

b. To contact the subject individual regarding matters of official business;

c. To maintain the agency telephone directory (accessible from *www.nrc.gov*);

d. For internal agency mail services;

e. A record from this system of records which indicates a violation of civil or criminal law, regulation, or order may be referred as a routine use to a Federal, State, local, or foreign agency that has authority to investigate, enforce, implement, or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

f. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

g. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) the NRC suspects or has confirmed that there has been a breach of the system of records, (2) the NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

h. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records

is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information is accessed by name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Mail, printing, and telecommunication service control records are retained under the National Archives and Records Administration's General Records Schedule 5.5: Mail, Printing, and Telecommunications Service Management Records, item 020. Destroy when 1 year old or when superseded or obsolete, whichever is applicable, but longer retention is authorized if required for business use. Customer/client records are retained under General Records Schedule 6.5: Public Customer Service Records, item 020. Destroy when superseded, obsolete, or when customer requests the agency to remove the records.

Administrative records maintained in any agency office are retained under General Records Schedule 5.1: Common Office Records, item 010. Destroy when business use ceases.

Employee emergency contact information records are retained under the National Archives General Records Schedule 5.3 item 020. Destroy when superseded or obsolete, or upon separation or transfer of employee. These records are used to account for and maintain communication with personnel during emergencies, office dismissal, and closure situations.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records are protected by password controls and multi-factor authentication. Access to, and use of, these records is limited to authorized individuals whose official duties require such access. Administrative, technical, and physical safeguards are implemented to protect records from unauthorized access, use, or disclosure.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

89 FR 58788 (July 19, 2024).

SYSTEM NAME AND NUMBER:

Information Security Files and Associated Records—NRC 37.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Division of Security Operations, Office of Nuclear Security and Incident Response, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

SYSTEM MANAGER(S):

Director, Division of Security Operations, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2161–2169 and 2201(i); Executive Order 13526; 10 CFR part 95.

PURPOSE(S) OF THE SYSTEM:

Keep track of NRC employees, contractors, consultants, licensees, and other cleared persons who have been granted classification authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals include present and former NRC employees, contractors, consultants, licensees, and other cleared persons.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information regarding:

a. Personnel who are authorized access to specified levels, categories and types of information, the approving authority, and related documents; and

b. Names of individuals who classify and/or declassify documents (*e.g.,* for the protection of Classified National Security Information and Restricted Data).

RECORD SOURCE CATEGORIES:

NRC employees, contractors, consultants, and licensees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the other types of disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To prepare statistical reports for the Information Security Oversight Office;

b. A record from this system of records which indicates a violation of civil or criminal law, regulation, or order may be referred as a routine use to a Federal, State, local, or foreign agency that has authority to investigate, enforce, implement, or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

c. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

d. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

e. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

f. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

g. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants,

and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

h. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) the NRC suspects or has confirmed that there has been a breach of the system of records, (2) the NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

i. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Accessed by name and/or assigned number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained under the National Archives and Records Administration's, General Records Schedule 4.2: Information Access and Protection Records. Freedom of Information Act (FOIA), Privacy Act (PA), and classified administrative records are retained under General Records Schedule 4.2, item 001. Destroy when 3 years old, but longer retention is authorized if needed for business use. Information access and protection tracking and control records are retained under General Records Schedule 4.2, item 030. Destroy 2 years after last form entry, reply, or submission; or when associated documents are declassified or destroyed; or when authorization expires; whichever is appropriate. Longer retention is authorized if required for business use. Access control records are retained under General Records Schedule 4.2, item 031. Destroy when superseded or obsolete, but longer retention is authorized if required for business use. Accounting for and control of access to classified and controlled unclassified records and records requested under FOIA, PA and Mandatory Declassification Review are retained under General Records Schedule 4.2, item 040. Destroy or delete 5 years after date of last entry, final adjudication by courts, or final action by agency (such as downgrading, transfer, or destruction of related classified documents, or release of information from controlled unclassified status), as may apply, whichever is later; but longer retention is authorized if required for business use.

Classified information nondisclosure agreements which are maintained separately from the individual's official personnel folder are retained under the National Archives and Records Administration's General Records Schedule 4.2 item 121. Destroy records when 50 years old.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Information maintained in locked buildings, containers, or security areas under guard and/or alarm protection, as appropriate. Records are processed only on systems approved for processing classified information or accessible through password protected systems for unclassified information. The classified systems are stand-alone systems located within secure facilities or with removable hard drives that are either stored in locked security containers or in alarmed vaults cleared for open storage of TOP SECRET information.

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedures.''

RECORD ACCESS PROCEDURE:

Same as ''Notification procedures.'' Some information is classified under Executive Order 13526 and will not be disclosed. Other information has been received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1) and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4), (G), (H), and (I), and (f).

HISTORY:

89 FR 58789 (July 19, 2024).

SYSTEM NAME AND NUMBER:

Mailing Lists—NRC 38.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Facilities, Logistics and Support Branch, Division of Facilities and Security, Office of Administration, NRC, 11545 Rockville Pike, Rockville, Maryland.

SYSTEM MANAGER(S):

Facilities, Logistics and Support Branch, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 3301.

PURPOSE(S) OF THE SYSTEM:

The system is maintained for the purpose of mailing informational literature or responses to those who request it; maintaining lists of individuals who attend meetings; and for other purposes for which mailing or contact lists may be created.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, including NRC staff, with an interest in receiving information from the NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Mailing lists include an individual's name and address; and title, occupation, and institutional affiliation, when applicable.

RECORD SOURCE CATEGORIES:

NRC staff, NRC licensees, and individuals expressing an interest in NRC activities and publications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the other types of disclosures permitted under subsection

(b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. A record from this system of records may be disclosed as a routine use for distribution of documents to persons and organizations listed on the mailing list;

b. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

c. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) the NRC suspects or has confirmed that there has been a breach of the system of records, (2) the NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

d. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records maintained on paper and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are accessed by company name, individual name, or file code identification number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Customer/client records are retained under the National Archives and Records Administration's General Records Schedule 6.5: Public Customer Service Records, Item 020. Delete when superseded, obsolete, or when customer requests the agency to remove the records.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

89 FR 58791 (July 19, 2024).

SYSTEM NAME AND NUMBER:

Personnel Security Files and Associated Records—NRC 39.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Division of Facilities and Security, Office of Administration, NRC, Two White Flint North, Rockville, Maryland.

SYSTEM MANAGER(S):

Director, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2011 *et seq.;* 42 U.S.C. 2165, 2201(i), 2201a, and 2284; 42 U.S.C. 5801 *et seq.;* Executive Order (E.O.) 9397, as amended by E.O. 13478; E.O. 10450, as amended; E.O. 10865, as amended; E.O. 13467; E.O. 13526; E.O. 13587; 10 CFR Parts 10, 11, 25, 50, 73, 95; OMB Circular No. A–130, Revised; 5 CFR parts 731, 732, and authorities cited therein.

PURPOSE(S) OF THE SYSTEM:

This record system will maintain information gathered by and in the possession of the NRC Division of Facilities and Security to maintain the NRC's Personnel Security and Insider Threat programs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons including NRC employees, employment applicants, consultants, contractors, and licensees; other Government agency personnel, other persons who have been considered for an access authorization, special nuclear material access authorization, unescorted access to NRC buildings or nuclear power plants, NRC building access, access to Federal automated information systems or data, and actual or suspected violators of laws administered by NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information about individuals, which includes, but is not limited to, their name(s), address, date and place of birth, social security number, identifying information, citizenship, residence history, employment history, military history, financial history, foreign travel, foreign contacts, education, spouse/cohabitant and relatives, personal references, organizational membership, medical, fingerprints, criminal record, and security clearance history. These records also contain copies of personnel security investigative reports from other Federal agencies, summaries of investigative reports, results of Federal agency indices and database checks, records necessary for participation in the criminal history program, reports of personnel security interviews, clearance actions information (*e.g.,* grants and terminations), access approval/disapproval actions related to NRC building access or unescorted access to nuclear plants, or access to Federal automated information systems or data, violations of laws, reports of security infraction, insider threat program inquiry records including analysis, results, referrals, and/or mitigation actions, and other related personnel security processing documents.

RECORD SOURCE CATEGORIES:

NRC applicants, employees, contractors, consultants, licensees, visitors and others, as well as information furnished by other Government agencies or their contractors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used by the Division of Facilities and Security and on a need-to-know basis by appropriate NRC officials, Hearing Examiners, Personnel Security Review Panel members, Office of Personnel Management, Central Intelligence Agency, Office of the Director of National intelligence, and other Federal agencies under the following routine uses:

a. To determine clearance or access authorization eligibility;

b. To determine eligibility for access to NRC buildings or access to Federal automated information systems or data;

c. To certify clearance or access authorization;

d. To maintain the NRC personnel security program, including the Insider Threat Program;

e. To provide licensees information needed for unescorted access or access to safeguards information determinations;

f. A record from this system of records which indicates a violation of civil or criminal law, regulation, or order may be referred as a routine use to a Federal, State, local, or foreign agency that has authority to investigate, enforce, implement, or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

g. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

h. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

i. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

j. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

k. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

l. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) the NRC suspects or has confirmed that there has been a breach of the system of records, (2) the NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

m. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records maintained on paper, tapes, and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Indexed and accessed by name, social security number, docket number, or a combination thereof.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Security administrative records are retained under the National Archives and Records Administration's General Records Schedule 5.6: Security Records, Item 010. Destroy when 3 years old, but longer retention is authorized if required for business use. Visitor processing records in areas requiring highest level security awareness are retained under General Records Schedule 5.6, item 110. Destroy when 5 years old, but longer retention is authorized if required for business use. Visitor processing records in all other facility security areas are retained under General Records Schedule 5.6, item 111. Destroy when 2 years old, but longer retention is authorized if required for business use. Personnel security and access clearance records of people issued clearances are retained under General Records Schedule 5.6, item 181. Destroy 5 years after employee or contractor relationship ends, but longer retention is authorized if required for business use. Indexes to the personnel security case files are retained according to General Records Schedule 5.6 item 190 and destroyed when superseded or obsolete.

Insider threat inquiry records are retained according to General Records Schedule 5.6 item 220 and destroyed 25 years after close of inquiry, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in use are protected to ensure that access is limited to those persons whose official duties require such access. Unattended records are maintained in NRC-controlled space in locked offices, locked desk drawers, or locked file cabinets.

Mass storage of records is protected when unattended by a combination lock and alarm system. Unattended classified records are protected in appropriate security containers in accordance with Management Directive 12.1.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedures.'' Some information is classified under Executive Order 12958 and will not be disclosed. Other information has been received in confidence and will not be

disclosed to the extent the disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedures.''

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

HISTORY:

89 FR 58792 (July 19, 2024).

SYSTEM NAME AND NUMBER:

Facility Security Access Control Records—NRC 40.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Division of Facilities and Security, Office of Administration, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

SYSTEM MANAGER(S):

Director, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2165–2169 and 2201; Executive Order (E.O.) 9397, as amended by E.O. 13478; E.O. 13462, as amended by E.O. 13516.

PURPOSE(S) OF THE SYSTEM:

Tracking NRC personal identification badges issued for access to NRC-controlled space and approved visitors to the NRC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees, consultants, contractors, other Government agency personnel, and approved visitors.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes information regarding: (1) NRC personal identification badges issued for continued access to NRC-controlled space; and (2) records regarding visitors to NRC. The records include, but are not limited to, an individual's name, electronic image, badge number, citizenship, employer, purpose of visit, person visited, date and time of visit, and other information contained on Government issued credentials.

RECORD SOURCE CATEGORIES:

Sources of information include NRC employees, contractors, consultants, employees of other Government agencies, and visitors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the other types of disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To control access to NRC classified information and to NRC spaces by human or electronic means;

b. Information (identification badge) may also be used for tracking applications within the NRC for other than security access purposes;

c. The electronic image used for the NRC employee personal identification badge may be used for other than security purposes only with the written consent of the subject individual;

d. A record from this system of records which indicates a violation of civil or criminal law, regulation, or order may be referred as a routine use to a Federal, State, local, or foreign agency that has authority to investigate, enforce, implement, or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

e. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

f. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

g. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

h. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

i. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

j. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) the NRC suspects or has confirmed that there has been a breach of the system of records, (2) the NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

k. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information is indexed and accessed by individual's name, identification badge number, employer's name, date of visit, or sponsor's name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The National Archives and Records Administration (NARA) General Records Schedule (GRS) 5.6, Security

Management Records establishes retention requirements for visitor processing records and related security indexes. Visitor processing records for areas requiring the highest level of security awareness, including spaces designated by the Interagency Security Committee (ISC) as Facility Security Level (FSL) V, are covered under GRS 5.6, item 110 and are temporary records authorized for destruction when 5 years old, unless a longer retention period is required for business use. Visitor processing records for all other facility security areas, including those designated by ISC as FSL I through IV, are covered under GRS 5.6, item 111 and are temporary records authorized for destruction when 2 years old, unless longer retention is required for business use. Indexes to personnel security case files are covered under GRS 5.6, item 190 and are temporary records authorized for destruction when superseded or obsolete. The NARA GRS 5.6, Security Management Records establishes retention requirements for routine facility security operations, credentialing records, and personnel security investigative documentation. Facility security management operations records are covered under GRS 5.6, item 090 and are temporary records authorized for destruction when 30 days old, unless longer retention is required for business use. Records associated with personal identification credentials and cards, including application and activation records, are covered under GRS 5.6, item 120 and are temporary records authorized for destruction 6 years after the end of an employee or contractor's tenure, unless a longer retention period is required for business use. Personal identification cards are covered under GRS 5.6, item 121 and are temporary records authorized for destruction after expiration, confiscation, or return. Personnel suitability and eligibility investigative reports are covered under GRS 5.6, item 170 and are temporary records authorized for destruction in accordance with the investigating agency's instructions. Reports and records created by agencies conducting investigations under delegated investigative authority are covered under GRS 5.6, item 171 and are temporary records authorized for destruction in accordance with the applicable delegated authority agreement or memorandum of understanding.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All records are maintained in NRC-controlled space that is secured after normal duty hours or a security area under guard presence in a locked security container/vault. There is an approved security plan which identifies the physical protective measures and access controls (*i.e.,* passwords and software design limiting access based on each individual's role and responsibilities relative to the system) specific to each system.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

89 FR 58793 (July 19, 2024).

SYSTEM NAME AND NUMBER:

Employee Fitness Center Records—NRC 44.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Fitness Center, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

SYSTEM MANAGER(S):

Office of Chief Human Capital Officer Contracting Officer Representative, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901; Executive Order (E.O.) 9397, as amended by E.O. 13478.

PURPOSE(S) OF THE SYSTEM:

Maintaining membership for the NRC Fitness Center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees who apply for membership at the Fitness Center, including current and former members.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes applications to participate in NRC's Fitness Center, information on an individual's degree of physical fitness and their fitness activities and goals; and various forms, memoranda, and correspondence related to Fitness Facilities membership and financial/payment matters. Specific information contained in the application for membership includes the employee applicant's name, gender, age, badge id, height, weight, and medical information, including a history of certain medical conditions; the name of the individual's personal physician and any prescription or over-the-counter drugs taken on a regular basis; and the name and address of a person to be notified in case of emergency.

RECORD SOURCE CATEGORIES:

Information in this system of records is principally obtained from the subject individual. Other sources of information include, but are not limited to, the NRC Fitness Center Director, staff physicians retained by the NRC, and the individual's personal physicians.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the other types of disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To the individual listed as an emergency contact, in the event of an emergency;

b. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 or 2906;

c. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local, or foreign agency that has authority to investigate, enforce, implement, or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

d. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

e. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

f. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

g. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

h. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

i. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) the NRC suspects or has confirmed that there has been a breach of the system of records, (2) the NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

j. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information is indexed and accessed by an individual's name and/or NRC Badge ID number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Fitness Center records are retained according to the National Archives and Records Administration's General Records Schedule 2.7: Employee Health and Safety Records, item 080, Non-occupational health and wellness program records. Destroy 3 years after the project/activity or transaction is completed or superseded, but longer retention is authorized if needed for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in a building where access is controlled by a security guard force. Access to the Fitness Center is controlled by keycard and bar code verification. Records in paper form are stored alphabetically by individuals' names in lockable file cabinets maintained in the NRC where access to the records is limited to agency and Fitness Center personnel whose duties require access. The records are under visual control during duty hours. Electronic records are protected by screen saver. Access to electronic data requires use of proper password and user identification codes. Only authorized personnel have access to areas in which information is stored.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

89 FR 58798 (July 19, 2024).

SYSTEM NAME AND NUMBER:

Electronic Credentials for Personal Identity Verification–NRC 45.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of the Chief Information Officer, NRC, White Flint North Complex, 11555 Rockville Pike, Rockville, Maryland, and current contractor facility.

SYSTEM MANAGER(S):

Director, Solutions Development and Operations Division, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 42 U.S.C. 2165 and 2201(i); 44 U.S.C. 3501, 3504; Electronic Government Act of 2002, 44 U.S.C. chapter 36; Homeland Security Presidential Directive 12 (HSPD–12), Policy for a Common Identification Standard for Federal Employees and Contractors, August 27, 2004; Executive Order (E.O.) 9397, as amended by E.O. 13478.

PURPOSE(S) OF THE SYSTEM:

Track and control Personal Identity Verification (PIV) cards issued to persons entering and exiting the NRC facilities or using NRC systems; and verify that all person entering federal facilities, using Federal information resources, are authorized to do so.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered are persons who have applied for the issuance of electronic credentials for signature, encryption, and/or authentication purposes; have had their credentials renewed, replaced, suspended, revoked, or denied; have used their credentials to electronically make contact with, retrieve information from, or submit information to an automated information system; or have corresponded with NRC or its contractor concerning digital services.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information needed to establish and verify the identity of users, to maintain the system, and to establish accountability and audit controls. System records may include: (a) applications for the issuance, amendment, renewal, replacement, or revocation of electronic

credentials, including evidence provided by applicants or proof of identity and authority, and sources used to verify an applicant's identity and authority; (b) credentials issued; (c) credentials denied, suspended, or revoked, including reasons for denial, suspension, or revocation; (d) a list of currently valid credentials; (e) a list of currently invalid credentials; (f) a record of validation transactions attempted with electronic credentials; and (g) a record of validation transactions completed with electronic credentials.

RECORD SOURCE CATEGORIES:

The sources for information are the individuals who apply for electronic credentials, the NRC and contractors using multiple sources to verify identities, and internal system transactions designed to gather and maintain data needed to manage and evaluate the electronic credentials program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To agency electronic credential program contractors to compile and maintain documentation on applicants for verifying applicants' identity and authority to access information system applications; to establish and maintain documentation on information sources for verifying applicants' identities; to ensure proper management, data accuracy, and evaluation of the system;

b. To Federal authorities to determine the validity of subscriber digital certificates and other identity attributes;

c. To the National Archives and Records Administration (NARA) for records management purposes;

d. To a public data repository (*only name, email address, organization, and public key*) to facilitate secure communications using digital certificates;

e. A record from this system of records which indicates a violation of civil or criminal law, regulation, or order may be referred as a routine use to a Federal, State, local, or foreign agency that has authority to investigate, enforce, implement, or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

f. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

g. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

h. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

i. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

j. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

k. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) the NRC suspects or has confirmed that there has been a breach of the system of records, (2) the NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

l. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored electronically.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by an individual's name, email address, certificate status, certificate number or credential number, certificate issuance date, or approval role.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained under the National Archives and Records Administration's, General Records Schedule 5.6: Security Records. Application and activation records for personal identification credentials and cards are retained under General Records Schedule 5.6, item 120. Destroy 6 years after the end of an employee or contractor's tenure, but longer retention is authorized if required for business use. Personnel identification cards are retained under General Records Schedule 5.6, item 121. Destroy after expiration, confiscation, or return. Local facility identification and card access records are retained under General Records Schedule 5.6, item 130. Destroy upon immediate collection once the temporary credential or card is returned for potential reissuance due to nearing expiration or not to exceed 6 months from time of issuance or when individual no longer requires access, whichever is sooner, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Technical, administrative, and personnel security measures are implemented to ensure confidentiality, integrity, and availability of the system data stored, processed, and transmitted. Electronic records are, at a minimum, password protected. Access to and use of these records is limited to those

individuals whose official duties require access.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMS FOR THE SYSTEM:

None.

HISTORY:

89 FR 58799 (July 19, 2024).

SYSTEM NAME AND NUMBER:

Health Emergency Records—NRC 46.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Headquarters, 11555 Rockville Pike, Rockville, Maryland. Records may be maintained at all locations at which the NRC, or contractors on behalf of the NRC, operate or at which NRC operations are supported.

SYSTEM MANAGER(S):

Chief Human Capital Officer, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Workforce safety Federal requirements, which include: the Occupational Safety and Health Act of 1970; Executive Order 12196; and 5 U.S.C. 7902, ''Safety programs.'' Federal laws that authorize the NRC to create and maintain Federal records of agency activities, which include: 44 U.S.C. 3101; the Religious Freedom Restoration Act of 1993, 42 U.S.C. Chapter 21B; Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e; and the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 *et seq.*

Authorities addressing the federal government's preparation for, and response to, public health threats, including the PREVENT Pandemics Act, 42 U.S.C. 300hh–3; and Executive Order 13987, ''Organizing and Mobilizing the United States Government to Provide a Unified and Effective Response to Combat COVID–19 and to Provide United States Leadership on Global Health and Security.''

PURPOSE(S) OF THE SYSTEM:

Maintaining records necessary and relevant to NRC activities responding to and mitigating high-consequence public health threats. Records may include, but are not limited to, those applicable health related records needed to understand the impact of an illness or disease on the NRC workforce or to assist the NRC in protecting its workforce from a declared public health emergency, pandemic, or other high-consequence public health threat, including records submitted by NRC personnel or by the lawful representative of such personnel.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may include:

A. Full name, NRC employee ID number; telephone number, worksite, email address, supervisor's name, address and contact information.

C. Other information about the individual directly related to the disease or illness (*e.g.,* testing results/information, symptoms, treatments, source of exposure, or other applicable health related information).

D. Appointment scheduling information, including the date, time, and location of a scheduled appointment.

E. Medical screening information, including the individual's name, date of birth, age, category of employment, current medical status, related medical history, and any relevant medical history.

RECORD SOURCE CATEGORIES:

Records may be obtained from NRC employees or their representative who may provide relevant information on a suspected or confirmed disease or illness, or the prevention of such disease or illness, which is the subject of a high-consequence public health threat.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the other types of disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the persons or entities mentioned herein if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

A. To appropriate medical facilities, or Federal, State, local, Tribal, territorial or foreign government agencies, to the extent permitted by law, for the purpose of protecting the vital interests of individual(s), including to assist the United States Government in responding to or mitigating high-consequence public health threats.

B. To determine eligibility for access to NRC buildings, NRC licensee facilities or sites, or other Federal facilities.

C. To provide licensees information needed for unescorted access or access to the licensee's facility or facilities.

D. Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate Federal, State, local, territorial, Tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

E. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the NRC determines that the records are arguably relevant to its proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

F. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an NRC function related to this system of records.

G. A record on an employee from this system of records may be disclosed as a routine use to a Federal, State, local, territorial, Tribal, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of that individual, letting a contract, or issuing a license, grant, or other benefit.

H. A record on an employee from this system of records may be disclosed as a routine use to a Congressional office in response to an inquiry from the Congressional office made at the request of that individual.

I. To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

J. To appropriate agencies, entities, and persons when (1) the NRC suspects or has confirmed that there has been a breach of the system of records, (2) the NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to an individual(s), the NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the NRC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

K. To another Federal agency or Federal entity, when the NRC determines that information from this system of records is necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach, or (2) 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.

L. To any agency, organization, or individual for the purpose of performing authorized audit or oversight operations of the NRC and meeting related reporting requirements.

M. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

N. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager.

O. To a Federal agency employee, expert, consultant, or contractor in performing a Federal duty for purposes of authorizing, arranging, and/or claiming reimbursement for official travel, including, but not limited to, traveler profile information.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

All records in this system of records are maintained and in compliance with applicable executive orders, statutes, and agency implementing recommendations. Electronic records are stored in databases. Paper records are maintained in a secure, access-controlled room, with access limited to authorized personnel.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records will be retrieved by any of the categories of records, including name, location, date of applicable health information, or work status.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

To the extent applicable, to ensure compliance with Americans with Disabilities Act, the Rehabilitation Act, and the Genetic Information Nondiscrimination Act of 2008, medical information must be ''maintained on separate forms and in separate medical files and be treated as a confidential medical record.'' 42 U.S.C. 12112(d)(3)(B); 42 U.S.C. sec 2000ff–5(a); 29 CFR 1630.14(b)(1), (c)(1),(d)(4)(i); and 29 CFR 1635.9(a).

This means that medical information and documents must be stored separately from other personnel records. As such, the NRC must keep medical records for at least 1 year from creation date (29 CFR 1602.14). Further, records compiled under this system of records notice will be maintained in accordance with the National Archives and Records Administration General Records Schedule (GRS) 2.7, Employee Health and Safety Records, Items 010, 070, or 080 to the extent applicable.

GRS 2.7 item 010 (DAA–GRS–2017–0010–0001)—Clinic scheduling records. Temporary. Destroy when 3 years old, but longer retention is authorized if needed for business use.

GRS 2.7 item 070 (DAA–GRS–2017–0010–0012)—Non-occupational individual case files. Temporary. Destroy 10 years after the most recent encounter, but longer retention is authorized if needed for business use.

GRS 2.7 item 080 (DAA–GRS–2017–0010–0013)—Non-occupational health and wellness program records. Temporary. Destroy 3 years after the project/activity/or transaction is completed or superseded, but longer retention is authorized if needed for business use.

GRS 2.7 item 063 (DAA–GRS–2021–0003–0001)—Vaccination attestations and proof of vaccination records. Federal employees and contractors. Temporary. Destroy when 3 years old.

GRS 2.7 item 064 (DAA–GRS–2021–0003–0002)—Vaccination attestations and proof of vaccination records. Visitors. Temporary. Destroy when 30 days old.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The NRC safeguards records in this system according to applicable rules and policies, including all applicable NRC automated systems security and access policies. The NRC has imposed controls to minimize the risk of compromising the information that is being stored. Users of individual computers can only gain access to the data by valid user identification and password. Paper records are maintained in a secure, access-controlled room, with access limited to authorized personnel.

RECORDS ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act Officer or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

89 FR 58800 (July 19, 2024).

[FR Doc. 2026–20438 Filed 10–5–26; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2026–401 and K2026–390]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *https://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

II. Public Proceeding(s)
III. Summary Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). The Public Representative does not represent any individual person, entity or particular point of view, and, when Commission attorneys are appointed, no attorney-client relationship is established. Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)–(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

None. *See* Section III for summary proceedings.

III. Summary Proceeding(s)

1. *Docket No(s).:* MC2026–401 and K2026–390; *Filing Title:* USPS Request to Add New Mid-Market Standardized Distinct Product, PM–GA Contract 1104, and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 1, 2026; *Filing Authority:* 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

This Notice will be published in the **Federal Register**.

Danielle LeFlore,

Legal Assistant.

[FR Doc. 2026–20437 Filed 10–5–26; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106564; File No. SR–NYSEARCA–2026–68]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Rules 5.32–O and 5.35–O

October 1, 2026.

I. Introduction

On June 18, 2026, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to permit cash settlement for up to 50 non-ETF Flexible Exchange (''FLEX'') Equity Options. The proposed rule change was published for comment in the **Federal Register** on July 7, 2026.[4] On August 19, 2026, pursuant to Section 19(b)(2)(A) of the Act,[5] the Commission designated a longer period within which to take action on the proposed rule change.[6] The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Description of the Proposed Rule Change

As described more fully in the Notice,[8] the Exchange proposes to: (i) amend paragraph (f)(3)(ii) of Rule 5.32–O to permit cash settlement for up to 50 non-ETF FLEX Equity Options whose underlying security meets the same criteria that currently must be met to qualify for the cash settlement program for ETF FLEX Equity Options; (ii) amend paragraph (f)(3)(ii)(A) of Rule 5.32–O to provide that, where more than 50 underlying ETFs or 50 underlying non-ETFs qualify, the Exchange will select the 50 qualifying securities with the highest average daily notional value, replacing the current usage of highest average daily share volume; (iii) and correspondingly revise Rule 903G, which addresses FLEX Equity Option position limits.

III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEARCA–2026–68 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[9] to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to

[4] *See* Securities Exchange Act Release No. 105833 (July 1, 2026), 91 FR 41716 (''Notice'').

[5] 15 U.S.C. 78s(b)(2)(A).

[6] *See* Securities Exchange Act Release No. 106164, 91 FR 54783 (August 24, 2026). The Commission designated October 5, 2026, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Notice, *supra* note 4.

[9] 15 U.S.C. 78s(b)(2)(B).

approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[10] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the proposed rule change's consistency with the Act and, in particular, Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[12] in addition to any other comments they may wish to submit about the proposed rule change. By way of example, the Commission recently granted exemptive relief—to permit p.m. settlement for cash-settled security futures—that was conditioned on the collection and provision of certain data elements.[13] Commenters may submit comments regarding the potential utility of the same or similar data collection commitments here, in addition to any other comments they may wish to submit about the proposed rule change.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, including the issues raised by commenters, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[14] any request for an opportunity to make an oral presentation.[15]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by October 27, 2026. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by November 10, 2026.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2026–68 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2026–68. 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 filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2026–68 and should be submitted on or before October 27, 2026. Rebuttal comments should be submitted by November 10, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20406 Filed 10–5–26; 8:45 am]

BILLING CODE 8011–01–P

[10] *See id.*

[11] 15 U.S.C. 78f(b)(5).

[12] *See* Notice, *supra* note 4.

[13] *See* Securities Exchange Act Release No. 105882 (July 10, 2026), 91 FR 43410 (July 15, 2026).

[14] 17 CFR 240.19b–4.

[15] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[16] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106559; File No. SR–IEX–2026–36]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Supplementary Material .04 and .05 to IEX Rule 23.150(h) To Change Three of the Variables in the Options Risk Parameter Quote Instability Calculation, Each Within the Permitted Ranges Specified Therein

October 1, 2026.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 23, 2026, the Investors Exchange LLC (''IEX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,[4] and Rule 19b–4 thereunder,[5] the Exchange is filing with the Commission a proposed rule change to amend Supplementary Material .04 and .05 to IEX Rule 23.150(h) to change three of the variables in the Options Risk Parameter quote instability calculation, each within the permitted ranges specified therein. The Exchange has designated this proposal as constituting an interpretation with respect to the administration of an existing IEX Rule pursuant to Rule 19b–4(f)(1) under the Act.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] 17 CFR 240.19b–4(f)(1).

The text of the proposed rule change is available at the Exchange's website at *https://www.iexexchange.io/resources/regulation/rule-filings* and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 18, 2025, the Commission approved IEX's rule change proposal to adopt rules governing the trading of options on the Exchange in a new facility called ''IEX Options'';[7] IEX Options has announced its plan to commence trading options on October 2, 2026.[8] The purpose of the proposed rule change is to amend Supplementary Materials .04 and .05 to IEX Rule 23.150(h) to change three of the variables in the Options Risk Parameter quote instability calculation, each within the range specified therein. Pursuant to IEX Rule 23.150(h), IEX Options will offer Market Makers the Options Risk Parameter (''ORP''), which the Market Makers can elect to apply to a quotation that rests on the Order Book at the price designated by the Market Maker that entered the quotation.[9] When the ORP is triggered based on pre-defined criteria in IEX rules, the relevant quotation(s) will be adjusted or canceled in the manner specified in IEX rules.[10]

As described in the Options Rule Filing, the ORP will leverage IEX's proprietary mathematical formula—the Options Quote Indicator, which is a fixed formula specified transparently in IEX's rules, to assess the materiality of an imminent change to the current best Protected Bid[11] of the Away Markets[12] to a lower price or of an imminent change to the current best Protected Offer[13] of the Away Markets to a higher price for a particular listed options series (*i.e.,* an imminent adverse price change).[14] The Indicator utilizes real time relative quoting activity of protected quotations from Signal Exchanges (as defined in IEX Rule 11.190(g)) in securities underlying each listed options series and a proprietary mathematical calculation (the ''quote instability calculation''), as described in more detail below, to assess the impact of a price change in the underlying on the price of a particular options series.[15] When the quote instability calculation identifies an imminent adverse price change in a particular listed options series, it will generate a quote instability determination.[16] If a Market Maker has elected that its quotations be subject to the ORP, and a quote instability determination is generated for an options series quoted by a Market Maker and the quote is above (below) the price level of the quote instability determination, the quote will be either cancelled or repriced to the price level of the quote instability determination, as instructed by the Market Maker.[17]

Supplementary Materials .04 and .05 to IEX Rule 23.150(h) provide that the Exchange may change three of the variables in the ORP quote instability calculation. For two aspects of the Quote Instability Calculation formula—the Delta Bound Band[18] and the Quote Instability Threshold[19]—Supplementary Material .04 to IEX Rule 23.150(h) specifies the possible range of values the Exchange may use for each aspect and the initial value for each aspect. Similarly, for the frequency of calculation of implied volatility, which is used to calculate Delta, Supplementary Material .05 to IEX Rule 23.150(h) specifies that it will be calculated each half-hour of System operation but that the Exchange may determine to calculate the value more frequently based on its assessment of factors that would optimize application of the ORP.[20]

As specified in Supplementary Material .04 and .05 to IEX Rule 23.150(h), in the event that the Exchange determines to change any of the two variables described above or the frequency of its calculation of implied volatility, it will submit a rule filing pursuant to Rule 19b–4(f) specifying the new value(s). Furthermore, as specified in the Options Rule Filing (and consistent with its approval by the Commission), if the Exchange determines to change such values within the applicable specified ranges, the Exchange will submit a rule filing pursuant to Rule 19b–4(f)(1) under the Act[21] (or other appropriate rule filing type) specifying the new value, within the range of possible values specified in the applicable rule. IEX believes that the proposed changes in this rule filing to values that fall within the previously approved range of possible values constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, and therefore that a filing pursuant to Rule 19b–4(f)(1) under the Exchange Act is appropriate.[22]

In preparation for launch of IEX Options, the Exchange proposes to modify each of these three (Delta Bound Band, Quote Instability Threshold, and

[7] *See* Securities Exchange Act Release No. 103998 (September 18, 2025), 90 FR 45861 (September 23, 2025) (SR–IEX–2025–02) (Commission order approving a Proposed Rule Change, as Modified by Amendment No. 3, to Adopt Rules to Govern the Trading of Options on the Exchange for a New Facility Called IEX Options) (''Approval Order'').

[8] *See https://www.iex.io/options/resources#important-dates.*

[9] The purpose and operation of the ORP is described in the Exchange's Proposed Rule Change to Adopt Rules to Govern the Trading of Options on the Exchange for a New Facility Called IEX Options (the ''Options Rule Filing''), Securities Exchange Act Release No. 103290 (June 18, 2025), 90 FR 26865 (June 24, 2025) (SR–IEX–2025–02).

[10] *See* IEX Rule 23.150(h).

[11] *See* IEX Rule 28.100(a)(19).

[12] *See* IEX Rule 22.160(a)(7).

[13] *See* IEX Rule 28.100(a)(19).

[14] *See* IEX Rule 23.150(h).

[15] *See* Supplementary Material .04 to IEX Rule 23.150(h).

[16] *See* IEX Rule 23.150(h)(1)(A).

[17] *See* IEX Rule 23.150(h)(1)(C).

[18] *See* Supplementary Material .04(1)(q) to IEX Rule 23.150(h). Delta is a key metric in options trading that measures the sensitivity of an option's price to changes in the price of the underlying asset. The Delta Bound Band restricts the ORP from triggering unless the option's Delta is within the specified band. Currently, the initial value for the Delta Bound Band would be between 0–1, with the possible range of values between 0–1.

[19] *See* Supplementary Material .04(2)(e) to IEX Rule 23.150(h). Currently, the possible Quote Instability Threshold range will be within a range of 0%–100%. If the Quote Instability Threshold is set at 100%, the expected change in the NBB/NBO of the option resulting from price movement in the underlying must be at least 100% of the current value of the NBB/NBO of the option for the ORP to trigger. If the Quote Instability Threshold is set at 0%, ORP would trigger if there is any expected change to the NBB/NBO of the option resulting from price movement in the underlying. The current initial value for the Quote Instability Threshold is specified to be 0.1%. When triggered, ORP will only result in the repricing or cancellation of quotes if the change to the NBB/NBO of the option resulting from price movement in the underlying is to a different price level than the current NBB/NBO after rounding to the nearest minimum price variation.

[20] *See* Supplementary Material .05 to IEX Rule 23.150(h).

[21] *See* 17 CFR 240.19b–4(f)(1). A rule filing pursuant to Rule 19b–4(f)(1) under the Exchange Act takes effect upon filing with the Commission.

[22] *See* Options Rule Filing, *supra,* note 9, 90 FR at 26879.

Implied Volatility calculation frequency) variables, as set forth below, in order to optimize the application of the ORP for launch with more conservative settings than initially approved (but within the approved ranges), in order to enable market participants to acclimate to IEX's new options market. The proposed rule change would be operative for IEX Options launch, currently scheduled to begin on October 2, 2026.

Variable	Current value	Range	Proposed value
Delta Bound Band	0–1	0–1	0.30–1.00.
Quote Instability Threshold	0.1%	0%–100%	0.5%.
Implied Volatility Calculation frequency.	Each half hour of System operation.	No longer than each half hour of System operation.	Each one minute of System operation.

Accordingly, IEX proposes to amend Supplementary Material .04 and .05 to IEX Rule 23.150(h) to reflect such modifications to the value of each of the three variables, as described above.

The Exchange will issue a Trading Alert announcing the modifications to the values of the three variables, as described above, upon effectiveness of this proposed rule change.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with Section 6(b) [23] of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act,[24] 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. Specifically, as discussed in the Purpose section, the proposed change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of existing IEX rules as contemplated by the Options Rule Filing. In this regard, IEX believes that the changes to the manner in which IEX will administer the ORP will optimize application of the ORP for IEX Options launch and thereby support Market Makers in providing more competitive quotes which will benefit all market participants and thereby support the protection of investors and the public interest.

Additionally, the Exchange notes that the ORP will continue to leverage a fixed formula specified transparently in IEX rules, that was previously approved by the Commission.[25] The Exchange is not proposing to add any new functionality, but merely to adjust the values for the three variables for the ORP quote instability calculation within the ranges set forth in IEX rules, as discussed in the Purpose section. Thus, IEX does not believe that the proposed rule change raises any new or novel issues that have not already been considered by the Commission, in that the ORP functionality and IEX's ability to change the three values within specified ranges were previously approved by the Commission.[26]

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, as discussed in the Statutory Basis section, the proposal is designed to enhance competition by optimizing application of the ORP for IEX Options launch.

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition because it will apply to all Options Members in the same manner and any Options Member could become a Market Maker subject to meeting applicable requirements.

The Exchange also does not believe that the proposal will impose any burden on inter-market competition that is not necessary or appropriate. Competing exchanges are free to adopt similar functionality, subject to the Commission rule filing process.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) [27] of the Act and Rule 19b–4(f)(1) [28] thereunder, in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of IEX.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [29] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–IEX–2026–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–IEX–2026–36. 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/*

[23] 15 U.S.C. 78f.

[24] 15 U.S.C. 78f(b)(5).

[25] *See supra* note 7.

[26] *See supra* note 7.

[27] 15 U.S.C. 78s(b)(3)(A)(i).

[28] 17 CFR 240.19b–4(f)(1).

[29] 15 U.S.C. 78s(b)(2)(B).

rules/sro.shtml). Copies of the filing 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–IEX–2026–36 and should be submitted on or before October 27, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20401 Filed 10–5–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106567; File No. 10–256]

Acknowledgement of Receipt of Notice of Registration as a National Securities Exchange Pursuant to Section 6(g) of the Securities Exchange Act of 1934 by ICE Futures U.S., Inc.

October 1, 2026.

Section 6(g) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] provides that an exchange that lists or trades security futures products may register as a national securities exchange solely for the purposes of trading security futures products by filing a written notice with the Securities and Exchange Commission (''Commission'') if: (1) the exchange is a board of trade, as that term is defined by the Commodity Exchange Act (''CEA''),[2] that has been designated a contract market by the Commodity Futures Trading Commission (''CFTC'') and such designation is not suspended by order of the CFTC; and (2) such exchange does not serve as a market place for transactions in securities other than security futures products or futures on exempted securities or groups or indexes of securities or options thereon that have been authorized under Section 2(a)(1)(C) of the CEA.[3] Rule 6a–4 under the Exchange Act [4] requires that such an exchange submit written notice of registration to the Commission on Form 1–N.[5] Under Exchange Act Section 6(g)(2)(B), an exchange's registration as a national securities exchange becomes effective contemporaneously with the submission of the written notice on Form 1–N.[6]

On September 30, 2026, ICE Futures U.S., Inc. (''ICE Futures'') filed a Form 1–N with the Commission. Pursuant to Section 6(g)(3) of the Exchange Act,[7] the Commission hereby acknowledges receipt of the Form 1–N submitted by ICE Futures. Copies of the Form 1–N, including all exhibits, are available on the Commission's internet website (*https://www.sec.gov/rules-regulations/commission-orders-notices/other-commission-orders-notices-information*).

For further information about this Release, you may contact David Dimitrious, Senior Special Counsel; Jennifer Colihan, Special Counsel; Eugene Hsia, Special Counsel; Michou Nguyen, Special Counsel; and Alba Baze, Attorney-Adviser, Office of Market Supervision, Division of Trading and Markets, at (202) 551–5550, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20409 Filed 10–5–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106560; File No. SR–C2–2026–027]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 5.52

October 1, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 2026, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 C2 Exchange, Inc. (''C2'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to amend Exchange Rule 5.52 (Market-Maker Quotes) to provide that the $5 maximum bid/ask differential will apply to options series expiring in 270 days or less, and a $15 maximum bid/ask differential will apply to options series expiring in more than 270 days. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Commission's website (*https://www.sec.gov/rules/sro.shtml*), the Exchange's website (*https://www.cboe.com/us/equities/regulation/rule_filings/ctwo/*), and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 5.52(c) to add a time-to-expiration tier to the existing bid/ask differential requirements for Market-Maker quotes.

The Exchange previously adopted bid/ask differential requirements for Market-Maker quotes under Rule 5.52(c) in a recent rule filing.[3] The Prior Filing

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78f(g).

[2] 7 U.S.C. 1a(6).

[3] 7 U.S.C. 2(a)(1)(C).

[4] 17 CFR 240.6a–4.

[5] Under Rule 202.3(b)(3) of the Commission's Informal and Other Procedures, upon receipt of a Form 1–N, the Division of Trading and Markets examines the notice to determine whether all necessary information has been supplied and whether all other required documents have been furnished in proper form. 17 CFR 202.3(b)(3).

[6] 15 U.S.C. 78f(g)(2)(B).

[7] 15 U.S.C. 78f(g)(3).

[8] 17 CFR 200.30–3(a)(75).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 106207 (August 27, 2026), 91 FR 56257 (September 1, 2026) (SR–C2–2026–022) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend

Continued

established a single general maximum bid/ask differential of $5 regardless of the Market-Maker's bid, applicable to all options series without regard to time to expiration. The Exchange now proposes to amend Rule 5.52(c) to conform to the approach in Cboe Options Rule 5.52(c), under which the $5 maximum bid/ask differential applies to options series expiring in 270 days or less, and a $15 maximum applies to options series expiring in more than 270 days.

The use of time to expiration as a variable in bid/ask differential requirements is an established concept across options exchanges. Cboe Options Rule 5.52(c) uses a 270-day threshold, under which a $5 maximum bid/ask differential applies to options series expiring in 270 days or less, and a $15 maximum applies to options series expiring in more than 270 days. Similarly, ISE Options 2, Section 4(b)(4) provides that bid/ask differentials do not apply to options series until the time to expiration is less than nine months (approximately 270 days), and Phlx Options 4A, Section 12(b)(2)(i) similarly provides that bid/ask differential rules shall not apply to index long-term option series until the time to expiration is less than twelve months.

The Exchange believes the proposed general bid/ask differentials of $5 for options series expiring in 270 days or less and $15 for options series expiring in more than 270 days are reasonable and appropriate. The $5 differential for shorter-dated series is sufficiently wide to accommodate normal market conditions and volatility while preventing Market-Makers from entering quotes that are so wide as to provide no meaningful liquidity. The wider $15 differential for longer-dated series (*i.e.,* those with more than 270 days to expiration) accounts for the reduced liquidity, wider theoretical values, and greater uncertainty associated with long-term options.

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.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] 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)[6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that adding a time-to-expiration tier to the existing bid/ask differential requirements promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system. The amendment conforms to Cboe Options Rule 5.52(c), and will enhance the quality of markets on C2 Options by establishing bid/ask differential requirements calibrated to the differing liquidity characteristics and pricing uncertainty across options series with varying times to expiration. Specifically, by establishing a general maximum permissible width of $5 (for options series expiring in 270 days or less) and $15 (for options series expiring in more than 270 days) between a Market-Maker's bid and offer, the Exchange believes the proposal will improve market quality by providing investors with more meaningful execution opportunities and contributing to more efficient price discovery.

As discussed above, the Exchange believes the proposed bid/ask differentials are reasonable and appropriate. The $5 differential for shorter-dated series accommodates normal market conditions while preventing excessively wide quotes. The wider $15 differential for longer-dated series accounts for the reduced liquidity, wider theoretical values, and greater uncertainty associated with long-term options. The use of time to expiration as a variable in bid/ask differential requirements is an established concept across options exchanges, including Cboe Options Rule 5.52(c), ISE Options 2, Section 4(b)(4), and Phlx Options 4A, Section 12(b)(2)(i).

The amended, tiered bid/ask differential requirements will apply uniformly to all Market-Makers on C2 Options based on the applicable time to expiration. The proposal therefore does not permit unfair discrimination among Market-Makers and applies the same $5 and $15 maximums on the same basis to similarly situated options series. For the foregoing reasons, the Exchange believes the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the amended, tiered bid/ask differential requirements will apply uniformly to all Market-Makers on C2 Options. The $5 and $15 maximums will be determined by the same time-to-expiration framework for all Market-Makers.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed time-to-expiration tier conforms to Cboe Options Rule 5.52(c) and is consistent with the quote width frameworks of other options exchanges, including ISE and Phlx. By adopting bid/ask differential requirements consistent with those of other options exchanges, Market-Makers on the Exchange will be subject to comparable bid/ask differential requirements as market-makers on other markets.

For the foregoing reasons, the Exchange does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become

Exchange Rule 5.52 (Market-Maker Quotes) To Adopt Two-Sided Quote Bid/Ask Differentials) (the ''Prior Filing'').

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *Id.*

operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [9] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–C2–2026–027 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–C2–2026–027. 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 filing 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–C2–2026–027 and should be submitted on or before October 27, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20402 Filed 10–5–26; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 15 U.S.C. 78s(b)(2)(B).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0780]

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension: Rule 0–5

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this collection of information to the Office of Management and Budget for extension and approval.

Rule 0–5 (17 CFR 270.0–5) under the Investment Company Act (the ''Act'') (15 U.S.C. 80a *et seq.*) entitled ''Procedure with Respect to Applications and Other Matters,'') sets forth procedure for applications seeking orders for exemptions or other relief under the Investment Company Act. Rule 0–5(e) requires applicants seeking expedited review to include certain information with the application. Rule 0–5(e)(1) requires that the cover page of the application include a notation prominently stating ''EXPEDITED REVIEW REQUESTED UNDER 17 CFR 270.0–5(d).'' Rule 0–5(e)(2) requires applicants to submit exhibits with marked copies of the application showing changes from the final versions of two precedent applications identified as substantially identical. Rule 0–5(e)(3) requires an accompanying cover letter, signed, on behalf of the applicant, by the person executing the application (i) identifying two substantially identical applications and explaining why the applicant chose those particular applications, and if more recent applications of the same type have been approved, why the applications chosen, rather than the more recent applications, are appropriate; and (ii) certifying that that the applicant believes the application meets the requirements of rule 0–5(d) and that the marked copies required by rule 0–5(e)(2) are complete and accurate.

Rule 0–5(g) provides that, if an applicant has not responded in writing to a request for clarification or modification of an application filed under standard review within 120 days after the request, the application will be deemed withdrawn. As an oral response would not stop an application from being deemed withdrawn, rule 0–5(g), requires applicants to respond ''in writing'' and therefore create an additional cost within the meaning of the PRA.

The information collected under rule 0–5(g) and (e) is intended to provide an expedited review procedure for certain applications and establish an internal timeframe for review of applications outside of the expedited procedure. The rule is meant to provide relief as efficiently and timely as possible, while also ensuring that applications continue to be carefully analyzed consistent with the relevant statutory standards.

Applicants for orders under the Act can include investment companies and affiliated persons of investment companies. Applicants file applications as they deem necessary. The Commission receives approximately 188 applications per year under the Act, and of the 188 applications, we estimate to receive approximately 47 applications seeking expedited review under the Act. Although each application is typically submitted on behalf of multiple entities, the entities in the vast majority of cases are related companies and are treated as a single applicant for purposes of this analysis. Each application subject to rules 0–5(e) and 0–5(g) does not impose any ongoing obligations or burdens on the part of an applicant.

Much of the work of preparing an application is performed by outside counsel. Based on conversations with applicants and Staff experience, approximately 20 percent of applications are prepared by in-house counsel.

The mandatory requirements under rule 0–5(e) increase the estimated hour or cost burden for applicants utilizing

in-house counsel by 7 hours [1] or $5,418 [2] per application. Therefore, the mandatory requirements under rule 0–5(e) increase the total estimated annual hour burden by approximately 65.80 hours utilizing in-house counsel.[3] The total estimated annual cost burden for utilizing in-house counsel is $50,929.20.[4]

We estimate to receive approximately 141 applications [5] per year seeking standard review under the Act and of the 141 applications, we estimate that in approximately 10 percent of those, the applicants respond ''in writing'' to avoid the application being deemed withdrawn pursuant to rule 0–5(g). We believe the ''in writing'' requirement under rule 0–5(g) increases the burden for applicants utilizing in-house counsel by 2 hours or $1,548 per application.[6] Therefore, the ''in writing'' requirement under rule 0–5(g) increases the total estimated annual hour burden by approximately 5.64 hours utilizing in-house counsel.[7] The total estimated annual cost burden utilizing in-house counsel is $4,365.36.[8]

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.

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 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.

Please direct your written comments on this 60-Day Collection Notice to Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Tanya Ruttenberg via email to *PaperworkReductionAct@sec.gov* by December 7, 2026.

Dated: October 1, 2026.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20400 Filed 10–5–26; 8:45 am]

BILLING CODE 8011–01–P

[1] This estimate is based on the following calculation: 5 hours (estimated hours per application to prepare the marked copies) + 2 hour (estimated hours per application to explain, notate, and certify) = 7 hours.

[2] This estimate is based on the following calculation: 5 (estimated hours per application to prepare the marked copies) × $774 (hourly rate for a lawyer) = $3,870. 2 (estimated hours per application to explain, notate, and certify) × $774 (hourly rate for a lawyer) = $1,548. $3,870 (estimated cost per application to prepare the marked copies) + $1,548 (estimated cost per application to explain, notate, and certify) = $5,418.

[3] This estimate is based on the following calculations: [5 (estimated hours per application to prepare the marked copies) + 2 (estimated hours per application to explain, notate, and certify)] × 47 (estimated number of applications under expedited review) × 0.20 (approximate percentage of applications prepared by in-house counsel) = 65.80 hours.

[4] This estimate is based on the following calculation: 65.80 (estimated total hours utilizing in-house counsel) × $774 (hourly rate for a lawyer) = $50,929.20.

[5] This estimate is based on the following calculation: 188 (estimated number of all applications) − 47 (estimated number of applications under expedited review) = 141.

[6] This estimate is based on the following calculation: 2 (estimated hours to prepare ''in writing'' response) × $774 (hourly rate for a lawyer) = $1,548.

[7] This estimate is based on the following calculations: 2 (estimated hours to prepare ''in writing'' response) × 141 (estimated number of applications under standard review) × 0.10 (approximate percentage of application required to respond ''in writing'') × 0.20 (approximate percentage of applications prepared by in-house counsel) = 5.64 hours.

[8] This estimate is based on the following calculation: 5.64 (estimated total hours utilizing in-house counsel) × $774 (hourly rate for a lawyer) = $4,365.36.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106561; File No. SR–CboeEDGX–2026–063]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 22.6

October 1, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 2026, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 EDGX Exchange, Inc. (''EDGX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to amend Exchange Rule 22.6 (Market Maker Quotations) to provide that the $5 maximum bid/ask differential will apply to options series expiring in 270 days or less, and a $15 maximum bid/ask differential will apply to options series expiring in more than 270 days. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Commission's website (*https://www.sec.gov/rules/sro.shtml*), the Exchange's website (*https://www.cboe.com/us/equities/regulation/rule_filings/edgx/*), and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 22.6(c) to add a time-to-expiration tier to the existing bid/ask differential requirements for Market Maker quotes.

The Exchange previously adopted bid/ask differential requirements for Market Maker quotes under Rule 22.6(c) in a recent rule filing.[3] The Prior Filing established a single general maximum bid/ask differential of $5 regardless of the Market Maker's bid, applicable to all options series without regard to time to expiration. The Exchange now proposes to amend Rule 22.6(c) to conform to the approach in Cboe Options Rule 5.52(c), under which the $5 maximum bid/ask differential applies to options series expiring in 270 days or less, and a $15 maximum applies to options series expiring in more than 270 days.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 106205 (August 27, 2026), 91 FR 56245 (September 1, 2026) (SR–CboeEDGX–2026–054) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 22.6 (Market Maker Quotations) To Adopt Two-Sided Quote Bid/Ask Differentials) (the ''Prior Filing'').

The use of time to expiration as a variable in bid/ask differential requirements is an established concept across options exchanges. Cboe Options Rule 5.52(c) uses a 270-day threshold, under which a $5 maximum bid/ask differential applies to options series expiring in 270 days or less, and a $15 maximum applies to options series expiring in more than 270 days. Similarly, ISE Options 2, Section 4(b)(4) provides that bid/ask differentials do not apply to options series until the time to expiration is less than nine months (approximately 270 days), and Phlx Options 4A, Section 12(b)(2)(i) similarly provides that bid/ask differential rules shall not apply to index long-term option series until the time to expiration is less than twelve months.

The Exchange believes the proposed general bid/ask differentials of $5 for options series expiring in 270 days or less and $15 for options series expiring in more than 270 days are reasonable and appropriate. The $5 differential for shorter-dated series is sufficiently wide to accommodate normal market conditions and volatility while preventing Market Makers from entering quotes that are so wide as to provide no meaningful liquidity. The wider $15 differential for longer-dated series (*i.e.,* those with more than 270 days to expiration) accounts for the reduced liquidity, wider theoretical values, and greater uncertainty associated with long-term options.

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.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] 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)[6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that adding a time-to-expiration tier to the existing bid/ask differential requirements promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system. The amendment conforms to Cboe Options Rule 5.52(c), and will enhance the quality of markets on EDGX Options by establishing bid/ask differential requirements calibrated to the differing liquidity characteristics and pricing uncertainty across options series with varying times to expiration. Specifically, by establishing a general maximum permissible width of $5 (for options series expiring in 270 days or less) and $15 (for options series expiring in more than 270 days) between a Market Maker's bid and offer, the Exchange believes the proposal will improve market quality by providing investors with more meaningful execution opportunities and contributing to more efficient price discovery.

As discussed above, the Exchange believes the proposed bid/ask differentials are reasonable and appropriate. The $5 differential for shorter-dated series accommodates normal market conditions while preventing excessively wide quotes. The wider $15 differential for longer-dated series accounts for the reduced liquidity, wider theoretical values, and greater uncertainty associated with long-term options. The use of time to expiration as a variable in bid/ask differential requirements is an established concept across options exchanges, including Cboe Options Rule 5.52(c), ISE Options 2, Section 4(b)(4), and Phlx Options 4A, Section 12(b)(2)(i).

The amended, tiered bid/ask differential requirements will apply uniformly to all Market Makers on EDGX Options based on the applicable time to expiration. The proposal therefore does not permit unfair discrimination among Market Makers and applies the same $5 and $15 maximums on the same basis to similarly situated options series. For the foregoing reasons, the Exchange believes the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the amended, tiered bid/ask differential requirements will apply uniformly to all Market Makers on EDGX Options. The $5 and $15 maximums will be determined by the same time-to-expiration framework for all Market Makers.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed time-to-expiration tier conforms to Cboe Options Rule 5.52(c) and is consistent with the quote width frameworks of other options exchanges, including ISE and Phlx. By adopting bid/ask differential requirements consistent with those of other options exchanges, Market Makers on the Exchange will be subject to comparable bid/ask differential requirements as market-makers on other markets.

For the foregoing reasons, the Exchange does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *Id.*

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change,

Continued

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [9] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeEDGX–2026–063 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–CboeEDGX–2026–063. 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 filing 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–CboeEDGX–2026–063 and should be submitted on or before October 27, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20403 Filed 10–5–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106562; File No. SR–CboeBZX–2026–078]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 22.6

October 1, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 2026, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to amend Exchange Rule 22.6 (Market Maker Quotations) to provide that the $5 maximum bid/ask differential will apply to options series expiring in 270 days or less, and a $15 maximum bid/ask differential will apply to options series expiring in more than 270 days. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Commission's website (*https://www.sec.gov/rules/sro.shtml*), the Exchange's website (*https://www.cboe.com/us/equities/regulation/rule_filings/bzx/*), and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 22.6(c) to add a time-to-expiration tier to the existing bid/ask differential requirements for Market Maker quotes.

The Exchange previously adopted bid/ask differential requirements for Market Maker quotes under Rule 22.6(c) in a recent rule filing.[3] The Prior Filing established a single general maximum bid/ask differential of $5 regardless of the Market Maker's bid, applicable to all options series without regard to time to expiration. The Exchange now proposes to amend Rule 22.6(c) to conform to the approach in Cboe Options Rule 5.52(c), under which the $5 maximum bid/ask differential applies to options series expiring in 270 days or less, and a $15 maximum applies to options series expiring in more than 270 days.

The use of time to expiration as a variable in bid/ask differential requirements is an established concept across options exchanges. Cboe Options Rule 5.52(c) uses a 270-day threshold, under which a $5 maximum bid/ask differential applies to options series expiring in 270 days or less, and a $15 maximum applies to options series expiring in more than 270 days. Similarly, ISE Options 2, Section 4(b)(4) provides that bid/ask differentials do not apply to options series until the time to expiration is less than nine months (approximately 270 days), and Phlx Options 4A, Section 12(b)(2)(i) similarly provides that bid/ask differential rules shall not apply to index long-term option series until the

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.

[9] 15 U.S.C. 78s(b)(2)(B).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 106206 (August 27, 2026) 91 FR 56250 (September 1, 2026) (SR–CboeBZX–2026–067) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 22.6 (Market Maker Quotations) To Adopt Two-Sided Quote Bid/Ask Differentials) (the ''Prior Filing'').

time to expiration is less than twelve months.

The Exchange believes the proposed general bid/ask differentials of $5 for options series expiring in 270 days or less and $15 for options series expiring in more than 270 days are reasonable and appropriate. The $5 differential for shorter-dated series is sufficiently wide to accommodate normal market conditions and volatility while preventing Market Makers from entering quotes that are so wide as to provide no meaningful liquidity. The wider $15 differential for longer-dated series (*i.e.,* those with more than 270 days to expiration) accounts for the reduced liquidity, wider theoretical values, and greater uncertainty associated with long-term options.

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.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] 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)[6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that adding a time-to-expiration tier to the existing bid/ask differential requirements promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system. The amendment conforms to Cboe Options Rule 5.52(c), and will enhance the quality of markets on BZX Options by establishing bid/ask differential requirements calibrated to the differing liquidity characteristics and pricing uncertainty across options series with varying times to expiration. Specifically, by establishing a general maximum permissible width of $5 (for options series expiring in 270 days or less) and $15 (for options series expiring in more than 270 days) between a Market Maker's bid and offer, the Exchange believes the proposal will improve market quality by providing investors with more meaningful execution opportunities and contributing to more efficient price discovery.

As discussed above, the Exchange believes the proposed bid/ask differentials are reasonable and appropriate. The $5 differential for shorter-dated series accommodates normal market conditions while preventing excessively wide quotes. The wider $15 differential for longer-dated series accounts for the reduced liquidity, wider theoretical values, and greater uncertainty associated with long-term options. The use of time to expiration as a variable in bid/ask differential requirements is an established concept across options exchanges, including Cboe Options Rule 5.52(c), ISE Options 2, Section 4(b)(4), and Phlx Options 4A, Section 12(b)(2)(i).

The amended, tiered bid/ask differential requirements will apply uniformly to all Market Makers on BZX Options based on the applicable time to expiration. The proposal therefore does not permit unfair discrimination among Market Makers and applies the same $5 and $15 maximums on the same basis to similarly situated options series. For the foregoing reasons, the Exchange believes the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the amended, tiered bid/ask differential requirements will apply uniformly to all Market Makers on BZX Options. The $5 and $15 maximums will be determined by the same time-to-expiration framework for all Market Makers.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed time-to-expiration tier conforms to Cboe Options Rule 5.52(c) and is consistent with the quote width frameworks of other options exchanges, including ISE and Phlx. By adopting bid/ask differential requirements consistent with those of other options exchanges, Market Makers on the Exchange will be subject to comparable bid/ask differential requirements as market-makers on other markets.

For the foregoing reasons, the Exchange does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[9] of the Act to determine whether the proposed rule change should be approved or disapproved.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *Id.*

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 15 U.S.C. 78s(b)(2)(B).

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–CboeBZX–2026–078 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–CboeBZX–2026–078. 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 filing 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–2026–078 and should be submitted on or before October 27, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20404 Filed 10–5–26; 8:45 am]

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[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106566; File No. SR–NYSE–2026–47]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delete the Approved Person Registration Category and Adopt a New Definition of Associated Person

October 1, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 18, 2026, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (1) delete the ''approved person'' registration category as no longer necessary; (2) adopt a new definition of ''associated person'' based on the definition of associated person in Rule 1011(b) of the Financial Industry Regulatory Authority, Inc., and elements of the current definition of approved person; and (3) make related technical and conforming changes. The proposed rule change is available on the Exchange's website at *www.nyse.com* and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (1) delete the ''approved person'' registration category as no longer necessary; (2) adopt a new definition of ''associated person'' based on the definition of associated person in Rule 1011(b) of the Financial Industry Regulatory Authority, Inc. (''FINRA'') and elements of the current definition of approved person; and (3) make related technical and conforming changes.

The proposal is not intended to effect any substantive change to the scope of the Exchange's jurisdiction. The Exchange will continue to exercise general supervision over, and retain jurisdiction over, the same categories of persons as currently set forth in Rule 2A (Jurisdiction). The persons currently encompassed by the ''approved person'' category would be captured by the proposed definition of ''associated person'' for jurisdictional and all other applicable Exchange rules on that basis.

Separately, the principal basis for the approved person category—identifying persons who directly or indirectly control a member organization—is already addressed through existing disclosure infrastructure. Member organization are required to identify such persons in Schedules A and B of the Form BD in the Central Registration Depository (''CRD''). Because control relationships of the kind that gave rise to the approved person category are already documented through that mechanism, a separate Exchange-specific registration category serves no independent regulatory purpose, and its elimination will not create any gap in oversight.

Finally, replacing the approved person category with a definition of associated person that aligns with FINRA's corresponding rule (and, by extension, with the statutory definition in the Act, as discussed below) will provide greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance.

Background

The ''approved person'' designation is an NYSE-specific regulatory category for certain persons or entities that have a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

controlling interest in a member organization. The rules governing the definition and application process for approved persons are Rules 2 and 304.[5]

The approved person category was adopted when Exchange membership was organized around individual seat-holders. Under that structure, certain individuals, including major shareholders, holding company executives, technology, and operations leaders, exercised significant control over member organizations without being registered representatives or principals, and therefore fell outside the Exchange's formal oversight reach. The approved person category was designed to close that potential gap by extending the Exchange's supervisory jurisdiction to those controlling persons who would otherwise escape review, thus enabling the Exchange to assess the fitness and background of individuals in a position to affect how a member organization conducted its business. That structural rationale no longer carries the same force. As described below, the Exchange proposed definition of ''associated person'' would capture the same individuals within the Exchange's regulatory framework without requiring a separate registration category and without the associated administrative burdens that the separate registration category imposes on the Exchange and member organizations.

Rule 2(c) defines ''approved person'' as a person, other than a member, principal executive or employee of a member organization, or governmental entity, who controls a member organization, is engaged in a securities or kindred business that is controlled by a member or member organization, or is a U.S.-registered broker-dealer under common control with a member organization. Rule 2(c) defines ''governmental entity'' to mean a sovereign nation, state, or territory, or other political subdivision, agency, or instrumentality thereof.

Rule 2(d) defines ''person'' as a natural person, corporation, limited liability company, partnership, association, joint stock company, trust, fund or any organized group of persons whether incorporated or not.

Under Rule 2(e), ''control'' means the power to direct or cause the direction of the management or policies of a person whether through ownership of securities, by contract or otherwise. A person is presumed to control another person if such person, directly or indirectly, has the right to vote 25 percent or more of the voting securities, is entitled to receive 25 percent or more of the net profits, or is a director, general partner or principal executive (or person occupying a similar status or performing similar functions) of the other person.

Rule 304 provides that a member organization must identify each approved person to the Exchange. Pursuant to the rule, each approved person must execute a written consent to the jurisdiction of the Exchange and agree to (1) supply the Exchange with information relating to the existence of any statutory disqualification to which the approved person or any person associated with the approved person may be subject, as defined in the Act; (2) abide by such provisions of the rules of the Exchange relating to approved persons as shall from time to time be in effect; and (3) permit examination by the Exchange, or any person designated by it, at any time or from time to time, of its books and records to verify the accuracy of the information required to be supplied herein and by the rules of the Exchange.

Supplementary Material .10 to Rule 304 sets forth certain additional requirements for approved persons domiciled outside the United States.

Supplemental Material .20 to Rule 304 provides that a member organization that is directly or indirectly controlled by a governmental entity as defined in Rule 2(c) shall be required to identify such governmental entity to the Exchange.

Form BD is the Uniform Application for Broker-Dealer Registration. Broker-Dealers are required to file this form to register with the Commission, the self-regulatory organizations, and jurisdictions through the CRD system operated by FINRA.

Schedule A to Form BD requires broker-dealers to provide detailed information about their direct owners and executive officers, including:

- Names and addresses of all direct owners (individuals or entities) and executive officers;
- Ownership percentages for each direct owner;
- Type of ownership (*e.g.,* partnership, corporation, trust); and
- Control relationships, indicating whether the owner or officer has control over the firm.

Schedule A assists regulators in the assessment of a broker-dealer's ownership structure and in the identification of individuals or entities with influence or control of the broker-dealer's activities.

Schedule B to Form BD requires broker-dealers to disclose information about their indirect owners, *i.e.,* those who own or control the firm through intermediary entities, and requires:

- Identification of Indirect Owners: List all individuals or entities that have indirect ownership or control over the broker-dealer through one or more layers of ownership.
- Ownership Structure: Provide details on how ownership is held, including the names of intermediary entities and the percentage of ownership at each level.
- Control Relationships: Indicate whether any indirect owner exercises control over the broker-dealer, as defined by the SEC (*e.g.,* voting rights, capital contributions).
- Personal Information: For individuals, include identifying details such as name, address, and employment history (via Form U–4 if applicable).

Schedule B complements Schedule A, which covers direct owners and executive officers, and helps regulators understand the full ownership and control structure of a broker-dealer.

Broker-dealers are required to keep Form BD current and promptly amend or update the information reported in Schedules A and B using Schedule C.

Proposed Rule Change

The Exchange proposes to eliminate the approved person registration category and delete the concept from its rules while simultaneously adopting a definition of associated person that incorporates elements of the current definition of approved persons and the FINRA definition of associated person in FINRA Rule 1011(b).

To effectuate these changes, the Exchange proposes the following amendments to its Rules.

Rule 2(c) (Definition of Approved Person)

The Exchange proposes the following changes to Rule 2(c). First, the Exchange would delete the definition of approved person in the first sentence of the Rule in its entirety. Second, the Exchange would adopt a new definition of associated persons based on FINRA Rule 1011(b) and the current approved person definition. As proposed, the Exchange would define ''Associated Person,'' ''associated person,'' and ''person associated with a member organization'' to mean

(1) a natural person registered under Exchange rules or who has applied for registration under Exchange rules. Proposed Rule 2(c)(1) would be substantially the same as FINRA Rule

[5] The Exchange notes that the approved person definition is an Exchange convention that is not intended to be identical to the definition of ''associated person of a broker or dealer'' pursuant to Section 3(a)(18) of the Act. See 15 U.S.C. 78c(a)(18).

1011(b)(1) except for the reference to registration under NYSE rules;

(2) any partner, officer, director, or branch manager of a member organization (or any person occupying a similar status or performing similar functions). Once again, this provision would be substantially similar to FINRA Rule 1011(b)(2) except that the Exchange would omit the reference to ''sole proprietor,'' which does not exist in the Exchange's rules; [6]

(3) any person (excluding a government entity) directly or indirectly controlling or controlled by a member organization, or a U.S. registered broker-dealer under common control with a member organization. This proposed definition would encompass the current ''approved person'' category in Rule 2(c), including persons that control a member organization, are engaged in a securities or kindred business controlled by a member or member organization, or are U.S. registered broker-dealers under common control with a member organization. The Exchange would also include members, principal executives,[7] or employees of member organizations to the extent such persons are identified as control persons on Form BD. The proposed definition is derived from Rule 346 (Statutory Disqualification—Association of Member Organizations and Persons Associated with Member Organizations) and is similar to FINRA Rule 1011(b)(5). Consistent with the existing definition of ''approved person'' in Rule 2(c), the proposal uses the term ''governmental entity,'' and the related provision is substantially similar to FINRA Rule 1011(b)(3). In addition, a member organization that is directly or indirectly controlled by a governmental entity would be required to identify that governmental entity to the Exchange. This requirement is substantially the same as Supplementary Material .20 to current Rule 304; or

(4) any employee of such member organization. The provision is substantially the same as FINRA Rule 1011(b)(4), except that the Exchange would not, consistent with Section 3(a)(18) of the Act, exclude any person whose functions are solely clerical or ministerial.[8]

The Exchange also proposes to add a new Supplementary Material .30 that would provide that ''Control Persons'' as defined in subsection (c) of this Rule include both direct and indirect owners identified on Schedules A and B of Form BD. Proposed Supplementary Material .30 would further provide that each Control Person agrees to submit to the jurisdiction of the Exchange and to comply with any provisions of the Exchange Rules applicable to Control Persons, as such term is defined in the Rules of the Exchange.

Because proposed Supplemental Material would encompass the substance of FINRA Rules 1011(b)(5) and (b)(6), the Exchange does not propose to adopt those provisions separately. Specifically, FINRA Rule 1011(b)(5) includes within the definition of an associated person any individual or entity that directly or indirectly controls an applicant for FINRA membership, regardless of whether that person is registered with or exempt from registration under the FINRA By-Laws or FINRA Rules. FINRA Rule 1011(b)(6), in turn, includes any person engaged in the investment banking or securities business that is directly or indirectly controlled by the applicant, regardless of whether such person is registered with or exempt from registration under the FINRA By-Laws or FINRA Rules.[9]

The approved person category and Form BD's Schedules A and B are, in material respects, duplicative. Both focus on the concept of control, that is, the power to direct management or policies, and both presume control at the 25% ownership or voting rights threshold. Schedule A captures direct owners and executive officers; Schedule B captures indirect owners, including entities exercising control through means other than direct equity ownership. Taken together, the Schedules require disclosure of substantially the same universe of individuals and entities that the approved person category was designed to identify persons who directly or indirectly control a member organization, affiliates engaged in securities or kindred businesses under common control, and U.S. registered broker-dealers under common control. Because those relationships are already documented through Form BD—a disclosure mechanism applicable across all FINRA members and Exchange member organizations—the approved person category no longer performs a disclosure function that is not already performed elsewhere. Elimination of separate Exchange-specific registration requirements would therefore remove a layer of redundant reporting without diminishing the Exchange's ability to identify and exercise jurisdiction over the controlling persons that the category was designed to reach. Member organizations would benefit from a corresponding reduction in the administrative obligations associated with maintaining a parallel, Exchange-only disclosure track.

Rule 2A (Jurisdiction)

The Exchange proposes conforming amendments to Rule 2A(c), (d), (e) and (f) to replace references to ''employees of member organizations,'' ''registered and non-registered employees of member organizations,'' ''registered or non-registered employees of members or member organizations'' and ''approved persons'' with the term ''associated persons, whether or not such person is registered or exempt from registration under Exchange rules.'' [10]

These amendments are designed to align the text of Rule 2A with the proposed definition of ''associated person'' and to ensure consistent terminology throughout the Exchange's rulebook. As revised, the provisions would continue to apply to the same categories of individuals currently subject to the Exchange's jurisdiction, including employees of member organizations and Control Persons, regardless of whether such individuals are registered, exempt from registration, or otherwise not required to be registered under Exchange rules. The proposed references to associated

[6] Prior to de-mutualization, a sole proprietor was the equivalent to a ''member'' under Exchange rules. Rule 2(a) provides that the term ''member,'' when used to denote a natural person approved by the Exchange, means a natural person associated with a member organization who has been approved by the Exchange and designated by such member organization to effect transactions on the floor of the Exchange or any facility thereof.

[7] The Exchange notes that, although principal executives are encompassed within the proposed definition of ''associated person,'' it is nonetheless proposing to retain separate references to principal executives throughout its rules. Retaining these references will preserve existing rule text and avoid any potential ambiguity regarding the continued application of those provisions to principal executives.

[8] See note 13, infra and Rule 1230.

[9] The Exchange does not propose to adopt FINRA Rule 1011(b)(7), which extends the definition of an associated person to include any individual or entity that will be, or is anticipated to become, a person described in paragraphs (1) through (6) of the FINRA rule. Unlike FINRA, the Exchange's jurisdiction does not extend to applicants for membership, prospective principal executives, or other persons who have not yet become subject to Exchange jurisdiction. See Rule 2A(f). Accordingly, the Exchange is not proposing to expand the scope of its jurisdiction to encompass such persons.

[10] The Exchange also proposes several non-substantive technical and grammatical changes. First, in Rule 2A(c), the Exchange would replace ''members organizations'' with ''member organizations'' to correct a typographical error. Second, in Rule 2A(f), the Exchange would lowercase the term ''self-regulatory organization'' to conform to standard drafting conventions. Finally, in Supplementary Material .01(b) of Rule 5.2, Rule 8.300(e)(2), and Rule 8.400(e)(2), the Exchange would lowercase the ''s'' in ''See'' or consistency with the formatting used throughout the Exchange's rules.

persons ''whether or not such person is registered or exempt from registration'' are consistent with both the breadth of the proposed definition of ''associated person'' and the scope of the existing provisions relating to approved persons that these amendments would replace. As discussed above, the approved person framework was intended to extend the Exchange's regulatory authority beyond registered persons and principals to encompass other individuals associated with a member organization whose conduct may appropriately be subject to Exchange oversight. Accordingly, the proposed amendments do not expand or narrow the substantive scope of the rules, but instead update the terminology to reflect the Exchange's revised definitional framework and preserve the Exchange's existing jurisdiction over the relevant persons.

The Exchange would also add a new subsection (g) to Rule 2A based on Supplemental Material .10 of Rule 304, replacing ''approved person'' with ''associated person'' throughout. As proposed, an associated person domiciled outside the United States would not be required to permit the Exchange or its designee to examine its books and records at its domicile if, in the opinion of an independent attorney or government official, such examination would violate local law or conflict with generally accepted customs or business practices in that jurisdiction.

To invoke this exemption, the associated person must, at its own expense, obtain a written certification from either an attorney or counselor at law independent of both the associated person and its affiliated member organization and authorized to practice in the relevant jurisdiction, or from an appropriate governmental official of that jurisdiction confirming that the on-site examination would violate local law or generally accepted customs or business practices. Separately, while the exemption remains in effect, the associated person must annually provide its affiliated member organization with a certification from an independent attorney, counselor at law, or auditor authorized to practice in the jurisdiction. That annual certification must confirm, based on a reasonable examination conducted under generally accepted local practices, two things: first, with respect to any omnibus account carried by the affiliated member organization for the associated person (but not for its benefit), that the certifier has no reason to believe that any transaction beneficiary was a person associated with the associated person or its affiliated member organization under the Exchange Act; and second, with respect to any account carried in the name and for the benefit of the associated person reflecting transactions under Section 11(a)(1)(G) of the Act and Rule 11a1–2, that the associated person derived more than 50% of its gross revenues during the preceding fiscal year from the sources specified in Section 11(a)(1)(G)(i) of the Act.

Proposed subsection (g) to Rule 2A is substantively identical to current Supplementary Material .10 to Rule 304, except that it would require an associated person relying on the exemption to provide the annual written certification to the affiliated member organization rather than directly to the Exchange. This change is administrative in nature and relates solely to the maintenance of the certification records. It does not alter the substantive requirements of the exemption, the persons eligible to rely on it, or the content and frequency of the certification. Moreover, the Exchange retains the authority to request and review such certifications from member organizations as part of its regulatory and surveillance activities.

Conforming Changes

The Exchange proposes conforming changes to the following rules. Unless otherwise indicated, the Exchange would replace ''approved person'' and/or references to ''employees'' or ''registered or non-registered employee affiliated with such entity'' with ''associated person'':

- Supplementary Material .01(b) to Rule 5.2 provides that member organizations acting as a registered market maker in Commodity-Linked Securities, Currency-Linked Securities, Futures-Linked Securities or Multifactor Index-Linked Securities must provide the Exchange with access to books, records, or other information related to, among other things, transactions made by the firm or any limited partner, officer or approved person thereof, or registered or nonregistered employee affiliated with such entity, for its or their own accounts in the Index Asset components, the underlying commodities, currencies, or futures, or in derivatives based on any of the above;
- Rule 8.204(f)(2) (Commodity Futures Trust Shares) provides that a member organization acting as a registered market maker in Commodity Futures Trust Shares will make available to the Exchange such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, or registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying commodity, related futures or options on futures, or any other related derivatives, as may be requested by the Exchange;
- Rule 8.300(e)(2) (Partnership Units) provides that a member organization acting as a registered market maker in Partnership Units will make available to the Exchange such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, or registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying asset or commodity, related futures or options on futures, or any other related derivatives, as may be requested by the Exchange;
- Rule 8.400(e)(2) (Paired Trust Shares) provides that a member organization acting as a registered market maker in Paired Trust Shares will make available to the Exchange such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity for its or their own accounts in the asset, commodity or other economic interest underlying the Reference Price, related options, related futures or options on futures, or any other related derivatives, as may be requested by the Exchange;
- Rule 8.700(f)(2) (Managed Trust Securities) provides that a member organization acting as a registered market maker in Managed Trust Securities will make available to the Exchange such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, or registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying commodity or applicable currency, related futures or options on futures, or any other related derivatives, as may be requested by the Exchange;
- Rule 21 (Disqualification of Directors on Listing of Securities) prohibits Board members or any authorized committee from participating in decisions related to the listing or distribution of securities if they have a substantial interest in the security or related plan. A Board member is deemed to have such an interest if, among other things, the Board member or any member, principal executive, approved person in their member organization is an officer or director (or person occupying a similar status or performing similar functions) or a

voting trustee of the issuer of such security or of any corporation which to his knowledge controls or is controlled by the issuer or such security (Rule 21(2)); the Board member or their member organization or any member, affiliate, principal executive, or approved person of such member organization owns directly or indirectly more than 1% of such security or of any class of stock of the issuer, or of any corporation which to his knowledge controls the issuer of such security (Rule 21(3)); or the Board member or their member organization or any member, affiliate, principal executive, or approved person of such member organization to his knowledge holds directly or indirectly any substantial contract, option, or other privilege to purchase such security; or within six months prior thereto has directly or indirectly purchased (other than through the exercise of a right to subscribe) such security from the issuer or an underwriter thereof at a price below the market price (Rule 21(4)). The Exchange would replace approved person with associated person in subsections (2), (3) and (4);

• Rule 22(a) (Disqualification Because of Personal Interest) provides that the individuals specified therein shall not participate in the investigation or consideration of any matter relating to any member, principal executive, approved person, or member organization or affiliate of such member organization with knowledge that such member, principal executive, approved person, member organization or affiliate is indebted to such director or committee member, or to their member organization or any participant therein, or that they, their member organization or any participant therein is indebted to such member, principal executive, approved person, member organization, or affiliate, excluding, however, any indebtedness arising in the ordinary course of business out of transactions on any exchange, out of transactions in the over-the-counter markets, or out of the lending and borrowing of securities;

• Rule 91 (Taking or Supplying Securities Named in Order) provides that an Exchange member, including DMMs, may not execute a client's buy or sell order by trading from an account in which they or their member organization, or any member, principal executive, approved person or officer of such member organization, have a direct or indirect interest, if they know or should know about that interest unless specific exceptions apply;

• Rule 96 (Limitation on Members' Trading Because of Options) prohibits members while on the trading Floor form trading a stock for their own or affiliated accounts if they or their member organization or any member, principal executive, or approved person of such member organization is directly or indirectly interested, if any stock in which the member holds or has granted options (*e.g.,* puts, calls, straddles) on that stock unless those options are listed on a national exchange;

• Rule 98 (Operation of a DMM Unit) governs the operations of DMM units and restricts DMMs on the trading Floor to trading only their assigned DMM securities at their designated post and prohibits them from trading related derivative products or accessing related customer or position information while on the Floor. The Exchange would replace approved person with ''Control Person'' in subsections (a)(1), (c)(3)(D), (c)(7), (e)(1), (f)(1), and (f)(4)). The Exchange believes that Control Persons as defined in proposed Rule 2(c) would most closely align with the persons covered by the current Rule;

• Rule 98A (Restrictions on Persons or Parties Affiliated with A DMM Unit), prohibits, among other things, a DMM from being registered in a stock of an issuer, or a partner or subsidiary thereof, if such entity is an approved person or affiliate of the DMM unit's member organization. The Exchange would replace approved person in this sentence with ''Control Person.'' As previously noted, the Exchange believes that Control Persons as defined in proposed Rule 2(c) would most closely align with the persons covered by the current Rule;

• Rule 112 (Orders initiated ''Off the Floor.'') restricts certain trading activity by members on the Exchange's Trading Floor. Subsection (a) provides that orders for the account of a member organization or any member, principal executive, approved person, officer, or employee of such organization or a discretionary account serviced by the member or member organization must be routed to the trading Floor through standard customer order transmission channels, such as a clearing firm's order room. Subsection (d) provides that orders placed after a conversation with a Floor-based employee for any account in which a member organization, or any member, principal executive, approved person, or officer, or employee of such organization is directly or indirectly interested, or for any discretionary account serviced by the member organization, are considered off-Floor orders if sent through standard public order channels with a time-stamped record, unless an exception applies. Finally, subsection (e) provides that members and member organizations are prohibited from executing trades on the Exchange for any account in which such member, member organization, or any member, principal executive, approved person, officer or employee of such organization is directly or indirectly interested, or for any discretionary account serviced by the member or member organization, if doing so violates Exchange front-running policies related to block transactions. The Exchange would replace approved person with associated person and delete ''or employee of such organization'' in subsections (a), (d), and (e) as duplicative, and replace the reference to ''employee'' in that organization who is on the trading Floor with ''associated person'' in subsection (d));

• Supplementary Material .20 of Rule 113 (DMM Unit's Public Customers) provides that it is contrary to good business practice for a DMM, ''his or her'' DMM unit or any other member or principal executive in such organization or any officer or employee to ''popularize'' either orally or in writing any security in which ''he or she'' is registered. The second sentence makes an exception for approved persons or member organizations associated with the DMM unit provided that certain disclosures are made. The Exchange would replace approved person in the second sentence with ''Control Person'' to reflect that associated persons who are Control Persons outside the DMM unit are the intended associated persons for the exception and not associated persons within the DMM. The Exchange would also replace gender-based references with references to the DMM;

• Rule 304 governing Approved Persons would be deleted in its entirety and marked ''Reserved''; [11]

[11] Supplementary Material .90T(a) to Rule 304A (Member Examination Requirements) provides that it only applies to approved persons of a member organization who (i) have been designated by such member organization to effect transactions on the Floor of Exchange; and (ii) held a valid 86 Trinity Permit at the time they were designated to effect transactions on the Floor of the Exchange. Subsection (b) to Supplementary Material .90T provides that approved persons who satisfy the conditions in subsection (a) have six months from the date of such designation to meet the requirements contained in Rule 304A. Further, if an approved person who has been designated to effect transactions on the Floor of the Exchange fails to meet the requirements of Rule 304A by the end of the grace period, the rule provides that such approved person shall not be permitted to effect trades on the Floor until such approved person shall have satisfied the requirements of Rule 304A. This temporary provision was added in 2008 to facilitate the relocation of all equities trading conducted on or through the existing systems and facilities of the American Stock Exchange LLC (''Amex'') located at 86 Trinity Place to trading systems and facilities operated by the NYSE located at 11 Wall Street. See Securities Exchange Act

• Rule 311 (Formation and Approval of Member Organizations) sets forth the requirements to form a NYSE member organization. The Exchange proposes to delete the second sentence of Rule 311(a), which currently requires that all approved persons execute agreements with the Exchange under Rule 304 as a condition of a member organization becoming or remaining a member organization. This requirement originated from the Exchange's approved person registration framework, which was designed to extend the Exchange's supervisory and disciplinary jurisdiction to controlling persons who might otherwise fall outside the scope of regulatory oversight. The framework enabled the Exchange to assess the fitness, qualifications, and disciplinary history of individuals in positions to direct or influence a member organization's business and affairs. Because such persons are now visible to the Exchange through CRD, the Exchange believes this agreement requirement is no longer necessary and proposes its removal. The Exchange would also remove Rule 311(b)(5), which requires every approved person of the member organization to meet the requirements of Rule 304. Rule 311.12 setting forth a required Authorization and Statement of Understanding for each natural person who is an approved person under Rule 2(c) would also be deleted as no longer necessary given the information available in CRD. The remaining subsections would be renumbered. Given the elimination of the approved person category and the Exchange's jurisdiction over individuals previously classified as approved persons, these provisions are obsolete. References to approved person would be changed to associated person with the exception of subsection (b)(1), which would be changed to Control Person which would most closely align with the persons covered by the current Rule. Subsection (c) would be deleted in its entirety as unnecessary since this information is currently available in CRD;

• Rule 312 (Changes Within Member Organizations) requires member organizations to provide notice to the Exchange of certain changes and actions. Rule 312(b)(1) requires written notice of any material change in the stockholdings of any member, principal executive or approved person of such member corporation. Rule 312(c) requires each member, principal executive and approved person of a member corporation to promptly notify his member corporation of any material acquisition or disposition of shares of stock of such corporation. Finally, Rule 312(d) requires a member corporation to take certain actions whenever a person who is required to be approved by the Board as a member, principal executive or approved person fails or ceases to be so approved. The Exchange would replace approved person with Control Person which would most closely align with the persons covered by the current Rule;

• Rule 313 (Submission of Partnership Articles, Corporate Documents and Limited Liability Company Documents) provides for the submission of certain documents to the Exchange prior to becoming effective, including agreements between a member organization and, among others, any approved person (subsection (b)) and provides for submission of a certified list of members, principal executives and approved persons showing the number of shares of each class of stock of the member organization held of record or beneficially or both by each such party (subsection (e)). The Exchange would replace approved person with Control Person in each subsection;

• Rule 346 (Statutory Disqualification—Association of Member Organizations, and Persons Associated With Member Organizations) provides that no member organization, principal executive, approved person, person associated with a member organization or any person directly or indirectly controlling, controlled by or under common control with a member organization shall have associated with it any person who is known, or in the exercise of reasonable care should be known, to be subject to any ''statutory disqualification'' as defined in Section 3(a)(39) of the Act. Supplementary Material .01 provides for waiver of this provision when there is a pending proceeding before another self-regulatory organization to determine whether to permit a member or associated person of a member to become or continue membership or association notwithstanding a statutory disqualification. The Exchange proposes to replace ''approved person, person associated with a member organization or any person directly or indirectly controlling, controlled by or under common control with a member organization'' with associated person in both sections. The Exchange believes that the proposed change would not alter the scope or operation of this rule. The terms ''person associated with a member organization'' and ''associated person'' are substantively equivalent, as the proposed definition of ''associated person'' encompasses the categories of individuals currently captured by the term ''person associated with a member organization.''

• Rule 402(4) (Customer Protection—Reserves and Custody of Securities) provides for customers to withdraw uncalled fully paid securities from a firm at any time prior to a partial call and to withdraw excess margin securities under certain circumstances. The Exchange would replace approved persons with associated persons.''

• Rule 422 (Loans of and to Directors, etc.) restricts directors, officers, and employees of ICE, ICE Holdings, NYSE Holdings, and the Exchange from making or receiving loans involving, among others, approved persons, without prior Board approval unless the loan is either fully secured by marketable collateral or made within the same member organization. The Exchange would replace approved person and three references to ''employee'' of a member organization with associated person. The Exchange would also add a missing ''the'' before the word Exchange in the first sentence of the Rule.

• Rule 460.30 (DMMs Participating in Contests) provides that approved persons or a member organization associated with a DMM unit must notify the Exchange of its participation in any distribution or tender or exchange offer of any security covered by paragraph (b) of the rule and shall provide the information required therein. The Exchange would replace approved person with ''Control Person'' in order to most closely align with the persons covered by the current Rule.

• Rule 619(h) of the Arbitration Rules (General Provision Governing Subpoenas, Production of Documents, etc.) provides that it may be deemed conduct or proceeding inconsistent with just and equitable principles of trade for purposes of Rule 2050(6) or Rule 8210, as applicable, for a member, member organization, principal executive, approved person, registered or non-registered employee of a member or member organization or person otherwise subject to the jurisdiction of the Exchange to fail to appear or to produce any document in their possession or control as directed pursuant to provisions of the NYSE Arbitration Rules. The Exchange would replace ''approved person, registered or

Release No. 58706 (Oct. 1, 200), 73 FR 59019 (Oct. 8, 2008) (SR–NYSE–2008–70) (Order Granting Approval of Proposed Rule Change Amending Rules Governing Membership in Order To Waive-In Members in Good Standing of the American Stock Exchange LLC as Members and Member Organizations of the Exchange). The Exchange proposes to delete Supplementary Material .90T(a) to Rule 304A as obsolete.

non-registered employee of a member or member organization'' with associated person.

• Subsection (a) of Rule 6140 (Other Trading Practices) prohibits a member, member organization, principal executive, approved person, registered or non-registered employee of a member or member organization or person otherwise subject to the jurisdiction of the Exchange from executing or participating in trades that involves successively higher purchases or successively lower sales of a designated security, are intended to create a false or misleading appearance of market activity, or are meant to manipulate the market price or establish an artificial price that does not reflect the true market conditions. Rule 6140(b) prohibits the same persons from engaging in actions that create a false or misleading appearance of market activity or creating or inducing a false or misleading appearance with respect to the market in such security. The Exchange would replace approved person with associated person and delete ''registered or non-registered employee of a member or member organization'' in both subsections as redundant.

• Finally, Rule 9120 (Definitions) sets forth definitions applicable to the Exchange's disciplinary rules in the Rule 9000 Series. Subsection (g) defines ''covered person'' to mean a member, principal executive, approved person, registered or non-registered employee of a member organization, or other person (excluding a member organization) subject to the jurisdiction of the Exchange. The Exchange would replace approved person with associated person and delete ''registered or non-registered employee of a member organization,'' as redundant.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

In particular, the Exchange believes that the proposal to eliminate the approved person category would eliminate a registration category that has no analogue under the membership scheme of FINRA or any other national securities exchange, thereby harmonizing the Exchange's rules with those of FINRA and other exchanges and resulting in less burdensome and more efficient regulatory compliance for member organizations. The Exchange accordingly believes that the proposal would remove impediments to and perfecting the mechanism of a free and open market and a national market system, consistent with the objectives of Section 6(b)(5) of the Act.[14]

The Exchange further believes that elimination of the approved person category would not diminish the scope of its jurisdiction. The principal function of the approved person category is identifying persons who directly or indirectly control a member organization, and this is already addressed through the disclosure infrastructure of the CRD, which captures controlling relationships through Form BD's Schedules A and B. Moreover, the proposed sub-definition of ''Control Person'' within the proposed definition of ''associated person'' would include persons who control a member organization, persons engaged in a securities or kindred business controlled by a member or member organization, and U.S. registered broker-dealers under common control with a member organization, the same three categories of persons encompassed by the current ''approved person'' definition. The Exchange thus believes that the proposal would thereby preserve the substantive coverage of the current approved person category within the Exchange's broader jurisdictional framework. For the foregoing reasons, the Exchange believes the proposed change is consistent with preserving the current scope of Exchange jurisdiction while eliminating a separate, Exchange-specific registration category that is no longer necessary to achieve that purpose.

Each of the individuals and entities that would be encompassed in the proposed definition of ''associated person'' would fall within the definition of ''associated person of a broker or dealer'' in Section 3(a)(18) of the Act.[15] The Exchange notes that the definition of associated person in the Act is broader in scope than the individuals and entities currently subject to the Exchange's jurisdiction since the Act's definition of associated person includes any person under common control with a broker-dealer, while the current definition of approved person in Rule 2(c) does not include all affiliates; rather, it includes only affiliates engaged in a securities or kindred business that is controlled by a member or member organization or a U.S. registered broker-dealer under common control with a member organization. The Exchange thus believes that harmonizing its definition of associated person with FINRA's definition would also harmonize its rules with Section 3(a)(18) of the Act.[16] As noted, the Exchange believes that providing greater harmonization between Exchange and FINRA rules of similar purpose would result in less burdensome and more efficient regulatory compliance for Exchange member organizations. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues, but rather would remove a registration category from the Exchange's rules that is no longer necessary and adopt a new definition of ''associated person'' based on the definition in FINRA Rule 1011(b). The proposed amendments are thus intended to encourage less burdensome and more efficient regulatory compliance and will not impose any burden on competition. Further, the proposed changes would

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(5).

[15] See 15 U.S.C. 78c(a)(18). Under Section 3(a)(18), ''associated person'' means any partner, officer, director, or branch manager of a broker-dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a broker-dealer, or any employee of such broker-dealer, excluding for certain purposes any person whose functions are solely clerical or ministerial.

[16] See 15 U.S.C. 78c(a)(18). Under Section 3(a)(18), ''associated person'' means any partner, officer, director, or branch manager of a broker-dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a broker-dealer, or any employee of such broker-dealer, excluding for certain purposes any person whose functions are solely clerical or ministerial. See also Rule 1230 (Associated Persons Exempt from Registration), which provides that persons associated with a member organization whose functions are solely and exclusively clerical or ministerial are not required to be registered with the Exchange.

apply to all member organizations in the same manner and therefore would not impose any unnecessary intramarket burdens.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6)[18] thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission 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–NYSE–2026–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSE–2026–47. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSE–2026–47 and should be submitted on or before October 27, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

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[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106563; File No. SR–NYSEAMER–2026–54]

Self-Regulatory Organizations; NYSE American LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Rules 903G and 906G

October 1, 2026.

I. Introduction

On June 29, 2026, NYSE American LLC (''Exchange'' or ''NYSE American'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to permit cash settlement for up to 50 non-ETF Flexible Exchange (''FLEX'') Equity Options. The proposed rule change was published for comment in the **Federal Register** on July 7, 2026.[4] On August 19, 2026, pursuant to Section 19(b)(2)(A) of the Act,[5] the Commission designated a longer period within which to take action on the proposed rule change.[6] The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[7][6] to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

As described more fully in the Notice,[8] the Exchange proposes to: (i) amend paragraph (c)(3)(ii) of Rule 903G to permit cash settlement for up to 50 non-ETF FLEX Equity Options whose underlying security meets the same criteria that currently must be met to qualify for the cash settlement program for ETF FLEX Equity Options; (ii) amend paragraph (c)(3)(ii)(A) of Rule 903G to provide that, where more than 50 underlying ETFs or 50 underlying non-ETFs qualify, the Exchange will select the 50 qualifying securities with the highest average daily notional value, replacing the current usage of highest average daily share volume; (iii) and correspondingly revise Rule 906G, which addresses FLEX Equity Option position limits.

III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEAMER–2026–54 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[9] to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 105831 (July 1, 2026), 91 FR 41696 (''Notice'').

[5] 15 U.S.C. 78s(b)(2)(A).

[6] *See* Securities Exchange Act Release No. 106165, 91 FR 54778 (August 24, 2026). The Commission designated October 5, 2026, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Notice, *supra* note 4.

[9] 15 U.S.C. 78s(b)(2)(B).

Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[10] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the proposed rule change's consistency with the Act and, in particular, Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[12] in addition to any other comments they may wish to submit about the proposed rule change. By way of example, the Commission recently granted exemptive relief—to permit p.m. settlement for cash-settled security futures—that was conditioned on the collection and provision of certain data elements.[13] Commenters may submit comments regarding the potential utility of the same or similar data collection commitments here, in addition to any other comments they may wish to submit about the proposed rule change.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, including the issues raised by commenters, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[14] any request for an opportunity to make an oral presentation.[15]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by October 27, 2026. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by November 10, 2026.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEAMER–2026–54 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEAMER–2026–54. 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 filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to file number SR–NYSEAMER–2026–54 and should be submitted on or before October 27, 2026. Rebuttal comments should be submitted by November 10, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20405 Filed 10–5–26; 8:45 am]

BILLING CODE 8011–01–P

[10] *See id.*

[11] 15 U.S.C. 78f(b)(5).

[12] *See* Notice, *supra* note 4.

[13] *See* Securities Exchange Act Release No. 105882 (July 10, 2026), 91 FR 43410 (July 15, 2026).

[14] 17 CFR 240.19b–4.

[15] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[16] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106565; File No. SR–TXSE–2026–034]

Self-Regulatory Organizations; Texas Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a Transaction Fee Applicable to Orders That Execute in Auctions on the Exchange

October 1, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 2026, Texas Stock Exchange LLC (the ''Exchange'' or ''TXSE'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposal to adopt a transaction fee applicable to orders that execute in auctions on the Exchange. The text of the proposed rule change is available on the Commission's website (*https://www.sec.gov/rules/sro.shtml*) at the Exchange's website (*https://www.txse.com/regulations/rules-filings*), and at the principal office of the Exchange.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to adopt a fee for orders executed in auctions conducted pursuant to Rule 11.022.[3] Specifically, the Exchange proposes to add a Transaction Fee for Eligible Auction Orders that are executed in a TXSE Opening, Closing, IPO, Halt or Volatility Closing Auction of $0.0012 per share executed.

The proposed fee would apply uniformly and without regard to whether an order is displayed or non-displayed, adds or removes liquidity, is designated to participate exclusively in an auction, or rests on the TXSE Book before participating in an auction. The fee applicable to executions in an auction would apply in lieu of, and would not be combined with, any other transaction-specific fee or rebate set forth in the Fee Schedule. Accordingly, each side of an auction execution would be assessed the applicable fee. The Exchange believes this approach would provide Members with a simple and predictable method for determining the fee applicable to an auction execution.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5)[5] requirements in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)[6] in that 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.

The Exchange believes the proposed fee is reasonable. The proposed $0.0012-per-share rate is within the range of auction transaction fees imposed by other equities exchanges. NYSE Texas and NYSE Arca assess a $0.0012-per-share fee for specified orders executed in a closing auction and a $0.0015-per-share fee for specified orders executed in an opening auction.[7] Cboe BZX has also assesses an auction execution fee of $0.0011 per share for specified closing-auction and continuous-book executions and $0.0013 per share for specified opening-, IPO-, and halt-auction executions.[8] The proposed $0.0012-per-share fee therefore is comparable to fees charged for auction executions on competing equities exchanges.

The Exchange also believes that applying one rate to all auction executions is reasonable because every executed order receives the benefit of the Exchange's auction process and the resulting single-price execution. A uniform rate would avoid distinctions based on how an order entered the auction and would allow Members to determine the applicable charge without considering whether an order was displayed, non-displayed, auction-only, or resting on the TXSE Book before the auction.

Further to this point, the Exchange also believes the proposed fee is equitably allocated and not unfairly discriminatory because it would apply uniformly to all Members and to each buy and sell order executed in an Exchange auction. The proposal would not distinguish based on a Member's identity, capacity, volume, order type, or whether its order added or removed liquidity. Each Member would be subject to the same fee for the same type of auction execution. Members whose orders do not execute in an auction would not be charged the proposed fee. The proposal also would not provide a rebate, discount, tier, or exemption to any category of Member. The Exchange therefore believes that the proposed fee is consistent with Sections 6(b)(4) and 6(b)(5) of the Act.

The Exchange operates in a competitive market in which market participants may direct order flow to competing exchanges and off-exchange venues. The Commission has recognized the importance of market forces in determining prices and self-regulatory organization revenues. The Exchange believes the proposed fee reflects a competitive rate designed to support the operation of its auctions while remaining comparable to auction fees assessed by other equities exchanges. Members are not required to enter orders for execution in an Exchange auction. Members may determine whether and to what extent to submit auction interest based on their customers' instructions, regulatory obligations, and the available execution alternatives. Competing exchanges may also respond by modifying their auction functionality or pricing. For these reasons, the Exchange believes the proposed rule change is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe the proposed rule change will impose any undue burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the fee for transacting in auctions on the Exchange would be assessed uniformly on each buy and sell order executed in an Exchange auction. The proposal would not distinguish among Members, capacities, order types, or liquidity-adding and liquidity-removing interest. No Member would receive a preferential auction rate, credit, tier, or exemption.

The Exchange does not believe the proposed rule change will impose an undue burden on intermarket competition because it would not restrict the ability of competing exchanges to offer auctions or to establish their own auction pricing. Market participants may consider the Exchange's fees, auction functionality, and execution quality when determining where to direct eligible order flow. To the extent the proposed fee affects competition, the Exchange believes it would promote competition among exchanges with respect to auction pricing and services. For these reasons, the Exchange does not believe the proposed rule change will impose any burden on competition that is not

[3] The Exchange initially filed the proposed rule change on September 15, 2026, as SR–TXSE–2026–034 [sic]. On September 23, 2026, the Exchange withdrew that filing and refiled the proposed rule change as SR–TXSE–2026–034.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(4).

[7] *See* page 3 of NYSE Texas Fee Schedule at *https://www.nyse.com/publicdocs/nyse/markets/nyse-texas/NYSE_Texas_Fee_Schedule.pdf* and page 3 of NYSE Arca Fee Schedule at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.*

[8] *See* BZX Fee Schedule at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/.*

necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(2) [10] 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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–TXSE–2026–034 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 No. SR–TXSE–2026–034. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the filing 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–TXSE–2026–034 and should be submitted on or before October 27, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20407 Filed 10–5–26; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106573; File No. SR–OCC–2025–018]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Setting Aside Action by Delegated Authority and Approving Proposed Rule Change, as Modified by Partial Amendment No. 1, by The Options Clearing Corporation Concerning Methodology To Allocate Clearing Fund Deposit Requirements Among Its Clearing Members To Better Align the Allocation With the Sizing of the Clearing Fund so Stress Based Risk is Fairly Allotted to Market Participants That Expose OCC to Such Stress Risk

October 2, 2026.

I. Introduction

On September 26, 2025, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2025–018, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder, to amend its allocation methodology for the Clearing Fund [3] deposit requirements of its Clearing Members by realigning the allocation to correspond to the sizing of the Clearing Fund so that certain stress-based risk is proportionally allotted to market participants that expose OCC to such risk.[4]

On December 11, 2025, the Commission, acting through authority delegated to the Division of Trading and Markets,[5] approved the Proposed Rule Change (''Delegated Order'').[6] On December 18, 2025, Fidelity Investments (''Fidelity'' or ''Petitioner'') [7] filed a notice of its intention to petition for review,[8] pursuant to Rule 430 of the Commission's Rules of Practice.[9] Pursuant to Commission Rule of Practice 431(e), the Delegated Order was stayed by the filing with the Commission of a notice of intention to petition for review.[10] On December 24, 2025, Fidelity submitted its Petition for Review (''Petition'') of the Delegated Order.[11] On February 13, 2026, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, *available at https://www.theocc.com/company-information/documents-and-archives/by-laws-and-rules.*

[4] The Commission published notice of the proposed rule change in the **Federal Register** on October 1, 2025. *See* Securities Exchange Act Release No. 104111 (Sept. 26, 2025), 90 FR 47383 (Oct. 1, 2025) (File No. SR–OCC–2025–018) (''Notice of Filing''). On October 7, 2025, OCC filed Partial Amendment No. 1 to append an Exhibit 2 to documents filed as part of File No. SR–OCC–2025–018 on September 26, 2025 (hereinafter, together, defined as ''Proposed Rule Change''). Exhibit 2 consists of communication from OCC to its Clearing Members discussing, amongst other things, the proposed rule change in File No. SR–OCC–2025–018. On November 3, 2025, 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 the proposed rule change should be disapproved. *See* Securities Exchange Act Release No. 104173 (Nov. 3, 2025), 90 FR 51424 (Nov. 17, 2025) (File No. SR–OCC–2025–018).

[5] 17 CFR 200.30–3(a)(12).

[6] Securities Exchange Act Release No. 104359 (Dec. 11, 2025), 90 FR 58352 (Dec. 16, 2025) (File No. SR–OCC–2025–018). The Delegated Order also provided notice of filing of Partial Amendment No. 1, which did not change the purpose of or basis for SR–OCC–2025–018.

[7] Fidelity Investments provides clearing, custody, or other brokerage services through National Financial Services LLC, which is a Clearing Member of OCC. *See https://www.theocc.com/company-information/member-directory* (last visited Sept. 30, 2026).

[8] *See* Letter from Roberto Braceras, General Counsel, Fidelity (Dec. 18, 2025), *available at https://www.sec.gov/files/rules/sro/occ/2026/34-104359-fidelity-letter-121825.pdf.*

[9] 17 CFR 201.430.

[10] 17 CFR 201.431(e). *See* Letter from J. Matthew DeLesDernier, Deputy Secretary, Commission, to Hafez Almiladi, Assistant General Counsel, OCC (Dec. 18, 2025), *available at https://www.sec.gov/files/rules/sro/occ/2025/34-104359-letter.pdf.*

[11] *See* Fidelity, Petition for Review of Order Taken by Delegated Authority Granting Approval of Proposed Rule Change by Options Clearing Corporation Amending Methodology for Allocation of Clearing Fund Deposit Requirements (Dec. 24, 2025), *available at https://www.sec.gov/files/rules/sro/occ/2025/34-104359-petition.pdf.* The Commission received two comments supporting the Petition. *See* Letter from Matt Billings, President, Robinhood Financial LLC and Robinhood Securities, LLC (Dec. 23, 2025) (''Robinhood I''), *available at https://www.sec.gov/comments/SR-*

Commission issued a scheduling order, pursuant to Commission Rule of Practice 431,[12] granting the Petition and providing until March 12, 2026, for any party or other person to file a written statement in support of, or in opposition to, the Delegated Order.[13] On March 12, 2026, Petitioner submitted a written statement in opposition to the Delegated Order.[14] The Commission received additional comment from the public, including from OCC.[15]

The Commission has conducted a *de novo* review of OCC's proposal, giving careful consideration to the entire record—including all comments and statements submitted—to determine whether the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a registered clearing agency. Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.[16] Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change.'' [17] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[18] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[19] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.[20]

For the reasons discussed herein, OCC has met its burden to show that the Proposed Rule Change is consistent with the Exchange Act and rules and regulations thereunder applicable to OCC, and this order sets aside the Delegated Order and approves the Proposed Rule Change. In particular, the Commission finds that the record before the Commission demonstrates that the Proposed Rule Change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the Proposed Rule Change is consistent with Sections 17A(b)(3)(F), and (I) of the Exchange Act, and with Exchange Act Rules 17ad–22(e)(2) and (18).

II. Summary of the Proposal

OCC is registered with the Commission as a clearing agency and, as such, is an SRO under the Exchange Act.[21] OCC is the only clearing agency for standardized U.S. securities options listed on Commission-registered national securities exchanges (''listed options''). In addition, OCC serves other financial markets, including the commodity futures, commodity options, security futures, securities lending, and the over-the-counter options markets. OCC provides central counterparty (''CCP'') clearing services for all these markets and performs critical functions in the clearance and settlement process. OCC's role as a CCP means that, as part of its function as a clearing agency, it interposes itself as the buyer to every seller and the seller to every buyer for certain financial transactions. As the CCP for the listed options markets in the United States, as well as for certain futures and stock loans, OCC is exposed to various risks arising from providing clearance and settlement services to its Clearing Members. Because OCC is obligated to perform on the contracts it clears, one such risk that OCC is exposed to is credit risk, including the risk that OCC would not maintain sufficient financial resources to cover exposures if one of its Clearing Members defaults.

Among the ways that OCC manages the credit risk posed by a potential Clearing Member default is by periodically collecting margin collateral from Clearing Members on an individual basis and, to the extent this margin collateral could be insufficient to cover OCC's credit exposure in the event of a Clearing Member default, maintaining a Clearing Fund, which is a mutualized pool of financial resources to which each Clearing Member is required to contribute. OCC establishes the size of its Clearing Fund on a monthly basis, in part, at an amount determined by OCC to be sufficient to protect it against losses stemming from the default of the two Clearing Member Groups that would potentially cause the largest aggregate credit exposure for OCC under stress test scenarios that represent extreme but plausible market conditions.[22]

After establishing the size of the Clearing Fund each month, OCC allocates a percentage of the obligation to contribute to the Clearing Fund to each Clearing Member. From time to time, OCC has modified its allocation methodology to more accurately reflect the risk each Clearing Member poses to OCC.[23] Currently, each Clearing Member's contribution to the Clearing Fund is a function of that member's proportionate share of total risk,[24] open

OCC-2025-018/srocc2025018-687647-2132694.pdf; Letter from Jeffrey Starr, Managing Director, Head of Operations, Charles Schwab & Co., Inc. (Feb. 12, 2026) (''Schwab I''), *available at https://www.sec.gov/comments/sr-occ-2025-018/srocc2025018-703548-2210614.pdf.* On January 22, 2026, OCC submitted a response recommending that the Commission not grant the Petition. *See* Letter from Nicole Jakubowski, Deputy General Counsel and Corporate Secretary, OCC (Jan. 22, 2026) (''OCC I''), *available at https://www.sec.gov/comments/sr-occ-2025-018/srocc2025018-695847-2175634.pdf.*

[12] 17 CFR 201.431.

[13] *See* Securities Exchange Act Release No. 104846 (Feb. 13, 2026), 91 FR 8034 (Feb. 19, 2026) (File No. SR–OCC–2025–018).

[14] *See* Fidelity, Opposition to Proposed Rule Change by Options Clearing Corporation Amending Methodology for Allocation of Clearing Fund Deposit Requirements (''Opposition'') (Mar. 12, 2026), *available at https://www.sec.gov/comments/sr-occ-2025-018/srocc2025018-722287-2261554.pdf.* Concurrently, Petitioner provided additional information supporting its statement to the Commission with a request for confidential treatment.

[15] Comments on the Proposed Rule Change are *available at https://www.sec.gov/comments/sr-occ-2025-018/srocc2025018.htm.*

[16] 15 U.S.C. 78s(b)(2)(C).

[17] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[18] *Id.*

[19] *Id.*

[20] *Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 447 (D.C. Cir. 2017).

[21] *See* 15 U.S.C. 78c(a)(26). OCC is also registered with the U.S. Commodity Futures Trading Commission (''CFTC'') as a derivatives clearing organization.

[22] OCC Rule 1001(a). OCC determines the size of its Clearing Fund based on the daily output of stress tests conducted using a range of foreseeable scenarios that utilize standard pre-determined parameters and assumptions, including: relevant peak historic price volatilities; shifts in other market factors including, as appropriate, priced determinants and yield curves; the default of one or multiple members; forward-looking stress scenarios. *See* Notice of Filing, 90 FR at 47384.

[23] *See* Securities Exchange Act Release No. 69403 (Apr. 18, 2013), 78 FR 24257 (Apr. 24, 2013) (File No. SR–OCC–2013–02) (replacing OCC's method of calculating Clearing Members' contributions to OCC's Clearing Fund in proportion to open interest with a formula based on open interest, total risk, and volume with relative weightings of 50%, 35%, and 15%, respectively); Securities Exchange Act Release No. 83735 (July 27, 2018), 83 FR 37855 (Aug. 2, 2018) (File No. SR–OCC–2018–008) (modifying OCC's allocation weighting to better manage its credit exposures to its Clearing Members by better aligning each Clearing Member's contributions to the credit risk it poses to OCC).

[24] Total risk in this context refers to a member's proportionate share of margin posted to OCC. *See* OCC Rule 1003(b)(i).

interest,[25] and volume.[26] OCC currently uses a one-month lookback when calculating a member's proportionate share of the Clearing Fund.[27]

In the Proposed Rule Change, OCC proposed to modify the allocation methodology again to more closely align member obligations with the risks to which they expose OCC.[28] Although the current Clearing Fund allocation methodology contemplates risk as a function of margin, it does not include a component that accounts for the stressed losses used to size the Clearing Fund when determining each Clearing Member's required Clearing Fund contribution. OCC states that the lack of such a stress loss component creates an inconsistency between the sizing and allocation across the membership.[29] To address this inconsistency, OCC's Proposed Rule Change includes the stress loss component in the allocation methodology, allowing OCC to more accurately allocate individual Clearing Fund requirements because they better reflect the potential risk also known as the directional stressed risk that Clearing Members present to OCC.

OCC's Proposed Rule Change would modify OCC's formula for allocating Clearing Fund Contribution requirements by (a) introducing a 70% Clearing Fund risk-based shortfall allocation based on stress loss in excess of margin (the ''shortfall''); [30] and (b) changing the weighting percentages by reducing the margin allocation from 70% to 15% and open interest to 0%. These changes would result in a new weighting scheme of 70% shortfall, 15% margin, and 15% cleared volume.

As part of the change to allocation weighting, OCC also proposed extending the lookback period from one month to three months of data to align with parameters OCC uses when sizing the Clearing Fund.[31] Secondly, OCC proposed adopting rules that would authorize OCC to hold allocation weights constant month-over-month in light of volatile market conditions.[32] Finally, OCC proposed clarifying and conforming changes to the Clearing Fund Methodology Policy (''Policy'') and the Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description (''Methodology Description'').[33]

A. Modifications to the Allocation Weighting Formula

OCC proposed replacing the current allocation weighting (70% total risk, 15% open interest, and 15% volume) with a new weighting that aligns more closely with OCC's Clearing Fund sizing methodology (70% shortfall,[34] 15% margin,[35] and 15% volume). Under the proposed weighting scheme, the proposed methodology would be driven primarily by a Clearing Member's proportionate share of shortfalls and would use the same Clearing Fund sizing scenarios to calculate these shortfalls.[36] OCC states that, based on its analysis of different allocation weightings, this specific allocation scheme generates a balance between the various risks captured by each component and would align the Clearing Fund allocation with the exposure driving the size of the Clearing Fund.[37] OCC also proposed to align the lookback period for all allocation-related measures with the parameters used to size the Clearing Fund by moving from a one-month lookback to a three-month lookback.[38]

Before the Commission published its Delegated Order, OCC provided and Commission staff reviewed confidential data describing how the proposed methodology could affect contributions by its Clearing Members.[39] OCC observed that, overall, the proposed approach allocates the Clearing Fund in a more distributed fashion within the top 10 Clearing Members (as measured by highest Clearing Fund contribution amounts), with some members experiencing larger changes relative to other Clearing Members.[40] Under the proposed methodology, while the top 10 Clearing Members would have experienced, on average, a 1.28% increase in their Clearing Fund contributions, the top five Clearing Members within that group would have experienced, on average, a 2.67% decrease in such contributions.[41] Outside of the top 10 group, the remaining Clearing Members would have experienced a 1.28% decrease in average contributions.[42]

B. Authority to Hold Constant

As noted above, OCC proposed to adopt rules that would authorize it to hold allocation weights constant month-over-month in light of volatile market conditions.[43] As OCC stated in its

[25] Open interest is the total number of cleared contracts and open positions plus units of stock underlying open stock loan or borrow positions. *See* Securities Exchange Act Release No. 69403 (Apr. 18, 2013), 78 FR 24257 (Apr. 24, 2013) (File No. SR–OCC–2013–02).

[26] OCC Rule 1003(a). The proportionate requirements are determined over and above the contribution of $500,000 per Clearing Member. *See id.*

[27] *See* Notice of Filing, 90 FR at 47386.

[28] *See* Notice of Filing, 90 FR at 47383 (providing notice of OCC's proposal to better align the allocation with the sizing of the Clearing Fund so that stress-based risk is fairly allotted to those market participants that expose OCC to such stress risk).

[29] Notice of Filing, 90 FR at 47384 (''OCC's rules require OCC to size the Clearing Fund monthly based on stress test scenarios that present extreme but plausible market condition . . . [h]owever, the current allocation methodology does not include a component that takes into account the same stressed losses used to size the fund when determining each Clearing Member's required Clearing Fund deposit'').

[30] OCC refers to such a shortfall as Stress Loss Over Initial Margin (''SLOIM''). *See generally* Letter from Nicole Jakubowski, Deputy General Counsel and Corporate Secretary, OCC (Mar. 12, 2026) (''OCC II''), *available at https://www.sec.gov/comments/sr-occ-2025-018/srocc2025018-722767-2261914.pdf.*

[31] Petitioner does not object to extending the lookback period used for allocation inputs from one month to three months. *See* Petition, at 6 n. 2. *See also* Opposition, at 9 n.3.

[32] Petitioner does not object to adopting a new authority allowing OCC to hold allocation weights constant month-over-month during periods of heightened market volatility. *See* Petition, at 6 n. 2. *See also* Opposition, at 9 n.3.

[33] In addition to the modifications to the allocation weighting formula and the authority to hold constant, OCC proposed non-substantive conforming changes and clarifications, which were not subject to Fidelity's Petition. *See* Delegated Order, 90 FR at 58354 (''Such clarifying changes include the removal of Interpretation and Policy .03 of Rule 1003, which provides for implementation of the current allocation methodology and is no longer necessary. The conforming changes also include the introduction of 'shortfall' into the provisions describing OCC's Clearing Fund allocation methodology across the Rules, Policy, and Methodology Description. Similarly, OCC would remove references to 'open interest; and other terms that are not relevant to the proposed allocation methodology.''). The clarifying and conforming changes are considered as part of the Proposed Rule Change; however, they were not the subject of concerns raised in the Petition.

[34] As proposed, OCC would define ''shortfall'' to mean ''an estimated stress loss exposure in excess of margin amounts aggregated across all accounts of a Clearing Member determined using the Corporation's margin methodology and such add-on charges as may be determined pursuant to the Corporation's policies and procedures.'' *See* Notice of Filing, 90 FR at 47385.

[35] ''Margin'' under the proposed rule would have the same meaning as ''total risk'' under the current rule. OCC states that using the term ''margin'' rather than ''total risk'' provides better clarity as to the metric upon which the factor is based. *See id.* at 47385 n. 12.

[36] The shortfall component used in the allocation is based on the highest shortfall across all sizing scenarios for that Clearing Member on a given business date and will be treated as zero in the event there are no shortfalls.

[37] *See* Notice of Filing, 90 FR at 47385. OCC provided the results of its analysis in confidential Exhibit 3 to File No. SR–OCC–2025–018. *See id.* at 47385 n. 14.

[38] Petitioner does not object to extending the lookback period used for allocation inputs from one month to three months. *See* Petition, at 6 n. 2. *See also* Opposition, at 9 n.3.

[39] *See* Notice of Filing, 90 FR at 47386.

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] Petitioner does not object to adopting a new authority allowing OCC to hold allocation weights constant month-over-month during periods of heightened market volatility. *See* Petition, at 6 n. 2. *See also* Opposition, at 9 n.3.

proposal, when markets are highly volatile during periods of market stress, elevated margin coverage becomes more commonplace and consequently may reduce or even eliminate Clearing Fund shortfalls because of elevated margin requirements.[44] This is because the shortfall component represents a stress loss in excess of margin. Thus, an increase in margin, all else being equal, results in a decreased shortfall.

As OCC further stated in its proposal, reductions in shortfalls could cause the resulting Clearing Fund allocation to change dramatically month-over month.[45] This is because the proposed changes to the allocation methodology described above reduce the weight of margin and give significant weight to shortfall. As a result, an increase in a Clearing Member's proportionate share of margin would not offset an equal reduction in that member's proportionate share of shortfall under the proposed allocation methodology. OCC stated that the proposed implementation of a three-month lookback would help to smooth month-over-month changes;[46] however, OCC stated that it is possible the extended lookback alone may not be sufficient in the unlikely event that high volatility and reduced shortfalls persisted even though OCC did not observe such persistence in its analysis.[47]

To address the potential impact of persistent high volatility on the allocation of Clearing Fund requirements, OCC proposed to adopt rules that would allow it to hold allocations constant month-over-month. As proposed, Rule 1003(c) would grant OCC the authority to make the hold-constant decision at its sole discretion. The rule would provide that any hold-constant decision would (i) be based upon then-existing facts and circumstances, (ii) be in furtherance of the integrity of OCC and the stability of the financial system, and (iii) take into consideration the legitimate interests of Clearing Members and market participants. Under the proposed Policy, OCC would exercise its hold-constant authority by conducting daily analyses of the output of OCC's sizing stress tests[48] and, if warranted, by escalating to the Chair of the Stress Testing Working Group (''STWG'')[49] or the Chief Financial Risk Officer so that an STWG meeting be convened to review, and approve or reject, a hold-constant recommendation.[50] Such a recommendation would be required to be supported by an analysis that may include and is not limited to the percentage of firms generating shortfalls, the size of peak shortfalls relative to the Clearing Fund size, a comparison of the Clearing Fund allocation projections to current requirements, and a breakdown of the allocation projections by component.[51] OCC would be required to notify Clearing Members and the Risk Committee of any hold-constant decision or reversion to the proportionate approach. Further, OCC would be required to notify the Commission and the CFTC promptly of any decision to hold allocations constant and to provide the reasons for such decision.

III. Discussion and Commission Findings

The Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the Proposed Rule Change is consistent with Sections 17A(b)(3)(F) and (I) of the Exchange Act,[52] and with Exchange Act Rules 17ad–22(e)(2) and (18),[53] as described in detail below.[54] Also as described below, commenters' argument regarding the equitable allocation of dues, fees, and other charges under Section 17A(b)(3)(D) of the Exchange Act[55] is misplaced. The Commission therefore approves the Proposed Rule Change.

A. Consistency With Sections 17A(b)(3)(F) and 17A(b)(3)(I) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that a clearing agency's rules are not designed to permit unfair discrimination among participants in the use of the clearing agency.[56] Section 17A(b)(3)(I) of the Exchange Act requires that the rules of a clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 17A(b)(3)(I) does not require the Commission to make a finding that OCC chose the option that imposes the least possible burden on competition. Rather, the Exchange Act requires that the Commission find that the Proposed Rule Change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, which involves balancing the competitive effects of the Proposed Rule Change against all other relevant considerations under the Exchange Act.[57] Because the concerns raised by the Petitioner and commenters regarding unfair discrimination and burdens on competition overlap substantively, this section addresses them together under the relevant statutory sections.

The purpose of the Proposed Rule Change is to align the financial obligations imposed by OCC's rules with the credit risk each Clearing Member poses to OCC. As described above, OCC maintains the Clearing Fund to cover OCC's credit exposure in the event of a Clearing Member default to the extent such exposure is not covered by margin collateral. The size of the Clearing Fund is a direct function of the difference between the margin OCC collects from Clearing Members and the potential losses OCC could face from a member default under extreme but plausible market conditions, *i.e.,* shortfall.[58] Collecting such collateral is necessary to ensure that OCC maintains sufficient financial resources to manage its credit risk. The greater the potential

[44] *See* Notice of Filing, 90 FR at 47387.

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] In particular, these tests would be the Cover 2 Sizing Stress Tests, where ''Cover 2'' means ''sufficient Pre-Funded Financial Resources, at a minimum, to enable OCC to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two Clearing Member Groups that would potentially cause the largest aggregate credit exposure in extreme but plausible market conditions.'' *See* Notice of Filing, 90 FR at 47384 n.23 and accompanying text. *See also* Notice of Filing, 90 FR at 47384 (''As described in the Methodology Description, OCC leverages a suite of sizing stress tests broadly categorized into two types: 'Systemic Scenarios' and 'Idiosyncratic Scenarios.' Systemic Scenarios are created to capture risk to OCC in an extreme event impacting all positions mainly driven by risk drivers, while Idiosyncratic Scenarios are used to assess the impact of extreme moves of specific equities in a Clearing Member portfolio. [. . .] OCC selects the largest aggregate stress test exposures as the primary basis for sizing the Clearing Fund.'').

[49] *See* Notice of Filing, 90 FR at 47387 (''OCC believes the STWG is the appropriate OCC internal governing body to approve or reject such recommendation given the authority the Management Committee has delegated to it as the subject matter expert on OCC's financial risk and liquidity risk stress-testing scenarios, models, underlying parameters and assumptions, and stress test results.'').

[50] *See* Notice of Filing, 90 FR at 47387 n. 24. Likewise, OCC would have the authority to revert to the proposed allocation calculation formula, subject to the STWG's prior approval. *See* Notice of Filing, 90 FR at 47387.

[51] *See* Notice of Filing, 90 FR at 47387 n. 25.

[52] 15 U.S.C. 78q–1(b)(3)(F), 15 U.S.C. 78q–1(b)(3)(I).

[53] 17 CFR 240.17ad–22(e)(2) and 17 CFR 240.17ad–22(e)(18).

[54] In approving this proposed rule change, the Commission has considered the Proposed Rule Change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[55] 15 U.S.C. 78q–1(b)(3)(D).

[56] 15 U.S.C. 78q–1(b)(3)(F).

[57] *See* Bradford National Clearing Corp., 590 F.2d 1085, 1105 (D.C. Cir. 1978).

[58] *See* Notice of Filing, 90 FR at 47384 (defining shortfall as the estimated stress loss exposure in excess of margin requirements).

shortfall, the greater the size of the Clearing Fund.[59] Currently, however, the size of each Clearing Member's contribution is unrelated to the share of the shortfall it presents to OCC.

Both the Petition and several comments received after the Petition address the burden on competition, as described in detail below.[60] Petitioner states that the proposal overstates the risk posed by agency brokers [61] in that the allocation methodology would ''require agency brokers to contribute to the Clearing Fund substantially in excess of the risk they generate, while allowing proprietary trading firms and market makers to contribute substantially less than their risk profile warrants—resulting in a loss-allocation framework in which agency brokers subsidize any loss created by other distinct cohorts.'' [62]

Petitioner and some commenters suggest that, unlike Clearing Fund sizing, the proposed Clearing Fund allocation does not align with each Clearing Member's relative default likelihood as well as expected losses, and that the relative default likelihood of an agency broker is distinct from that of proprietary trading firms and market makers due to structural differences.[63] Petitioner states that theoretical exposure to market direction (via, in some cases, many individual accounts) for agency brokers does not necessarily translate into real-world default risk,[64] and that, unlike proprietary and market-making firms, whose losses hit their books immediately, stress losses attributable to agency brokers are borne by individual customers and would first be absorbed by the defaulting customers' net equity and available margin collateral.[65] Petitioner also states that agency brokers frequently have access to additional forms of loss protection, including fidelity bonds, insurance coverage, and clearing deposits by introducing brokers.[66]

Lastly, Petitioner states that the proposed allocation formula overstates relative credit risk posed by agency brokers compared to proprietary trading firms and market-makers because the contribution requirements are driven primarily by OCC's new stress loss metric, and the proposed allocation change minimizes operational risk that can lead to member default since proprietary trading firms and market makers face greater operational risk than agency brokers.[67] The Petitioner states that, unlike agency brokers, ''[p]roprietary trading firms and market-makers face greater operational risk than agency brokers because they often employ high-volume, programmatic trading strategies. When these strategies fail—through system errors, algorithmic malfunctions, or breakdowns in intraday controls and hedging—the resulting losses can scale with their trading volumes and open interest, introducing more systemic risk.'' [68] As a result, by removing open interest entirely and instead focusing on shortfall, the Petitioner states that the proposal would compound structural disparities in the Clearing Fund methodology between agency brokers and proprietary and market-making firms, thereby disadvantaging retail-facing agency brokers and unfairly discriminating against that type of business model.[69]

[59] *See* OCC Rule 1001(a) (explaining that the size of the Clearing Fund is set at an amount determined sufficient to protect against losses under stress test scenarios that represent extreme but plausible market conditions).

[60] *See* Petition, at 11–15 (suggesting that the proposal imposes an inappropriate burden on competition by unfairly discriminating against agency brokers serving retail clients). *See also* Opposition, at 13–20. *See also generally* Letter from Jeffrey Starr, Managing Director, Head of Operations, Charles Schwab & Co., Inc. (Mar. 12, 2026) (''Schwab II''), *available at https://www.sec.gov/comments/sr-occ-2025-018/srocc2025018-722707-2261854.pdf;* Letter from Matthew Morningstar, Group Managing Director, Chief Legal Officer, LPL Financial (Mar. 20, 2026) (''LPL Letter''), *available at https://www.sec.gov/comments/SR-OCC-2025-018/srocc2025018-731607-2277094_0.pdf;* and Letter from Jessica Giroux, Chief Legal Officer, American Securities Association (Mar. 19, 2026) (''ASA Letter''), available at *https://www.sec.gov/comments/sr-occ-2025-018/srocc2025018-729927-2274615.pdf.*

[61] Although Petitioner states that ''the relative default risk of each member is fundamental to the equitable allocation of Clearing Fund contributions,'' it also states that the ''proposed allocation change greatly overstates the risk posed by the agency-broker model, compared to the risks posed by different business models such as proprietary trading firms and market makers.'' *See* Petition, at 11. *See also* Opposition, at 13–19.

[62] *See* Petition, at 11. Under the Proposed Rule Change, Petitioner estimates that its contribution obligations will increase by approximately 67%. *Id.,* at 3, 9, and 17. *See also* Schwab II, at 4 (''Specifically, Schwab's monthly Clearing Fund contribution is projected to increase by approximately 40% under the Re-Weighted Formula. At the same time, principal trading firms, including quantitative trading firms, market makers, and other broker-dealers engaged primarily or solely in principal trading [. . .] would see only modest increases (*e.g.,* 1.28%)—or even *decreases*—in their Clearing Fund contributions under the Re-Weighted Formula.'' (emphasis in original)). *See also* LPL Letter, at 2. *See also generally* ASA Letter.

[63] *See* Petition, at 12–14; Opposition, at 14–17; Schwab II, at 5–6; and LPL Letter, at 3.

[64] *See* Petition, at 12 (''OCC's stress-testing methodology does not account for key structural and regulatory features of agency brokerage that materially reduce the actual likelihood of agency-broker default [. . .] put simply, two customers may short the same options, but may not default at the same time.''). *See also* LPL Letter, at 3 (''Retail order flow is typically highly diversified across a large number of customers, strategies, and underlying securities. Unlike institutional trading strategies that may involve concentrated directional positions, retail activity tends to consist of smaller positions spread across a large number of accounts and a variety of asset classes. This volume and diversification reduce the likelihood that a single market event or exposure would result in large losses concentrated on a single intermediary or clearing participant.'').

[65] *See* Petition, at 12; and Opposition, at 14–15. *See also* Schwab II, at 5 (''OCC's new stress-based shortfall approach ignores the fact that when an Agency Broker's customer fails to pay or deliver, 100% of the loss does not need to be covered by OCC-collected margin with any shortfall being covered by Clearing Fund resources. Instead, the Agency Broker business model has built-in regulatory protections that mitigate the risk of Clearing Fund resources being needed to cover an Agency Broker customer default. FINRA Rule 4210 provides one such protection by requiring Agency Brokers to collect margin when they extend credit to their customers to finance transactions in exchange-listed options. Collecting margin protects Agency Brokers from customer credit risk because the collected margin serves as collateral for the transaction, mitigating the extent of any loss to the firm if the customer ultimately fails to pay for or deliver the securities subject to the transaction.'') (footnotes omitted).

[66] *See* Petition, at 12; Opposition, at 15. *See also* Schwab II, at 5 (''Because Agency Brokers have resources to mitigate losses stemming from customer failures to pay or deliver, the likelihood of Agency Broker defaults is lower than anticipated by the Proposed Rule Change. Even in the event of an Agency Broker default, a significant portion of any loss may be covered before any need to rely on OCC resources. If an Agency Broker covers a significant portion of the loss before OCC resources are needed, then OCC-collected margin may fully cover the remaining portion of the loss without needing to rely on the Clearing Fund. Even if OCC-collected margin does not fully cover the loss, any margin shortfall would be significantly smaller than if OCC resources were needed to cover 100% of the loss.'').

[67] *See* Petition, at 12–14; Opposition, at 16–17. *See also* Schwab II, at 6. One commenter also states that the proposed extended lookback period could prevent Clearing Fund allocations from fully capturing all relevant risks to OCC. *Id.,* at 9. The Proposed Rule Change, however, is focused solely on the allocation of collateral contribution requirements, not on the sizing those requirements. *See* Notice of Filing, 90 FR at 47384 (''While the changes would not affect the overall size of the Clearing Fund, some Clearing Members would see their allocation increase while others would see their allocation decrease.''). The commenter also suggested potential alternatives to achieve the goals of the Proposed Rule Change without ''disproportionately impacting'' agency brokers (*e.g.,* phase in the re-weighted formula on which the allocation methodology relies, permit agency broker-dealers to use certain offsets in net capital requirements). *See* Schwab II at 8–9. The alternatives suggested by commenters do not alter the Commission's determination that the Proposed Rule Change, as designed, is consistent with the applicable statute, rules, and regulations. While there may be more than one reasonable way to address a given risk, the existence of an alternative does not, in and of itself, render the proposed approach inconsistent with applicable law. Additionally, Rule 17ad–22(e) generally provides CCAs with flexibility in designing their written policies and procedures, rather than to take a strictly prescriptive approach. *See, e.g.,* Securities Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, at 70795–97, and 70800–01 (Oct. 13, 2016) (File No. S7–03–14). This means that clearing agencies have the flexibility to tailor their policies and procedures to the risks posed by their particular businesses.

[68] *See* Petition, at 13. *See also* Opposition, at 16.

[69] *See* Opposition, at 13–14.

OCC states that the proposed allocation is business model-neutral because if a Clearing Member is required to increase its contribution under the new allocation, that is because that Clearing Member contributes more tail risk than it is currently being charged for, and that any burden on competition imposed is necessary and appropriate in furtherance of the purposes of the Exchange Act.[70] OCC states that it ''has a single class of members subject to a single Clearing Fund—there are not separate rules or requirements applicable to particular classes of Clearing Members'' and, ''[i]n fact, the PRC is designed to *more fairly* allocate Clearing Fund contributions to those Clearing Members who present increased tail risk.'' [71] OCC states that the proposed methodology ''considers only the risk that Clearing Members introduce into the clearing system, and is agnostic to external characterizations of the nature of their business.'' [72] OCC also states that the proposed approach ''reflects a measured, data-driven calculation that was vetted closely by regulators, Clearing Members, and others [. . .].'' [73] OCC further states, ''[t]he change in allocation methodology necessarily means that the deposit requirement for some Clearing Members will increase because they present higher risk to OCC in a default scenario, represented by shortfall, than is apportioned under the current methodology, while the deposit requirement of other Clearing Members will decrease correspondingly based on a lower risk profile.'' [74] Based on the underlying impact data confidentially submitted to the Commission, OCC states that of the top 15 largest Clearing Fund allocations for June 2026 under the proposal, nine Clearing Members would have seen an increased allocation, ranging from +8.69% to +104.78%, and six Clearing Members would have seen a decreased allocation, ranging from –4.79% to –39.97%.[75] OCC states that the Clearing Members who would have experienced higher allocations ''are not limited to those who generally describe themselves as serving retail customers. Some Clearing Members who serve retail customers would in fact see their allocation decrease.'' [76]

Additionally, OCC states that because the proposed allocation methodology more accurately measures Clearing Fund deposits based on the tail risk represented by a particular Clearing Member to OCC in the event of a default, the proposal is ''designed to appropriately apportion contributions so that Clearing Members who do not cause significant tail risk are not required to subsidize those who do cause such risk.'' [77] As detailed below, several commenters support OCC's proposed Clearing Fund reallocation and its effect on mutualization of losses, stating that the proposal would enhance resilience of the clearing system in the markets OCC serves and more appropriately align structural incentives for Clearing Members to manage the risks they bring into the system in the face of OCC's evolving risk profile.[78] OCC and the supportive commenters point out that, due to ''tremendous growth and innovation in the options markets'' [79]—such as the rise of new products like options on cryptocurrencies, the introduction of new expiry days, extended trading hours, and increased retail investor participation—certain developments ''can increase non-linear tail exposures, making shortfalls a particularly relevant measure for allocating mutualized default resources.'' [80] One such commenter states that the proposal realigns the incentives around loss mutualization,[81] adding that ''[w]here clearing members are able to introduce risks that are not fully reflected in their Clearing Fund contributions, those risks are effectively subsidized by others in the mutualized pool, undermining both fairness and the integrity of the risk management framework.'' [82] This commenter further states that ensuring that Clearing Fund contributions are commensurate with the risks OCC faces ''is therefore a critical component of the safety and soundness of OCC and the broader market ecosystem.'' [83]

Regarding relative likelihood of default, OCC states that the Clearing Fund and the applicable regulatory requirements [84] are not designed to address the probability of default, but rather the degree of loss if and after a default occurs.[85] OCC states that neither OCC's Rules nor federal securities laws ''provide for OCC to discount or haircut the financial resources it must maintain to meet OCC's Cover 2 standard by reference to the creditworthiness of the Clearing Members generating the Cover 2 exposures.'' [86] Rather, OCC states that it assesses a Clear Member's credit worthiness through ''other processes for addressing the probability of a member's default, including Commission-approved margin requirements, membership standards (and ongoing monitoring of members' adherence to

[70] *See* OCC II, at 7–8 (''Far from being unfair or discriminatory, the new allocation method more fairly allocates tail risk and places all Clearing Members on a more level playing field.'').

[71] *See* OCC II, at 7 (emphasis in original).

[72] *See* Letter from Nicole Jakubowski, Deputy General Counsel and Corporate Secretary, OCC, at 1 (June 17, 2026) (''OCC III''), *available at https://www.sec.gov/comments/SR-OCC-2025-018/srocc2025018-840179-2567787.pdf See id.,* at 2 (''OCC seeks to clarify that OCC does not view its Clearing Members based on public perceptions on the nature of their business but strictly by the risk each Clearing Member introduces to OCC. The revised methodology does not allocate the fund by the type of customers that use a particular Clearing Member, but rather by the tail risk presented by each Clearing Member. Tail risk is a product of the positions held by the Clearing Members.'') (footnote omitted).

[73] *See* OCC I, at 3.

[74] *See* OCC II, at 5.

[75] *See* OCC III, at 2.

[76] *Id.*

[77] *See* OCC II, at 1.

[78] *See generally* Letter from Stuart Bourne, CEO, BofA Securities, Inc.; Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities; and Alicia Crighton, Global co-head of Futures, Global head of Clearing, Goldman Sachs & Co. LLC (Apr. 2, 2026) (''Goldman Letter''), *available at https://www.sec.gov/comments/SR-OCC-2025-018/srocc2025018-739727-2297854.pdf;* Letter from Boudewijn Duinstra, CEO, ABN AMRO Clearing USA LLC (Apr. 16, 2026) (''ABN AMRO Letter''), *available at https://www.sec.gov/comments/sr-occ-2025-018/srocc2025018-755167-2324074.pdf;* and Letter from Jackie Mesa, Chief Operating Officer and Senior Vice President of Global Policy, FIA (Mar. 12, 2026) (''FIA Letter''), *available at https://www.sec.gov/comments/sr-occ-2025-018/srocc2025018-722227-2261394.pdf.* Specifically, one commenter stated that the inherent loss mutualization of the Clearing Fund ''creates a collective responsibility among clearing members to robustly manage the risk of the positions they introduce to the clearinghouse.'' *See* Goldman Letter, at 2.

[79] *See* Goldman Letter, at 3 (''The average daily volumes have nearly doubled since 2020, surpassing 60 million contracts per day. [. . .] The OCC's Clearing Fund as of the end of last year had grown to over $21 billion dollars, nearly doubling over the last decade, highlighting the growth and change in complexity and risk profile over time.''). *See also* OCC II, at 8 (''OCC, and the listed options industry more broadly, have seen a well-documented increase in retail trading activity since 2019. [. . .] In fact, OCC has seen a shift in the type of firms that drive its Cover 1 exposure, from institutional participants to agency brokers.'').

[80] *See* Goldman Letter, at 3.

[81] *See* Goldman Letter, at 2 (''While central clearing delivers significant benefits to the markets [. . .] it also boosts the exposure clearing members (and by extension their customers) have to each other, especially as the OCC is the only clearinghouse for U.S. listed options. In the event a clearing member defaults, if the losses exceed the defaulting clearing member's margin on deposit and its own Clearing Fund contribution, the OCC will utilize the Clearing Fund contributions of other, non-defaulting clearing members to manage the default.'') (footnotes omitted).

[82] *See* Goldman Letter, at 2.

[83] Goldman Letter, at 2.

[84] *See* 17 CFR 240.17ad–22(e)(4).

[85] *See* OCC II, at 8 (''The Clearing Fund and Exchange Act Rule 17ad–22(e)(4) are not designed to address the *probability of default,* but rather the degree of loss *given* default. The proposed allocation appropriately does not take into account the likelihood of default; that is not what the Clearing Fund is for.'' (emphasis in the original)).

[86] OCC II, at 8.

those standards), and protective measures.'' [87] Moreover, OCC states that despite the fact that agency brokers collect customer margin as an internal buffer before potentially resorting to OCC's Clearing Fund in the event of a Clearing Member default, ''agency brokers may choose to keep this excess margin at the firm, which puts these resources outside the reach of OCC in the event of the Clearing Member's failure. Because it does not have access to this increased margin in the event of a default, OCC does not realize a reduced tail risk associated with that Clearing Member in the event that Clearing Member in fact defaults.'' [88]

Lastly, regarding Petitioner's statements on operational risk, the proposed removal of open interest as a component of the allocation methodology, and the proposed shortfall-focused approach, OCC states that the ''SLOIM methodology is [sic] more appropriate way to apportion the costs of tail risk to the Clearing Members who actually create that risk'' and, as such, ''if the risk in excess of margin associated with a particular Clearing Member increases, that Clearing Member's Clearing Fund allocation likewise increases.'' [89] Further, OCC states that ''the Petition provides no support for why operational risk necessarily scales with open interest.'' [90] Rather, OCC states that other metrics, such as shortfall, ''are more closely aligned with the actual market and tail risk that Clearing Member activity produces.'' [91] OCC additionally states that ''open interest does not account for the sizeable and growing presence of trading in options with zero days to expiration (so-called '0DTE' options), particularly among retail traders.'' [92] OCC further states that it is not required to select the least restrictive means of complying with the Exchange Act for a particular subset of members.[93]

As noted above, supporting commenters state that the proposal appropriately realigns incentives and is consistent with recognized international CCP clearing practices, both generally and specifically as to the shortfall-based calculation. For example, one commenter states that the proposal is ''a well-reasoned shift toward ensuring that clearing members whose portfolios produce the greatest stress exposures bear a proportionate share of the mutualised resources required to manage those risks.'' [94] Another commenter states that the proposed allocation methodology ''which emphasizes stress losses in excess of margin ('shortfall') while incorporating margin and cleared volume, represents a thoughtful and well-reasoned shift toward a stress-centric allocation.'' [95] Other commenters state that the focus on such a shortfall, or SLOIM, addresses the misaligned incentives existing in the current market, where although ''[s]hortfall is an important measure of the likelihood that OCC would need to draw on the mutualized Clearing Fund'', under the present methodology, Clearing Members ''whose activities drive growth in the size of the overall Clearing Fund today are not responsible for funding that increase.'' [96] These commenters state that ''[b]y better funding tail risk ex ante, the proposal also reduces the likelihood of abrupt and destabilizing Clearing Fund reallocations during periods of market stress.'' [97]

In response to the commenters' concerns regarding the impact on agency brokers serving retail customers, the Commission acknowledges that the Proposed Rule Change would result in some Clearing Members' allocations increasing while other Clearing Members' allocations would decrease. Based on the Commission's review, however, the change would not impose any burden on competition not necessary or appropriate. The rights afforded to Clearing Members are accompanied by a set of obligations, including an obligation to provide assets to OCC as collateral. The amount of collateral required varies from member to member, and, therefore, the relative burden of such obligations also varies from member to member. To the extent OCC's rules impose burdens that impact competition between Clearing Members, such burdens must be both necessary and appropriate.

As described above, OCC's role as a CCP exposes it to credit risk in the event of a Clearing Member default. One of the tools [98] OCC uses to maintain sufficient financial resources to manage a potential Clearing Member default is the collection of collateral, including Clearing Fund deposits.[99] OCC determines the amount of Clearing Fund deposits that it needs to hold based on Clearing Member shortfall calculations, which, as described above, account for losses that would exceed the margin collateral posted by a given Clearing Member. The change OCC proposed would, similarly, allocate Clearing Fund requirements based, in part, on shortfall to align with the risk the Clearing Fund is designed to mitigate. Although changing the allocation methodology will increase the collateral obligations of some Clearing Members while reducing the collateral obligations of others, the change is necessary to ensure the burden of posting collateral is tied to the purpose of that collateral. Therefore, to the extent the change in allocation may impose a burden, that burden is necessary to align the collateral obligations with the risk such collateral is designed to cover.

Whether the relative burden of providing Clearing Fund collateral is appropriately distributed among OCC's Clearing Members must be based on the method for allocating such obligations.

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[87] OCC II, at 8.

[88] OCC II, at 8.

[89] OCC II, at 6. As noted above, SLOIM is synonymous with shortfall. *See supra* note 30.

[90] OCC II, at 8.

[91] OCC II, at 8.

[92] OCC II, at 8.

[93] *See* OCC II, at 6 (''To the extent that the commenters suggest that OCC is required to evaluate and select the least restrictive means of complying with the Exchange Act for a particular subset of members, that is an incorrect characterization of the legal standard the PRC must meet. The question at issue is whether the PRC is consistent with the Exchange Act, not whether the PRC will impose increased costs on a particular Clearing Member.'').

[94] *See* FIA Letter, at 1.

[95] See Letter from Joanna Mallers, Secretary, PTG, at 2 (Mar. 17, 2026), *available at https://www.sec.gov/comments/sr-occ-2025-018/srocc2025018-727487-2270874.pdf.* The commenter adds that ''[b]y eliminating the open-interest component and extending the lookback period to three months, OCC has demonstrated a commitment to achieving more stable and representative measures.'' *Id.*

[96] *See* Goldman Letter, at 2.

[97] *Id. See also* ABN Amro Letter, at 1 (''We strongly believe that any allocation to prefund a clearing fund should be based on the principle that a potential defaulter should cover as far as possible the potential credit risk that its positions and those it guarantees for its clients pose to the CCP and thus via risk mutualization to the other clearing members. [. . .] In our view, Shortfall (*i.e.* stress loss in excess of margin assets) better accounts for the non-linearity of credit risk exposures and potential losses in portfolios than Margin (or some multiple of it) that is calibrated rather to normal, less volatile market conditions.'').

[98] Clearing Fund deposits serve as a secondary buffer on top of OCC's initial collection of margin to cover credit exposures that could arise under normal market conditions. *See* Securities Exchange Act Release No. 95319 (July 19, 2022), 87 FR 44167 (July 25, 2022) (File No. SR–OCC–2022–001) (As a CCP, OCC ''interposes itself as the buyer to every seller and seller to every buyer for financial transactions. As the CCP for the listed options markets in the U.S., as well as for certain futures, OCC is exposed to the risk that one or more of its members may fail to make a payment or to deliver securities. OCC addresses such exposures, in part, by requiring its members to provide collateral, including margin collateral. [. . .] Typically, margin is designed to cover such exposures during normal market conditions''). *See also* 17 CFR 240.17ad–22(b)(2).

[99] Clearing Fund deposits serve to cover credit exposures under a wide range of foreseeable stress scenarios, including the default of a participant family in extreme but plausible market conditions. *See* Notice of Filing, at 47384. *See also* 17 CFR 240.17ad–22(e)(4)(iii).

Based on both the language of the proposed rule and the impact data provided by OCC and reviewed by the Commission, the proposal allocates Clearing Fund contribution requirements based on the credit risk presented by a Clearing Member's portfolio, not the member's business model. The addition of shortfall as the most heavily weighted factor in OCC's allocation methodology would help to calibrate a Clearing Member's obligation to post collateral to the extent to which that member makes it necessary for OCC to collect such collateral in the first place. As noted above, a Clearing Member would be in a position to change its Clearing Fund requirement by changing the positions it submits for clearing. The extent to which the change affects a member over time, therefore, is at least in part a function of the changes in the positions the Clearing Member submits for clearing at OCC. For example, if the proposed changes had been put in place in 2023, one Clearing Member who would have seen a 1.1% reduction in its Clearing Fund requirements [100] while the same member would have seen a 47.08% increase if the change were implemented in 2026.[101] Such a change in potential impact of the Proposed Rule Change is a function of it being designed to address the Clearing Member's risk rather than any unfair discrimination by OCC.

Although the Petitioner and commenters state that the Proposed Rule Change would disproportionately impact Clearing Members serving retail investors, the proposed rule text is not based upon a specific business model or organizational structure. Instead, it is based on the risk that each Clearing Member brings to OCC. To the extent the Proposed Rule Change would require some members to contribute more to the Clearing Fund, such a burden is appropriate given that it reflects the proportionate share of the shortfall that could arise out of such member's default. Removing open interest and focusing on shortfall in the allocation methodology would more accurately account for tail risks posed by developments in the options markets, such as the rise of 0DTE products, increased participation by retail traders, and heightened options trading volume.[102] Based upon the Commission's review and analysis of the data provided confidentially by OCC, the Proposed Rule Change is designed to address risk presented by Clearing Members and not target retail or agency brokers, or other specific business models, contrary to the assertions of the Petitioner or other commenters.[103]

Additionally, the Commission disagrees with the Petitioner as to whether operational risk necessarily scales with open interest. Further, Petitioner acknowledges that volume, which would remain an input in the allocation methodology, can help capture operational risk.[104] Rather than focusing on open interest or relying exclusively or primarily on volume, the proposal's shortfall-based approach helps apportion the burden of providing the collateral necessary to cover tail risk to the Clearing Members whose cleared positions pose such risk to OCC. As a practical matter, and specifically as to Petitioner's statements regarding the likelihood of default, the Commission agrees with OCC that it would be unable to rely on assets outside of its control in the context of a Clearing Member default.[105] Moreover, the current design of the Clearing Fund, assuming default, is unchanged.

Further, based on the Commission's review of the record, the proposed amendment to the allocation methodology is not unfairly discriminatory because it is reasonably designed to align responsibility for mitigating risk with the activity generating such risk. Although the proposed changes will result in a shift in collateral requirements with some Clearing Members being required to post more collateral and some to post less collateral,[106] such a shift in collateral requirements will relate directly to the risk that each member presents to OCC as represented by that Clearing Member's shortfall calculation.

The proposed change is not designed to permit unfair discrimination among current or future Clearing Members in the use of OCC's clearance and settlement services and facilities. Rather, the proposed changes would require each Clearing Member to post collateral to cover the risk posed by the positions that member submits for clearing at OCC over and above the coverage provided by such member's margin collateral. As Clearing Members change the positions they submit for clearing, the relevant collateral requirements will change as well to reflect the change in risk associated with the new position.[107] For example, if the proposed changes had been put in place in 2023, one Clearing Member who would have seen a 1.1% reduction in its Clearing Fund requirements [108] while the same member would have seen a 47.08% increase if the change were implemented in 2026.[109] Such a change in potential impact of the Proposed Rule Change is a function of the Clearing Member's risk rather than any unfair discrimination by OCC. The Proposed Rule Change is, therefore, not designed to permit unfair discrimination of OCC's Clearing Members.

Separately, Petitioner and some commenters state that increasing Clearing Fund contribution requirements for certain types of Clearing Members would result in higher costs in the form of pass-through costs and limited access to the markets for which OCC clears that would disproportionately harm retail investors, and, thus, is inconsistent with the

[100] *See supra* note 37 (Confidential Exhibit 3 to File No. SR–OCC–2025–018).

[101] *See* underlying impact data submitted confidentially to the Commission alongside OCC III, at 2.

[102] Open interest captures the number of positions open at the end of the trading day. Open interest will not include trades that expire the same day they are executed. Similarly, open interest will not reflect trades opened and closed by offsetting trades on the same day. Therefore, open interest will not account for the risk posed by such positions because it is an end-of-day metric.

[103] *See* confidential Exhibit 3 to File No. SR–OCC–2025–018 and underlying impact data submitted confidentially alongside OCC III.

[104] *See* Petition, at 2. Additionally, as noted above, the Proposed Rule Change is one in a series of changes that, since 2013, have reduced the role of open interest in allocating Clearing Fund contributions. *See* Securities Exchange Act Release No. 69403 (Apr. 18, 2013), 78 FR 24257 (Apr. 24, 2013) (File No. SR–OCC–2013–02) and Securities Exchange Act Release No. 83735 (July 27, 2018), 83 FR 37855 (Aug. 2, 2018) (File No. SR–OCC–2018–008). Regarding these prior matters, commenters supported shifting the weights in favor of risk over open interest *See, e.g.,* Letter from Andrej Bolkovic, CEO, ABN AMRO Clearing Chicago LLC (June 26, 2018), *available at https://www.sec.gov/comments/sr-occ-2018-008/occ2018008-3952920-167052.pdf* (stating that the then current Clearing Fund allocation methodology disincentived Clearing Members from appropriately managing the risk they present to OCC by underweighting total risk and overweighting open interest); Letter from Kurt Eckert, Partner, Wolverine Execution Services, LLC (July 12, 2018), *available at https://www.sec.gov/comments/sr-occ-2018-008/occ2018008-4038120-168568.pdf* (agreeing that a change shifting allocation weights in favor of risk over open interest better aligns incentives for each Clearing Member to reduce the risk it introduces to the Clearing Fund).

[105] When calculating the financial resources it must maintain to cover extreme but plausible market conditions, OCC's policies and procedure must be reasonably designed to include prefunded resources exclusive of resources that are not prefunded. *See* 17 CFR 240.17ad–22(e)(4)(iv).

[106] *See* Notice of Filing, 90 FR at 47386.

[107] Similarly, a Clearing Member may reduce its shortfall calculation by posting additional margin collateral because shortfall represents a stress loss in excess of margin. *See supra* p. 9.

[108] *See supra* note 37 (Confidential Exhibit 3 to File No. SR–OCC–2025–018).

[109] *See* underlying impact data submitted confidentially to the Commission alongside OCC III, at 2.

regulatory requirement of protecting investors and the public interest.[110] Specifically, Petitioner states that OCC's proposed formula will result in higher costs to agency brokers, who will be forced to pass those costs through to their clients, a majority of whom are retail investors.[111] Petitioner and opposing commenters state that these pass-through costs will lead to reducing customer access to the markets for which OCC clears, providing more limited products or services, or imposing higher costs on retail customers.[112]

With regard to potential pass-through costs to or limited access for retail investors, OCC states that the Petitioner ''fails to acknowledge the very purpose of the rule, which is to mitigate and apportion risk based on the risk profile of the activity at issue,'' [113] OCC states that irrespective of whether pass-through costs or limited access would result from the proposal, the Petitioner does not provide supporting data, nor disputes OCC's data-driven process.[114] OCC adds that ''increased cost to certain market participants based on the increased tail risk they pose to OCC and the market does not equate to 'investor harm.' '' [115] Additionally, supporting commenters suggest that the proposal could address concentration in the clearing ecosystem, where options clearing capacity is concentrated in a small number of members.[116] These commenters state that ''[a] more risk-sensitive allocation also supports more efficient use of members' constrained balance sheet resources, which is important to maintaining consistent liquidity provision under evolving bank capital and liquidity requirements.'' [117] Supporting commenters state that the amount of clearing capacity Clearing Members provide is driven by many factors, including whether risks are being appropriately mutualized across participants, and state that the proposal would align the Clearing Fund contributions with the amount of risk Clearing Members bring to OCC and, thus, would give Clearing Members ''additional confidence to expand the amount of clearing capacity they can provide.'' [118] OCC and supporting commenters also state that the Proposed Rule Change reflects a consistency of approach with evolving market expectations, standard business practices and regulatory developments [119] as well as with recent regulatory developments.[120]

Based on the Commission's review of the record, the Petitioner's statements about pass-through costs and limited access affecting retail investors are outside the scope of the Proposed Rule Change. The Proposed Rule Change pertains only to the allocation of Clearing Fund requirements to Clearing Members; it does not prescribe whether or how these Clearing Members would pass costs associated with such Clearing Fund requirements onto their clients. Indeed, Section 17A(b)(3)(E) of the Exchange Act requires that the rules of a clearing agency do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants.[121] Consistent with that requirement, the Proposed Rule Change does not impose a schedule of fees or attempt to fix prices for the services that OCC's Clearing Members charge to their customers. This is consistent with other collateral requirements that OCC imposes on its Clearing Members.[122] As with all collateral requirements imposed by OCC on its Clearing Members, it is entirely within the individual Clearing Member's discretion and control—and entirely outside of OCC's knowledge or control—whether and how the Clearing Member passes on such collateral requirements to its customers. To the extent a change in collateral obligations may impact competition, that concern is addressed separately above in this section.

Therefore, for the reasons stated above, the Proposed Rule Change is consistent with Sections 17A(b)(3)(F) and 17A(b)(3)(I) of the Exchange Act.[123]

B. Section 17A(b)(3)(D) of the Exchange Act

Section 17A(b)(3)(D) of the Exchange Act requires that the rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among participants.[124] The requirement to pledge collateral to the Clearing Fund is not a due, fee, or other charge, which relate to a payment rather than the pledging of collateral.[125] When amending parts of the Exchange Act in 1975 to establish a national market

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[110] *See* Petition, at 15; Opposition, at 19–20; Schwab II, at 7; and LPL Letter, at 2.

[111] *See* Petition, at 15; and Opposition, at 19–20 (Petitioner states that the proposal's ''significantly increased costs would place pressure on agency brokers to raise fees, limit product offerings, or restrict access to listed options strategies for retail investors. In turn, retail customers could face reduced access to listed options, which serve as important tools for hedging portfolio risk, generating income, and managing market exposure.'').

[112] *Id. See also* LPL Letter, at 2 (''[R]etail focused firms would face materially higher clearing costs and operational burdens [. . .] When broker-dealers serving individual investors face higher clearing costs or materially increased capital requirements, they are forced to consider limiting access to products, increasing fees, or reducing the availability of trading in those products for smaller accounts.''); and Schwab II, at 7 (Schwab states that the proposal's impact ''has real, tangible consequences for Agency Brokers and the millions of retail investors that they serve [. . .] For firms, a requirement to contribute substantially more capital to the Clearing Fund would meaningfully increase the cost of doing business. While some Agency Brokers may account for that increase in operating costs by raising fees, others may limit the products that are available to retail investors. Either result would limit participation in the market for exchange-listed options to investors that are able to pay higher fees and Principal Trading Firms that will not be impacted by (or may even benefit under) the Re-Weighted Formula.'').

[113] OCC I, at 3.

[114] *See* OCC I, at 3; and OCC II, at 9.

[115] *See* OCC II, at 9.

[116] *See* Goldman Letter, at 4 (''Options clearing is concentrated within a small number of clearing members, which could make it harder for investors to find the capacity to clear the full extent of their portfolios and risk management strategies, particularly when markets are volatile. Ensuring that mutualized risk is allocated in proportion to tail exposure is particularly important in a concentrated clearing ecosystem, where misaligned incentives can discourage marginal expansions of capacity.'').

[117] *See* Goldman Letter, at 4.

[118] *See* Goldman letter, at 4. *See also* ABN AMRO Letter, at 1 (''[T]he proposed changes to the allocation methodology for the clearing fund of OCC are appropriate. In particular as the contributions to the clearing fund will be better aligned with the risk exposure of each clearing member under stressed market conditions, which are exactly those that the clearing fund is meant to cover for the case of a large clearing member default.'').

[119] *See* FIA Letter, at 2 (''This [shift toward a stress-aligned allocation] reflects a broader industry trend: global CCPs increasingly rely on stress-based metrics to allocate mutualised resources in a manner that is consistent with both fairness and effective risk management.''); Goldman Letter, at 4 (''OCC's proposal aligns with international central counterparty clearing practices concerning Clearing Fund allocation and is in line with the Principles for Financial Markets Infrastructure''). *See also* OCC II, at 1, 5–7.

[120] *See* OCC II, at 1–2 (''This SLOIM approach is consistent with recent regulatory developments, such as the Commission's orders granting ICE Clear Credit LLC ('ICE Clear') and CME Securities Clearing Inc. ('CMESC') registration as clearing agencies for U.S. Treasury securities using allocation methodologies based on SLOIM calculations that are similar to OCC's proposed approach.''). *See also* generally OCC II, at 4–6.

[121] 15 U.S.C. 78q–1(b)(3)(E).

[122] *See* Securities Exchange Act Release No. 102768 (Apr. 3, 2025), 90 FR 15274, 15281 (Apr. 9, 2025) (File No. SR–OCC–2024–010).

[123] 15 U.S.C. 78q–1(b)(3)(F) and 15 U.S.C. 78q–1(b)(3)(I).

[124] 15 U.S.C. 78q–1(b)(3)(D).

[125] *See Due,* Merriam-Webster (defining a due as something owed, such as a payment or obligation required by law or custom) (last visited Sept. 30, 2026), *available at https://www.merriam-webster.com/dictionary/due#dictionary-entry-2; Fee,* Merriam-Webster (defining a fee as a fixed charge for a service) (last visited Sept. 30, 2026), *available at https://www.merriam-webster.com/dictionary/fee#dictionary-entry-1;* and *Charge* Merriam-Webster (defining charge by reference to an expense or cost) (last visited Sept. 30, 2026), *available at https://www.merriam-webster.com/dictionary/charge#dictionary-entry-2. See also Fee,* Ballentine's Law Dictionary (3rd ed. 2010).

system and a system for nationwide clearance and settlement of securities transactions, Congress intended that the references to dues, fees, and other charges in Section 17A(b)(3)(D) contemplated payment for services rendered (rather than the pledging of collateral).[126] Consistent with this Congressional intent, the Commission has distinguished such collateral from working capital.[127]

OCC requires its Clearing Members to pay a variety of dues, fees, and other charges as defined in its schedule of fees.[128] Such obligations include monthly dues for ancillary services, per contract clearing fees, and potential other charges such as OCC's operational loss fee.[129] The obligation to contribute collateral to the Clearing Fund is different in nature. Specifically, Clearing Fund contributions are collateral held to cover potential losses, but not a fee collected by OCC for performing a service. Such collateral must be returned to the contributing member to which it belongs upon termination of membership.[130] The equitable allocation requirements of Section 17A(b)(3)(D) [131] are not relevant here because they pertain specifically to dues, fees, and other charges among participants, which do not include contributions to the Clearing Fund.

One commenter states that the Proposed Rule Change does not provide for the equitable allocation of reasonable fees, but that it disproportionately impacts broker-dealers that clear options trades for their retail and institutional customers in a way that amounts to unfair discrimination among clearing members.[132] The commenter goes on to state that the proposed change disproportionately impacts agency brokers in that it deemphasizes operational risk, and projects that such a change would increase its Clearing Fund contribution requirement by approximately 40%.[133] As discussed above, the commenters' argument regarding the equitable allocation of dues, fees, and other charges is misplaced. The Commission recognizes that the proposed change in allocation will shift the relative burden of each Clearing Member to meet its Clearing Fund obligations, but such burdens are considered above in the context of Section 17A(b)(3)(I) of the Exchange Act.[134]

C. Consistency With Rule 17ad–22(e)(2) Under the Exchange Act

Rule 17ad–22(e)(2) under the Exchange Act requires, in part, that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent [135] and that specify clear and direct lines of responsibility.[136]

Both Petition and comments received after the Petition are directly related to governance, transparency, and clarity, as described in detail below.

With regard to governance more broadly, the Petitioner states that OCC failed to meaningfully consult with agency brokers in developing the proposed allocation change.[137] The Petitioner acknowledges that OCC presented the proposal to its Financial Risk Advisory Council (''FRAC''), but states that OCC cannot rely on the FRAC to vet its proposals because not all Clearing Members participate in it.[138] One commenter states that it was not until OCC provided more comprehensive impact data in November 2025 that the commenter understood the full impact of the Proposed Rule Change.[139] Commenters also recommend that OCC establish a process and procedure to periodically review, and update as needed, the manner in which it allocates its Clearing Fund to members.[140]

OCC states that, between 2023 and 2025 it spent considerable time and traded considerable correspondence with Clearing Members in which OCC shared data related to costs to Clearing Members and answered their questions.[141] OCC states further that it provided data to Clearing Members, including the Petitioner, in November 2023, December 2023, January 2024, and May 2024, and discussed the Proposed Rule Change at a September 25, 2025, meeting of OCC's FRAC Risk Management Committee.[142] OCC also commits to presenting results of its annual review of its allocation methodology to the FRAC and FRAC Risk Management Committee on an annual basis going forward.[143]

The substance of the Proposed Rule Change, as well as related data, was presented through several channels over the course of multiple years. OCC presented the substance of the Proposed Rule Change as well as related data to members, including the Petitioner, as early as 2023. The Commission does not agree with the Petitioner's argument that OCC cannot rely on the FRAC to vet its proposals because not all Clearing Members participate in it. Such an argument would necessitate that OCC form an advisory committee comprising representation from each Clearing Member to be consulted prior to the filing of any proposed rule change that could impact members, which is not required by either the Exchange Act or the Commission's rules.[144]

[126] *See* S. REP. 94–75, at 124 (1975) *reprinted in* 1975 U.S.C.C.A.N. 179, 301 (stating that the provision ''does not preclude the clearing agency from imposing fees for services which it renders''). *Cf. id.* at 96 (citing examples of dues, fees, and other charges an exchange may charge as those ''in connection with such matters as effecting transactions on the exchange, use of communication services operated by the exchange, and clearing and settling transactions through exchange maintained facilities'').

[127] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920, 41929 (June 23, 1980) (stating that ''the rules of the clearing agency should limit the purposes for which the clearing fund may be used to protecting participants and the clearing agency (i) from the defaults of participants and (ii) from clearing agency losses (not including day-to-day operating expenses)'').

[128] *See* OCC Schedule of Fees, *available at https://www.theocc.com/company-information/schedule-of-fees.*

[129] The operational loss fee is an amount OCC would charge to its members to raise additional capital should OCC's liquid net assets funded by equity fall below defined thresholds. *See* Securities Exchange Act Release No. 104510 (Dec. 23, 2025), 90 FR 61480 (Dec. 31, 2026) (File No. SR–OCC–2025–020).

[130] *See* OCC Rule 1009.

[131] 15 U.S.C. 78q–1(b)(3)(D).

[132] Schwab II at 2. *See also* Opposition at 2 (stating that the Proposed Rule Change inequitably shifts Clearing Fund costs to one set of Clearing Members and subsidizes the riskier activities of other Clearing Members.'')

[133] Schwab II, at 4. Similarly, Petitioner states that the proposed allocation change substantially minimizes operational risk as a risk that can lead to member default. Petition, at 13.

[134] 15 U.S.C. 78q–1(b)(3)(I).

[135] 17 CFR 240.17ad–22(e)(2)(i).

[136] 17 CFR 240.17ad–22(e)(2)(v).

[137] Petition, at 20.

[138] Petition, at 21. Another commenter made similar statements. *See* Schwab II at 11 (''The fact that OCC discussed the Proposed Rule Change with the [FRAC] and a Clearing Member Roundtable before the proposal was filed with the Commission does not mean that clearing members were provided with useful information that was adequate to understand the full impact of the Proposed Rule Change.'').

[139] Schwab II, at 10.

[140] Letter from Katie Kolchin, CFA, Managing Director, Head of Equity & Options Market Structure and Joseph Corcoran, Managing Director and Associate General Counsel, SIFMA, at 2 (Mar. 11, 2026) *available at https://www.sec.gov/comments/sr-occ-2025-018/srocc2025018-721767-2260154.pdf. See also* Letter from Matt Billings, President, Robinhood Financial LLC and Robinhood Securities, LLC, at 2 (June 15, 2026) (''It is only appropriate, therefore, that the OCC periodically reassess and, when empirically justified, update the formula, as it has in the past and as it now proposes to do.'') (footnote omitted), *available at https://www.sec.gov/comments/SR-OCC-2025-018/srocc2025018-826881-2530405.pdf.*

[141] OCC I, at 3.

[142] OCC I, at 4.

[143] OCC III, at 2.

[144] *See* 15 U.S.C. 78q–1(b)(3)(C) (requiring only rules to ensure fair representation of shareholders and participants in the administration of a clearing agency's affairs); 17 CFR 240.17ad–25(j)

Continued

Further, Petitioner states that the Proposed Rule Change offers only a superficial analysis of the impact on individual clearing members.[145] Petitioner states that it cannot quantify the impact of the proposed allocation change on agency brokers versus proprietary trading firms versus market makers because OCC treats member-specific Clearing Fund information as confidential.[146] Petitioner acknowledges, however, that it has data regarding how the Proposed Rule Change would impact its own Clearing Fund requirements.[147] Petitioner and commenters acknowledge receipt of updated impact data since November 2025.[148] However, Petitioner and commenters have not provided data to support the premise that the Proposed Rule Change would categorically disadvantage agency brokers to the benefit of OCC's other Clearing Members.

In its submission of the Proposed Rule Change to the Commission, OCC stated that Exhibits 3, 5B, and 5C to File No. SR–OCC–2025–018, which contain internal policies and procedures as well as an impact analysis and assessment, were entitled to confidential treatment because they contained commercial and financial information that is not customarily released to the public and is treated as the private information of OCC. Consistent with commenters' statements about impacts to their respective businesses, OCC committed to parallel reporting during which daily Clearing Fund requirement projections will be made available.[149] In contrast to Petitioner's and commenters' statements regarding impact, the data provided by OCC to the Commission as recently as June 17, 2026, demonstrates that the impact on agency brokers is not so clear cut.[150] The data is consistent with OCC's statement that some Clearing Members who serve retail customers would in fact see their allocation decrease.[151] Further, OCC has committed to consult with members through its existing governance arrangements [152] on an at least annual basis.

Based on a review of the record, the data provided by OCC was sufficient to allow the Commission to understand the impact of the Proposed Rule Change at an individual Clearing Member level. The information that OCC provided in the public portion of its filing was summary data describing the overall impact of the Proposed Rule Change. However, the data that OCC provided confidentially to the Commission was more detailed. In its confidential Exhibit 3 to File No. SR–OCC–2025–018,[153] OCC included Clearing Member level data describing the largest changes in allocation of the Proposed Rule Change in terms of both dollar and percentage impact. OCC provided such data both for a single month as well as an average set of effects over the course of five months, also at the individual Clearing Member level. Subsequently, OCC provided updated data showing the projected effect of the Proposed Rule Change at an individual Clearing Member level.[154] As a result, OCC provided sufficient information in its confidential submission to allow the Commission to assess the effects of the Proposed Rule Change as well as how those effects would have changed over the course of time, including on a member-by-member basis.

Separate from the concerns raised by the Petitioner, the Proposed Rule Change would amend the arrangements governing OCC's allocation of Clearing Fund requirements; specifically, the proposed authority to hold allocations constant month-over-month. As noted above, Petitioner does not challenge this aspect of the Proposed Rule Change.[155] As such, the following analysis of the proposed authority here is consistent with that stated in the Delegated Order.[156] OCC's proposal to hold allocations constant to address the potential impact of persistent high volatility is subject to a review process initiated by OCC staff and implemented by the STWG, a panel delegated by OCC management as the relevant subject matter expert. As proposed, OCC staff would be required to base the hold-constant recommendation on daily analyses of stress test results and in consideration of a non-exhaustive list of factors before escalating it to the STWG or the Chief Financial Risk Officer. The STWG or the Chief Financial Risk Officer would have the authority to accept or reject the hold-constant recommendation. This same review process would be implemented if OCC staff recommends a reversion to the proportionate approach. Additionally, OCC staff would be required to provide notification of (1) a hold-constant decision or reversion to Clearing Members and the Risk Committee; and (2) a hold-constant decision to the Commission and CFTC, with reasons for such a decision provided to the regulators. This recommendation review process provided for in OCC's rules and policies would help facilitate governance arrangements that specify clear and direct lines of responsibility.

Accordingly, the Proposed Rule Change is consistent with Rule 17ad–22(e)(2) under the Exchange Act.[157]

D. Consistency With Rule 17ad–22(e)(18) Under the Exchange Act

Rule 17ad–22(e)(18)(ii) under the Exchange Act requires, in part, that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which require participants to have

(contemplating board solicitation, consideration, and documentation of such consideration of the views of participants and stakeholders). The Commission approved updates to OCC's governance arrangements as recently as December 2024 to align with applicable rules and regulations. *See* Securities Exchange Act Release No. 101792 (Dec. 2, 2024), 89 FR 97127 (Dec. 6, 2024) (File No. SR–OCC–2024–015).

[145] *See* Petition, at 16. One commenter states that the Delegated Order relied on high-level data provided by OCC explaining that its top 10 clearing members would, on average, experience a 1.28% increase in their Clearing Fund contributions. Schwab II, at 11.

[146] *See* Opposition, at 17–18. Another commenter recommends that the Commission should ''[r]equire OCC to provide a comprehensive economic analysis of the proposed changes, including stress test results, estimated impact on clearing fund sizing by business model, differentiated risk analysis for retail vs. institutional activity, and assessment of alternative approaches.'' ASA Letter, at 2.

[147] *See* Opposition, at 17–18.

[148] *See* Opposition, at 10 (''During the comment period, OCC also communicated to clearing members that data reflecting firm-specific impacts to Clearing Fund requirements could be provided 'upon request.'''); Schwab II, at 10 (''It was not until OCC provided more comprehensive impact data in November 2025 that Schwab understood the full impact of the Proposed Rule Change.'').

[149] *See* Exhibit 3 to SR–OCC–2025–018.

[150] *See generally* OCC III. As part of submitting OCC III, OCC also provided to the Commission confidential data underlying summary statements made in its public comment letter dated June 17, 2026.

[151] *See* OCC III, at 2.

[152] *See* OCC, Risk Committee Charter, at III. A., *available at https://www.theocc.com/getcontentasset/e71a4c1d-52dc-4c95-aeb1-98dab9159f41/dfc3d011-8f63-43f6-9ed8-4b444333a1d0/risk_committee_charter.pdf;* (''From time to time, the Committee may receive reports and guidance relating to financial risk issues from, among others, the OCC Financial Risk Advisory Council [FRAC] and, in the exercise of its fiduciary judgment, shall take such guidance into account in the performance of its functions and responsibilities.''). *See also generally* Securities Exchange Act Release No. 100194 (May 21, 2024), 89 FR 46205 (May 28, 2024) (SR–OCC–2024–005) (supplementing OCC's governance arrangements to provide for Board oversight of and Risk Committee obligation for consultation with the newly established FRAC Risk Management Committee to comply with CFTC's governance rules).

[153] See Notice of Filing, at 47385, n. 14.

[154] *See* underlying impact data submitted confidentially alongside OCC III.

[155] Petitioner does not object to adopting a new authority allowing OCC to hold allocation weights constant month-over-month during periods of heightened market volatility. *See* Petition, at 6 n. 2. *See also* Opposition, at 9 n.3.

[156] *See* Delegated Order, 90 FR at 58355.

[157] 17 CFR 240.17ad–22(e)(2).

sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency.[158]

OCC manages its credit exposures, in part, through the resources held in its Clearing Fund. Such resources are sized to address stress losses in excess of margin; however, the current allocation methodology does not consider the extent to which a member poses risk to OCC that exceeds its potential margin contributions. As a requirement of participation, each Clearing Member is required to contribute financial resources to fund the Clearing Fund. The methodology for allocating such contributions is not currently aligned with the methodology for setting the size of the Clearing Fund itself. As described above, OCC proposed to revise its allocation methodology to align the weighting of variables and lookback period more closely with OCC's methodology for sizing the Clearing Fund. As a result, the proposed changes would more closely align a member's financial obligations to OCC with the credit risk the member poses without entirely removing consideration of other factors. To address the possibility that the proposed weighting methodology could cause an inappropriate allocation of requirements due to persistent, high volatility, the Proposed Rule Change would authorize OCC to hold allocation requirements constant month-over-month where doing so would be in furtherance of the integrity of OCC and the stability of the financial system, and take into consideration the legitimate interests of Clearing Members and market participants. These changes would further align Clearing Members' obligations with the exposures such members pose to OCC while also providing flexibility to respond to extreme market volatility. Such alignment is consistent with Rule 17ad–22(e)(18)(ii) because it would help ensure that Clearing Fund contribution requirements, which are a requirement for participation in OCC, are risk-based and objective.

Accordingly, the Proposed Rule Change is consistent with Rule 17ad–22(e)(18)(ii) under the Exchange Act.[159]

IV. Conclusion

For the foregoing reasons, the Commission finds that the Proposed Rule Change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.

It is therefore ordered, pursuant to Rule 431 of the Commission's Rules of Practice, that the earlier action taken by delegated authority, Exchange Act Release No. 104359 (Dec. 11, 2025), 90 FR 58352 (Dec. 16, 2025), is set aside and, pursuant to Section 19(b)(2) of the Act, the Proposed Rule Change (SR–OCC–2025–018), as modified by Amendment No. 1, hereby is approved.

By the Commission.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20465 Filed 10–5–26; 8:45 am]

BILLING CODE 8011–01–P

[158] 17 CFR 240.17ad–22(e)(18)(ii). The Commission did not receive any comments on the Proposed Rule Change directly related to objective, risk-based, and publicly disclosed criteria for participation.

[159] 17 CFR 240.17ad–22(e)(18)(ii).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #21930 and #21931; CONNECTICUT Disaster Number CT–20004]

Administrative Declaration of a Disaster for the State of Connecticut

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is notice of an Administrative declaration of a disaster for the state of Connecticut dated October 2, 2026.

Incident: Severe Storms and Flash Flooding.

DATES: Issued on October 2, 2026.

Incident Period: September 13, 2026.

Physical Loan Application Deadline Date: December 1, 2026.

Economic Injury (EIDL) Loan Application Deadline Date: July 2, 2027.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Shaquille Lewis, Office of Disaster Recovery, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given as a result of the Administrator's disaster declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or in person at other locally announced locations. For further assistance please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

The following areas have been determined to be adversely affected by the disaster:

Primary County: Fairfield.

Contiguous Counties:

Connecticut: Litchfield, New Haven.

New York: Dutchess, Nassau, Putnam, Suffolk, Westchester.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	6.000
Homeowners without Credit Available Elsewhere	3.000
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Private Non-Profit Organizations with Credit Available Elsewhere	3.625
Private Non-Profit Organizations without Credit Available Elsewhere	3.625
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Private Non-Profit Organizations without Credit Available Elsewhere	3.625

The number assigned to this disaster for physical damage is 219306 and for economic injury is 219310.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority: 13 CFR 123.3(b).)

James Stallings,

Associate Administrator, Office of Disaster Recovery.

[FR Doc. 2026–20472 Filed 10–5–26; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #21929; OREGON Disaster Number OR–20031 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of Oregon

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is notice of an Economic Injury Disaster Loan (EIDL) declaration for the state of Oregon dated October 1, 2026.

Incident: Mid-July Severe Storms and Wildfires.

DATES: Issued on October 1, 2026.

Incident Period: July 15, 2026 through August 24, 2026.

Economic Injury (EIDL) Loan Application Deadline Date: July 1, 2027.

ADDRESSES: Visit the MySBA Loan Portal at *https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Shaquille Lewis, Office of Disaster Recovery, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given as a result of the Administrator's EIDL declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or in person at other locally announced locations. For further assistance please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Baker, Clackamas, Deschutes, Grant, Umatilla, Wallowa, Wasco, Wheeler.

Contiguous Counties:

Oregon: Crook, Gilliam, Harney, Hood River, Jefferson, Klamath, Lake, Lane, Linn, Malheur, Marion, Morrow, Multnomah, Sherman, Union, Washington, Yamhill.

Idaho: Adams, Idaho, Nez Perce, Washington.

Washington: Asotin, Benton, Columbia, Garfield, Klickitat, Walla Walla.

The Interest Rates are:

	Percent
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Private Non-Profit Organizations without Credit Available Elsewhere	3.625

The number assigned to this disaster for economic injury is 219290.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority: 13 CFR 123.3(b).)

James Stallings,

Associate Administrator, Office of Disaster Recovery.

[FR Doc. 2026–20399 Filed 10–5–26; 8:45 am]

BILLING CODE 8026–09–P

SURFACE TRANSPORTATION BOARD

60-Day Notice of Intent To Seek Extension of Approval: Petitions for Declaratory Order and Petitions for Relief Not Otherwise Specified

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for extensions of the collections regarding petitions for declaratory order and petitions for relief not otherwise specified, as described below.

DATES: Comments on these information collections should be submitted by December 7, 2026.

ADDRESSES: Direct all comments to Chris Oehrle, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, or to *PRA@stb.gov.* When submitting comments, please refer to ''Paperwork Reduction Act Comments, Petitions for Declaratory Orders and Petitions for Relief Not Otherwise Specified.'' For further information regarding this collection, contact Mike Higgins at (866) 254–1792 (toll-free) or 202–245–0238, or by emailing *rcpa@stb.gov.* Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: For each collection, comments are requested concerning: (1) the accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collections

Collection Number 1

Title: Petitions for declaratory order.
OMB Control Number: 2140–0031.
STB Form Number: None.
Type of Review: Extension without change.
Respondents: Affected shippers, railroads, communities, and other stakeholders that choose to seek a declaratory order from the Board to terminate a controversy or remove uncertainty.
Number of Respondents: Approximately seven (based on the average number of petitioners filing during 2023–2025).
Estimated Time per Response: 180 hours.
Frequency: On occasion. In calendar years 2023–2025, approximately seven petitions for declaratory order were filed with the Board per year.
Total Burden Hours (annually including all respondents): 1,260 hours (estimated hours per petition (180) × total number of petitions (7)).
Total ''Non-hour Burden'' Cost: None identified. Filings are submitted electronically to the Board.
Needs and Uses: Under 5 U.S.C. 554(e) and 49 U.S.C. 1321, the Board may issue a declaratory order to terminate a controversy or remove uncertainty. Because petitions for declaratory order can encompass a broad range of issues and types of requests, the Board does not prescribe specific instructions for their filing. The collection by the Board regarding petitions for declaratory order that parties choose to file enables the Board to meet its statutory duty to regulate the rail industry.

Collection Number 2

Title: Petitions for relief not otherwise provided.
OMB Control Number: 2140–0030.
STB Form Number: None.
Type of Review: Extension without change.
Respondents: Affected shippers, railroads, communities, and other stakeholders that seek to address issues under the Board's jurisdiction that are not otherwise specifically provided for under the Board's other regulatory provisions.
Number of Respondents: Approximately five (based on the average number of petitioners filing during 2023–2025).
Estimated Time per Response: 25 hours.
Frequency: On occasion. In calendar years 2023–2025, approximately six petitions of this type were filed with the Board per year.
Total Burden Hours (annually including all respondents): 150 hours (estimated hours per petition (25) × total number of petitions (6)).
Total ''Non-hour Burden'' Cost: None identified. Filings are submitted electronically to the Board.
Needs and Uses: Under 49 U.S.C. 1321 and 49 CFR part 1117 (the Board's

catch-all petition provision), shippers, railroads, and the public in general may seek relief (such as waiver of the Board's regulations) not otherwise specifically provided for under the Board's other regulatory provisions. Under section 1117.1, such petitions should contain three items: (a) a short, plain statement of jurisdiction, (b) a short, plain statement of petitioner's claim, and (c) request for relief. The collection by the Board of these petitions that parties choose to file enables the Board to more fully meet its statutory duty to regulate the rail industry.

The Board makes this submission because, under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under 44 U.S.C. 3506(c)(2)(A), federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: October 2, 2026.

Stefan Rice,

Clearance Clerk.

[FR Doc. 2026–20455 Filed 10–5–26; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

60-Day Notice of Intent To Seek Extension of Approval: Classification Index Survey Form

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for extensions of the collection of a Classification Index Survey Form, as described below.

DATES: Comments on this information collection should be submitted by December 7, 2026.

ADDRESSES: Direct all comments to Chris Oehrle, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, or to *PRA@stb.gov.* When submitting comments, please refer to ''Paperwork Reduction Act Comments, Classification Index Survey Form.'' For further information regarding this collection, contact Pedro Ramirez at (202) 245–0333 or *pedro.ramirez@stb.gov.* Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Comments are requested concerning: (1) the accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Subjects: In this notice, the Board is requesting comments on the following information collection:

Description of Collection

Title: Classification Index Survey Form.

OMB Control Number: 2140–0043.

Form Number: Classification Index Survey Form.

Type of Review: Extension without change.

Respondents: All railroad companies not required to file an Annual Report (Form R–1).

Number of Respondents: One per year (based on an average of filings 2023–2025).

Estimated Time per Response: Approximately 24 hours. This estimate includes time spent reviewing instructions; searching existing data sources; gathering and maintaining the data needed; completing and reviewing the collection of information; and converting the data from the carrier's individual accounting system.

Frequency of Response: On occasion.

Total Annual Hour Burden: 24 hours annually.

Total Annual ''Non-Hour Burden'' Cost: The Classification Index Survey Form may be submitted electronically without non-hourly costs.

Needs and Uses: Railroads are classified by size into groups of large, medium, and small carriers. The Board must determine the classification of each rail carrier as a Class I, Class II, or Class III railroad. Railroads with a Class I classification (large railroads) must file Annual Reports (Form R–1) under 49 U.S.C. 11145. See OMB Control Number 2140–0009 (Class I Railroad Annual Reports). These reports are used by the Board, other Federal agencies, and industry groups to monitor and assess railroad industry growth, financial stability, traffic, and operations, and to identify industry changes that may affect national transportation policy. All other railroads (those not required to file an (R–1) Annual Report) shall annually compute their adjusted revenues using the ''railroad revenue deflator formula,'' and, if the computation derived from that formula indicates a change in a carrier's classification, that carrier must submit a ''Classification Index Survey Form'' to the Board pursuant to 49 CFR 1201 General Instructions 1–1 and § 1241.15.

Under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under 44 U.S.C. 3506(c)(2)(A), federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: October 2, 2026.

Stefan Rice,

Clearance Clerk.

[FR Doc. 2026–20456 Filed 10–5–26; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2026–3172]

Agency Information Collection Activities: Requests for Comments; Clearance of a New Approval of Information Collection: Federal Aviation Administration (FAA) Surface Weather Status Dashboard

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB)

approval for a new information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 11, 2026. The collection involves voluntarily reporting when National Airspace System (NAS) surface weather systems (AWOS and ASOS) experience operational issues, such as erroneous data or full outages. The information to be collected will be used to verify and track these errors and outages, and publish the status onto the FAA's Surface Weather Status Dashboard for user awareness.

DATES: Written comments should be submitted by November 5, 2026.

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: Joel Siegel by email at: *joel.m.siegel@faa.gov;* phone: 405–954–4341.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–XXXX.

Title: Federal Aviation Administration (FAA) Surface Weather Status Dashboard.

Form Numbers: Report a Problem Webform.

Type of Review: New Information Collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 11, 2026 (91 FR 25753). The FAA's Air Traffic Organization plans to host the Congressionally mandated Surface Weather Status Dashboard as part of the existing FAA Weather Cameras website. As part of this dashboard, the FAA plans to offer the ability for National Airspace System (NAS) users (*e.g.,* pilots, meteorologists, members of the public) to voluntarily submit information regarding any safety issues (*e.g.,* outages, erroneous data) with surface weather stations.

It is anticipated that the information collected will be used after verification to create reports that will trigger trouble tickets within the FAA's Remote Monitoring and Logging System (RMLS) for corrective action to be taken by the responsible parties, such as technicians within the FAA, NOAA, and non-federal entities. Once the trouble ticket is logged, the FAA's Aviation Weather Cameras website will capture and display the real-time service status of all automated surface observation systems/automated weather observing systems within 30 minutes.

As the information collected will be system site specific, the FAA may use the information collected from this form to update future policy decisions regarding surface weather infrastructure, for approvals and audits. FAA's NAS Security and Enterprise Operations (NASEO) will retain control over the information collected and safeguard it from improper access, modification, and destruction, consistent with FAA standards for confidentiality, privacy, and electronic information.

Respondents: Anyone may use the publicly available webform via the FAA Aviation Weather Cameras website. There is no limit on the number of responses.

Frequency: N/A.

Estimated Average Burden per Response: 1 minute.

Estimated Total Annual Burden: Respondents may submit webforms for multiple sites with issues. The annual burden per respondent per submission is one minute. Estimate around 1,825 responses per year equating to 1,825 minutes of total burden to the public per year.

Issued in Oklahoma City, OK, on October 1, 2026.

Jeremy Traylor,

Manager, National Airway Systems Engineering Group, Weather Systems Team, AJW–141.

[FR Doc. 2026–20483 Filed 10–5–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2026–2081]

Agency Information Collection Activities; New Information Collection: Hours of Service of Drivers: Pilot Program To Allow Commercial Drivers To Pause Their 14-Hour Driving Window

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval and invites public comment. This notice invites comments on a proposed information collection titled *Hours of Service of Drivers: Pilot Program to Allow Commercial Drivers to Pause Their 14-Hour Driving Window.* This research study will collect data on commercial motor vehicle (CMV) drivers to examine if extending the 14-hour ''driving window'' with up to 3 hours of off duty, sleeper berth, or on-duty/not driving time (provided it is taken at the location of cargo delivery or pickup) improves the working conditions and quality of life of America's truck drivers and result in an equivalent or greater level of safety relative to operations under the current regulations. Approximately 256 CMV drivers will provide data in the study. The study will provide FMCSA with data to examine driver fatigue and driving performance while operating under current hours of service (HOS) regulations and while operating under split duty period (SDP) exemptions.

DATES: Comments on this notice must be received on or before December 7, 2026.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2026–2081 using any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, W58–213, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey

Avenue SE, W58–213, 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 and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Samuel White, Research Division, DOT, FMCSA, 1200 New Jersey Avenue SE, West Building, 6th Floor, Washington, DC 20590–0001; 202–366–3068; *Samuel.White@dot.gov.*

SUPPLEMENTARY INFORMATION:

Instructions

All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Public Participation and Request for Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2026–2081), indicate the specific section of this document to which your 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 FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2026-2081/document,* click on this notice, click ''Comment,'' and type your comment into the text box on the following screen.

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.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, 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 (FDMS)), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices.* The comments are posted without edits and are searchable by the name of the submitter.

Background

HOS is a high-priority topic for FMCSA. Addressing driver fatigue, which is a serious safety concern for our nation's truck drivers and those who share the road with them, is at the heart of HOS regulations. Previous research has shown that driver fatigue is associated with an increased risk of being involved in a safety-critical event and may be involved in over 30 percent of fatal CMV crashes. As a result, HOS regulations are designed to limit the number of driving hours within a 24-hour period and across a 7- or 8-day window.

Under 49 CFR 395.3(a)(2), a driver of a property-carrying CMV may drive only during a period of 14 consecutive hours after coming on duty following 10 consecutive hours off duty. The driver may not drive after the end of the 14-consecutive-hour period without first taking 10 consecutive hours off duty or in the sleeper berth (including the option to take the ''equivalent of at least 10 consecutive hours off-duty'' as referenced in § 395.1(g)(1)(i)(E)).

On August 22, 2019, FMCSA published a notice of proposed rulemaking (NPRM) concerning drivers' HOS which proposed certain amendments to provide greater flexibility for drivers, without adversely affecting safety (84 FR 44190). As part of that rulemaking, FMCSA proposed that a single off-duty period of between 30 minutes and 3 consecutive hours could be excluded from the 14-hour ''driving window,'' provided the driver complies with the existing requirement to take 10 consecutive hours off-duty before beginning driving. The Agency explained that a single pause of up to 3 hours would provide significantly more flexibility than was allowed under the current rules. The pause would have allowed drivers to take an off-duty break without concern of exhausting their available hours under the 14-hour ''driving window.'' This would also have allowed them to get additional rest or avoid traffic congestion.

After reviewing the public comments to the NPRM, the Agency decided not to include the pause to the 14-hour ''driving window'' in the final rule (85 FR 33396, June 1, 2020). Although FMCSA explained that it continued to believe that an opportunity for a single off-duty pause in the 14-hour ''driving window'' would provide flexibility for drivers without compromising safety, many commenters believed that drivers would be pressured by carriers, shippers, or receivers to use the break for reasons other than accommodating their own rest or schedule. These comments suggested that the pause could have unintended consequences that were not adequately evaluated in the development of the NPRM.

To further evaluate the outcomes of a split duty period, the Agency later proposed a pilot program which would have examined the level of safety of extending the 14-hour ''driving window'' after a 30-minute to 3-hour off-duty period (85 FR 55061, Sept. 3, 2020). Due to changes in programmatic priorities over time, FMCSA ultimately did not initiate the pilot program. Since then, drivers have continued to encounter various scenarios in which they might have benefited from the flexibility to extend the 14-hour ''driving window,'' including encountering unreasonably long periods of ''detention time'' when waiting to load or unload. The previously proposed pilot program, however, would not have allowed on-duty time of any type to count toward a ''pause,'' even if that program had been completed.

As such, this study will assess the safety and performance impacts of additional flexibility for CMV drivers to pause their 14-hour driving window. Specifically, the study will collect multiple sources of data to examine driver fatigue and driving performance while operating under current HOS regulations and while operating under SDP exemptions.

The study includes data collection via pre- and post-study surveys, psychomotor vigilance tests, subjective sleepiness ratings, a wrist actigraphy device, drivers' record of duty status (RODS), and a non-intrusive telematics device. These data will provide information on drivers' schedules, the use of SDP exemptions, fatigue, and driving performance. This information will allow FMCSA to assess whether additional flexibility in how drivers may pause their 14-hour driving window achieves a level of safety equivalent to that which would be achieved absent the regulatory relief. After agreeing to participate in the study, drivers will participate in the study for 16 weeks.

Eligibility to participate will be based on carrier and driver safety records. A

motor carrier's participation in the pilot program shall be contingent upon the carrier meeting the following eligibility criteria:

1. Must have applicable interstate operating authority and registration;
2. Must have the minimum levels of financial responsibility under 49 CFR part 387, if applicable;
3. Must not be a high or moderate risk carrier, as defined in the Agency's **Federal Register** notice titled ''Notification of Changes to the Definition of a High-Risk Motor Carrier and Associated Investigation Procedures'' (81 FR 11875, Mar. 7, 2016);
4. Must not have a ''Unsatisfactory'' safety rating;
5. Must not have any FMCSA enforcement actions within the past 3 years;
6. Must not have a driver out of service (OOS) rate above the National average; and
7. Must not have a vehicle OOS rate above the National average.

In addition, unpaid civil penalties may be grounds for exclusion from participating in the pilot program.

Further, motor carriers participating in the pilot program would be required to:

- Grant permission for drivers to participate in the pilot program;
- Agree to comply with all pilot program procedures;
- Grant permission for the Virginia Tech Transportation Institute to gather RODS information for each participating driver throughout the study duration; and
- Grant permission for drivers participating in the study to operate under the applicable exemption.

A driver would not be eligible for participation in the pilot program if the driver is identified in FMCSA's Drug and Alcohol Clearinghouse, regardless of whether the driver has completed the return-to-duty process, or during the 2-year period immediately preceding the date of participation, the driver had his or her license suspended, revoked, cancelled, or has been disqualified for a conviction of one of the disqualifying offenses listed in § 383.51. In addition, drivers would be required to:

- Possess a valid commercial driver's license;
- Maintain a valid medical certificate from a healthcare professional on the Agency's National Registry of Certified Medical Examiners while participating in the pilot program;
- Be employed by a motor carrier who has been approved for participation in the pilot program and/or certify as an owner-operator;
- Agree to the release of specific information to FMCSA for purposes of the pilot; and
- Agree to comply with all study procedures, including the use of actigraphs and RODS.

FMCSA would also reserve the right to exclude from participation any driver whom the Agency believes has a safety history incompatible with the interests of the pilot programs.

The study will use a convenience sampling approach, where participating carriers and drivers volunteer to participate. This is expected to attract drivers who are likely to use the exemption, which is key to obtaining sufficient data during the exemption period and maximizing statistical power for analyses. However, the sample of drivers will be drawn from carriers who are representative of the overall distribution of carrier sizes in the population of interstate motor carriers utilizing drivers beyond a 100-mile radius. A total of 256 CMV drivers will participate in this study.

The ''method of comparison'' for the ''safety analysis plan'' will vary depending on the data, but may include *t*-tests, χ^2 tests, other inferential/descriptive statistics, and/or qualitative analyses to include case narratives (*e.g.,* for crash events). To make effective comparisons between drivers operating in compliance with the current regulations and drivers operating under the conditions of the exemption, the study has been structured as a within-subjects research design, which will compare data for the same drivers operating under both conditions.

Title: Hours of Service of Drivers: Pilot Program to Allow Commercial Drivers to Pause Their 14-hour Driving Window.

OMB Control Number: 2126–00XX.

Type of Request: New ICR.

Respondents: CMV drivers.

Estimated Number of Respondents: 256 CMV drivers.

Estimated Time per Response: Varies depending on the task, 16.68 total hours per respondent over 16 weeks.

Expiration Date: This is a new ICR.

Frequency of Response: Daily.

Estimated Total Annual Burden: 4,270.92 hours.

Public comments invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this ICR.

Issued under the authority of 49 CFR 1.87.

Nicole S. Michel,

Acting Associate Administrator, Office of Research and Registration.

[FR Doc. 2026–20476 Filed 10–5–26; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2025–0060]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Request for Comment; Assessment of Contextual Driver Monitoring Systems (DMS)

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on a request for approval of a new information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) summarized below will be submitted to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. This document describes a collection of information for which NHTSA intends to seek OMB approval to assess contextual driver monitoring systems (DMS). A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on June 10, 2026 (with an administrative correction published June 18, 2026).

DATES: Comments must be submitted on or before November 5, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection, including suggestions for reducing burden, should be submitted to the Office of Management and Budget at *www.reginfo.gov/public/do/PRAMain.* To find this particular information collection, select ''Currently under Review—Open for Public Comment'' or use the search function.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Jeffrey

Dressel, Office of Vehicle Safety Research, Human Factors/Engineering Integration Division NSR–310, West Building, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590; (202) 366–7409; *jeffrey.dressel@dot.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), a Federal agency must receive approval from the Office of Management and Budget (OMB) before it collects certain information from the public and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. In compliance with these requirements, this notice announces that the following information collection request will be submitted OMB.

Title: Assessment of Contextual Driver Monitoring Systems (DMS).

OMB Control Number: New.

Form Number(s): There are multiple forms for this new information collection including:

- NHTSA Form 2235—Advertisement
- NHTSA Form 2243—Eligibility Questionnaire & Availability Form
- NHTSA Form 2249—Scheduling Form
- NHTSA Form 2236—Appointment Reminder Form
- NHTSA Form 2246—Informed Consent Document
- NHTSA Form 2238—Demographics Questionnaire
- NHTSA Form 2251—Simulator Sickness Questionnaire
- NHTSA Form 2239—Acceptance Questionnaire 1
- NHTSA Form 2240—Acceptance Questionnaire 2
- NHTSA Form 2241—Acceptance Questionnaire 3
- NHTSA Form 2242—Acceptance Questionnaire 4
- NHTSA Form 2237—Debrief & Honorarium Confirmation Form

Type of Request: New information collection.

Type of Review Requested: Regular.

Requested Expiration Date of Approval: Three years from date of approval.

Summary of the Collection of Information: The National Highway Traffic Safety Administration (NHTSA) is proposing a new information collection consisting of a single, one-time experimental research study that involves voluntary participation from members of the public. The purpose of this research is to develop and evaluate a prototype contextual DMS, which fuses data gathered from driver attention (*e.g.,* gaze location), physiological state (*e.g.,* heart rate variability), vehicle kinematics (*e.g.,* lateral lane position) and environmental sensors (*e.g.,* time to collision). The research goals are to examine the efficacy of a contextual DMS with respect to safety-critical events and assess driver response and acceptance. Data collection will occur as needed, and results will be shared with NHTSA for eventual publication in the National Transportation Library for public access. The final report will include a literature review and a supplementary report documenting the down-selection process of candidate DMS systems and scenarios. This information collection is for reporting purposes.

This information collection will be a one-time effort to recruit 48 participants from the public to address NHTSA's research questions on the effectiveness of a contextual DMS. Recruitment will occur via Westat's internal participant database and social media posts, with sex and age balanced among experimental groups. No specific experience is required to participate, but generally, participants must be at least 18 years old, possess a valid driver's license, and drive at least 3000 miles per year. Participation is voluntary and individuals may withdraw at any time. This research will require Westat's institutional review board (IRB) approval.

Participant attrition is acknowledged, and specific measures are being taken to ensure the target sample size is achieved. Participants will complete a series of four drives in a driving simulator using either a contextual or conventional DMS. The conventional DMS will consist of either a research or production-grade DMS model that uses standard practices at classifying driver distraction (*e.g.,* gaze direction, head pose). The contextual DMS will retain all the capabilities of the conventional DMS but will also factor in driver physiological state (*e.g.,* heart rate variability), vehicle handling (*i.e.,* kinematics), and driver interactions with the driving environment (*e.g.,* extended glances towards hazards). While completing the driving scenarios, participants will perform a secondary task in which they recite number strings displayed on an adjacent tablet, mimicking distraction from a smartphone or infotainment system, in order to assess the performance of the DMS during distracting events.

Each of the four drives will be approximately ten minutes in length to allow for sufficient data collection. All drives will consist of typical highway driving environments and speeds.

The first three drives will have one of three safety-relevant events (*i.e.,* events that could cause a crash) occur at randomized drive portions. The last drive will consist of a safety-critical scenario that requires drivers to perform an action (*e.g.,* brake) to avoid a collision, such as a covered-to-revealed road obstruction. The first three drives will be counterbalanced to control for order effects, however due to the potential for significant behavioral changes, the safety-critical scenario will always occur last.

Eligibility screening will be completed through an online questionnaire (NHTSA Form 2243—Eligibility Questionnaire & Availability Form) hosted by Qualtrics, a secure online survey administration platform. Form display and branching logic will ensure respondents see the minimal number of questions required to determine eligibility by ending the questionnaire early if criteria are not met at different points in time. The components include (1) a PRA statement informing participants about the rules governing federally funded research; (2) consent for the eligibility questionnaire and study introduction and description to inform participants about the study and specific data to be collected; (3) eligibility questionnaire to identify participants based on predefined criteria; and (4) contact information for scheduling purposes.

The landing page of the questionnaire will contain a forced response question asking if the respondent is above 18 years old, then (if yes) branching logic will display the consent text that contains the elements necessary for eligibility consent. Participants will provide consent to the online questionnaire when they answer ''yes'' to both the consent and study interest questions. These questions will be set to force response. Respondents who are less than 18 years old, or those who do not give consent to provide responses to the online eligibility questionnaire, or who are not interested in the study will be directed to a message informing them they are not eligible and thanking them for their time. Everyone else will be directed to complete the questionnaire. The questionnaire will ask potential participants about their ability to adhere to study requirements, driving qualifications, and general health history.

If criteria are not met, participants will be directed to a message thanking them for their time and telling them they are not eligible. If criteria are met, participants will be asked to provide their contact information and general availability. They will be informed this

would link their questionnaire responses to their name. If a participant meets study criteria, a researcher will schedule the study session using participant information provided in the eligibility questionnaire and confirmed by a scheduling phone call, where the participant's name, study date and time is recorded as part of recruitment record keeping (NHTSA Form 2249—Scheduling Form), until all slots have been filled. Approximately 24 hours before the participant's study session, NHTSA Form 2236—Appointment Reminder Form will be sent (via email) along with a copy of the informed consent document for their records. This email will also serve to remind participants to abstain from alcohol and recreational substance use (including marijuana) 24 hours before their study session. The email also requests that participants verify they have no current symptoms of illness, do not feel unwell, that they have experienced no changes to their health or mobility since completion of the eligibility questionnaire and to respond to the email confirming their attendance, which will be recorded by researchers as part of recruitment recordkeeping. Note that recruitment record keeping will be kept separate from any data collected during the study to maintain confidentiality.

Participants will be quasi-randomly assigned to complete four simulated driving scenarios using either a conventional or contextual DMS. Researchers will attempt to balance age and sex across groups. All data will be anonymized such that any data linking study data to participant eligibility criteria will be kept separate and secured on Westat systems that are only accessible by the research team. Only participants who complete the study will have their data retained for three years per OMB data storage requirements. All other data will be destroyed after the project period of performance.

Upon arrival at the study location, participants will be greeted and led to a private room where data collection will occur. Researchers will review the participant's driver's license to ensure validity, age and sex for participation eligibility and condition balancing. Participants will then complete NHTSA Form 2246—Informed Consent Document, which will be presented physically for both the participant and researcher to sign. If individuals agree to participate, they will then proceed with the Intake Procedures, completing the NHTSA Form 2238—Demographic Questionnaire on a tablet using Qualtrics. If participants decline to participate, they will be thanked for their interest and escorted out.

The second component of the Intake Procedures consists of driving simulator training to determine if participants can complete study procedures (*i.e.,* no simulator sickness). Participants will be directed to the driving simulator, where a researcher will describe how to operate the driving simulator, and give an overview of the DMS functions and alerts. Participants will receive the same explanation for the DMS functionality regardless of DMS type to enable group comparisons across self-report measures. Next, participants will receive an explanation of the secondary task, called the Numbers Task, which will be displayed on a tablet next to the driving simulator designed to replicate smartphone or infotainment center distraction. Researchers will inform participants that their recitations will be scored for accuracy to encourage consistent engagement with the secondary task while driving. After all procedures have been explained, participants will be instrumented with a physiological sensor suite to capture participant heart rate variability and electrodermal activity. These sensors do not interfere with participant dexterity or mobility.

After the sensors have been secured, participants will complete a 5-minute practice drive to familiarize themselves with vehicle control and secondary tasks. This drive will be similar to the study driving scenarios, including highway setting and speed (*e.g.,* >45 mph). However, no safety events will occur during the practice drive. Participants can request as many practice drives as needed to feel comfortable with the driving simulator. Participants will then complete NHTSA Form 2251—Simulator Sickness Questionnaire (SSQ) to assess any symptoms that developed during the practice drive. If participants are feeling unwell, they will be provided with bottled water and a place to rest until symptoms have passed. The SSQ will be administered to participants following each study drive to continuously monitor participant wellbeing. Participants may stop driving at any point during practice or study drives.

Participants will then complete a series of four driving scenarios, all of which consist of standard highway driving and will take ten minutes to complete as part of Data Collection Activities. These drives are 10 minutes long to ensure adequate distraction data is captured from both DMS. The first three scenarios will not contain a safety-critical scenario due to potential behavioral changes resulting from the near crash and will be counterbalanced to control for order effects. The safety-critical scenario will occur in the final drive (*e.g.,* a covered-to-revealed road obstruction). No other vehicle maneuvers will prevent a crash from occurring. The secondary task will be coordinated with the safety-critical event such that participants will be engaged in the task immediately preceding the safety-critical event to ensure consistency in assessment of the DMS. After each drive, participants will complete NHTSA Form 2239—Acceptance Questionnaire 1, which consists of survey questions focused on the usefulness, annoyance, predictability, timing, and perceived accuracy of the DMS. After all drives have been completed, participants will complete NHTSA Form 2240—Acceptance Questionnaire 2, which asks two questions about the participant's comfort level with being monitored by the DMS and their preference for having such a system in their vehicle (*i.e.,* their acceptance of the DMS). This questionnaire is administered once after all drives to ensure that participants have sufficient exposure to the system, providing more consistent and well-informed feedback regarding their experiences.

Next, participants proceed to System Comparison Activities. To help participants understand the differences between the two DMS types, they will watch four videos, one for each driving scenario, accompanied by explanations highlighting how the systems differ. The DMS will be labeled as System A (conventional DMS) and System B (contextual DMS) to avoid biasing participants. As the contextual DMS is a prototype of a new technology, it is critical to examine how a deeper understanding with its functionality influences participant opinions. After each set of videos (a total of four), participants will complete NHTSA Form 2241—Acceptance Questionnaire 3. The questionnaire will ask participants to rate the systems side-by-side on factors of usefulness, annoyance, predictability, timing, and perception of system accuracy of the system's distraction detection for a total of four repetitions. Participants will watch the videos in the order they experienced the driving scenario. However, the presentation of System A and System B videos will be counterbalanced across drives to control order effects. After all sets of videos have been watched, participants will complete a final survey (NHTSA Form 2242—Acceptance Questionnaire 4) to assess their comfort with DMS

monitoring and their acceptance of the two DMS. They will be asked to indicate their system preference, if they have one.

After the study is completed, participants will complete NHTSA Form 2237—Debrief & Honorarium Confirmation Form where researchers will discuss the purpose of the study and answer any remaining questions. As part of this process, participants will complete a document acknowledging receipt of the honorarium. Participants will receive $120 for completing the study, which is anticipated to last approximately two hours.

Description of the Need for the Information and Proposed Use of the Information: NHTSA's mission is to save lives, prevent injuries, and reduce the economic costs of road traffic crashes through education, research, safety standards, and enforcement activity. As vehicle technologies advance, they have the potential to dramatically reduce the loss of life from roadway crashes. Alternatively, the systems may not reach this potential or could potentially decrease safety when drivers do not understand how to safely interact with the systems or do not understand the capabilities and limitations. This new information request is for a driving simulator study designed to assess a new type of driver monitoring system that uses external sensor data to identify potential hazards, determine driver distraction based on whether they observed the hazard and modify countermeasures based on this joint understanding of driver distraction and the driving environment. The following components will be used to obtain the necessary information to achieve this purpose.

NHTSA Form 2235—Advertisement—This form is necessary to recruit potential participants. This document's content will be published on the contractor's intranet and social media channels, as well as distributed via email to a database of former participants expressing interest in future research. Participants who are interested in participating will be redirected to NHTSA Form 2243—Eligibility Questionnaire & Availability Form to determine eligibility.

NHTSA Form 2243—Eligibility Questionnaire & Availability Form—Determining participant eligibility is critical both for completing the study objectives as well as the health and wellbeing of participants. This process will involve online screening and diverse outreach efforts, such as social media advertisements and intranet postings, to assemble a representative participant pool. At the end of the eligibility questionnaire, participants will also provide their contact information and days of the week and session times they are available to participate so researchers may contact them to schedule their study session.

NHTSA Form 2249—Scheduling Form—The next step in the enrollment process involves calling eligible individuals to schedule their appointment.

NHTSA Form 2236—Appointment Confirmation Form—Sending a reminder email 24 hours before scheduled sessions is a critical step to ensure smooth coordination and minimize participant no-shows. Participants will be asked to confirm their intention to attend their session, which will be noted by researchers. This form will include essential information such as the session time, location, materials to bring, and instructions to confirm their attendance. Additionally, the email provides an opportunity for participants to ask any last-minute questions or inform the research team of scheduling conflicts. This step is designed to reinforce participant preparedness, reduce logistical issues, and enhance overall study efficiency.

NHTSA Form 2246—Informed Consent Document—Obtaining informed consent upon arrival is an essential step to ensure compliance with ethical research standards.

Intake Procedures—The purpose of the intake procedures is to collect important demographic information from participants for reporting purposes. Afterward, participants under driving simulator training to learn how to operate the driving simulator, respond to the secondary task, and to ensure that participants can complete the study drives without experiencing motion sickness.

NHTSA Form 2238—Demographics Questionnaire—Collecting participant demographics is an integral part of communicating sample characteristics and ensuring representativeness and generalizability. Participants will complete an online survey that focuses on only the most important demographic characteristics needed to describe the sample, including age, sex, ethnicity, highest level of education level completed and income. Age and sex are collected a second time to ensure balance among experimental conditions.

Driving Simulator Training—This step is necessary for preparing participants for driving in the simulator. Simulator driving may feel different from regular driving and requires an adjustment period to successfully control the vehicle. *In addition,* participants who experience simulator sickness can withdraw from the study. Before entering the vehicle, participants will receive training on the operation of the vehicle, the DMS, and the secondary task on an adjacent tablet, which is expected to last approximately eight minutes. Participants will then enter the vehicle and receive additional training. Next, participants will complete a 5-minute familiarization drive to practice driving, experience the DMS, and practice completing a secondary task.

NHTSA Form 2251—Simulator Sickness Questionnaire (SSQ)—This form is required to ascertain whether participants feel well enough to continue after the driving simulator training and after each of the four subsequent study drives (administered five times). The SSQ is important to administer after the last drive because some participants may feel motion sickness due to vehicle control or the safety-critical event and would require monitoring from study staff until the symptoms pass.

Data Collection Activities—This process is required because it captures the information necessary to answer NHTSA's research questions regarding acceptance and the valuation of the contextual DMS. It is composed of two subcomponents: study drives, and a DMS acceptance form. Each subcomponent is discussed in greater detail below. The subcomponents of burden can be seen below.

Driving Scenario Test Drives—These driving scenarios will serve as the main source of data collection. Measures will include data gathered from the driving simulator that relate to vehicle control (*e.g.,* standard deviation of lane position, velocity), driver behavior (*e.g.,* gaze location, head and body pose data) gathered from the DMS, and driver physiological data (*e.g.,* electrodermal activity, heart rate variability). Participants will complete four driving scenarios using either a conventional or contextual DMS. All drives mimic standard highway settings and speed. The first three driving scenarios will have non-crash imminent events (*e.g.,* passing vehicles, merging) and will be counterbalanced to control for order effects. The last drive will have a crash-imminent event (*e.g.,* a covered-to-revealed road obstruction). The secondary task will be synchronized with the simulator such that participants will be distracted approaching the hazard to ensure validity of the DMS assessment.

NHTSA Form 2239—Acceptance Questionnaire 1: This questionnaire is critical as it directly answers NHTSA's

research question regarding how a contextual DMS affects driver acceptance of the DMS. The questionnaire will be administered after each study drive and consist of five questions related to the participant's perception of the DMS's usefulness, annoyance, predictability, timing and perceived accuracy.

NHTSA Form 2240—Acceptance Questionnaire 2: This questionnaire is critical as it directly answers NHTSA's research question regarding how a contextual DMS affects driver acceptance of the DMS. Two questions will be collected focusing on the participant's comfort with DMS monitoring and their acceptance of the system. These items were not added to NHTSA Form 2239—Acceptance Questionnaire 1 because these address long term factors which require more experience with the systems before participants can form meaningful conclusions.

System Comparison Activities: This process is required because it contains the information necessary to answer NHTSA's research questions regarding acceptance. It is composed of two subcomponents: a review of conventional and contextual DMS drives and completing a DMS acceptance form. Each subcomponent is discussed in greater detail below.

Review of Conventional and Contextual DMS Drives: Participants watch videos comparing the DMS types across driving scenarios to increase their understanding of how a contextual DMS operates. Driving scenarios will be presented in the same sequence experienced by the participants, while the order of DMS presentation will be counterbalanced to control for order effects. Each video is anticipated to last two minutes covering the lead up to the DMS action or inaction, and the conclusion of the triggering event. Each drive scenario will have two videos, one for the conventional DMS and one for the contextual DMS (referred to as a set of videos). After each set of videos, participants will then complete NHTSA Form 2241—Acceptance Questionnaire 3 before proceeding to the next driving scenario.

NHTSA Form 2241—Acceptance Questionnaire 3: After each video, researchers will ask participants to complete this survey, which consists of rating both types of DMS side-by-side on the factors of interest from NHTSA Form 2239—Acceptance Questionnaire 1.

NHTSA Form 2242—Acceptance Questionnaire 4: After all sets of driving scenario videos have been watched, participants will complete a survey comparing the conventional and contextual DMS in terms of monitoring comfort and acceptance, as well explicating indicating their preference for the conventional or contextual DMS.

NHTSA Form 2237—Debrief & Honorarium Confirmation Form— Debriefing is an essential study component which is designed to gather participant insights and refine study outcomes. Following NHTSA Form 2241—Acceptance Questionnaire 4 completion, participants will engage in a semi-structured debriefing session where the researcher will explain the purpose of the study and participants will provide feedback on the DMS, including usability and their overall study experience. This process allows researchers to identify potential issues, capture subjective perspectives, and gain insights into interface design features (*e.g.,* alerts, warnings), ensuring comprehensive evaluation and improving the quality of study findings. The honorarium confirmation form will be completed after the debrief and is necessary because it ensures that participants are compensated for their time and provides a record of compensation.

60-Day Notice: A **Federal Register** notice with a 60-day comment period soliciting public comments on the following information collection was published on June 10, 2026 (91 FR 35296), with an administrative correction published on June 18, 2026 (91 FR 36946). NHTSA received a total of 11 comments from: Alliance for Automotive Innovation (Auto Innovators), *Responsibility.Org* and the National Alliance to Stop Impaired Driving (NASID), Mitsubishi Electric Automotive America (MEAA), The Insurance Institute for Highway Safety's Highway Loss Data Institute (IIHS HLDI), Consumer Reports (CR), American Trucking Associations (ATA), and comments from five individuals: Juli Patrick, Sean Patrick, Paul Runstrom, Emily Faubion, and Sergio Drosihn. The following excerpts summarize the key points submitted by commenters for NHTSA's consideration; all cited references have been removed for brevity. When applicable, to facilitate a clear mapping of the agency's response to the specific issues raised, the points are numbered to correspond with the numbered responses below.

Auto Innovators stated that the notice did not describe in detail the methods and scenarios to be used in the research, concerns over whether the DMS used would reflect commercially available systems and whether limited exposure to such a system would reflect the efficacy of such systems, and concern with the use of physiological measures and their feasibility of use with in-vehicle systems.

NHTSA thanks Auto Innovators for the feedback on this topic. Regarding the specific points, NHTSA agrees with Auto Innovators about the need to be specific with regard to the construction of the candidate contextual DMS system and associated scenarios. While the 60-day notice provides a high-level summary, these operating parameters will be described in full detail in the research and analysis plan and included in the final report. Specifically, the candidate scenarios (and alerting strategies) are safety-relevant and selected based on conditions where a contextual DMS may offer enhanced safety and performance over a conventional DMS, and part of the system down-selection process involves engaging with industry stakeholders, including original equipment manufacturers (OEMs) and tier-one suppliers, to gather feedback on scenario definitions, alerting approaches, and sensor integration parameters. NHTSA also agrees with Auto Innovators' point regarding the study limitations of a prototype contextual DMS compared to an eventual commercial application and will clearly qualify findings with regard to future generalization of a commercial contextual DMS as appropriate by noting study parameters within the controlled simulated environment.

In addition, NHTSA acknowledges industry perspectives on the practical considerations for use of physiological sensors in mass-market implementation. Physiological measures were referenced to illustrate the broader potential range of inputs that a contextual DMS could incorporate, and within this exploratory research, if they are collected, it will primarily be to better understand participant state and cognitive workload under controlled simulated conditions. To ensure practical feasibility in vehicle environments, physiological sensors that can be integrated directly into touchpoints such as steering wheels or in-cabin radar sensors (*e.g.,* heart rate variability monitors) may be utilized, whereas intrusive setups (*e.g.,* electroencephalography) are not being considered as feasible for implementation in this study. In addition to exploring these measures, the research study incorporates a broad array of primary performance and behavioral metrics, including standard deviation of lane position, glance frequency and duration, eyes-off-road time, response times to safety-critical events, and driver acceptance questionnaires, to evaluate prototype

contextual DMS efficacy. NHTSA agrees that the report will reflect the findings of the exploratory research study, and will make additional efforts to qualify the findings as specific to the prototype DMS and scenarios tested, to list limitations, and to avoid over-generalization of these initial research findings.

Responsibility.Org and NASID provided three comments, summarized here: (1) ''Consider the Impact of Significant Implementation Differences in the Proposed Conventional and Contextual DMS Approaches,'' (2) ''Equally Evaluate Potential Safety Benefits Alongside User Acceptance,'' and (3) ''Future Research Should Consider Additional Driver States such as Drowsiness and Impairment.''

NHTSA thanks *Responsibility.Org* and NASID for the compelling comments. Regarding the first comment, NHTSA acknowledges the *Responsibility.Org* and NASID's perspective regarding potential implementation and technological maturity differences, as well as the practical considerations of sensor invasiveness. To be clear, NHTSA is not building a prototype contextual DMS for future commercial implementation; rather, the prototype capability features a production equivalent DMS and driving simulator environment, which is designed to evaluate the core concept of a potential contextual DMS as it pertains to driver acceptance and the potential to yield improved driving performance and safety metrics by gathering and utilizing contextual information from the environment. Because the specific prototype configurations are still in development, the final hardware and software specifications are not fixed yet; however, the research design relies on a common baseline production-grade DMS (currently deployed in the U.S. vehicle fleet) for both conditions to establish a consistent technical foundation. NHTSA recognizes that participant perceptions must be interpreted within the context of a controlled laboratory simulation rather than a commercial deployment and will ensure participants are fully briefed on the exploratory nature of the study, noting that questions surrounding features of the prototype system tested pertain to hypothetical, potential features. With regard to sensor configuration, if included, the intent is to utilize practical, non-intrusive touchpoint-integrated physiological sensors (such as steering wheel monitors) while avoiding intrusive setups like electroencephalography. From the participant's standpoint, the primary and most noticeable difference will center on what and how alerts and warnings are presented, as the research focus is squarely on evaluating these modified alerting strategies rather than evaluating core classification capabilities.

Regarding *Responsibility.Org* and NASID's second comment, NHTSA agrees that assessing safety outcomes alongside user acceptance is critical for understanding the underlying value of contextual intelligence (as described by the commenter). In addition to measuring subjective perceptions of usefulness, annoyance, and acceptance, the research study incorporates a comprehensive array of primary performance and behavioral metrics, such as standard deviation of lane position, glance frequency and duration, eyes-off-road time, response times to safety-critical events, and driver acceptance questionnaires (including trust calibration dynamics), to evaluate prototype contextual DMS efficacy. Furthermore, while NHTSA concurs with the commenter on the fundamental importance of trust in the functional use of a contextual DMS, it notes that recent research indicates there may not always be sufficient discriminant validity between measures of acceptance and trust (Rönkkö & Cho, 2022; [1] Chen, *et al.,* 2023 [2]).

Regarding *Responsibility.Org* and NASID's third comment, NHTSA acknowledges the recommendation to consider broader driver states such as drowsiness, fatigue, medical events, and substance impairment in future efforts.

Mitsubishi Electronic Automotive America, Inc. (MEAA) made multiple comments focused in four topic areas: (1) ''The Necessity and Practical Utility of Information Collection'', (2) ''Accuracy of the Burden Estimate,'' (3) ''Ways to Improve the Quality, Utility and Clarity of Collected Information,'' and (4) ''Ways to Minimize Respondent Burden.''

NHTSA thanks MEAA for their helpful comments. Regarding the first topic, NHTSA acknowledges the commenter's interest in metrics such as sensitivity, false positive rate, ROC/AUC, and reaction time. Because both the conventional and contextual conditions utilize the same underlying camera-based classification architecture, with the contextual DMS primarily modifying alert timing and presentation based on additional inputs, thus, system-level classification performance differences is not an experimental variable. Consequently, the research focus is on evaluating the comparative impact of these modified alerting strategies rather than re-evaluating core algorithmic classification. Where available, manufacturer-reported DMS performance metrics will be included in the final report to provide contextual transparency.

In addition, NHTSA notes that physiological measures are referenced primarily to illustrate the broader range of multi-modal inputs that a conceptual, future-generation contextual DMS could potentially incorporate to gather deeper contextual driver state information. To the extent physiological sensing hardware and software are utilized in the study, they will serve to monitor participant state under controlled simulator conditions rather than validate hardware-level measurement accuracy or establish commercial sensor specifications. Because the primary focus of this study is driving performance and the potential safety benefit of these additional inputs rather than testing a production-ready sensor suite, any collected physiological signals will support the evaluation of relative changes in cognitive workload and driver acceptance.

Regarding MEAA's second topic, NHTSA appreciates the detailed review of the burden calculation assumptions. The figures, rounding for Form 2242, and participant cost accounting will be verified and reconciled in the final package to ensure full consistency across all tables and narrative text, and unrevised placeholders will be corrected.

In response to MEAA's third topic, where available, NHTSA will include manufacturer-reported DMS performance metrics in the final report. To the extent physiological sensing hardware and software are utilized in the study, high-quality research-grade equipment will serve to monitor participant state under controlled simulator conditions rather than validate hardware-level measurement accuracy or establish commercial sensor specifications. When available, the error margin reported by the manufacturer will be included in the final report. Because the primary focus of this research is driving performance and potential safety impact, rather than testing a production-ready sensor suite, any collected physiological signals will support the evaluation of relative changes in cognitive workload.

[1] Rönkkö, M., & Cho, E. (2022). An updated guideline for assessing discriminant validity. *Organizational Research Methods, 25*(1), 6–14. *https://doi.org/10.1177/1094428120968614.*

[2] Chen, Y., Khalid Khan, S., Shiwakoti, N., Stasinopoulos, P., & Aghabayk, K. (2023). Analysis of Australian public acceptance of fully automated vehicles by extending technology acceptance model. *Case Studies on Transport Policy, 14,* 101072. *https://doi.org/10.1016/j.cstp.2023.101072.*

Furthermore, alerts will be constructed in a method designed to enable preemptive DMS alert status, where perceived false alarms will be captured by the acceptance questionnaires.

In addition, the conventional and contextual conditions utilize the same production-grade DMS currently employed in the U.S. vehicle fleet. NHTSA will include the relevant DMS and alerting capabilities described in the final report, alongside a transparent description of the down-selection process, which is focused specifically on driving performance and safety metrics, rather than evaluating different core DMS hardware platforms. NHTSA agrees with the point regarding the scope of comparisons, as this study is designed to assess the differences between a contextual DMS and a conventional DMS rather than validate the importance of DMS relative to vehicles without such systems.

Also, NHTSA agrees with the potential inferential limitation regarding the effects of video comparisons to experiencing the drives. We will take care to construct the videos as closely as possible, but will acknowledge the associated limitations in the final report. While the final research report and aggregated summary metrics will be made publicly available, releasing raw participant datasets directly is not feasible at this stage due to privacy protections, proprietary baseline DMS architecture agreements, and human-subjects data governance restrictions regarding personally identifiable information (PII).

Regarding MEAA's fourth topic, NHTSA agrees that the use of electronic submission is helpful at reducing participant burden. It is anticipated to be the primary form of survey cataloguing from this study. To further minimize burden, NHTSA will limit questionnaires to only those items strictly necessary for the research objectives and will utilize clear pre-briefings and standardized protocols to minimize participant confusion and ensure high data quality.

The Insurance Institute for Highway Safety's Highway Loss Data Institute (IIHS HLDI) provided valuable input summarized into eight topic areas: (1) ''[d]esign the study to test when contextual DMS provides added value,'' (2) ''[d]istinguish sensing from system response,'' (3) [k]eep feedback consistent across conditions,'' (4) ''[c]ollect baseline data before simulated drives,'' (5) ''[f]irstly, evaluate and compare how the DMS solutions identify distraction,'' (6) ''[c]onsider using production systems or collaborating with industry partners,'' (7) ''[a]ccount for prior experience with driver assistance technologies,'' and (8) ''[r]econsider the video-based acceptance evaluation.''

NHTSA thanks IIHS HLDI for their valuable feedback. Regarding the first topic, NHTSA agrees that the proposed numbers task is likely to produce frequent glances away from the roadway, which the conventional DMS is well-suited to capture. However, the primary goal of this empirical research is to examine potential improved safety behavior and acceptance of the contextual DMS. To incorporate this comment, the researchers will consider other tasks that may be more cognitively distracting than visually distracting. It should be noted that a previous commenter recommended the reverse; the researchers will consider the balance of cognitive and visual-manual distraction in the tasks selected for the experiment.

Regarding the second topic, NHTSA agrees with IIHS' point about the importance of alerting strategies.

In response to the third topic, NHTSA clarifies that while the fundamental alert modalities (auditory sounds and visual instrument cluster displays) and content remain identical across both conditions, the timing and escalation methods of the alerts in the prototype contextual DMS used in this experiment may be adapted based on real-time traffic conditions, environmental data, and time-to-collision metrics. Unlike the conventional DMS, which may trigger alerts strictly using standard driver gaze thresholds, vehicle measures, or a mix of both, the prototype contextual DMS will have the capability to preemptively issue or escalate alerts when an imminent traffic hazard is detected or suppress/de-escalate alerts if the driver is already actively attending to the specific roadway threat. This localized adjustment in alert timing and feedback structure serves as the core mechanism being evaluated to determine whether adapting feedback to the driving context improves driver responses to safety-critical scenarios, improves overall driver acceptance as a function of reduced false alarms, and ultimately improves safety.

Regarding the fourth topic, NHTSA agrees with the importance of establishing baseline measures of driving behavior and driver state. To incorporate this comment, baseline measures will be captured in the pre-driving simulations component as part of the quality checks to ensure adequate data quality throughout the session.

With regard to the fifth topic, NHTSA agrees that DMS sensor fusion can introduce additional noise in the model. To ensure that the DMS performance remains the same across integrated sensor systems, the same production-quality DMS will remain unchanged. The alerting strategies are informed and modified by additional simulated driving environment sensors, allowing repeatability. NHTSA currently anticipates physiological data being used for exploratory purposes of workload assessment.

Regarding IIHS HLDI's sixth topic, the proposed prototype DMS is a production-grade system currently available in the U.S. vehicle fleet, with proposed alerting modalities and iconography reflecting common designs. Furthermore, the research will involve outreach to industry stakeholders, providing valuable feedback during the down-selection process to ensure the selected sensors, scenarios, and alerting strategies are feasible and practical.

In response to the seventh topic, NHTSA agrees that controlling for participant prior experience with ADAS is an important study consideration. To incorporate this comment, NHTSA and the researchers amended the eligibility questionnaire to collect data on whether participants have used a system that monitors their attention.

Regarding the eighth topic, NHTSA clarifies that the study design relies primarily on extensive, hands-on driving experience across four distinct simulated drives (three safety-relevant and one safety-critical) before any video-based preference evaluations occur. Participants complete iterative technology acceptance questionnaires (Acceptance Questionnaires 1 and 2) directly following their hands-on driving sessions. The comparative video phase and subsequent questionnaires (Acceptance Questionnaires 3 and 4) are administered *only after* direct operational experience is established, serving solely to help participants articulate nuanced preference tradeoffs between the two specific architectural approaches.

Consumer Reports expressed support for the research and provided valuable feedback, summarized into four topic areas: (1) specificity of the description of the research design, including operational definitions, specific physiological metrics, and baseline conditions, (2) concern with the proposed sample size, a recommendation to conduct a power analysis, and a suggestion to consider prior participants' experience with DMS, (3) a recommendation to consider a visual-manual distraction task as well as a cognitive distraction task, and (4) a recommendation to keep researcher scripts strictly neutral in the video

comparison explanation component of the research, to avoid a potential halo effect or injecting other biases.

In response to Consumer Reports' first topic, NHTSA agrees with Consumer Reports' points regarding variable definitions and characteristics. While the 60-day notice provides a high-level summary, these variables are described in the full research and analysis plan and will be included in the final report. NHTSA agrees with the importance of establishing baseline measures of driving behavior and driver state. This will be captured in the pre-driving simulations component as part of the quality checks to ensure adequate data quality throughout the session.

Regarding the second topic, a power analysis was included in the full research and analysis plan and will be included in the final report. The 2 (between; DMS type) × 4 (within; drive type) returned sufficient statistical power to detect a small effect with a between subjects group size of 24. To further incorporate Consumer Reports' comment, a sensitivity power analysis with more conservative assumptions was performed to seek greater confidence in the adequacy of the planned sample size, and the sample size was confirmed. Regarding Consumer Reports' suggestion to consider prior participants' experience with DMS, a screening question will be added to assess prior experience. This question will be administered during contact information collection for eligible respondents, meaning it will only target a subset of those who complete the screener. Consequently, the addition of this single question is expected to introduce negligible burden to participants.

In response to Consumer Reports' third topic, NHTSA acknowledges the value of evaluating multiple distraction modalities and notes that the proposed numbers task is specifically structured to test visual-manual and cognitive demands by requiring drivers to look away from the road to an adjacent tablet to recite digit sequences. To further incorporate this comment, the researchers will consider incorporating additional tasks that target different distraction modalities, including visual-manual and purely cognitive tasks.

Regarding the fourth topic, NHTSA agrees with Consumer Reports' assessment of the importance of keeping procedures neutral to avoid biasing participants. We will carefully review procedures, scripts, and videos to ensure neutral language, and that there is no favoritism for a particular system.

American Trucking Associations (ATA) provided insightful comments, stating that contextual DMS in the trucking industry has been shown to accommodate drivers' privacy and data capture concerns, as well as demonstrating efficacy in providing context-specific feedback and training opportunities, concluding that it is valuable for NHTSA to study such technologies.

NHTSA thanks ATA for their insights and feedback on this topic.

NHTSA appreciates comments received from the five individuals, as well. Paul Runstrom's comment addressed alcohol impairment detection; NHTSA clarifies that such technologies are not within the scope of this project. Juli Patrick and Sean Patrick both shared concerns about the potential accuracy, false alarm and false positive rates of potential contextual DMS. NHTSA acknowledges and notes those concerns, and while system performance is not the focus of this research, NHTSA anticipates such potential effects to be better understood and empirically addressed by this research. Emily Faubion described concern with unintended consequences of contextual (and non-contextual) DMS potentially altering driver behavior. NHTSA acknowledges and notes those concerns, and expects such effects to be explored and documented by this safety focused research effort. Sergio Drosihn shared a suggestion that DMS may serve a safety function best by assessing driver consciousness, and by doing so using only posture and head position. NHTSA thanks the commenter for his insight and cited research; the concern is noted. Several of the commenters mentioned a concern with privacy, and DMS capability to collect biometric sensitive personally identifiable information. NHTSA thanks the commenters for sharing these concerns; the concerns are noted. In addition, NHTSA clarifies that one metric of interest in this research is driver acceptance of contextual DMS, which may yield results reflecting and documenting such concerns.

After thoughtful consideration of all the above comments, NHTSA ensured that additional sensitivity power analyses were conducted, PRA documentation was aligned, the eligibility form was updated, and cognitive and visual-manual tasks are being considered, among other actions to be taken as mentioned above. These modifications yielded an addition of two hours in the participant burden estimate from that which was published in the 60-day notice, for a total of 134 participant burden hours.

Affected Public: Individuals in the Washington, DC metro area who have opted to receive research-related emails through the contractor's participant database will be contacted. Recruitment efforts will be supplemented by advertisements placed on the contractor's intranet and via social media posts and advertisements. Respondents must meet specific eligibility criteria to be included in this information collection. Respondents must (1) be at least 18 years old, (2) possess a valid driver's license, (3) drive at least 3,000 miles annually, (4) have normal or corrected-to-normal vision, (5) have normal or corrected-to-normal hearing, (6) refrain from alcohol and recreational substance use (*e.g.,* marijuana) for 24 hours before the session, (7) not take sedative or psychotropic medication, (8) not wear bifocal lenses while driving, (9) not require specialized driving equipment, (10) not have medical conditions that might impact their ability to get in and out of vehicles or sit for extended periods of time with intermittent driving, (11) no history of simulator sickness.

Estimated Number of Respondents: The contractor estimates contacting 204 respondents to achieve a final, valid dataset consisting of 48 respondents. Of the 204 respondents anticipated, the contractor anticipates contacting 68 respondents via phone call. Of the 68 respondents contacted, the contractor anticipates nine percent attrition, resulting in 62 scheduled participants; the contractor anticipates an attrition rate of nine percent between scheduling and study session, resulting in 56 participants attending their scheduled session. Some respondents may experience minor simulator sickness and be unable to complete the study, which the contractor estimates at seven percent, resulting in 52 respondents completing the study. Finally, the contractor estimates eight percent of respondent data will be unusable due to data quality problems (*e.g.,* equipment malfunction, non-compliance), resulting in the target dataset of 48 valid respondents.

Frequency: One-time collection.

Estimated Total Annual Burden Hours: The total estimated burden is 134 hours, which can be seen in Table 1 and is the sum of the total opportunity burden hours column. All data collection is estimated to occur within the same year, so the annualized burden equals the total burden.

TABLE 1—BURDEN HOURS

NHTSA form No.	Information collection	Total number of respondents	Estimated burden per response (minutes)	Frequency of response (count)	Total opportunity burden hours
2235	Advertisement	204	1	1	3
2243	Eligibility Questionnaire & Availability Form	204	5	1	17
2249	Scheduling Form	68	5	1	6
2236	Appointment Reminder Form	62	1	1	1
2246	Informed Consent Document	56	3	1	3
2238	Intake Procedures (Demographics Questionnaire, Driving Simulator Training).	56	16	1	15
2251	Simulator Sickness Questionnaire	52	2	5	9
2239	Data Collection Activities (Driving Scenarios Test Drives, Acceptance Questionnaire 1).	52	12	4	43
2240	Acceptance Questionnaire 2	52	1	1	1
2241	System Comparison Activities (Review of Conventional and Contextual DMS Drives; Acceptance Questionnaire 3).	52	8	4	29
2242	Acceptance Questionnaire 4	52	2	1	2
2237	Debrief & Honorarium Confirmation Form	52	6	1	5
Total Burden					134

Estimated Total Annual Burden Cost: Participation is voluntary and there will be no start-up or record-keeping costs to respondents to obtain these data. The only cost burdens respondents will incur are costs related to travel to and from the research location. The costs are minimal and are expected to be offset by the honorarium that will be provided to the research participants. NHTSA estimates that each participant will travel less than 30 miles one-way to the research location (60 miles round trip). Using the IRS standard mileage rate of $0.70 per mile, each respondent is expected to incur no more than $42.00 ($0.70 × 60 miles) in transportation costs. Therefore, estimated travel burden costs are no more than $2,352 ($42.00 × 56 respondents).

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) 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; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including 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.

Authority—The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29A.

Cem Hatipoglu,

Associate Administrator, Vehicle Safety Research.

[FR Doc. 2026–20394 Filed 10–5–26; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2026–2113]

Request for Information: Nationwide Implementation of Prehospital Blood Transfusion

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice; Request for Information (RFI).

SUMMARY: The National Highway Traffic Safety Administration (NHTSA), on behalf of the Federal Interagency Committee on Emergency Medical Services (FICEMS), is seeking comments from all sources (public, private, governmental, academic, professional, public interest groups, and other interested parties) on the nationwide implementation of prehospital blood transfusion. The purpose of this notice is to solicit comments on strategies, barriers, and solutions to advance prehospital blood transfusion capabilities across State, local, tribal, and territorial emergency medical services (EMS) and 911 systems, and to request responses to specific questions provided below. This notice is an information-gathering inquiry and is neither a request for proposals nor an invitation for bids.

DATES: Comments on this announcement must be submitted on or before November 5, 2026.

ADDRESSES: You may submit comments, identified by Docket No. NHTSA–2026–2113, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Instructions: Regardless of how you submit your comments, you must include the docket number identified in the heading of this document. Note that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov.* Please see the Privacy Act heading below.

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

Anyone is able to 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.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Office of Emergency Medical Services, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590; email: *FICEMS@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

FICEMS was created (42 U.S.C. 300d–4) by the Secretaries of Transportation, Health and Human Services and Homeland Security to, in part, ensure coordination among the Federal agencies involved with State, local, tribal or regional emergency medical services and 9–1–1 systems. FICEMS has statutory authority to identify State and local Emergency Medical Services (EMS) and 9–1–1 needs, to recommend new or expanded programs and to identify the ways in which Federal agencies can streamline their processes for support of EMS. FICEMS includes representatives from the Department of Defense (DoD) Office of the Assistant Secretary of Defense for Health Affairs, the Department of Health and Human Services (HHS) Office of the Administration for Strategic Preparedness and Response (ASPR), HHS Indian Health Service (IHS), HHS Centers for Disease Control and Prevention (CDC), HHS Health Resources and Services Administration (HRSA), HHS Centers for Medicare and Medicaid Services (CMS), the Department of Homeland Security (DHS) Office of Health Security (OHS), DHS U.S. Fire Administration (USFA), NHTSA, the Federal Communications Commission (FCC) and a State EMS Director appointed by the Secretary of Transportation.

Severe hemorrhage remains a leading cause of preventable death following traumatic injury. To address systemic challenges and improve clinical outcomes nationwide, FICEMS is prioritizing the implementation of prehospital blood transfusion in its strategic planning process. By focusing national efforts on this critical clinical intervention, FICEMS aims to support EMS systems in preventing up to 10,000 deaths annually and achieving a 5% reduction in overall mortality from severe bleeding by 2028.

On June 11, 2025, FICEMS convened a national Prehospital Blood Transfusion Summit in Washington, DC, bringing together nearly 900 in-person and virtual stakeholders across EMS, 911 dispatch, trauma surgery, blood banking, public health, and regulatory entities.

II. Questions Regarding Nationwide Implementation of Prehospital Blood Transfusion

Responses to the following questions are requested. Please provide references as appropriate.

1. What are the current impediments to possible solutions for achieving the following national goals by the end of calendar year 2028?

a. Increasing the number of EMS agencies nationwide with active prehospital blood transfusion programs to 2,028;

b. Providing 911 pre-arrival instructions to 25% of pediatric patients with life-threatening bleeding;

c. Providing 911 pre-arrival instructions to 25% of all patients with life-threatening bleeding;

d. Administering a prehospital blood transfusion to 28% of pediatric patients with life-threatening bleeding;

e. Administering a prehospital blood transfusion to 16% of all patients with life-threatening bleeding;

f. Capturing outcomes data in the National EMS Information System (NEMSIS) for 10% of all children transfused prehospitally;

g. Capturing outcomes data in NEMSIS for 10% of all patients transfused prehospitally;

h. Participation from at least 51 states and territories in the National EMS Licensure Compact; and

i. Establishing 10,000 prehospital pediatric emergency care coordinators (PECCs) across the nation.

2. What role can technology such as Advanced Automatic Crash Notification (AACN) play in improving timely delivery of prehospital blood transfusion to patients injured in crashes?

3. What is the potential role of structured 911 call-taking protocols, including Emergency Medical Dispatch (EMD), in optimizing call processing, dispatch accuracy, and early bystander intervention for patients with life-threatening bleeding?

3. What mechanisms, technical standards, or policy enhancements are needed to advance data integration and linkage across local, State, and national data systems (*e.g.,* NEMSIS, trauma registries) in support of prehospital blood transfusion surveillance and quality measurement?

4. How might improve military and civilian EMS integration advance prehospital blood transfusion practices, logistics, cold-chain management, and clinical training?

5. What improvements and curriculum enhancements are needed within the EMS education and training system to support transfusion medicine, clinical competency, and other innovative prehospital practices?

6. Do you have any additional comments regarding the nationwide implementation of prehospital blood transfusion programs?

Authority: 42 U.S.C. 300d–4; 44 U.S.C. 3506(c)(2)(A); 23 U.S.C. 403(b)(1)(A)(iv); 49 CFR 1.95; 501.8.

Issued in Washington, DC.

Angie Wang,

Acting Associate Administrator, Research and Program Development.

[FR Doc. 2026–20426 Filed 10–5–26; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

[Docket No. TTB–2026–0001]

Proposed Information Collections; Comment Request (No. 99)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB); Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the continuing or proposed information collections listed below in this document.

DATES: We must receive your written comments on or before December 7, 2026.

ADDRESSES: You may send comments on the information collections described in this document using one of these two methods:

- *Internet*—To submit comments electronically, use the comment form for this document posted on the ''*Regulations.gov*'' e-rulemaking website at *https://www.regulations.gov* within Docket No. TTB–2026–0001.
- *Mail*—Send comments to the Paperwork Reduction Act Officer, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

Please submit separate comments for each specific information collection described in this document. You must reference the information collection's title, form number or recordkeeping requirement number (if any), and OMB control number in your comment.

You may view copies of this document, the relevant TTB forms, and any comments received at *https://www.regulations.gov* within Docket No. TTB–2026–0001. TTB has posted a link to that docket on its website at *https://www.ttb.gov/rrd/information-collection-notices.* You also may obtain paper copies of this document, the listed forms, and any comments received by contacting TTB's Paperwork Reduction Act Officer at the addresses or telephone number shown below.

FOR FURTHER INFORMATION CONTACT: Michael Hoover, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; 202–453–1039, ext. 135; or complete the Regulations and Rulings Division contact form at *https://www.ttb.gov/contact-rrd.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB), as part of a continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections described below, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this document will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether an information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information has a valid OMB control number.

Information Collections Open for Comment

Currently, we are seeking comments on the following forms, letterhead applications or notices, recordkeeping requirements, questionnaires, or surveys:

OMB Control No. 1513–0001

Title: Tax Information Authorization.

TTB Form Number: TTB F 5000.19.

Abstract: In general, the Internal Revenue Code (IRC) at 26 U.S.C. 6103 protects the privacy of taxpayer information by prohibiting the disclosure of tax returns and taxpayer information to unauthorized persons while allowing a taxpayer to authorize a representative to receive otherwise confidential tax information. Under that authority, the Alcohol and Tobacco Tax and Trade Bureau (TTB) requires a taxpayer to file form TTB F 5000.19 to authorize a representative, who does not have the power of attorney, to receive their otherwise confidential tax information. TTB uses the collected information to identify the taxpayer's designated representative and the scope of that representative's authority to obtain their otherwise confidential tax information.

Current Actions: There are no current program changes or adjustments to this information collection at this time, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits; Individuals or households.

Estimated Annual Burden

- *Number of Respondents:* 10.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 10.
- *Average Per-response Burden:* 1 hour.
- *Total Burden:* 10 hours.

OMB Control No. 1513–0003

Title: Referral of Information.

TTB Form Number: TTB F 5000.21.

Abstract: TTB personnel may identify, during investigations or other duties, apparent violations of State and local government laws and regulations, and TTB uses form TTB F 5000.21, Referral of Information, to provide information to such external agencies if disclosure is authorized under 26 U.S.C. 6103 or other Federal laws. This form includes a section for an external agency to respond to TTB regarding its action on the referral. The TTB-requested response from external agencies provides information as to the utility of the referrals and potential enforcement actions taken by those agencies against TTB-regulated entities.

Current Actions: There are no program changes to this information collection at this time, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is decreasing the estimated number of annual respondents, responses, and total burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local, and tribal governments.

Estimated Annual Burden

- *Number of Respondents:* 25.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 25.
- *Average Per-response Burden:* 1 hour.
- *Total Burden:* 25 hours.

OMB Control No. 1513–0041

Title: Distilled Spirits Plants—Records and Monthly Reports of Processing Operations.

TTB Form and Recordkeeping Numbers: TTB F 5110.28 and TTB REC 5110/03.

Abstract: The IRC at 26 U.S.C. 5207 requires that distilled spirits plant (DSP) proprietors keep records and submit reports regarding their production, storage, denaturation, and processing operations in as the Secretary of the Treasury (the Secretary) prescribes by regulation. As defined in that section, processing activities include receipt or transfer of alcoholic ingredients used in spirits production, bottling and packaging of distilled spirits, and removal of distilled spirits from the DSP premises. Under that authority, the TTB regulations in 27 CFR part 19 require DSP proprietors to keep certain records related to their processing operations, and based on those records, to submit monthly summary reports of their processing operations using form TTB F 5110.28. TTB uses the collected information to ensure that the relevant tax provisions of the IRC are appropriately applied and to produce generalized distilled spirits statistical reports for release to the public.

Current Actions: There are no program changes to this information collection, and TTB is submitting for extension purposes only. As for adjustments, due to a change in agency estimates resulting from continued growth in the number of DSPs in the United States, TTB is increasing the estimated number of annual respondents, total responses, and burden hours associated with this information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits; State and local governments.

Estimated Annual Burden

- *Number of Respondents:* 6,100.
- *Average Responses per Respondent:* 12 (once per month).
- *Number of Responses:* 73,200.
- *Average Per-response Burden:* 2 hours (1 hour recordkeeping and 1 hour reporting).
- *Total Burden:* 146,000 hours.

OMB Control No. 1513–0058

Title: Usual and Customary Business Records Maintained by Brewers.

TTB Recordkeeping Number: TTB REC 5130/1.

Abstract: The IRC at 26 U.S.C. 5415 requires brewers to keep records containing such information as the Secretary prescribes by regulation and make them available for Government inspection, while 26 U.S.C. 5555 requires any person liable for Federal excise tax on alcohol beverages to keep records, make reports, and comply with regulations prescribed by the Secretary. Under those IRC provisions, the TTB regulations in 27 CFR part 25, Beer, require brewers to keep certain usual and customary business records documenting their operations, including production and packaging of beer and other brewery products and inventories, removals, returns, shipments, storage, and transfers of such products. TTB uses the collected information to establish a brewer's excise tax liability and verify tax claims, and verify that beer is produced, packaged, stored, shipped, and transferred in accordance with the relevant Federal laws and regulations.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is increasing the estimated number of annual respondents and responses to this information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 15,380.
- *Average Responses per Respondent:* 1 (one) per year.
- *Number of Responses:* 15,380.
- *Average Per-response and Total Burden:* This information collection consists of usual and customary records kept by respondents during the normal course of business, regardless of any regulatory requirement to do so. As such, under the OMB regulations at 5 CFR 1320.3(b)(2), this information collection imposes no additional burden on respondents.

OMB Control No. 1513–0059

Title: Usual and Customary Business Records Relating to Tax-Free Alcohol.

TTB Recordkeeping Number: TTB REC 5150/3.

Abstract: In general, the IRC at 26 U.S.C. 5001 imposes Federal excise tax on distilled spirits produced in or imported into the United States, but, under sections 26 U.S.C. 5214(a)(2) and (a)(3), distilled spirits may be withdrawn free of tax for nonbeverage purposes for use by Federal, State, and local governments, and for use by certain educational organizations and institutions, research laboratories, hospitals, blood banks, sanitariums, and nonprofit clinics, subject to regulations prescribed by the Secretary. In addition, the IRC at 26 U.S.C. 5275 requires persons that procure or use distilled spirits withdrawn free of tax under those sections to keep records and make reports regarding the receipt and use of such spirits as required by regulation. Under that IRC authority, the TTB regulations in 27 CFR part 22 require tax-free alcohol users to maintain certain usual and customary business records regarding the inventory, receipt, and disposition of such alcohol. TTB uses the collected information to account for tax-free spirits and detect their diversion to taxable beverage use.

Current Actions: There are no program changes to this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is decreasing the estimated number of annual respondents, responses, and total burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 5,050.
- *Average Responses per Respondent:* 1 (one) per year.
- *Number of Responses:* 5,050.
- *Average Per-response and Total Burden:* This information collection consists of usual and customary records kept by respondents during the normal course of business, regardless of any regulatory requirement to do so. As such, under the OMB regulations at 5 CFR 1320.3(b)(2), this information collection imposes no additional burden on respondents.

OMB Control No. 1513–0062

Title: Usual and Customary Business Records Relating to Denatured Spirits.

TTB Recordkeeping Number: TTB REC 5150/1.

Abstract: Denatured distilled spirits, which generally are not subject to Federal excise tax, may be used for industrial purposes in the manufacture of nonbeverage products. To prevent diversion of denatured spirits to taxable beverage use, the IRC at 26 U.S.C. 5271–5275 imposes a system of permits, bonds, recordkeeping, and reporting requirements on persons that procure or use such alcohol and authorize the Secretary to issue regulations regarding those matters. Under those authorities, the TTB regulations in 27 CFR part 20 require industrial alcohol users to keep certain usual and customary business records regarding the procurement, distribution, and use of denatured spirits. To protect the revenue, TTB uses the required records to account for denatured spirits and ensure compliance with statutory and regulatory requirements.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is increasing the estimated number of annual respondents and responses to this information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 5,770.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 5,770.
- *Average Per-response and Total Burden:* None. This information collection consists of usual and customary records kept by respondents during the normal course of business,

regardless of any regulatory requirement to do so. As such, under the OMB regulations at 5 CFR 1320.3(b)(2), this information collection imposes no additional burden on respondents.

OMB Control No. 1513–0071

Title: Tobacco Products Importer or Manufacturer—Records of Large Cigar Wholesale Prices.

TTB Recordkeeping Number: TTB REC 5230/1.

Abstract: In general, the IRC at 26 U.S.C. 5701 imposes Federal excise taxes on tobacco products and cigarette papers and tubes, and, as described at 26 U.S.C. 5701(a)(2), the excise tax on large cigars is based on a percentage of the price at which such cigars are sold by the manufacturer or importer. The IRC at 26 U.S.C. 5741 also requires every manufacturer and importer of tobacco products to keep records in such manner as the Secretary prescribes by regulation. Under those authorities, the TTB regulations at 27 CFR 40.187 and 41.181 require that manufacturers and importers of large cigars maintain certain records regarding the price for which those cigars are sold. TTB uses the collected information to verify that the appropriate amount of excise tax is paid on large cigars.

Current Actions: There are no program changes or adjustments associated with this information collection at this time, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 300.
- *Average Responses per Respondent:* 1 (one) per year.
- *Number of Responses:* 300.
- *Average Per-response Burden:* 2.33 hours.
- *Total Burden:* 699 hours.

OMB Control No. 1513–0085

Title: Principal Place of Business Address and Place of Production Coding on Beer and Malt Beverage Labels.

TTB Recordkeeping Number: TTB REC 5130/5.

Abstract: Under the authority of the IRC at 26 U.S.C. 5412 and the Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e), the TTB regulations require consumer containers of beer to be marked with the name and address of the brewer. In the case of multi-plant brewers, the TTB regulations in 27 CFR parts 7 and 25 allow such brewers to label beer containers with their principal place of business, provided that the brewer also places a code on each beer container indicating its actual place of production. This option allows multi-plant brewers to use identical labels at all their breweries. The labeling of beer containers with the producer's name and place of production is a usual and customary business practice undertaken by brewers to identify their products to consumers and facilitate recall of adulterated products. In addition, TTB uses the required information to verify tax refund claims for the loss or destruction of beer.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, TTB is decreasing the estimated number of annual respondents to this information collection but is increasing its number of annual responses and its average number of responses per respondent.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 1,280.
- *Average Responses per Respondent:* 2.4.
- *Number of Responses:* 3,072.
- *Average Per-response and Total Burden:* None. This information collection consists of usual and customary labeling practices undertaken by respondents during the normal course of business, regardless of any regulatory requirement to do so. As such, under the OMB regulations at 5 CFR 1320.3(b)(2), this information collection imposes no additional burden on respondents.

OMB Control No. 1513–0086

Title: Marks on Brewery Equipment and Structures (TTB REC 5130/3), and Marks and Labels on Containers of Beer (TTB REC 5130/4).

TTB Recordkeeping Numbers: TTB REC 5130/3 and TTB REC 5130/4.

Abstract: Under the authority of chapter 51 of the IRC, the TTB regulations in 27 CFR part 25 require brewers to place certain marks, signs, and measuring devices on their equipment and structures, and to place certain brands, labels, and marks on bulk and consumer containers of beer and other brewery products. The required information identifies the use, capacity, and contents of brewery equipment and structures, as well as taxable brewery products and the responsible taxpayer. TTB uses the required information to ensure effective administration of the IRC's provisions regarding brewery operations and products.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is increasing the estimated number of annual respondents and responses to this information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 15,380.
- *Average Responses per Respondent:* 1 (one) per year.
- *Number of Responses:* 15,380.
- *Average Per-response and Total Burden:* This information collection consists of usual and customary records kept by respondents during the normal course of business, regardless of any regulatory requirement to do so. As such, under the OMB regulations at 5 CFR 1320.3(b)(2), this information collection imposes no additional burden on respondents.

OMB Control No. 1513–0095

Title: Application for Registration for Tax-Free Firearms and Ammunition Transactions Under 26 U.S.C. 4221.

TTB Form Number: TTB F 5300.28.

Abstract: The IRC at 26 U.S.C. 4181 imposes a Federal excise tax on the sale of firearms and ammunition sold by manufacturers, producers, and importers. However, under 26 U.S.C. 4221, no tax is imposed on certain sales of firearms and ammunition, provided that the seller and purchaser of the articles (with certain exceptions) are registered as required by 26 U.S.C. 4222 and regulations prescribed by the Secretary. Under those authorities, the TTB regulations at 27 CFR 53.140 prescribe the use of TTB F 5300.28 as the application to obtain an approved Certificate of Registry to sell or purchase firearms and ammunition tax free. Also, once registered, respondents amend their registration information by filing a revised TTB F 5300.28 or a letterhead notice. TTB uses the collected information to determine if the respondent is qualified to engage in tax-free sales of firearms and ammunition.

Current Actions: There are no program changes to this information collection, and TTB is submitting for extension purposes only. As for adjustments, due to a change in agency estimates, TTB is decreasing the estimated number of annual

respondents, total responses, and burden hours associated with this information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits; State, local, and tribal governments.

Estimated Annual Burden

- *Number of Respondents:* 85.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 85.
- *Average Per-response Burden:* 3 hours.
- *Total Burden:* 255 hours.

OMB Control No. 1513–0119

Title: Certification of Proper Cellar Treatment for Imported Natural Wine.

Abstract: Under the IRC at 26 U.S.C. 5382, importers of natural wine produced after December 31, 2004, must provide the Secretary with a certification, accompanied by an affirmed laboratory analysis, that the practices and procedures used to produce the wine constitute proper cellar treatment unless exempted by international agreement or affiliation with a domestic winery. In addition, the FAA Act at 27 U.S.C. 205 vests the Secretary with authority to prescribe regulations regarding the identity and quality of alcohol beverages. Under those authorities, the TTB wine labeling regulations in 27 CFR part 4 and its alcohol beverage import regulations in 27 CFR part 27 implement the IRC's statutory requirement.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to a change in agency estimates, TTB is increasing the estimated number of annual responses, average number of responses per respondent, and burden hours associated with this information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 20.
- *Average Responses per Respondent:* 3.25.
- *Number of Responses:* 65.
- *Average Per-response Burden:* 20 minutes.
- *Total Burden:* 22 hours.

OMB Control No. 1513–0127

Title: Petitions to Establish or Modify American Viticultural Areas.

Abstract: The FFA Act at 27 U.S.C. 205(e) authorizes the Secretary to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages to prohibit consumer deception, the use of misleading statements, and provide adequate information as to the identity and quality of the product. Under that FAA Act authority, TTB regulates the use of appellations of origin on wine labels, including the use of American viticultural area (AVA) names. Specific to this information collection, the TTB regulations in 27 CFR part 9 specify the information to be included in petitions to create or modify AVAs. TTB uses the provided information to evaluate a petitioner's proposal and, if accepted for rulemaking, draft a notice of proposed rulemaking requesting public comment regarding the creation of a new AVA or the amendment of the name, boundary, or other terms of an existing AVA.

Current Actions: There are no program changes to this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is decreasing the estimated number of annual respondents, responses, and total burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits; Individuals or households.

Estimated Annual Burden

- *Number of Respondents:* 12.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 12.
- *Average Per-response Burden:* 130 hours.
- *Total Burden:* 1,560 hours.

OMB Control No. 1513–0138

Title: Tax Class Statement Required on Hard Cider Labels.

Abstract: In general, the IRC at 26 U.S.C. 5041 imposes six Federal excise tax rates on wine based on a wine's alcohol and carbon dioxide content. The lowest rate is that for hard cider tax as listed in section 5041(b)(6), while section 5041(g) defines the products eligible for the hard cider tax rate. Under the authority of the FAA Act, TTB's wine labeling regulations in 27 CFR part 4 allow the term ''hard cider'' to appear on the labels of products that do not meet the IRC's definition of hard cider for tax purposes. In light of that difference, in order to adequately identify products eligible for the hard cider tax rate, the TTB regulations in 27 CFR parts 24 and 27 provide that the tax class statement, ''Tax class 5041(b)(6),'' appear on containers of domestic and imported hard cider, respectively, which are eligible for that tax rate. The placement of such a statement on such labels identifies the product for Federal excise tax purposes without affecting other marketing information on the label.

Current Actions: There are no program changes or adjustments associated with this information collection at this time, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 20.
- *Average Responses per Respondent:* 2 per year.
- *Number of Responses:* 40.
- *Average Per-response Burden:* 1 hour.
- *Total Burden:* 40 hours.

OMB Control No. 1513–0139

Title: Record of Carbon Dioxide Measurement in Effervescent Products Taxed as Hard Cider.

Abstract: In general, the IRC at 26 U.S.C. 5041 lists six tax rates on wine that vary by their alcohol and carbon dioxide content. Under that section, wines with more than 0.392 grams of carbon dioxide per 100 milliliters are taxed as effervescent wine at $3.30 per gallon if artificially carbonated or $3.40 per gallon if naturally carbonated. However, under that section, certain apple- and pear-based wines are subject to the hard cider tax rate of $0.226 per gallon if the product contains no more than 0.64 grams of carbon dioxide per 100 milliliters of wine and does not exceed 8.5 percent alcohol by volume. Given the significant difference in those excise tax rates which, in part, depend on the level of a wine's effervescence, the TTB regulations at 27 CFR 24.302 require proprietors who produce or receive effervescent hard cider to record the amount of carbon dioxide in the product. This recordkeeping requirement is necessary to allow TTB to verify a respondent's compliance with the statutory definition of wine eligible for the hard cider tax rate.

Current Actions: There are no program changes or adjustments associated with this information collection at this time, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 50.
- *Average Responses per Respondent:* 2.
- *Number of Responses:* 100.
- *Average Per-response Burden:* 1 hour.
- *Total Burden:* 100 hours.

OMB Control No. 1513–0142

Title: CBMA Imports Refund Program—Foreign Producer Registration and Assignment System, and CBMA Importer Refund Claims System.

Abstract: The IRC at 26 U.S.C. 5001, 5041, and 5051 imposes Federal excise tax on, respectively, distilled spirits, wine, and beer produced in or imported into the United States, while certain quantities of those products are eligible for lower excise taxes under the Craft Beverage Modernization Act (CBMA). For imported products, rather than receiving CBMA tax benefits at the time of entry, U.S. alcohol beverage importers are required to pay the full excise tax rate to U.S. Customs and Border Protection and then subsequently submit refund claims to TTB to receive their assigned CBMA tax benefits. Under the IRC at 26 U.S.C. 5001(c), 5041(c), and 5051(a), a U.S. importer will only be eligible for CBMA tax benefits if a foreign producer has elected to assign, and the importer has elected to receive, such benefits in accordance with regulations and procedures issued by the Secretary. Finally, under 26 U.S.C. 6038E, foreign producers electing to make such assignments are required to provide the information the Secretary requires by regulation, including ownership information relating to such producers. Under those IRC authorities, the TTB regulations in 27 CFR part 27 establish procedures for foreign producers to assign CBMA tax benefits to U.S. importers, and for U.S. importers to receive those assignments and submit their CBMA tax benefit refund claims to TTB. This information collection is required to ensure that the IRC provisions regarding CBMA tax benefit refund claims for U.S. alcohol importers are appropriately applied, including for confirming an importer's eligibility for a refund.

Current Actions: There are no program changes at this time, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is decreasing the estimated number of annual respondents, responses, and burden hours for this information collection, but is increasing its estimated average number of annual responses per respondent.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 12,000.
- *Average Responses per Respondent:* 2.75.
- *Number of Responses:* 33,000.
- *Average Per-response Burden:* 2 hours.
- *Total Burden:* 66,000 hours.

OMB Control No. 1513–0143

Title: Combined Alcohol Excise Tax Returns and Operations Reports—Pilot Test.

TTB Form Numbers: TTB F 5130.Pilot–A and TTB F 5130.Pilot–B.

Abstract: Under the IRC at 26 U.S.C. 5061, the Federal excise tax on distilled spirits, wine, and beer is collected on the basis of a return which taxpayers file on a semi-monthly, quarterly, or annual basis, depending on the amount of their annual tax liability. In addition, under the IRC at 26 U.S.C. 5207, 5367, and 5415, taxpayers for distilled spirits, wine, and beer respectively, must furnish operations reports as the Secretary prescribes by regulation. Under those IRC authorities, the TTB regulations in 27 CFR chapter I currently require alcohol excise taxpayers to report their excise tax liability using form TTB F 5000.24, Excise Tax Return, approved under OMB No. 1513–0083, while those taxpayers separately file operations reports using various forms approved under various OMB control numbers to account for their production, removals, losses, and certain other matters that affect their excise tax liability. As part of TTB's efforts to lower respondent burden, the Bureau is developing combined tax returns and simplified operations report for each alcohol beverage commodity and intends to pilot their use with its taxpayers. Under this pilot, alcohol excise taxpayers will submit a letterhead application to join the pilot program as an alternative to filing their current tax return and operations reports under existing regulatory requirements. Once approved, taxpayers participating in the pilot program will file their combined alcohol excise return and simplified operations report under the due dates currently applicable to their excise tax returns. The collected information allows TTB to identify the excise taxpayer, the amount of taxes due, and the amount of payments made, as well as operational activities that affect the amount of alcohol excise taxes due, while reducing the overall burden of filing separate tax returns and operations reports.

Current Actions: TTB is currently piloting a combined excise tax return and operations report forms for brewers. There are no program changes or adjustments associated with this collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 10,000.
- *Average Responses per Respondent:* 5.8.
- *Number of Responses:* 58,000.
- *Average Per-response Burden:* 1.0 hour.
- *Total Burden:* 58,000 hours.

Dated: October 1, 2026.

Amy R. Greenberg,

Acting Assistant Administrator, Headquarters Operations.

[FR Doc. 2026–20417 Filed 10–5–26; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: This action was issued on October 1, 2026. See **SUPPLEMENTARY INFORMATION** for relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, 202–622–2420; Assistant Director for Licensing, 202–622–2480; Assistant Director for Sanctions Compliance, 202–622–2490; or *https://ofac.treasury.gov/contact-ofac.*

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website: *https://ofac.treasury.gov.*

Notice of OFAC Actions

On October 1, 2026, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. HAMEDANI, Mehnoosh Poursaraf (Arabic: مهنوش پورصراف همدانی), China; DOB 07 Mar 1984; POB Qom, Iran; nationality Iran; alt. nationality Dominica; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Female; National ID No. 0058172041 (Iran) (individual) [IRAN-EO13871] (Linked To: SHANGHAI RUIMI IMPORT AND EXPORT TRADE CO., LTD.).

   Designated pursuant to section 1(a)(v) of Executive Order 13871 of May 8, 2019, 84 FR 20761, "Imposing Sanctions With Respect to the Iron, Steel, Aluminum, and Copper Sectors of Iran," ("E.O. 13871") for having acted or purported to act for or on behalf of, directly or indirectly, SHANGHAI RUIMI IMPORT AND EXPORT TRADE CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13871.

2. KESHVARDOUST, Ramin (Arabic: رامین کشوردوست), Hong Kong, China; DOB 20 May 1983; POB Tehran, Iran; nationality Iran; alt. nationality Dominica; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Passport W55497664 (Iran) expires 27 Dec 2026; National ID No. 0063416611 (Iran) (individual) [IRAN-EO13871].

   Designated pursuant to section 1(a)(i) of Executive Order 13871 for operating in the iron, steel, aluminum, or copper sector of Iran, or being a person that owns, controls, or operates an entity that is part of the iron, steel, aluminum, or copper sector of Iran.

Entities

1. ISLAMIC REPUBLIC OF IRAN RAILWAY COMPANY (Arabic: شركت راه آهن جمهوري اسلامي ايران سهامي خاص) (a.k.a. THE RAILWAYS OF ISLAMIC REPUBLIC OF IRAN COMPANY), Ground Floor, Railway Central Building, No. 0, Dadman Boulevard, Argentina Square, District 6, Tehran, Tehran Province, Iran; Website www.rai.ir; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 31 Jul 1988; Company Number 10101155744 (Iran); Registration Number 70644 (Iran) [IRAN-EO13902].

   Designated pursuant to section 1(a)(i) of Executive Order 13902 of January 10, 2020, "Imposing Sanctions With Respect to Additional Sectors of Iran," 85 FR 2003, 3 CFR, 2020 Comp., p. 299 (E.O. 13902), for operating in the rail sector of the Iranian economy.

2. RAJA PASSENGER TRAINS COMPANY (Arabic: شركت قطارهای مسافری رجاء) (a.k.a. RAJA RAIL TRANSPORTATION COMPANY), No. 159, Karim Khan Zand St., Sanaee St. Intersection, Tehran, Iran; Website www.raja.ir; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 1996; Company Number 10100029590 (Iran); Registration Number 128209 (Iran) [IRAN-EO13902].

   Designated pursuant to section 1(a)(i) of E.O 13902 for operating in the rail sector of the Iranian economy.

3. SHERKAT-E RAH AHAN-E KHAMLE-O-NAGHLE (Arabic: شركت راه آهن حمل و نقل سهامي خاص) (a.k.a. "RAILWAY TRANSPORTATION COMPANY"), No. 124, Nosrat Street, North Kargar Street, District 6, Tehran, Tehran Province, Iran; Website http://rwt.ir/; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 16 Mar 1993; Company Number 10101402621 (Iran); Registration Number 96201 (Iran) [IRAN-EO13902].

   Designated pursuant to section 1(a)(i) of E.O 13902 for operating in the rail sector of the Iranian economy.

4. FIDAR FOOLAD RADMAN (Arabic: شركت فيدار فولاد رادمان), No. 35, 2nd Floor, Northeast Unit, Raz Boulevard, Ammar Street, Farmanieh, Tehran, Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 17 Apr 2018; National ID No. 14007529243 (Iran); Registration Number 525217 (Iran) [IRAN-EO13871] (Linked To: KESHVARDOUST, Ramin).

   Designated pursuant to section 1(a)(v) of E.O. 13871 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, RAMIN KESHVARDOUST, a person whose property and interests in property are blocked pursuant to E.O. 13871.

5. M AND R STEEL CO., LTD. (a.k.a. BEIJING M & R STEEL CO., LTD. (Chinese Simplified: 北京润达森进出口贸易有限公司)), Unit 3005, Building 5,

Wanda Plaza No. 93, Jian'guo Road, Chaoyang District, Beijing 100022, China; Organization Established Date 16 Apr 2008; Unified Social Credit Code (USCC) 91110105674279546N (China) [IRAN-EO13871] (Linked To: KESHVARDOUST, Ramin).

Designated pursuant to section 1(a)(v) of E.O. 13871 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, RAMIN KESHVARDOUST, a person whose property and interests in property are blocked pursuant to E.O. 13871.

6. SHANGHAI RUIMI IMPORT AND EXPORT TRADE CO., LTD. (Chinese Simplified: 上海睿弥进出口贸易有限公司), 1125, No. 35 Rijing Road, China Pilot Free Trade Zone, Shanghai 200000, China; Organization Established Date 29 Jan 2019; Unified Social Credit Code (USCC) 91310115MA1K49TG93 (China) [IRAN-EO13871] (Linked To: KESHVARDOUST, Ramin).

   Designated pursuant to section 1(a)(v) of E.O. 13871 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, RAMIN KESHVARDOUST, a person whose property and interests in property are blocked pursuant to E.O. 13871.

7. TECH-TRADE INTERNATIONAL IMPEX GMBH, Engelbertstrasse 13a, Hilden 40724, Germany; Organization Established Date 29 Nov 2017; Trade License No. HRB 82099 (Germany); Registration Number DER1101.HRB82099 (Germany) [IRAN-EO13871] (Linked To: ESFAHAN'S MOBARAKEH STEEL COMPANY).

   Designated pursuant to section 1(a)(iv) of E.O. 13871 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, ESFAHAN'S MOBARAKEH STEEL COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13871.

8. TRACO INTERNATIONAL FZE (Arabic: تراكو إنترنا□ونا□ م.م.ح), Ras Al Khaimah, United Arab Emirates; Organization Established Date 17 Oct 2021; License 5024613 (United Arab Emirates); Economic Register Number (CBLS) 11769621 (United Arab Emirates) [IRAN-EO13871].

   Designated pursuant to section 1(a)(i) of E.O. 13871 for operating in the iron, steel, aluminum, or copper sector of Iran, or being a person that owns, controls, or operates an entity that is part of the iron, steel, aluminum, or copper sector of Iran.

9. HEAVY EQUIPMENT PRODUCTION COMPANY (Arabic: هپکو سنگین تجهیزات تولید شرکت□) (a.k.a. "HEPCO"), Ground Floor, No. 102 Somayyeh Street, Ramsar Street, Government Gate, Tehran, Tehran 1581875513, Iran; HEPCO Manufacturing Complex, Shahid Bakhtiari Boulevard, San'at Square, Arak, Markazi, Iran; Website https://hepcoir.com; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 22 Feb 1973; Company Number 10100594509 (Iran); Registration Number 16584 (Iran) [IRAN-EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the manufacturing sector of the Iranian economy.

10. HEPCO SHANGHAI CO., LTD. (Chinese Simplified: 赫世浦上海机械贸易有限公司) (a.k.a. HESHIPU SHANGHAI MACHINERY TRADING CO., LTD; a.k.a. SHANGHAI HEPCO LTD.), Room C-25, 6th Floor, Building 1, No. 198, Huashen Road, China (Shanghai) Pilot Free Trade Zone, Pudong New Area, Shanghai 200135, China; Block E, 16 F, Huadu Mansion, No. 858 Zhangyang Rd., Shanghai 200135, China; Organization Established Date 31 May 2011; Enterprise Number 3100574132491 (China); Registration Number 310115400269442 (China); Unified Social Credit Code (USCC) 913100005741324917 (China) [IRAN-EO13902] (Linked To: HEAVY EQUIPMENT PRODUCTION COMPANY).

    Designated pursuant to section 1(a)(iv) of E.O. 13902 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, HEAVY EQUIPMENT PRODUCTION COMPANY.

11. HESSENBERG CO., LIMITED (Chinese Traditional: 海森堡有限公司) (a.k.a. JEDBURGH CO., LIMITED (Chinese Traditional: 傑德堡有限公司)), 1320, Unit A, 13/F Wing Tai Centre, 12 Hing Yip Street, Kowloon, Hong Kong, China; Organization Established Date 10 May 2023; Trade License No. 3277708 (Hong Kong); Business Registration Number 75302415 (Hong Kong) [IRAN-EO13902].

    Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the automotive sector of the Iranian economy.

12. NIROO MOTOR DAMAVAND COMPANY, (Arabic: ركت نيرو موتور دماوند) 3rd Floor, No. 127, Khaled Islambouli Street, Shahid Masoud Ahmadian Street, Argentina-Saei, Tehran 1513833115, Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 14 Mar 2017; National ID No. 14006666240 (Iran); Business Registration Number 507567 (Iran); Registration Number 411546754799 (Iran) [IRAN-EO13902].

    Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the automotive sector of the Iranian economy.

13. NIROO MOTOR SHIRAZ INDUSTRIAL AND MANUFACTURING COMPANY (Arabic: ركت توليدى و صنعتى نيرو موتور□يراز) (a.k.a. NIROO MOTOR COMPANY), Beheshti Street, No. 69, Niroo Motor Building, Tehran, Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 11 Mar 2003; National ID No. 10102422801 (Iran); Business Registration Number 200521 (Iran); Registration Number 411134851895 (Iran) [IRAN-EO13902].

    Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the automotive sector of the Iranian economy.

14. PT GOLDEN MOTORCYCLE INTERNATIONAL (a.k.a. GOLDEN MOTORCYCLE INTERNATIONAL LTD), GKM Green Tower Lantai 20, Jalan TB Simatupang Kav. 89G, Kota Admin. Jakarta Selatan, DKI Jakarta 12520, Indonesia; J1. Raya Narogong No. 22, Tlajung Udik, Kec. Klapanunggal, Kabupaten Bogar, Jawa Barat 16710, Indonesia; Website https://goldenmotorcycle.id; Tax ID No. 0626345219017000 (Indonesia) [IRAN-EO13902].

    Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the automotive sector of the Iranian economy.

15. TANEX GLOBAL TRADING HONG KONG LIMITED, Room D10 9/F, Camelpaint Building Block 2, 62 Hoi Yuen Road, Kwun Tong, Kowloon, Hong Kong, China; Organization Established Date 13 Jul 2021; Company Number 3066901 (Hong Kong); Business Registration Number 73176480 (Hong Kong) [IRAN-EO13902].

    Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the automotive sector of the Iranian economy.

16. TROY TRADING ARAC PARCALARI SANAYI VE TICARET LIMITED SIRKETI (Latin: TROY TRADİNG ARAÇ PARÇALARI SANAYİ VE TİCARET LİMİTED ŞİRKETİ), Tahtakale Mah. Firat 1, Cad. Bahce City Sitesi B Blok No: 4/1 IC Kapi N: 57, Avicilar, Istanbul, Turkey; Website www.troytrading.com.tr; Organization Established Date 21 Mar 2019; Tax ID No. 8591058042 (Turkey); Chamber of Commerce Number 1175145 (Turkey); Registration Number 185360-5 (Turkey) [IRAN-EO13902].

    Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the automotive sector of the Iranian economy.

17. IRAN KHODRO COMPANY (Arabic: شرکت ایران خودرو سهامی عام) (a.k.a. IRAN KHODRO INDUSTRIAL GROUP COMPANY; a.k.a. IRAN KHODRO INDUSTRIAL GROUP COMPANY PUBLIC JOINT STOCK), No. 1 Door, Iran Khodro Blvd, (Kilometer 14 of Karaj Special Road), Tehran-Karaj Special Road, District 21, Tehran, Tehran, Iran; PO Box 13895-111, Tehran, Tehran, Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 01 Sep 1962; National ID No. 10100360794 (Iran); Registration Number 8352 (Iran) [IRAN-EO13902].

    Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the automotive sector of the Iranian economy.

18. IRAN KHODRO DIESEL COMPANY (Arabic: شرکت ایران خودرو دیزل سهامی عام), Iran Khodro Diesel Boulevard, 14th km, Azadegan Beltway, P.O. Box: 13185-736, Tehran, Iran; Ground Floor, No 480, Sa'idi Expy (Chahardangeh City - Gol Sahra - Shohadaye Iran Khodro Diesel Blvd), Fourth Division, Eslamshahr, Tehran, Tehran, Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 05 Mar 1960; National ID No. 10100326014 (Iran); Registration Number 7174 (Iran) [IRAN-EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the automotive sector of the Iranian economy.

19. PARS KHODRO COMPANY (Arabic: شركت پارس خودرو سهامی علم) (a.k.a. PARS KHODRO PUBLIC JOINT STOCK COMPANY), Pars Khodro Complex, KM 9 Special Road, Tehran-Karaj Special Road, District 21, Tehran, Tehran, Iran; PO Box 13445 377, Tehran, Tehran, Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 21 Mar 1956; National ID No. 10100599444 (Iran); Registration Number 16832 (Iran) [IRAN-EO13902].

    Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the automotive sector of the Iranian economy.

20. SAIPA IRANIAN AUTOMOBILE MANUFACTURING COMPANY (Arabic: شركت ايرانى توليد اتومبيل سايپا سهامى عام) (a.k.a. IRANIAN AUTOMOBILE MANUFACTURING COMPANY SAIPA PUBLIC JOINT STOCK; a.k.a. SAIPA HOLDING COMPANY), Ground Floor, No 0, 53rd Street (Tehran Expressway - Karaj Shahid Famideh), Vila Shahr, District 12, Tehran, Tehran, Iran; PO Box address 13445-1554, Tehran, Tehran, Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 06 Mar 1967; alt. Organization Established Date 1965; National ID No. 10100448712 (Iran); Registration Number 11331 (Iran) [IRAN-EO13902].

    Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the automotive sector of the Iranian economy.

21. ZAMYAD COMPANY (Arabic: شركت زامياد سهامی علم) (a.k.a. ZAMYAD PUBLIC JOINT STOCK COMPANY), Km 15 Fath Expressway (Karaj Tehran Old Road), District 21, Tehran, Tehran, Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 06 May 1963; National ID No. 10100370594 (Iran); Registration Number 8682 (Iran) [IRAN-EO13902].

    Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the automotive sector of the Iranian economy.

22. BONASOL GROUP CO., LIMITED (a.k.a. "LIDA SHINE GROUP LIMITED"), Unit 2610, 26/F, Apec Plaza, 49 Hoi Yuen Road, Kowloon, Hong Kong, China; Organization Established Date 18 Jul 2023; Business Registration Number 75524718 (Hong Kong) [IRAN-EO13902].

    Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the financial sector of the Iranian economy.

23. DOMINION TRADING GROUP LIMITED (a.k.a. "XINYI INTERNATIONAL DEVELOPMENT CO., LIMITED"), Rm 40H, Blk AD, 19/F, Golden Bear Ind. Ctr., 66-82 Chai Wan Kok St., Tsuen Wan, Hong Kong, China; Organization Established Date 23 Oct 2024; Business Registration Number 77222102 (Hong Kong) [IRAN-EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the financial sector of the Iranian economy.

24. EAST CONCORD DEVELOPMENT LIMITED, Rm 2610, 26/F, Apec Plz, 49 Hoi Yuen Rd, Kwun Tong, Hong Kong, China; Organization Established Date 10 Oct 2024; Business Registration Number 77164714 (Hong Kong) [IRAN-EO13902].

    Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the financial sector of the Iranian economy.

25. KGT TRADING LIMITED, Room 31, 1/F, Shing Lee Commercial Building, 8 Wing Kut Street, Central, Hong Kong, China; Organization Established Date 08 Jan 2024; Business Registration Number 76093900 (Hong Kong) [IRAN-EO13902].

    Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the financial sector of the Iranian economy.

26. MEIZI CO., LIMITED, Rm 205, 2/F, Kwong On Bank Mongkok Branch Bldg Unit C, 728-730 Nathan Rd, Mongkok, Hong Kong, China; Organization Established Date 16 Dec 2024; Business Registration Number 77473995 (Hong Kong) [IRAN-EO13902].

    Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the financial sector of the Iranian economy.

27. INTEGRATED AUTO PARTS LLC (Arabic: انتجريتد لقطع غيار السيارات ذ م م), Office No 1708, Burj Khalifa, Bur Dubai, Dubai, United Arab Emirates; Website http://iap.ae/; Organization Established Date 04 Apr 1999; License 510808 (United Arab Emirates); Chamber of Commerce Number 53473 (United Arab Emirates); Registration Number 52576 (United Arab Emirates); Economic Register Number (CBLS) 10800499 (United Arab Emirates) [IRAN-EO13902].

    Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the automotive sector of the Iranian economy.

28. SILVER LINE METAL TRADING LLC (Arabic: سيلفر لاين لتجارة المعادن ذ م م), Office 2813, Burj Khalifa, Bur Dubai, Dubai, United Arab Emirates; Organization Established Date 27 Oct 2019; License 860601 (United Arab Emirates); Chamber of Commerce Number 330015 (United Arab Emirates); Registration Number 1462050 (United Arab Emirates); Economic Register Number (CBLS) 11429991 (United Arab Emirates) [IRAN-EO13871].

    Designated pursuant to section 1(a)(i) of Executive Order 13871 of May 10, 2019, for operating in the iron, steel, aluminum, or copper sector of Iran, or being a person that owns, controls, or operates an entity that is part of the iron, steel, aluminum, or copper sector of Iran.

(Authorities: E.O. 13871; E.O. 13902)

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2026–20475 Filed 10–5–26; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of this entity are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: This action was issued on October 1, 2026. See **SUPPLEMENTARY INFORMATION** for relevant dates.

FOR FURTHER INFORMATION CONTACT: *OFAC:* Associate Director for Global Targeting, 202–622–2420; Assistant Director for Licensing, 202–622–2480; Assistant Director for Sanctions Compliance, 202–622–2490 or *https://ofac.treasury.gov/contact-ofac.*

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website: *https://ofac.treasury.gov.*

Notice of OFAC Action

On October 1, 2026, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person are blocked under the relevant sanctions authorities listed below.

Entity

1. A7 NETWORK, Russia; Kyrgyzstan; Nigeria; Zimbabwe; Organization Established Date 2024; Target Type Criminal Organization [TCO].

Designated pursuant to section 1(a)(ii)(A) of Executive Order 13581 of July 24, 2011, ''Blocking Property of Transnational Criminal Organizations,'' 76 FR 44757 (July 27, 2011), as amended by Executive Order 13863 of March 15, 2019, ''Taking Additional Steps to Address the National Emergency With Respect to Significant Transnational Criminal Organizations,'' 84 FR 10255 (March 19, 2019) (''E.O. 13581, as amended'') for being a foreign person that constitutes a significant transnational criminal organization.

(Authorities: E.O. 13581, as amended)

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2026–20395 Filed 10–5–26; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: This action was issued on September 29, 2026. See **SUPPLEMENTARY INFORMATION** for relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, 202–622–2420; Assistant Director for Licensing, 202–622–2480; Assistant Director for Sanctions Compliance, 202–622–2490 or *https://ofac.treasury.gov/contact-ofac.*

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website: *https://ofac.treasury.gov.*

Notice of OFAC Actions

On September 29, 2026, OFAC determined that one or more persons identified below meet one or more of the criteria for the imposition of sanctions set forth in section 1(a)–(c) of Executive Order 14059 of December 15, 2021, ''Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade,'' 86 FR 71549 (E.O. 14059). OFAC has selected to impose blocking sanctions pursuant to section 2(a)(i) of E.O. 14059 on the persons identified below.

OFAC further determined that one or more persons identified below meet one or more of the criteria for sanctions pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism,'' 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, ''Modernizing Sanctions To Combat Terrorism,'' 84 FR 48041 (E.O. 13224, as amended).

As a result, the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. BUENROSTRO MARTIN, Rafael, Mexicali, Baja California, Mexico; DOB 28 Dec 1982; POB Baja California, Mexico; nationality Mexico; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P. BUMR821228HBCNRF02 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Sanctioned pursuant to section 1(b)(i) of E.O. 14059 for having provided, or attempted to provide, financial, material, or technological support for, or goods or services in support of, the Sinaloa Cartel, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. MENDIVIL GARCIA, Pedro Ariel, Mexicali, Baja California, Mexico; DOB 28 May 1972; POB Sonora, Mexico; nationality Mexico; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P. MEGP720528HSRNRD06 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Sanctioned pursuant to section 1(b)(i) of E.O. 14059 for having provided, or attempted to provide, financial, material, or technological support for, or goods or services in support of, the Sinaloa Cartel, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended,

for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. MORENO GOMEZ SANTELICES, Marco Antonio, Tijuana, Baja California, Mexico; DOB 09 Feb 1983; POB Baja California, Mexico; nationality Mexico; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P. MOGM830209HBCRMR02 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Sanctioned pursuant to section 1(b)(i) of E.O. 14059 for having provided, or attempted to provide, financial, material, or technological support for, or goods or services in support of, the Sinaloa Cartel, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. TORRES TORRES, Luis Alfonso, Tijuana, Baja California, Mexico; DOB 07 Sep 1960; POB Baja California, Mexico; nationality Mexico; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P. TOTL600907HBCRRS00 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Sanctioned pursuant to section 1(b)(i) of E.O. 14059 for having provided, or attempted to provide, financial, material, or technological support for, or goods or services in support of, the Sinaloa Cartel, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

5. TORRES TORRES, Carlos Alberto, Tijuana, Baja California, Mexico; DOB 18 Nov 1975; POB Baja California, Mexico; nationality Mexico; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P. TOTC751118HBCRRR06 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Sanctioned pursuant to section 1(b)(i) of E.O. 14059 for having provided, or attempted to provide, financial, material, or technological support for, or goods or services in support of, the Sinaloa Cartel, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

6. VILLELA GOMEZ SANTELICES, Carlos, Tijuana, Baja California, Mexico; DOB 29 Jun 1993; POB Baja California, Mexico; nationality Mexico; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P. VIGC930629HBCLMR08 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Sanctioned pursuant to section 1(b)(i) of E.O. 14059 for having provided, or attempted to provide, financial, material, or technological support for, or goods or services in support of, the Sinaloa Cartel, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

7. GASTELUM GARCIA, Hildegardo (a.k.a. ''Aldo''), Culiacan, Sinaloa, Mexico; DOB 29 Oct 1972; POB Sinaloa, Mexico; nationality Mexico; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P. GAGH721029HSLSRL09 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

8. ZAMBADA SICAIROS, Ismael (a.k.a. CICAIROS ZAMBADA, Ismael; a.k.a. SICAIROS AISPURO, Fernando; a.k.a. ''Mayito Flaco''), Sinaloa, Mexico; DOB 07 Mar 1982; POB Sinaloa, Mexico; alt. POB Anaheim, California, United States; nationality Mexico; alt. nationality United States; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P. ZASI820307HSLMCS04 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

9. CHAPOTIN VILLALBA, Diosvany Samuel (a.k.a. PICHON VIDAL, Lazaro), Cancun, Quintana Roo, Mexico; DOB 03 Jan 1978; POB Cuba; nationality Mexico; alt. nationality Cuba; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P. CAVD780103HNEHLS00 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Sanctioned pursuant to section 1(b)(i) of E.O. 14059 for having provided, or attempted to provide, financial, material, or technological support for, or goods or services in support of, the Sinaloa Cartel, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

10. RIVERA ZAZUETA, Jose Angel (a.k.a. RIVERA SALAS, Miguel Angel; a.k.a. ''El Flaco''), Mexico; DOB 15 Aug 1987; alt. DOB 15 Dec 1987; POB Sinaloa, Mexico; alt. POB Estado de Mexico, Mexico; nationality Mexico; citizen Mexico; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P.

RIZA870815HSLVZN00 (Mexico); alt. C.U.R.P. RISM871215HMCVLG00 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

11. CASTILLO MALDONADO, Lorenzo, Mexico; DOB 13 Dec 1975; POB Chihuahua, Mexico; nationality Mexico; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P. CAML751213HCHSLR08 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

12. FELIX RIVERA, Ilia Elizabeth, Tijuana, Baja California, Mexico; DOB 17 Jun 1984; POB Sinaloa, Mexico; nationality Mexico; Gender Female; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P. FERI840617MSLLVL00 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

13. HUEZO HERNANDEZ, Franklin Ernesto (a.k.a. ''El Ranchero''), Tijuana, Baja California, Mexico; DOB 13 Dec 1986; POB El Salvador; alt. POB Chiapas, Mexico; nationality Mexico; alt. nationality El Salvador; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P. HUHF861213HCSZRR09 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

14. MARTINEZ RODRIGUEZ, Pedro Humberto (a.k.a. ''Gordo Flubber''), Tijuana, Baja California, Mexico; Culiacan, Sinaloa, Mexico; DOB 02 Mar 1989; POB Sinaloa, Mexico; nationality Mexico; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P. MARP890302HSLRDD00 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

15. MENDOZA URIARTE, Francisco Javier, Tijuana, Baja California, Mexico; DOB 03 Feb 1984; POB Sinaloa, Mexico; nationality Mexico; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P. MEUF840203HSLNRR06 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

16. MENDOZA URIARTE, Jorge Luis (a.k.a. ''Guero Chompas''), Tijuana, Baja California, Mexico; DOB 19 Dec 1987; POB Sinaloa, Mexico; nationality Mexico; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P. MEUJ871219HSLNRR19 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

17. VERA AYALA, Jorge Mario, Tijuana, Baja California, Mexico; DOB 27 Apr 1985; POB Baja California, Mexico; nationality Mexico; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P. VEAJ850427HBCRYR08 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Sanctioned pursuant to section 1(b)(i) of E.O. 14059 for having provided, or attempted to provide, financial, material, or technological support for, or goods or services in support of, the Sinaloa Cartel, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

18. VERA AYALA, Jeronimo Javier, Tijuana, Baja California, Mexico; DOB 27 Apr 1985; POB Baja California, Mexico; nationality Mexico; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P. VEAJ850427HBCRYR16 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Sanctioned pursuant to section 1(b)(i) of E.O. 14059 for having provided, or attempted to provide, financial, material, or technological support for, or goods or services in support of, the Sinaloa Cartel, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

19. YOCUPICIO YOCUPICIO, Jesus Rafael (a.k.a. ''El Cabezon''), Tijuana, Baja California, Mexico; DOB 24 Oct 1988; POB Sonora, Mexico; nationality Mexico; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P. YOYJ881024HSRCCS04 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

20. ARZATE GARCIA, Alfonso (a.k.a. ''AQUILES''), Mexico; DOB 02 Dec 1973; POB Baja California, Mexico; nationality Mexico; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P. AAGA731202HBCRRL05 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

21. ARZATE GARCIA, Rene (a.k.a. ''LA RANA''), Mexico; DOB 11 Jun 1983; POB Baja California, Mexico; nationality Mexico; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P. AAGR830611HBCRRN02 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Entities

1. GALERIAS CENTRO CAMBIARIO, S.A. DE C.V. (a.k.a. MAGIC CASA DE CAMBIO), Tijuana, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 01 Nov 2011; Organization Type: Other financial service activities, except insurance and pension funding activities, n.e.c.; Folio Mercantil No. 33511 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: FELIX RIVERA, Ilia Elizabeth).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Ilia Elizabeth Felix Rivera, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Ilia Elizabeth Felix Rivera, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. MIA CENTRO CAMBIARIO, S.A. DE C.V., Mexicali, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 15 Nov 2011; Organization Type: Other financial service activities, except insurance and pension funding activities, n.e.c.; Folio Mercantil No. 38102 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: RIVERA ZAZUETA, Jose Angel).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jose Angel Rivera Zazueta, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jose Angel Rivera Zazueta, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. RIVOS SERVICIOS, S.A. DE C.V., Culiacan, Sinaloa, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 05 Mar 2015; Organization Type: Other transportation support activities; Folio Mercantil No. 84179 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: RIVERA ZAZUETA, Jose Angel).

Designated pursuant to section (1)(b)(iii): For being owned, controlled, or directed by, or having acted or purported to act for or on behalf of . . . RIVERA ZAZUETA, Jose Angel Designated pursuant to section 1(a)(iii)(A): Owned or Controlled by, or Acted For or on Behalf of, an SDGT.

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jose Angel Rivera Zazueta, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jose Angel Rivera Zazueta, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. SERVICIOS HOTELEROS GASTELUM, S.A. DE C.V., Culiacan, Sinaloa, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 03 Apr 2003; Organization Type: Short term accommodation activities; Folio Mercantil No. 180 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: GASTELUM GARCIA, Hildegardo).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Hildegardo Gastelum Garcia, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Hildegardo Gastelum Garcia, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

5. BAJA FIXER GROUP, S.A. DE C.V., Tijuana, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by

Executive Order 13886; Organization Established Date 21 Dec 2023; Organization Type: Real estate activities with own or leased property; Folio Mercantil No. N–2024074861 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: MORENO GOMEZ SANTELICES, Marco Antonio).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Marco Antonio Gomez Santelices, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Marco Antonio Gomez Santelices, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

6. CONCIERTOS Y ESPECTACULOS INHOUSE S.A.P.I. DE C.V., Tijuana, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 25 Jan 2023; Organization Type: Creative, arts and entertainment activities; Folio Mercantil No. N–2023100920 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: MORENO GOMEZ SANTELICES, Marco Antonio).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Marco Antonio Gomez Santelices, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Marco Antonio Gomez Santelices, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

7. FESTIVALES ARTISTAS MOBILIARIO ASESORIA, S.A. DE C.V. (a.k.a. PROMOCIONES CHF DE BAJA CALIFORNIA, S.A. DE C.V.), Tijuana, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 19 Feb 2021; Organization Type: Creative, arts and entertainment activities; Folio Mercantil No. N–2021012223 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: MORENO GOMEZ SANTELICES, Marco Antonio).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Marco Antonio Gomez Santelices, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Marco Antonio Gomez Santelices, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

8. GRUPO GASOLINERO NUEVA ESPERANZA, S. DE R.L. DE C.V., Mexicali, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 03 Mar 2006; Organization Type: Wholesale of solid, liquid and gaseous fuels and related products; Folio Mercantil No. 34113 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: MENDIVIL GARCIA, Pedro Ariel).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Pedro Ariel Medivil Garcia, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Pedro Ariel Medivil Garcia, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

9. HOLISTIC WELLWAVES S. DE R.L. DE C.V., Tijuana, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 24 Jun 2019; Organization Type: Retail sale of pharmaceutical and medical goods, cosmetic and toilet articles in specialized stores; Folio Mercantil No. N–2020009462 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: MORENO GOMEZ SANTELICES, Marco Antonio).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Marco Antonio Gomez Santelices, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Marco Antonio Gomez Santelices, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

10. INTELIPROOF EFFICIENT, S. DE R.L. DE C.V., Tijuana, Baja California, Mexico; website *iesecurity.com.mx;* Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 19 Oct 2020; Organization Type: Private security activities; R.F.C. IEF201019BY7 (Mexico); Folio Mercantil No. N–2020075511 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: MORENO GOMEZ SANTELICES, Marco Antonio).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Marco Antonio Gomez Santelices, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Marco Antonio Gomez Santelices, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

11. PRIVATE EQUITY BAJA S.A.P.I. DE C.V., Tijuana, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 20 Oct 2021; Organization Type: Other financial service activities, except insurance and pension funding activities, n.e.c.; Folio Mercantil No. N–2021082072 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: MORENO GOMEZ SANTELICES, Marco Antonio).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Marco Antonio Gomez Santelices, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Marco Antonio Gomez Santelices, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

12. PRIVATE EQUITY BURSATIL, S.A. DE C.V., Tijuana, Baja California, Mexico; Secondary sanctions risk:

section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 22 Jul 2022; Organization Type: Other financial service activities, except insurance and pension funding activities, n.e.c.; Folio Mercantil No. N–2022069640 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: MORENO GOMEZ SANTELICES, Marco Antonio).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Marco Antonio Gomez Santelices, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Marco Antonio Gomez Santelices, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

13. PROYECTO ALERTA VERDE, S.A.P.I. DE C.V., Hermosillo, Sonora, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 15 Feb 2018; Organization Type: Private security activities [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: MORENO GOMEZ SANTELICES, Marco Antonio).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Marco Antonio Gomez Santelices, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Marco Antonio Gomez Santelices, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

14. VIDEOVIGILANCIA COLABORATIVA, S.A.P.I. DE C.V., Hermosillo, Sonora, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 07 Nov 2018; Organization Type: Private security activities; Folio Mercantil No. N–2019000914 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: MORENO GOMEZ SANTELICES, Marco Antonio).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Marco Antonio Gomez Santelices, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Marco Antonio Gomez Santelices, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

15. WERMAK PUBLIRED, S.A. DE C.V., Tijuana, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 12 Jun 2023; Organization Type: Creative, arts and entertainment activities; Folio Mercantil No. N–2023089074 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: MORENO GOMEZ SANTELICES, Marco Antonio).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Marco Antonio Gomez Santelices, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Marco Antonio Gomez Santelices, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

16. CODESUAM, S. DE R.L. DE C.V., Tijuana, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 22 Jun 2017; Organization Type: Manufacture of industrial, electric and electronic machinery; Folio Mercantil No. N–2017056810 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: VERA AYALA, Jeronimo Javier).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jeromino Vera Ayala, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jeronimo Vera Ayala, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

17. DISTRIBUIDORA Y COMERCIALIZADORA ATAF (a.k.a. DISTRIBUIDORA Y COMERCIALIZADORA ATAF S.A.S.), Juarez, Chihuahua, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 20 Apr 2022; Organization Type: Wholesale and retail trade; Company Number SAS2022499192 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: TORRES TORRES, Luis Alfonso).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Luis Alfonso Torres Torres, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Luis Alfonso Torres Torres, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

18. EDIFIKA DESARROLLOS BAJA, S. DE R.L. DE C.V., Tijuana, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 01 Jul 2016; Organization Type: Real estate activities on a fee or contract basis; Folio Mercantil No. N–2016019967 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: TORRES TORRES, Luis Alfonso).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Luis Alfonso Torres Torres, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Luis Alfonso Torres Torres, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

19. GRUPO BAJA FIRME, S.A. DE C.V., Tijuana, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 18 Dec 2020; Organization Type: Growing of cereals (except rice), leguminous crops and oil seeds; Folio Mercantil No. N–2021045875 (Mexico) [SDGT] [ILLICIT–

DRUGS–EO14059] (Linked To: VERA AYALA, Jeronimo Javier).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jeromino Vera Ayala, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jeronimo Vera Ayala, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

20. LTHINGS MEXICO, S. DE R.L. DE C.V., Tijuana, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 16 Jun 2023; Organization Type: Retail sale of textiles in specialized stores; Folio Mercantil No. N–2024010343 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: VERA AYALA, Jeronimo Javier).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jeronimo Vera Ayala, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jeronimo Vera Ayala, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

21. PUBLICIDAD E IMAGEN INTEGRAL ENLA–C, S. DE R.L. DE C.V., Mexicali, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 06 May 2024; Organization Type: Advertising; Folio Mercantil No. N–2024040377 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: BUENROSTRO MARTIN, Rafael).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Rafael Buenrostro Martin, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Rafael Buenrostro Martin, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

22. RAES RESTAURANTE S. DE R.L. DE C.V., Tijuana, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 04 Mar 2015; Organization Type: Other amusement and recreation activities; Folio Mercantil No. 38467 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: TORRES TORRES, Luis Alfonso).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Luis Alfonso Torres Torres, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Luis Alfonso Torres Torres, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

23. THE WOODS BAR, S. DE R.L. DE C.V., Tijuana, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 18 Nov 2020; Organization Type: Restaurants and mobile food service activities; Folio Mercantil No. N–2021008881 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: TORRES TORRES, Luis Alfonso).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Luis Alfonso Torres Torres, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Luis Alfonso Torres Torres, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

24. VIDA ORGANICA TIJUANA, S. DE R.L. DE C.V., Tijuana, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 09 Nov 2020; Organization Type: Transportation and storage; Folio Mercantil No. N–2020074577 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: TORRES TORRES, Luis Alfonso).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Luis Alfonso Torres Torres, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Luis Alfonso Torres Torres, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

25. XOLO GAS DE BAJA CALIFORNIA, S. DE R.L. DE C.V., Tijuana, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 19 Aug 2024; Organization Type: Retail sale of automotive fuel in specialized stores; Folio Mercantil No. N–2024079165 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: VERA AYALA, Jeronimo Javier).

Sanctioned pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jeronimo Vera Ayala, a sanctioned person pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jeronimo Vera Ayala, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

(Authority: E.O. 14059; E.O. 13224, as amended)

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2026–20425 Filed 10–5–26; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Agency Information Collection Activities; Comment Request on Cognitive and Psychological Research Coordinated by Statistics of Income on Behalf of All IRS Operations Functions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of information collection; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the IRS is inviting comments on the information collection request outlined in this notice.

DATES: Written comments should be received on or before December 7, 2026 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include ''OMB Control No. 1545–1349'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Kerry Dennis, (202) 317–5751.

SUPPLEMENTARY INFORMATION: The IRS, 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 IRS assess the impact and minimize the burden of its information collection requirements. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record, and viewable on relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Title: Cognitive and Psychological Research Coordinated by Statistics of Income on Behalf of All IRS Operations Functions.

OMB Control Number: 1545–1349.

Abstract: The proposed research will improve the quality of data collection by examining the psychological and cognitive aspects of methods and procedures such as: Interviewing processes, forms redesign, survey and tax collection technology and operating procedures (internal and external in nature).

Current Actions: We will be conducting different opinion surveys, focus group sessions, think-aloud interviews, and usability studies regarding cognitive research surrounding forms submission or IRS system/product development.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and businesses or other for-profit organizations.

Estimated Number of Respondents: 10,000.

Estimated Time per Response: 1 hour, 30 minutes.

Estimated Total Annual Burden Hours: 15,000.

Dated: October 1, 2026.

Kerry Dennis,

Tax Analyst.

[FR Doc. 2026–20410 Filed 10–5–26; 8:45 am]

BILLING CODE 4831–GV–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity: Department of Veterans Affairs Work Study Work Site Application

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Comments must be received on or before December 7, 2026.

ADDRESSES: Comments must be submitted through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: *Program-Specific information:* Kendra McCleave, 202–461–9568, *kendra.mccleave@va.gov.*

VA PRA information: Dorothy Glasgow, 202–461–1084, *VAPRA@va.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Department of Veterans Affairs Work Study Work Site Application, VA Form 22–10219.

OMB Control Number: 2900–NEW. *https://www.reginfo.gov/public/do/PRASearch* (Once at this link, you can enter the OMB Control Number to find the historical versions of this Information Collection).

Type of Review: New Collection.

Abstract: The VA Work Study program allows Veterans and other VA beneficiaries who are enrolled at least ¾ time (75% Rate of Pursuit) in school to earn pay by working part-time jobs related to VA services. These jobs are available at locations such as colleges and training facilities, VA Regional Offices, VA cemeteries, and other allowed sites. Each work site wishing to be considered for approval must submit a request for approval. Required information to determine suitability as a work site includes items such as the location of the work site, the type of facility, designation of Primary and Secondary Work Site Supervisors, and confirmation that Human Resources is aware of VA Work Study program participation.

VA Form 22–10219, Department of Veterans Affairs Work Study Site Application, will capture this information in an efficient manner when a work site initially applies for VA approval. Historically, the VA Work Study Team has provided a locally produced template to capture this information. A digital process will

reduce administrative delays, facilitate faster communication between schools and VA, and streamline record-keeping. Additionally, an official form is required to lay the groundwork for future automation of the application process.

Affected Public: Individuals, households and educational Institutions.

Estimated Annual Burden: 292 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Annually, or as needed.

Estimated Number of Respondents: 1,750.

(Authority: 44 U.S.C. 3501 *et seq.*)

Shunda Willis,

Alternate, VA PRA Clearance Officer, Office of Information and Technology/Office of Data Governance and Analytics, Department of Veterans Affairs.

[FR Doc. 2026–20412 Filed 10–5–26; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0663]

Agency Information Collection Activity Under OMB Review: PayVA (Pay Now Enter Info Page)

AGENCY: Debt Management Center, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Debt Management Center (DMC), Department of Veterans Affairs (VA), will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Comments and recommendations for the proposed information collection should be sent by November 5, 2026.

ADDRESSES: To submit comments and recommendations for the proposed information collection, please type the following link into your browser: *www.reginfo.gov/public/do/PRAMain,* select ''Currently under Review—Open for Public Comments'', then search the list for the information collection by Title or ''OMB Control No. 2900–0663.''

FOR FURTHER INFORMATION CONTACT: *VA PRA information:* Dorothy Glasgow, 202–461–1084, *VAPRA@va.gov.*

SUPPLEMENTARY INFORMATION:

Title: PayVA (Pay Now Enter Info Page).

OMB Control Number: 2900–0663 *https://www.reginfo.gov/public/do/PRASearch.*

Type of Review: Revision of a currently approved collection.

Abstract: PayVA (Pay Now Enter Info Page—*pay.va.gov*) is used by the VA Debt Management Center (DMC) to verify debts that are active at DMC before the indebted person makes a payment. PayVA collects basic debt information from the respondent and redirects them to *pay.gov* (a Department of Treasury website) for online payments. PayVA then collects responses from *pay.gov* to verify payment. The change in burden was the result of more payments being made electronically through the *pay.va* platform and a higher number of overall overpayment debts owed to the VA.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 91 FR 48228, July 30, 2026.

Affected Public: Individuals.

Estimated Annual Burden: 42,878 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 257,266.

(Authority: 44 U.S.C. 3501 *et seq.*)

Shunda Willis,

Alternate, VA PRA Clearance Officer, Office of Information and Technology, Office of Data Governance and Analytics, Department of Veterans Affairs.

[FR Doc. 2026–20415 Filed 10–5–26; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity: Designation of Work Study Site Supervisors

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Comments must be received on or before December 7, 2026.

ADDRESSES: Comments must be submitted through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: *Program-Specific information:* Kendra McCleave, 202–461–9568, *kendra.mccleave@va.gov.*

VA PRA information: Dorothy Glasgow, 202–461–1084, *VAPRA@va.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Designation of Work Study Site Supervisors, VA Form 22–10219a.

OMB Control Number: 2900–NEW. *https://www.reginfo.gov/public/do/PRASearch* (Once at this link, you can enter the OMB Control Number to find the historical versions of this Information Collection).

Type of Review: New Collection.

Abstract: The VA Work Study program allows Veterans and other VA beneficiaries who are enrolled at least ¾ time (75% Rate of Pursuit) in school to earn pay by working part-time jobs related to VA services. These jobs are available at locations such as approved colleges and training facilities, VA Regional Offices, VA cemeteries, and other approved sites. Each approved

work site is required to designate a Primary and at least one Secondary Work Site Supervisor. Similar to designated VA School Certifying officials (SCO) at schools and training facilities approved to certify training for VA students to receive GI Bill benefits, the designated Work Study Site Supervisors are the only individuals authorized to provide and receive information pertaining to approved VA Work Study students and who have the authority to submit VA Work Study forms on a student's behalf.

VA Form 22–10219, Department of Veterans Affairs Work Study Site Application captures this information when a work site initially applies for VA approval. The VA Form 22–10219 is not practical for collecting subsequent changes to the Work Site Supervisors and would require a work site to provide redundant and unneeded information when updates to the Work Site Supervisors are needed. Therefore, the VA Work Study Team currently provides a locally produced template to capture this information when updates are needed to the listed site supervisors. When a work site needs to update its Site Supervisor information, staff currently must request a template by email and manually submit changes to VA, which is an inefficient manual process. Additionally, in some instances a Work Site cannot certify Work Study Students for payment during this process, and the delay may cause financial hardship, making it difficult for students to cover essential expenses.

VA Form 22–10219a, Designation of Work Study Site Supervisors, has been patterned after the form used to collect designated VA School Certifying Officials, VA Form 22–8794, as the concepts are very similar. Incorporation of VA Form 22–10219a, Designation of Work Study Site Supervisors, will allow work sites to download the form online and submit it to VA, enabling faster communication between work sites and VA. This digital process will not only provide quicker processing of work study site supervisor designations, reducing payment delays, but will streamline record-keeping as well. Additionally, an official form is required to lay the groundwork for future automation of the process.

Affected Public: Individuals, households and educational Institutions.

Estimated Annual Burden: 86 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: As needed.

Estimated Number of Respondents: 515.

Authority: 44 U.S.C. 3501 *et seq.*

Shunda Willis,

Alternate, VA PRA Clearance Officer, Office of Information and Technology/Office of Data Governance and Analytics, Department of Veterans Affairs.

[FR Doc. 2026–20413 Filed 10–5–26; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0165]

Agency Information Collection Activity Under OMB Review: Financial Status Report

AGENCY: Debt Management Center, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Debt Management Center (DMC), Department of Veterans Affairs (VA), will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Comments and recommendations for the proposed information collection should be sent by November 5, 2026.

ADDRESSES: To submit comments and recommendations for the proposed information collection, please type the following link into your browser: *www.reginfo.gov/public/do/PRAMain,* select ''Currently under Review—Open for Public Comments'', then search the list for the information collection by Title or ''OMB Control No. 2900–0165.''

FOR FURTHER INFORMATION CONTACT: *VA PRA information:* Dorothy Glasgow, 202–461–1084, *VAPRA@va.gov.*

SUPPLEMENTARY INFORMATION:

Title: Financial Status Report, VA Form 5655.

OMB Control Number: 2900–0165 *https://www.reginfo.gov/public/do/PRASearch.*

Type of Review: Revision of a currently approved collection.

Abstract: The major use of the form is to document and support the eligibility determinations for waivers of collection, for the consideration of compromise offers, determine financial hardship suspensions, and/or for assisting in the development of repayment plans for overpayment debts owed to the VA.

The burden has increased since the previous approval due to the resumption of collections of debts that were suspended during the Coronavirus 2019 (COVID–19) Pandemic. Collection was paused on new debts effective April 2020 at the Debt Management Center (DMC). Collection action resumed beginning May 2022 for suspended debts, and additional debts continue to be created, returning operations to normal.

Additionally, DMC also no longer requires VA Form 5655 to approve repayment plans extending 60 months or fewer. Previously, VA Form 5655 was required to approve repayment plans extending greater than 12 months. Repayment plans on compensation and pension benefit overpayments now also automatically extend for 36 months instead of 12 months when over the minimum monthly payment threshold.

Form usage has fluctuated due to the above-mentioned policy changes and collections restarting.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 91 FR 48229, July 30, 2026.

Affected Public: Individuals.

Estimated Annual Burden: 150,871 hours.

Estimated Average Burden per Respondent: 60 minutes.

Frequency of Response: On occasion and/or annually.

Estimated Number of Respondents: 150,871.

Authority: 44 U.S.C. 3501 *et seq.*

Shunda Willis,

Alternate, VA PRA Clearance Officer, Office of Information and Technology, Office of Data Governance and Analytics, Department of Veterans Affairs.

[FR Doc. 2026–20414 Filed 10–5–26; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

Vol. 91 Tuesday,
No. 192 October 6, 2026

Part II

Securities and Exchange Commission

17 Part 239, 249, 274, et al.
Investment Adviser Performance-Based Compensation Modernization; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 249, 274, and 275

[Release Nos. 33–11443; 34–106533; IA–7022; IC–36350; File No. S7–2026–28]

RIN 3235–AN59

Investment Adviser Performance-Based Compensation Modernization

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') is proposing to amend the rule under the Investment Advisers Act of 1940 that provides an exemption from the statutory prohibition on registered investment advisers receiving compensation on the basis of a share of capital gains in or capital appreciation of an advisory client's account. Specifically, the proposed amendments would expand the ability of investment advisers to receive this compensation from clients that are registered management investment companies and business development companies (collectively, ''regulated funds''), subject to certain conditions. The proposal would relatedly amend certain regulated fund registration and reporting forms to require separate disclosure of all performance-based compensation paid by regulated funds to their investment adviser. The proposed rule amendments would also allow investment advisers to receive this compensation from additional clients by revising the rule's ''qualified client'' definition to include investors that meet the ''accredited investor'' definition in Regulation D under the Securities Act of 1933. The proposal would relatedly make conforming amendments to certain other rules under the Investment Advisers Act of 1940 whose provisions reference the ''qualified client'' definition.

DATES: This release was published in the **Federal Register** on October 6, 2026. Comments should be received on or before December 7, 2026.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/comments/s7-202628/investment-adviser-performance-based-compensation-modernization*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–2026–28 on the subject line.

Paper Comments

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–2026–28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (*https://www.sec.gov/comments/s7-202628/investment-adviser-performance-based-compensation-modernization*). Do not include personally identifiable information in submissions; you should submit only information that you wish to make available publicly. The Commission may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

A summary of the proposal of not more than 100 words is posted on the Commission's website (*https://www.sec.gov/comments/s7-202628/investment-adviser-performance-based-compensation-modernization*).

FOR FURTHER INFORMATION CONTACT: Daniel Levine, Neema Nassiri, Lawrence Pace, Senior Counsels; Robert Holowka, Assistant Director, at (202) 551–6787, Investment Adviser Regulation Office; Pamela Ellis, Senior Counsel; Blair Burnett, Branch Chief; Brian McLaughlin Johnson, Assistant Director, at (202) 551–6792, Investment Company Regulation Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for public comment amendments to the following rules and forms:

Commission Reference		CFR Citation [17 CFR]
Securities Act of 1933 (the "Securities Act")[1] and Investment Company Act of 1940 (the "Investment Company Act")[2]	Form N-1A	§ 239.15A and § 274.11A
	Form N-2	§ 239.14 and § 274.11a-1
Investment Company Act and Securities Exchange Act of 1934 (the "Exchange Act")[3]	Form N-CSR	§ 274.128 and § 249.331
Investment Advisers Act of 1940 (the "Advisers Act")[4]	Rule 203A-3	§ 275.203A-3
	Rule 204-3	§ 275.204-3
	Rule 205-3	§ 275.205-3

[1] 15 U.S.C. 77a *et seq.*
[2] 15 U.S.C. 80a *et seq.*
[3] 15 U.S.C. 78a *et seq.*
[4] 15 U.S.C. 80b *et seq.*

Table of Contents

I. Introduction and Background
A. Overview of Section 205 and Rule 205–3
1. Section 205: 1940 Enactment and 1970 Amendments
2. Initial Rule 205–3 Adoption and Subsequent Section 205 Amendments
3. Current Rule 205–3
B. Performance-Based Compensation: Current Practices
II. Discussion
A. Expansion of the Ability of Investment Advisers To Charge Performance-Based Compensation to RICs and BDCs
1. Scope of Amended Exception
2. Conditions
3. Disclosure Related to Performance-Based Compensation
B. Additional Amendments to the ''Qualified Client'' Definition
1. Incorporation of the ''Accredited Investor'' Definition
2. Removal of the Assets Under Management Test
3. Amending References to the ''Qualified Client'' Definition in Rule 203A–3, Rule 204–3 and Form ADV
C. Client Look-Through
D. Compliance Period
III. Economic Analysis
A. Introduction
B. Economic Baseline
1. Regulatory Baseline
2. Affected Parties
3. Performance-Based Compensation: Current Market Practices
C. Benefits and Costs
1. Changes to the Qualified Client Definition
2. Amending References to the Qualified Client Definition
3. Performance Fee Disclosure for Regulated Funds
4. Aggregate Monetized Benefits and Costs
D. Effects on Efficiency, Competition, and Capital Formation
1. Efficiency
2. Competition
3. Capital Formation
E. Reasonable Alternatives Considered
1. Performance Fees Only on Realized Capital Gains
2. Performance Fee on Capital Gains for Contracts With a Subset of Regulated Funds
3. Additional Conditions for the Fund Board Channel
4. Disclosure Alternatives
F. General Request for Comment
IV. Paperwork Reduction Act Analysis
A. Summary of the Collections of Information
B. Summary of the Proposed Amendments' Estimated Effects on the Collections of Information
1. Form N–1A PRA Estimates
2. Form N–2 PRA Estimates
3. Form N–CSR PRA Estimates
C. Changes in Paperwork Burdens Under the Proposed Amendments
D. Request for Comments
V. Initial Regulatory Flexibility Analysis
A. Reasons for and Objectives of the Proposed Actions
1. Proposed Amendments to Rule 205–3
2. Proposed Amendments to Forms N–1A, N–2, and N–CSR
B. Legal Basis
C. Small Entities Subject to the Rule Amendments
D. Projected Reporting, Recordkeeping, and Other Compliance Requirements
1. Proposed Rule 205–3 Amendments
2. Proposed Disclosure and Reporting Requirements
E. Duplicative, Overlapping, or Conflicting Federal Rules
1. Proposed Amendments to Rule 205–3
2. Proposed Amendments to Forms N–1A, N–2, and N–CSR
F. Significant Alternatives
G. Request for Comment
VI. Congressional Review Act
VII. Other Matters
Statutory Authority

I. Introduction and Background

The asset management industry has expanded significantly in recent decades, driven by evolving investor demands and the availability of a broader range of investment opportunities across public and private markets. Asset managers today employ an increasingly wide array of investment strategies and offer those strategies through multiple investment products, including, among others, regulated funds, private funds, separately managed accounts, and direct advisory recommendations to individual clients.

As the variety of investment products and their delivery channels have grown, both institutional and individual investors have increasingly sought to access alternative investment assets and to construct more diversified investment portfolios than in the past. The Commission is committed to identifying ways to reduce unnecessary regulatory obstacles to investment product innovation, allowing for the broadening of investor choice available in today's asset management industry while appropriately addressing risks associated with increasingly diverse portfolio compositions and operations.

As part of this commitment, the Commission is proposing amendments to the ''qualified client'' definition and other provisions in rule 205–3 under the Advisers Act that would expand the ability of registered investment advisers and certain of their clients, including regulated funds under certain conditions and investors that meet the ''accredited investor'' definition in Regulation D under the Securities Act, to enter into performance-based compensation arrangements calculated on the basis of a share of capital gains in or capital appreciation of an advisory client's account. We anticipate that such expansion would allow a wider range of advisers to offer regulated funds, enable the introduction of more investment strategies into regulated funds, and separately expand the availability of investment opportunities to accredited investors in pools or separately managed accounts. In addition, the proposal would amend certain forms under the Investment Company Act to require disclosure of all performance-based compensation to shareholders of regulated funds, including compensation based on interest, ordinary income, or dividends. As the ''qualified client'' definition is also referenced in the definition of ''investment adviser representative'' in rule 203A–3 and the exceptions to a registered investment adviser's brochure supplement delivery requirement in rule 204–3 under the Advisers Act, we also propose conforming amendments to these rules.[5]

The use of performance-based compensation has long been a common and defining characteristic of investment strategies that are associated with private funds, such as hedge fund, private equity, and venture capital strategies, which generally include private market strategies as well as complex or differentiated public market strategies.[6] Because registered investment advisers and their private fund clients are largely able to enter into and tailor performance-based compensation arrangements, these types of alternative investment strategies have, as a practical matter, been limited to the private fund industry, reducing access to a limited group of eligible investors. Therefore an adviser may be incentivized to allocate its potentially higher performing investment strategies and opportunities to this limited group of investors. This situation results in a structural disadvantage for retail investors, as it may disincentivize capable advisers from allocating potentially higher performing strategies to regulated funds or, in some cases, from launching or maintaining regulated funds altogether.

Performance-based compensation can offer a rational and effective means to define and align adviser and investor goals, especially as arrangements have evolved over time through commercial practice to commonly include features and terms designed to more closely

[5] *See also infra* section II.B.3.c. (noting that the proposed amendments to the qualified client definition would expand the meaning of ''high net worth individual'' as defined in Form ADV).

[6] Performance-based compensation has in practice also been used in the context of separately managed accounts of eligible clients, including for advisory services with respect to more traditional investment strategies.

align adviser and investor interests.[7] Expanding the ability for advisers to charge performance fees could incentivize advisers currently operating in the private markets to bring diverse strategies to a wider group of clients and investors, including investors in regulated funds. Accordingly, the proposed amendments are designed to modernize the regulatory framework related to performance-based compensation, facilitate capital formation in the public and private markets by promoting innovation in regulated fund structures, and expand investor choice, while maintaining appropriate investor protections and safeguards.

As discussed below, Congress amended the Advisers Act in 1970 to authorize the Commission to exempt any person or transaction (or class of persons or transactions) from any provision of the Advisers Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the Advisers Act.[8] In granting such authority to the Commission, Congress specifically contemplated its potential application to the performance fee prohibition in section 205 under the Advisers Act.[9] Congress also amended the Advisers Act in 1996 to authorize the Commission to exempt any person or transaction (or class thereof) specifically from the performance fee prohibition in section 205, provided that the exemption relates to an advisory contract with ''any person that the Commission determines does not need the protections'' of the prohibition ''on the basis of such factors as financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, and such other factors as the Commission determines are consistent with'' section 205.[10] Over decades, the Commission has used these authorities to expand the use of performance fees by registered investment advisers, and this proposal continues on that path.

A. Overview of Section 205 and Rule 205–3

Section 205(a)(1) of the Advisers Act generally prohibits an investment adviser registered or required to be registered with the Commission from receiving compensation on the basis of a share of capital gains in or capital appreciation of an advisory client's account.[11] These restricted performance-based compensation arrangements are commonly referred to as ''performance fees'' because they compensate advisers based on the investment performance of a client's account rather than on another basis, such as the aggregate value of the assets in a client's account.[12] For example, an advisory fee calculated as a percentage of the investment gains in a client's account over a period of time (*e.g.,* twenty percent of an account's gains over the last year) is a performance fee, while an advisory fee calculated as a percentage of the total value of a client's account (*e.g.,* two percent of such client's assets) is not a performance fee.

Although performance fees can be structured in various amounts and forms, section 205(a)(1) functions to broadly prohibit a registered investment adviser from entering into, extending, renewing, or in any way performing an investment advisory contract that provides for any performance fees to the adviser, however that performance fee is expressed or calculated, unless that advisory contract qualifies for an exception or exemption to the prohibition on performance fees. Statutory exceptions to the prohibition are provided in sections 205(b)(1) through (b)(5) of the Advisers Act,[13] and the Commission has authority to promulgate exemptions to the prohibition under sections 205(e) and/or 206A thereof. Pursuant to these authorities, the Commission previously adopted and amended rule 205–3 as a generally available exemption to the statutory performance fee prohibition set forth in section 205(a)(1).

1. Section 205: 1940 Enactment and 1970 Amendments

The prohibition on performance fees in section 205(a)(1) has been part of the Advisers Act since its original enactment by Congress in 1940 (originally as section 205(1) thereof). Legislative history indicates that the prohibition was included because of Congressional concern that performance fee arrangements (then typically called ''profit-sharing'' arrangements) would by their nature incentivize investment advisers to take inappropriate risks with their clients' funds, rather than because of evidence of actual abuse or misconduct in the advisory industry related to performance fees at that time.[14] Specifically, because performance fee arrangements generally provided an adviser with additional fees when its client had investment gains but did not decrease the adviser's compensation when the client had investment losses, performance fees were viewed by some as encouraging advisers to speculate excessively with their clients' funds.[15]

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[7] *See infra* section I.B. for examples of these features and terms.

[8] Investment Company Act Amendments of 1970, Public Law 91–547, § 26, 84 Stat. 1413 (1970) (codified at 15 U.S.C. 80b–6a).

[9] *See Investment Company Amendments of 1969: Analysis of S. 34,* 91st Cong., 1st Sess. 29 (1969) (''Under proposed section 206A, the Commission would in appropriate cases be able to exempt persons from the registration requirements of proposed section 203 and from the ban on performance-based advisory compensation in proposed section 205(1) of the Advisers Act if and to the extent such action is appropriate in the public interest and consistent with the protection of investors and the policy of the [A]ct.''); S. Rep. No. 184, 91st Cong., 1st Sess. 46 (1969); H.R. Rep. No. 1382, 91st Cong., 2d Sess. 42 (1970).

[10] National Securities Markets Improvement Act of 1996, Public Law 104–290, § 210, 110 Stat. 3416 (1996) (''NSMIA'') (codified at 15 U.S.C. 80b–5(e)).

[11] 15 U.S.C. 80b–5(a)(1).

[12] Unless otherwise specified, the term ''performance fee'' is used herein to refer to those types of compensation arrangements based on capital gains or capital appreciation that are prohibited by section 205(a)(1) under the Advisers Act. Compensation arrangements based on other measures of performance—such as, for example, interest, ordinary income, or dividends—are not prohibited by section 205(a)(1) and are not referred to as or otherwise within the meaning of ''performance fees'' as used herein.

[13] Per the statutory exceptions set forth in sections 205(b)(1) through (b)(5), section 205(a)(1)'s general prohibition against performance fees does not apply to: (1) advisory contracts that provide for compensation based on the total value of a fund's account averaged over a definite period, or as of definite dates or taken as of a definite date; (2) provided that an appropriate ''fulcrum fee'' (as discussed below) is used in each instance, (A) advisory contracts with registered investment companies and (B) advisory contracts relating to the investment of assets in excess of $1,000,000 with persons other than trusts, governmental plans, collective trust funds, or separate accounts as referred to in section 3(c)(11) of the Investment Company Act; (3) advisory contracts involving business development companies, subject to certain conditions; (4) advisory contracts with a company that exempted is from the definition of an investment company under section 3(c)(7) of the Investment Company Act; and (5) advisory contracts with persons who are not residents of the United States.

[14] *See* H.R. Rep. No. 2639, 76th Cong., 3d Sess. 29 (1940); S. Rep. No. 1775, 76th Cong., 3d Sess. 22 (1940).

[15] *See* SEC, Investment Trusts and Investment Companies, H.R. Doc. No. 477, 76th Cong., 2d Sess. 30 (1939) (summarizing an industry survey and a public conference held by the Commission on February 11, 1938, in which an industry representative asserted that performance fees encourage advisers to recommend a degree of risk that investors themselves would not knowingly undertake, as advisers have ''everything to gain . . . and nothing to lose''); *see also Investment Trusts and Investment Companies: Hearings on S. 3580 before a Subcomm. of the Senate Comm. on Banking and Currency,* 76th Cong., 3d Sess. 319–320 (1940) (''1940 Senate Hearings'') (testimony from Director Schenker of the then-SEC Investment Company Division that ''it was virtually . . . the unanimous consensus of the industry that what you ought to abolish is these profit-sharing abuses in the industry: 'If you make any money, you turn part of

Although the performance fee prohibition for registered investment advisers has been in the Advisers Act since its enactment in 1940, the prohibition was, in practice, narrow in scope for two reasons:

- First, the Advisers Act provided a registration exemption for investment advisers whose only clients were registered investment companies, and the performance fee prohibition did not extend to advisers that were not required to register with the Commission.
- Second, for advisers that were registered, or required to register, with the Commission, the Advisers Act excepted from the performance fee prohibition advisory contracts with investment companies registered under the Investment Company Act.

These were intentional decisions. The original bill did not include these exceptions, but the final Advisers Act excepted contracts with investment company clients from the performance fee prohibition, with legislative history suggesting Congress ultimately responded to industry input that performance fees closely linked the interests of investment company investors and advisers ''throughout the life of the investment,'' and that the basis of advisory compensation should not be limited by statute if clearly and adequately disclosed to investors.[16]

In the decades following the enactment of the Investment Company Act and the Advisers Act, the registered investment company industry grew dramatically from under $450 million in assets and 300,000 investors in 1940 to over $45 billion in assets and 4 million investors by the end of 1966.[17] This dramatic growth and accompanying perceptions of prevalent excessive fee and expense practices in the industry, especially related to the then-popular ''go-go funds'' that aggressively sought short-term gains with high portfolio turnover and related transaction costs, prompted both Congress and the Commission to take a hard look at the registered fund industry and investor protections under the securities laws more broadly.[18] Congress directed the Commission to comprehensively review and conduct a study on the registered fund industry, and the Commission in turn requested the securities research unit of the Wharton School of Finance and Commerce to broadly examine the industry in 1958.

This examination resulted in the transmittal to the Commission in 1962 of Wharton's ''A Study on Mutual Funds,'' which generally found that advisory fees paid by registered funds often bore little relation to the actual cost of the advisory services provided or to investment performance.[19] The Wharton report was immediately followed by a special study by the Commission's staff that focused its attention on problematic distribution practices and excessive sales charges in the registered fund industry.[20]

This review effort culminated in the Commission's submission to Congress in 1966 of its Report on the Public Policy Implications of Investment Company Growth (the ''PPI Report''), which recommended, among a broader package of comprehensive reforms to fee and expense practices, the extension of the Advisers Act's performance fee prohibition to advisory contracts with registered investment companies.[21] Although the PPI Report did not contain any specific examples of abuse or misconduct relating to performance fees at registered investment companies, the Commission nonetheless recommended that Congress amend the Advisers Act to remove its exceptions for advisers to registered investment companies, and explained that doing so with respect to the performance fee prohibition would complement the Commission's primary recommendation at the time to incorporate a general standard of reasonableness into the Investment Company Act for advisory compensation paid by registered investment companies.[22] Combined with this reasonableness standard, the extension of the performance fee prohibition to advisory contracts with registered investment companies would, according to the Commission, permit ''capital gains and appreciation of a registered investment company [to] be taken into account as a factor in setting the amount of the fee of its investment adviser, [notwithstanding that] such fee could not be tied directly to such gains or appreciation.'' [23]

Shortly afterward, bills were introduced in Congress that would largely implement the Commission's recommendations discussed above, including the extension of the performance fee prohibition to investment advisory contracts with registered investment companies.[24] In Congressional hearings on these bills, it was generally acknowledged that the types of performance fee arrangements ''that would be barred by section 205(1) . . . are not common in the investment company industry, but some do exist, and the number of [such] contracts appears to be increasing.'' [25]

Notwithstanding the view that performance fees were generally uncommon for investment companies and the fact that the Commission's 1966 PPI Report had not included any specific examples of abuse, there was an effort to justify the extension of the performance fee prohibition by broadly

it over to me; but if you lose, I don't lose anything.' ''); S. Rep. No. 1775, 76th Cong., 3d Sess. 22 (1940) (''Individuals assuming to act as investment advisers at present can enter profit-sharing contracts which are nothing more than 'heads I win, tails you lose' arrangements.'').

[16] *See* 1940 Senate Hearings, *supra* note 15, at 664, 1055.

[17] *See* SEC, Report on the Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong., 2d Sess. 2 (1966) (''PPI Report''); *Mutual Fund Legislation of 1967: Hearings before the Comm. on Banking and Currency on S. 1659,* 90th Cong., 1st Sess. 125 (1967) (''1967 Senate Hearings'').

[18] *See, e.g.,* Securities Act Amendments of 1964, Public Law 88–467, 78 Stat. 565 (1964). *Cf.* Chairman Manuel S. Cohen, SEC, Address at the 1968 Conference on Mutual Funds: The ''Mutual'' Fund (Mar. 1, 1968) (''Chairman Cohen Address'') (''The regulatory scheme devised in 1940, when the industry was in its infancy, reached the grosser forms of abuses, such as embezzlement and the more obvious form of overreaching. It seems evident that it is now important to deal with more subtle abuses which may flow from overcharging and overreaching which traditional disclosure techniques are ineffective to reach.'').

[19] *See* Wharton School of Finance and Commerce, A Study of Mutual Funds, H.R. Rep. No. 2274, 87th Cong., 2d Sess. (1962).

[20] *See* SEC, Report of Special Study of the Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess. (1963). Staff reports and other staff documents (including those cited herein) represent the views of Commission staff and are not a rule, regulation, or statement of the Commission. Furthermore, the Commission has neither approved nor disapproved these documents and, like all staff statements, they have no legal force or effect, do not alter or amend applicable law, and create no new or additional obligations for any person.

[21] *See* PPI Report, *supra* note 17, at 344–45.

[22] *See id.* (''This amendment would complement the Commission's recommendations . . . that the Investment Company Act be amended to incorporate a standard of reasonableness for compensation paid by investment companies for services furnished by those who occupy a fiduciary relationship to such companies.'').

[23] *Id.* at 345.

[24] 1967 Senate Hearings, *supra* note 17, at 897.

[25] S. Rep. No. 1351, 90th Cong., 2d Sess. 43–45 (1967). The Commission's views at the time that performance fee arrangements at registered investment companies were increasing was based on an increase in the registration of such companies, which coincided with litigation where a federal court found that a New York Stock Exchange rule prohibiting advisory services ''based on the profits realized'' did not apply to registered investment companies. SEC, 35th Annual Report, 14–15, 141–42 (1969) (''1969 SEC Annual Report''). The Commission subsequently furnished Congress with information that, out of 137 registered investment companies with performance fee arrangements, 48 allowed the adviser to earn a bonus for good performance without imposing a penalty for poor performance, and another 45 had performance fee arrangements where the potential rewards were substantially greater than the penalties. *Mutual Fund Amendments: Hearings before the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce on H.R. 11995, S. 2224, H.R. 13754 and H.R. 14737,* 91st Cong., 1st Sess. 207 (1969).

referencing the legislative history from the Investment Company Act's and Advisers Act's original enactments.[26] The Commission's Chairman at the time echoed the earlier characterization of performance fees as a 'heads, I win; tails, you lose' arrangement and opined that performance fees inherently lead to excessive risk-taking by investment advisers, such that Congress should act to ''protect fund clients'' in the growing investment company industry and ''insulate investment company shareholders from arrangements that give investment managers a direct pecuniary interest in pursuing high risk investment policies.'' [27]

The proposed extension of the performance fee prohibition to advisory contracts with registered investment companies was met with some scrutiny and skepticism by the investment advisory industry and other stakeholders, including criticism that the proposal had received insufficient deliberation and that prohibiting performance-based compensation was inconsistent with the Commission's recognition in other contexts that the quality of investment advisory services is ultimately reflected by performance. One investment adviser objected that ''[a]s far as we can determine little or no attention has been directed to the proposed amendments [to the performance fee prohibition] either during the hearings, in the press or otherwise.'' [28] After discussions with the Investment Company Institute and other industry representatives, Congress added a narrow exception for a limited type of performance-based fee (commonly called a ''fulcrum fee'') to the pending extension of the performance fee prohibition to registered investment companies.[29]

Under the new fulcrum fee exception, advisory contracts that based any part of the adviser's compensation on a percentage of a company's (or other client's) capital gains or appreciation would be prohibited, but fulcrum fees that increased and decreased proportionately on the basis of the company's investment performance (over a specified period and measured against an appropriate securities index or other appropriate measure of performance) would be permissible. Using a fulcrum fee, an adviser would thus be permitted to receive its ''baseline'' fee only at the point that the fund's performance equaled the index or other appropriate measure. Fulcrum fees were intended to address the notion that an adviser with a performance fee arrangement did not face any downside and share in the otherwise excessive risk that might be incentivized by performance-based compensation.

Despite further objections from some stakeholders,[30] Congress enacted a version of the bill extending the prohibition on performance fees to advisory contracts with registered investment companies, with a narrow exception for fulcrum fees.[31] However, Congress also amended the Advisers Act to include new section 206A, which authorized the Commission, by rulemaking on its own motion or by order upon application, to exempt conditionally or unconditionally any person or transaction (or class or classes of persons or transactions) from any provision in the Advisers Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the Advisers Act.[32] This broad exemptive authority was intended to provide the Commission with greater flexibility to appropriately administer the Advisers Act in light of the broader coverage of the Advisers Act to investment advisers of registered investment companies, and it accordingly mirrored the general exemptive authority that the Commission already had with respect to the Investment Company Act under section 6(c) thereof.[33]

Congress specifically contemplated the potential application of section 206A's exemptive authority to exempt persons in appropriate circumstances from the registration requirements of section 203 and from the performance fee prohibition in section 205, each of which were newly being applied to advisers of registered investment companies.[34]

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[26] *Cf.* Chairman Cohen Address, *supra* note 18 (''[F]ee structure has provided a real opportunity for the exercise of the ingenuity for which fund managers have established an enviable reputation. . . . A current and developing fashion seems to be the performance fee. An appealing case can be made for the proposition that the man who does well for the fund he manages is entitled to extra compensation measured by the quality of his performance. But, apart from the problem of establishing appropriate yardsticks against which to measure performance, a difficult problem which has not as yet been resolved, we must not overlook the dangers inherent in certain types of incentive fees which led the Congress in the Investment Advisers Act of 1940 to prohibit compensation for investment advisers based on a percentage of the gains achieved by their clients. These considerations are equally matters of concern in the investment company area today.'').

[27] *See* 1967 Senate Hearings, *supra* note 17, at 111. Because advisory contracts with private clients were not excepted under section 205 at the time, the Commission also characterized the extension as making applicable to advisers of registered investment companies the prohibition on performance fees then-applicable to advisers of private clients. 1969 SEC Annual Report, *supra* note 25, at 15.

[28] *Investment Company Amendments Act of 1969: Hearings before the Comm. on Banking and Currency,* 91st Cong., 1st Sess. 421 (1969) (''1969 Senate Hearings''). *Cf.* 1967 Senate Hearings, *supra* note 17, at 253 (''The Commission . . . indicates that in the securities field, the quality of service means performance. . . . Despite this recognition of the significance of relating compensation to performance the Commission apparently is reluctant to put this relationship into practice. It has recommended that the Investment Advisers Act be amended to outlaw compensation on the basis of a share of capital gains or appreciation of the funds—although such a fee clearly would be most directly tied to performance. This suggests an odd discrepancy between recommended theory and recommended practice.'') (from ''Implications of the Rate-Making Proposals of the SEC in the Mutual Fund Industry'' by Sidney Robbins, Professor of Finance, Graduate School of Business, Columbia University).

[29] *See Investment Company Act Amendments of 1967: Hearings before the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce on H.R. 9510, H.R. 9511,* 90th Cong., 1st Sess. 79 (1968) (noting that the shift from an absolute prohibition on performance fees to permitting a fulcrum fee occurred subsequent to discussions with the Investment Company Institute).

[30] *See, e.g.,* 1969 Senate Hearings, *supra* note 28, at 422 (''[T]he real problem today should not be fear of the 'heads I win, tails you lose' investment adviser, since even without prohibitory legislation, the present competitive nature of the business would make it hard for such an adviser to survive. The real danger is that a misunderstanding of the fundamental problem and a lack of interest on the part of much of the mutual fund industry could effectively destroy the incentives available to the 'put your money where your mouth is' type of money manager, the investment adviser who is not afraid to tie his fees to his investment results. There is no question that such type of adviser poses a competitive threat to the more traditional fund manager whose fees depend solely upon the amount of money managed. It is understandable, therefore, that the Investment Company Institute and many other spokesmen for the industry might not be overly concerned with the proposed amendments to section 205.'') (statement of John M. Hartwell, President of Hartwell Management Co.).

[31] Investment Company Act Amendments of 1970, Public Law 91–547, 25, 84 Stat. 1413 (1970) (codified at 15 U.S.C. 80b–5(b)(1)). The exception for appropriate fulcrum fees is available with respect to an advisory contract with a client that is a registered investment company or any person ''except a trust, governmental plan, collective trust fund, or separate account referred to in section 3(c)(11) of [the Investment Company Act],'' provided that the advisory contract with such a person relates to the investment of assets in excess of $1 million.

[32] *Id.* at § 26 (codified at 15 U.S.C. 80b–6a).

[33] *See, e.g.,* H.R. Rep. No. 1351, 90th Cong., 2d Sess. 43–45 (1967); *Investment Company Amendments of 1969: Analysis of S. 34,* 91st Cong., 1st Sess. 29 (1969) (''The proposed amendment [to add new section 206A] would be the counterpart of section 6(c) of the Investment Company Act, which gives the Commission broad power to exempt any person, transaction, or security from any provision of that statute. The flexibility which this amendment would introduce into the administration of the Advisers Act is appropriate in view of the broader coverage provided for by this bill.'').

[34] *See id.* (''Under proposed section 206A, the Commission would in appropriate cases be able to exempt persons from the registration requirements

Over the next decade, the Commission used its exemptive authority under section 206A to issue several orders conditionally exempting certain performance fee arrangements in advisory contracts with certain clients.[35] These conditional exemptions were generally subject to objective client eligibility requirements relating to both minimum client income or net worth and minimum amounts invested with the adviser.

In 1980, Congress added another statutory exception to the performance fee prohibition, permitting advisers to business development companies (''BDCs'') to include performances fee arrangements in their advisory contracts, provided that the fee did not exceed 20% of the BDC's net realized capital gains over a defined period and the BDC did not have other incentive compensation structures in place.[36] This exception was part of broader legislation to incentivize venture capital investing in small businesses and accordingly allowed BDCs, which were engaged in that type of investment, to receive performance-based compensation similar to that charged by advisers to private venture capital funds, subject to meaningful structural constraints designed to align adviser and investor interests.

2. Initial Rule 205–3 Adoption and Subsequent Section 205 Amendments

Based partly on its experience using its authority under section 206A to approve individual exemptive orders related to performance fees, the Commission used its rulemaking authority thereunder in 1985 to propose and adopt a generally applicable exemptive rule to the performance fee prohibition as rule 205–3 under the Advisers Act.[37] As originally adopted, rule 205–3 permitted an adviser to charge performance fees to a client that had at least $500,000 in assets under management with the adviser or had a net worth of at least $1,000,000, departing from some of the Commission's earlier orders that had required both a minimum client net worth and a minimum investment amount as conditions for exemptive relief.[38] If the client was a private or registered investment company or business development company, rule 205–3 required the adviser to ''look through'' the company and apply these net worth and investment minimums to each of its equity owners. This requirement expressly covered clients that were registered investment companies, which were thus provided with their first alternative to the statutory fulcrum fee exception for performance fee arrangements with their advisers.[39] The Commission ''concluded that it is consistent with the protection of investors and the purposes of the [Advisers] Act to permit clients who are financially experienced and able to bear the risks associated with performance fees to have the opportunity to negotiate compensation arrangements which they and their advisers consider appropriate.'' [40] To provide ''alternate safeguards to the statutory prohibition,'' however, rule 205–3 at the time also required that performance fee contracts include certain provisions concerning the appropriate calculation of performance fees, and that advisers provide certain disclosures to their clients regarding potential conflicts of interest, the periods and any index used to measure performance for purposes of the fee, and, if relevant to the fee's calculation, the valuation of unrealized appreciation of securities for which market quotations are not readily available.[41]

In 1992, the staff of the Commission's Division of Investment Management (the ''Division'') issued a report recommending that the existing exemptions from the performance fee prohibition be expanded to generally permit performance fees in advisory contracts with institutions or otherwise financially sophisticated clients, as well as with foreign clients, whether sophisticated or unsophisticated.[42] In the report, the Division acknowledged that the ''existing exemptions . . . preclude the use of performance fees in advisory contracts in a number of situations, even where the clients are institutions and otherwise sophisticated.'' [43] In particular, whereas the fulcrum fee exception requires advisers to ''structure their performance fee arrangements to increase and decrease proportionately[, m]any institutional investors, however, prefer to structure performance fee arrangements with a low base fee, with satisfactory performance resulting in additional compensation,'' which arrangement ''does not qualify as a fulcrum fee.'' [44] In this regard, the Division expressed its view that, ''where a client appreciates the risk of performance fees and is in a position to protect itself from overreaching by the adviser, the determination of whether such fees provide value is best left to the client.'' [45] With respect to sophisticated and unsophisticated foreign clients, the Division stated its belief that the Advisers Act's performance fee prohibition ''likely reduce[s] the ability of domestic advisers to compete effectively with foreign advisers in foreign markets'' where performance fees may not be restricted.[46]

The Division explained these views by acknowledging various criticisms of the performance fee prohibition, noting that the prohibition ''always has been controversial.'' [47] These included criticisms that performance fee arrangements rationally align advisory and client interests by linking adviser compensation to client investment performance, encourage the establishment of new and smaller advisory firms, incentivize advisers to service smaller client accounts that may otherwise not have access to advisory services, and function to reduce advisory costs during periods of market decline.[48] The Division concluded that it ''believe[d] that some of the criticisms of the performance prohibition [were] valid and that modification of the

of proposed section 203 and from the ban on performance-based advisory compensation in proposed section 205(1) of the Advisers Act if and to the extent such action is appropriate in the public interest and consistent with the protection of investors and the policy of the [A]ct.''); S. Rep. No. 184, 91st Cong., 1st Sess. 46 (1969); H.R. Rep. No. 1382, 91st Cong., 2d Sess. 42 (1970).

[35] *See, e.g.,* Foster Management Company, Investment Advisers Act Rel. Nos. 646 (Nov. 1, 1978), 43 FR 52313 (Notice of Application) and 651 (Nov. 28, 1978), 16 SEC Docket 316 (Order); Weiss, Peck & Greer, Investment Advisers Act Rel. Nos. 623 (Mar. 28, 1978), 43 FR 14193 (Notice of Application) and 625 (Apr. 25,1978), 14 SEC Docket 946 (Order); Connecticut Mutual Life Ins. Co., Investment Advisers Act Rel. Nos. 459 (May 7, 1975), 40 FR 20992 (Notice of Application) and 461 (June 5, 1975), 16 SEC Docket 316 (Order).

[36] *See* section 205(b)(3) of the Advisers Act; *see also* Small Business Investment Incentive Act of 1980, Public Law 96–477, 94 Stat. 2275 (1980).

[37] *See* Conditional Exemption to Allow Registered Investment Advisers to Charge Fees Based Upon a Share of the Capital Gains or Capital Appreciation of a Client's Account, Investment Advisers Act Rel. No. 961, March 15, 1985 [50 FR 11718 (March 25, 1985)] (''1985 Proposal''); Exemption to Allow Registered Investment Advisers to Charge Fees Based Upon a Share of the Capital Gains or Capital Appreciation of a Client's Account, Investment Advisers Act Rel. No. 996 (Nov. 14, 1985) [50 FR 48556 (Nov. 28, 1985)] (''1985 Adoption'').

[38] *See* 1985 Proposal, *supra* note 37, at n.15.

[39] Original rule 205–3(b)(2).

[40] 1985 Adoption, *supra* note 37, at 48558.

[41] *Id.*

[42] Division of Investment Management, SEC, Protecting Investors: A Half Century of Investment Company Regulation 237–250 (1992) (''Protecting Investors Report'').

[43] *Id.* at 245.

[44] *Id.* at 246.

[45] *Id.* at 245.

[46] *Id.* at 247.

[47] *Id.* at 239.

[48] *Id.* at 239–40. The Protecting Investors Report also acknowledged views in support of the performance fee prohibition, noting, for instance, that ''supporters of the prohibition . . . challenge whether there is any basis, theoretical or actual, for believing that performance fees will improve performance.''

prohibition is warranted.'' [49] Consequently, the Division recommended that Congress amend section 205 to specifically authorize the Commission to unconditionally exempt advisory contracts with any person whom the Commission determines to not need the protections of the prohibition and contracts with foreign clients.

Four years later, in 1996, Congress amended the Advisers Act to add new statutory exceptions for advisory contracts with clients that are companies excepted from the definition of ''investment company'' by section 3(c)(7) of the Investment Company Act or that are foreign residents, as well as new section 205(e).[50] Following the Division's earlier recommendation, section 205(e) provides that the Commission may conditionally or unconditionally exempt any person or transaction (or class or classes of persons or transactions) from the performance fee prohibition in section 205(a)(1), provided that the exemption relates to an advisory contract with ''any person that the Commission determines does not need the protections'' of the prohibition ''on the basis of such factors as financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, and such other factors as the Commission determines are consistent with'' section 205.[51] As the Commission has noted, the definition of ''person'' under section 202 of the Advisers Act includes companies, which in turn includes investment companies, for purposes of section 205.[52]

3. Current Rule 205–3

Shortly following the addition of section 205(e) to the Advisers Act in 1996, the Commission used its expanded rulemaking authority to propose (in 1997) and adopt (in 1998) amendments to rule 205–3, giving shape to the rule in its current form.[53] These amendments eliminated the specific contractual and disclosure requirements relating to performance fees that were previously explained in 1985 as ''alternative safeguards'' to the statutory prohibition, because the Commission ultimately viewed these requirements as in practice ''hav[ing] inhibited the flexibility of advisers and their clients in establishing performance fee arrangements beneficial to both parties'' and, moreover, as unnecessary in light of the other protections provided by the Advisers Act.[54] The amendments also expanded the eligibility criteria for clients to which investment advisers could charge performance fees, with clients that satisfied the new eligibility criteria referred to by the rule as ''qualified clients.''

Under rule 205–3 as amended in 1998, qualified clients to which an investment adviser may charge a performance fee include: (1) clients that meet a minimum net worth or assets-under-management requirement, with the threshold amounts from original rule 205–3 inflation-adjusted from $1,000,000 to $1,500,000 for the net worth test and from $500,000 to $750,000 for the assets-under-management test; [55] (2) clients that are ''qualified purchaser[s]'' under section 2(a)(51)(A) of the Investment Company Act; and (3) clients that are certain executive officers or employees of the adviser who actively participate in the investment activities of the adviser, similar to the category of ''knowledgeable employees'' eligible to invest in section 3(c)(1) and 3(c)(7) companies in accordance with rule 3c–5 under the Investment Company Act.[56] With respect to the addition of qualified purchasers as a category of clients eligible for performance fees, the Commission explained that, although persons that have the $5,000,000 in investments required to be a qualified purchaser under section 2(a)(51)(A) generally should separately satisfy the lower minimum net worth or minimum assets-under-management thresholds under rule 205–3, they may in certain cases not meet the lower thresholds because of different approaches to accounting for indebtedness between these provisions.[57] In light of the 1996 amendments' addition of section 3(c)(7) companies (*i.e.,* privately-offered qualified purchaser pools) to the statutory exceptions for the performance fee, the addition of qualified purchasers themselves to rule 205–3 filled an eligibility gap to provide qualified purchasers and their advisers with the flexibility to enter into performance fee contracts outside of the context of a section 3(c)(7) private fund.[58] Regarding the addition of certain knowledgeable employees as a category of qualified clients, the Commission stated that an adviser's officers and ''employees who actively participate in the investment activities of the adviser are likely to be sophisticated financially and do not need the protections of the performance fee prohibition,'' [59] consistent with its authority under section 205(e) to consider ''whether a client may not need the protections of the performance fee prohibition by virtue of the client's relationship with the adviser,'' in addition to other criteria.[60]

The Commission retained ''look-through'' treatment for clients that are private or registered investment companies or business development companies, requiring each equity owner thereof that would be charged a performance fee to fall into one of the three categories of qualified client in order for the company itself to be a qualified client under the rule.[61] Some commenters objected to the application of the look-through requirement in contexts where the financial sophistication of an independent fund representative could be expected to adequately protect investors' interests by enabling the negotiation of performance fees at arm's length with the adviser, consistent with the exemption provided by rule 205–3.[62] Although the Commission did not expressly disagree with this view, the Commission determined ''not to eliminate the look through provision of the rule at this time'' but clarified that it would still ''entertain requests for relief from the application of the look through provision in circumstances where the policies and purposes of

[49] *Id.* at 240.

[50] NSMIA, *supra* note 10 (codified at 15 U.S.C. 80b–5(b)(4), (b)(5) and (e)). With respect to excepting section 3(c)(7) private funds, the Commission noted that ''[t]he level of sophistication of the investors in a qualified purchaser pool suggests that this kind of issuer should be allowed to enter into a fee arrangement that is not a fulcrum fee.'' *The Securities Investment Promotion Act of 1996: Hearing before the Comm. on Banking, Housing, and Urban Affairs on S. 1815,* 104th Cong., 2d Sess. 42 (1996).

[51] 15 U.S.C. 80b–5(e).

[52] *See* Exemption to Allow Investment Advisers to Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account, Investment Advisers Act Rel. No. 1682 (Nov. 13, 1997) [62 FR 61882 (Nov. 19, 1997)] (''1997 Proposal''), at n.13; Investment Advisers Act Rel. No. 1731 (July 15, 1998) [63 FR 39022 (July 21, 1998)], at n.9 (''1998 Adoption'').

[53] *See* 1997 Proposal and 1998 Adoption, *supra* note 52.

[54] *See* 1997 Proposal, *supra* note 52, at n.21 and accompanying text; 1998 Adoption, *supra* note 52, at 39023.

[55] *See* discussion of later inflation adjustments *infra* at notes 64–65 and accompanying text.

[56] Rule 205–3(d)(1)(i)–(iii); *see also* 1998 Adoption, *supra* note 52, at 39025. Similar to the definition of ''knowledgeable employee'' in rule 3c–5 under the Investment Company Act, this category of ''qualified client'' includes an executive officer, director, trustee, general partner, or person serving in a similar capacity, of the investment adviser, as well as certain other employees who participate in investment activities and have performed such functions for at least 12 months.

[57] *See* 1997 Proposal, *supra* note 52, at n.28; 1998 Adoption, *supra* note 52, at n.22.

[58] *See* 1998 Adoption, *supra* note 52, at n.23 and accompanying text.

[59] *Id.* at text following n.27.

[60] *See id.* at n.24 and accompanying text.

[61] Rule 205–3(b).

[62] *See* 1998 Adoption, *supra* note 52, at n.32.

section 205 of the Advisers Act would not be served by its application.'' [63]

In 2011, the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') amended section 205(e) of the Advisers Act to provide that, by July 21, 2011, and every five years thereafter, the Commission shall, by order, adjust for the effects of inflation the dollar amount thresholds included in rules issued under section 205(e), rounded to the nearest multiple of $100,000.[64] As of June 29, 2026, the dollar amount threshold of the assets-under-management test is $1,400,000, and the dollar amount threshold for the net worth test is $2,700,000.[65]

B. Performance-Based Compensation: Current Practices

The current exceptions to and exemptions from the performance fee prohibition have led to a patchwork of permitted performance fee arrangements and practices in the asset management industry. As detailed above, current section 205 and rule 205–3 under the Advisers Act operate to permit certain performance fee arrangements largely conditioned on the relevant advisory client's legal type or form (*e.g.,* the legal classification of a client fund managed by the adviser), rather than on an investor's ability to evaluate and bear the risks of an investment product with performance fees.[66] Specifically, the current use of performance fees can depend on the following classifications:

- whether the client is a registered investment company or any person (other than a trust, governmental plan, collective trust fund, or separate account referred to in section 3(c)(11) of the Investment Company Act, which covers most employee benefit plans) with at least $1 million in assets managed by the adviser, *provided that* in each instance an appropriate fulcrum fee is used;
- whether the client is a BDC, *provided that* the performance fee is structured to meet specific statutory conditions;
- whether the client is a section 3(c)(7) qualified-purchaser private fund;
- whether the client is a non-U.S. resident; or
- whether the client (or its equity owners, as applicable) is a ''qualified client,'' *e.g.,* a high net worth individual with a separately managed account.

These exceptions to and exemptions from the performance fee prohibition conditioned on a client's legal classification have in practice confined the use of performance fees behind the requirements for such classifications, including applicable investor eligibility requirements. Particularly, the use of performance fees has long been a defining characteristic of the private fund industry, which has experienced tremendous asset growth over the last decades.[67] Investors that do not meet the eligibility requirements for these performance-fee investment products have had limited opportunities for exposure to their underlying investment strategies and for participation in their asset growth.[68]

However, performance fee arrangements have come to reflect a matured industry practice that can offer a rational and effective means of aligning adviser and investor interests, as well as incentivizing outperformance and rewarding specialized advisory expertise. This is particularly true as performance fees have evolved over time through commercial negotiations to commonly include features designed to mitigate the prospect of conflicted or otherwise excessive risk-taking and more closely align adviser and investor interests (*e.g.,* distribution waterfalls with preferred return and high-water mark rates, catch-ups, and agreed-upon valuation procedures, as applicable to the particular investment strategy). Although initially developed through negotiations between advisers and sophisticated institutional investors, these features have since become commonly adopted across performance fee arrangements offered to private fund investors.[69]

Private funds that are offered exclusively to investors that are ''qualified purchasers'' with generally at least $5,000,000 in investments in accordance with section 3(c)(7) of the Investment Company Act fall under the broad statutory exception to the performance fee prohibition set forth in section 205(b)(4) of the Advisers Act. As such, performance fee arrangements are most commonly and freely used in section 3(c)(7) qualified-purchaser private funds, causing investment strategies generally associated with performance fees, such as private equity, hedge fund, and venture capital strategies, to be offered largely through these types of clients (and hence through some of the most investor eligibility-restricted investment products).

Unlike section 3(c)(7) private funds, private funds that are offered to fewer than one hundred persons in accordance with section 3(c)(1) of the Investment Company Act do not generally qualify for a statutory exception under section 205(b) of the Advisers Act. Instead, a section 3(c)(1) private fund and its adviser can rely on the client-identification or ''look-through'' provision in rule 205–3(b) to enter into a performance fee arrangement if each of the fund's relevant equity owners is a ''qualified client'' under the rule (*e.g.,* a person with at least $1,400,000 managed by the adviser or a net worth of at least $2,700,000, or a knowledgeable employee of the adviser).[70] Similar to section 3(c)(1) private funds, a regulated fund and its investment adviser may likewise currently enter into a performance fee arrangement if each of the regulated fund's relevant equity owners is a ''qualified client'' under rule 205–3.

Because section 3(c)(1), like section 3(c)(7), requires that a relying fund ''is not making and does not presently propose to make a public offering of its securities,'' section 3(c)(1) funds are generally privately offered to U.S. investors in reliance on section 4(a)(2) of the Securities Act and the non-exclusive safe harbors and exemptions provided by Regulation D.[71] Private

[63] *See* 1998 Adoption, *supra* note 52, at n.32 and accompanying text.

[64] Public Law 111–203, 418, 124 Stat. 1376 (2010).

[65] Order Approving Adjustment for Inflation of the Dollar Amount Tests in Rule 205–3 under the Investment Advisers Act of 1940, Investment Advisers Act Rel. No. 6961 (April 28, 2026) [91 FR 23520 (May 1, 2026)] (''2026 Inflation Adjustment Order'').

[66] As noted above, compensation arrangements based on measures of performance other than capital gains or capital appreciation are also not prohibited, such as with respect to investment strategies where gains are sought primarily in the form of interest, ordinary income, or dividends. *See supra* note 12.

[67] Based on Form ADV reporting data, as of the end of 2025, private fund assets have increased from $11.9 trillion to $36.8 trillion in the preceding ten years alone.

[68] *Cf.* Democratizing Access to Alternative Assets for 401(k) Investors, E.O. 14330 (Aug. 7, 2025) [90 FR 38921 (Aug. 12, 2025)] (stating that the vast majority of investors in employer-sponsored defined-contribution plans ''do not have the opportunity to participate, either directly or through their retirement plans, in the potential growth and diversification opportunities associated with alternative asset investments'' and directing the Commission to ''facilitate access to investments in alternative assets,'' including ''consideration of revisions to existing SEC regulations and guidance relating to accredited investor and qualified purchaser status'').

[69] *Cf.* Institutional Limited Partners Association, ILPA Principles 3.0: Fostering Transparency, Governance and Alignment of Interests for General and Limited Partners (June 2019).

[70] Investors that are qualified clients by virtue of their status as qualified purchasers are eligible to invest in a section 3(c)(7) qualified-purchase private fund rather than a section 3(c)(1) private fund.

[71] 17 CFR 230.500–508 (''Regulation D'').

offerings to U.S. investors in reliance on rule 506(b) of Regulation D may be made to up to 35 non-accredited investors (in any 90-calendar-day period) and to an unlimited number of ''accredited investors,'' a definition that includes, among other qualifying criteria, entities with over $5,000,000 in assets or investments and individuals with net worths of over $1,000,000 (excluding their primary residence) or incomes of over $200,000 (individually) or $300,000 (with a spouse or spousal equivalent).[72] Some private funds have also begun to rely on rule 506(c) of Regulation D, which requires that the issuer take reasonable steps to verify accredited investor status of all investors and does not permit any non-accredited investors. Section 3(c)(1) private funds that rely on Regulation D and seek to enter into performance fee arrangements are thus generally subject to separate qualified client and accredited investor asset tests to determine investor eligibility. In addition to these distinct investor eligibility requirements, the requirement that a section 3(c)(1) fund have not more than one hundred beneficial owners necessarily limits the potential scale of these funds, which may limit the incentive for investment advisers to sponsor investment products that utilize them and, in turn, the ultimate availability of these investment products to investors.

The option to use a fulcrum fee in accordance with section 205(b)(2)(B) of the Advisers Act may be available with respect to section 3(c)(1) private funds (if their advisory contracts relate to assets of at least $1,000,000) and regulated funds. However, the inflexibility of the fulcrum fee model and its concomitant operational risks have contributed to its lack of substantial adoption in the industry. Based on available industry data, in 2026 only approximately 1% of registered funds used a fulcrum fee, indicating the model's limited appeal as a practical matter.[73]

Specifically, the symmetrical nature of the fulcrum fee model can lead to unanticipated operational consequences for an adviser and its fund client. The model requires that the fulcrum fee ''provide for increases and decreases in compensation which are proportionate to each other,'' so that the potential upside performance adjustment must equal the potential downside performance adjustment in absolute terms.[74] As a result, the potential for unpredictable changes in a fund's net assets (upon which a fulcrum fee must be calculated) because of factors other than its relative performance (*e.g.,* due to a general declining or rising asset environment that impacts the fund's portfolio to a different extent than it does its chosen benchmark or due to fund redemptions or purchases over the period) can in practice make the total advisory fees paid by the fund unpredictable.[75] Accordingly, fund advisers may face pressure to increase their fulcrum fee's base fee (*i.e.,* the fee earned when performance is equivalent to the fund's benchmark index) and/or limit the possible extent of their upside and downside performance adjustments in order to ensure more reliably that they receive a level of compensation adequate to continue their advisory operations in an economically feasible manner. Otherwise, they risk receiving a minimal level of compensation—or even zero or negative compensation, depending on the applicable fulcrum fee and performance adjustment schedule—that could be inadequate to meet an adviser's own ongoing expenses necessary for its continued operation and provision of services to its client funds, which can in turn precipitate their closures and liquidations. Although unpredictable changes in a client fund's net assets can impact the compensation level of any fund adviser with an asset-based fee, including advisory fees that are not performance fees, the fulcrum fee's requirement for strictly proportional performance adjustments can exacerbate these impacts and heighten the risk of receiving inadequate compensation to address operational challenges.[76]

Additionally, the frequency of compensation under a fulcrum fee model can likewise cause operational difficulties, as the fulcrum fee exception generally requires that the period used for calculating the base fee must be the same as the period used for purposes of calculating the performance adjustment.[77] This can cause a mismatch between the operational needs of the adviser to receive compensation more regularly (*e.g.,* quarterly) than may be desired for a meaningful performance period (*e.g.,* yearly). Although rule 205–2(c) under the Advisers Act provides some flexibility in this respect to use a rolling performance period for purposes of calculating the performance adjustment while using the most recent subperiod of that performance period for purposes of calculating the base fee,[78] the use of two different periods can in practice result in actual fees that greatly differ from the predictable advisory fees that advisers and funds may anticipate.

In sum, the fulcrum fee model's inflexibility has limited its adoption among regulated funds. More broadly, as a result of the general statutory prohibition on performance fees paired with the rigidity of the fulcrum fee exception, the regulated fund industry has been prevented from developing more competitive fee structures, including, for instance, adapting features from performance fee arrangements that have evolved in the private fund industry to address the prospect of conflicted or otherwise excessive risk-taking that originally animated the performance fee prohibition. Instead, advisory fees for registered investment companies are

[72] Rule 501(a) of Regulation D. In addition to the net worth and income criteria, the current accredited investor definition includes individuals who are directors, executive officers, or general partners of the issuer; are a ''family client'' of a ''family office''; hold certain professional certifications; or are ''knowledgeable employees'' of the issuer (if the issuer is a private fund). *See* Rule 501(a)(4), (10), (11), and (13). For entities, in addition to entities with over $5,000,000 in assets or investments, certain financial institutions, certain insurance companies, business development companies, entities in which all of the equity owners are accredited investors, and ''family offices'' are also accredited investors. *See* Rule 501(a)(1), (2), (8), and (12).

[73] This approximation is derived from an assessment of data obtained from Morningstar Direct as of June 10, 2026.

[74] S. Rep. No. 184, 91st Cong., 1st Sess. 45 (1969).

[75] *See, e.g.,* Redmond Growth Fund, Inc., SEC No-Action Letter (pub. avail. Apr. 30, 1974) (granting no-action letter to a fund in connection with its transition to a fulcrum fee arrangement, where its adviser would not receive any advisory fee and would pay monies to the fund, if the performance adjustment resulted in a total advisory fee of less than zero). *See also* Andrew J. Donohue, *Speech by Staff: Keynote Address at the Independent Directors Council Investment Company Directors Conference* (Nov. 12, 2009) (''What advisers sometimes fail to realize, however, is that when the base fee is calculated on current level net assets, the adviser runs the risk of having to reimburse the fund when there is a significant decline in assets coupled with poor performance'').

[76] *See* J. W. Murphy *et al.,* Mutual Fund Performance Fees: Perspectives After More Than 40 Years, The Investment Lawyer, Vol. 26, No. 5 (May 2019) (discussing some of the practical issues faced by advisers and fund boards that seek to implement fulcrum fees).

[77] *See* section 205(b)(2)(B) and rule 205–2(b).

[78] *See* rule 205–2(c). In effect, rule 205–2(c) provides that the periods for calculating the fulcrum fee's base fee and its performance adjustment may differ if: (1) the performance-related portion of the fee is computed on the basis of net asset value averaged over a rolling period (*e.g.,* 12, 24 or 36 months); (2) the base fee is computed on the basis of net asset value averaged over the most recent subperiod of the performance period (*e.g.,* a month, quarter or semi-annual period); and (3) the total advisory fee (*i.e.,* both the base fee and the performance adjustment) is paid at the end of each subperiod.

generally based solely on their net asset value, where an adviser's compensation is principally a function of their client funds' size, which, while reflecting asset accumulation that can result from strong performance, may not isolate investment performance as a direct driver of compensation.

Allowing other kinds of performance fees for registered investment companies would provide investors with the opportunity to select funds where adviser compensation is more directly tied to investment performance and ultimately the returns generated for shareholders. For instance, allowing advisers to be compensated commensurate with the investment gains they generate for shareholders rather than solely based on accumulated assets may promote capital formation in capacity-constrained strategies, where advisers limit assets under management to preserve investment efficacy, but where meaningful return opportunities nonetheless exist.[79]

II. Discussion

A. Expansion of the Ability of Investment Advisers To Charge Performance-Based Compensation to RICs and BDCs

The proposal would amend the qualified client definition in rule 205–3 to expand the ability of investment advisers to regulated funds to enter into investment advisory contracts with performance-based compensation arrangements, provided the following conditions are satisfied:

- The performance-based compensation does not exceed 20% of the regulated fund's net gains over a specified period;
- The regulated fund satisfies rule 0–1(a)(7) under the Investment Company Act (the ''fund governance standards''); and
- The regulated fund's board, including a majority of independent directors, determines that the performance-based compensation arrangement is in the best interest of the regulated fund and its shareholders and makes specific findings regarding the arrangement's appropriateness, structure, and investor protection features.

As discussed above, the prohibition in section 205(a)(1) of the Advisers Act was primarily designed to protect investors who lack the sophistication and bargaining power to evaluate performance fees from the prospect of excessive risk-taking by investment advisers.[80] Regulated funds operate within a comprehensive regulatory framework that provides for a number of investor protections, including, among other features, board oversight, shareholder approval rights, leverage limits, and mandatory disclosure and reporting obligations. Notably, with respect to advisory compensation, the Investment Company Act requires regulated fund boards to annually evaluate and approve the reasonableness of the advisory fees paid to the regulated fund's adviser.[81] The proposed amendments would leverage the existing investor protection framework under the Investment Company Act and the Advisers Act and incorporate conditions tailored to mitigate the risks associated with performance-based compensation arrangements.

1. Scope of Amended Exception

The proposed rule amendments would apply to investment advisers of a registered management investment company or BDC.[82] The amended rule would therefore apply to investment advisers of open-end management investment companies (''registered open-end funds''), such as exchange-traded funds and mutual funds, as well as registered closed-end management investment companies, such as interval funds and tender offer funds. The proposed amendments would apply to investment advisers of regulated funds that are listed for trading on an exchange and those that are unlisted.

We are not, however, proposing to include contracts with unit investment trusts (''UITs'') within the scope of the proposed amendments. Unlike management investment companies and BDCs, UITs are organized under a trust indenture or similar instrument and do not have a board of directors or other governing body responsible for ongoing management of the trust. Because the proposed amendments are premised on the existence of a board of directors capable of exercising ongoing oversight, we have not proposed to extend the scope of the amendments to contracts with UITs. In addition, we are not proposing to include within the scope of the rule amendments contracts with separate accounts that are registered management investment companies offering variable annuity contracts registered on Form N–3 because such separate accounts typically function as pass-through vehicles that allocate contract holder assets to underlying management investment companies registered on Form N–1A, where active portfolio management occurs and to which the proposed amendments would already apply.

Although section 205(b)(3) of the Advisers Act provides an exception to the prohibition on charging performance-based compensation for certain contracts with BDCs, our proposal would allow investment advisers of BDCs to rely on the amended rule. We do not see a basis to differentiate between contracts with BDCs and contracts with registered management investment companies for purposes of the proposed amendments, as BDCs employ investment strategies similar to those of many registered management investment companies and are subject to a substantially similar regulatory framework, which includes the requirement to have a board of directors.

We are not proposing to limit the availability of performance-based compensation arrangements to contracts with registered closed-end funds or BDCs that focus their investments in private markets. Currently, performance-based compensation arrangements are most closely associated with private market-oriented strategies, such as private equity, private credit, hedge fund strategies, or other alternative asset approaches. Registered closed-end funds and BDCs, rather than registered open-end funds, typically have been perceived as better suited to holding relatively less-liquid private market assets because the liquidity and daily valuation and redeemability requirements for registered open-end funds restrict their ability to allocate a significant portion of their portfolio to less-liquid private market assets. There are varying degrees of liquidity associated with exempt offering products, however. For example, hedge fund strategies, which typically charge both management and performance fees, tend to be more liquid relative to private equity fund strategies, which also commonly charge performance fees.[83]

[79] For example, advisers pursuing investments in public market small- or micro-capitalization companies may limit the total assets deployed in such strategies, as large inflows can impair execution. Under a fee structure based solely on net asset value, an adviser's compensation in such a strategy would be inherently constrained by the capacity limitation, potentially rendering the strategy economically unattractive to offer in a regulated fund notwithstanding its return potential. A performance fee would allow the adviser to be compensated in proportion to the returns generated for shareholders, independent of the strategy's asset ceiling.

[80] *See supra* section I.A.

[81] *See* section 15(c) of the Investment Company Act.

[82] *See* proposed rule 205–3(c)(5).

[83] *See* 17 CFR 279.9 (Form PF) (defining ''hedge fund,'' in part, to mean ''[a]ny private fund . . . with respect to which one or more investment

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Similarly, innovative regulated funds formed as registered open-end funds could offer complex and differentiated strategies that rely heavily on manager skill, warranting performance-based compensation paid to the adviser. Accordingly, we are proposing to expand the ability of investment advisers to include performance fees in investment advisory agreements with all regulated funds, including registered open-end funds.

We request comment on the scope of the proposed rule amendments that would expand the ability of investment advisers to regulated funds to enter into investment advisory contracts with performance-based compensation arrangements.

1. Should the proposed rule amendments apply to contracts with all regulated funds, or just some subset of regulated funds? For example, should we explicitly exclude registered open-end funds from the amended rule and limit the scope of the proposed amendments to investment advisory agreements with registered closed-end funds and BDCs, considering that these regulated fund types are currently most associated with investing in private markets? Should the proposed amendments apply both to exchange-listed and unlisted regulated funds? Should the rule exclude regulated funds employing passive or index-tracking strategies?

2. Are there operational or administrative challenges unique to registered open-end funds that would make compliance by their advisers with the proposed amendments difficult or impracticable? For example, given that registered open-end funds continuously issue and redeem shares on a daily basis, are there structural or operational characteristics of registered open-end funds that present particular difficulties in implementing or administering performance fee arrangements? If so, how should the proposed rule amendments account for these challenges, and should the Commission consider alternative compliance frameworks or exemptions tailored to the operational realities of registered open-end fund structures?

3. Is there a basis to exclude investment advisers of BDCs from relying on the amended rule? Why or why not?

4. Should the proposed rule amendments apply to UITs? If so, how should the proposed amendments be modified to account for the structural differences between UITs and management investment companies and BDCs?

5. The proposed rule amendments would not apply to contracts with separate accounts that are registered management investment companies offering variable annuity contracts registered on Form N–3. These separate accounts typically allocate contract holder assets to underlying management investment companies where the active portfolio management occurs, and thus do not generally have an investment adviser whose managerial skills are relevant to the strategy. Should contracts with separate accounts that are registered management investment companies be included in the proposal? Why or why not? Are there any special considerations that would be important to address if such registered management investment companies were included in the proposal?

6. Should the Commission provide guidance on ''capital gains'' or ''capital appreciation'' or any other terms used in section 205(a) or rule 205–3 or define those terms by rule? Are there ways in which performance-based compensation calculated using risk-adjusted, market-relative returns (such as alpha) could be structured in a manner that falls outside the statutory scope of capital gains and capital appreciation under section 205(a)(1)? If so, what specific methodological, contractual, or economic features would distinguish such metrics from capital gains and capital appreciation?

2. Conditions

The proposed rule amendments would expand the ability of investment advisers to include performance fees in investment advisory agreements with regulated funds, permitting the adviser to align its economic incentives with the interests of the regulated fund and its shareholders by linking a portion of the adviser's compensation to the fund's investment performance. The proposed rule amendments would subject the adviser to certain conditions that are designed to protect regulated funds and their shareholders.[84] By conditioning compliance on limiting the maximum level of performance fees, mandating independent board oversight, and requiring a board determination that the compensation arrangement serves the best interests of the fund and its shareholders, the proposed rule amendments are intended to mitigate the potential for excessive risk-taking and speculation that prompted Congress to apply the general prohibition in section 205 of the Advisers Act to advisory agreements with regulated funds. We discuss each of the conditions below.

a. The Performance-Based Compensation Does Not Exceed 20% of the Regulated Fund's Net Gains Over a Specified Period

The current statutory exception on the performance fee prohibition for BDCs reflects a congressional judgment that investment advisers to certain investment vehicles should be permitted to receive performance fees, subject to certain conditions that protect investors from excessive fees.[85] Specifically, Section 205(b)(3) permits an investment adviser to a BDC to receive compensation based on a share of capital gains, not to exceed 20% of realized capital gains upon the funds of the BDC over a specified period or as of definite dates (computed net of all realized capital losses and unrealized capital deprecation). Congress calibrated the 20% ceiling to the then-prevailing market practice for private equity and venture capital funds, while providing investors with a statutory limit above which performance fees could not be increased by contractual negotiation.[86] In addition, considering that venture capital and private equity funds typically compensate managers through performance fees triggered upon the realization of portfolio gains, Congress designed section 205(b)(3) to apply only to the realized gains of BDCs.[87]

The proposal draws on this statutory framework as the conceptual foundation for a new condition in the amended rule, which would allow compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds of a regulated fund, subject to a ceiling of 20% of net capital gains or net capital appreciation over a specified period or as of definite dates.[88] Unlike section 205(b)(3), as applicable to BDCs, the proposed rule amendments would allow an investment adviser to calculate performance fees on net realized and net unrealized capital appreciation. This modification allows flexibility for investment advisers to align their compensation with the total-return experience of investors who typically

advisers (or related persons of investment advisers) may be paid a performance fee or allocation calculated by taking into account unrealized gains. . .'').

[84] *See* proposed rule 205–3(c)(1)(iv).

[85] *See supra* note 36 and accompanying text.

[86] H.R. Rep. No. 96–1341, at 21–22 (1980) (stating that the establishment of the BDC in the Small Business Investment Incentive Act of 1980 ''seeks to remove burdens on venture capital activities that create unnecessary disincentives to the legitimate provision of capital to small businesses'').

[87] *Id.*

[88] *See* proposed rule 205–3(c)(1)(iv)(A).

redeem (or tender shares for repurchase) from regulated funds at net asset value (a price that reflects current unrealized appreciation and depreciation on a mark-to-market basis).[89]

The clause ''over a specified period or as of definite dates,'' which appears in section 205(b)(3) and which we propose to incorporate into the amended rule's exemptive conditions, requires that the advisory contract specify a defined measurement period or reference dates over which net capital appreciation is calculated and against which the adviser's entitlement to performance-based compensation is determined. This measurement window can be a rolling period, such as the fiscal year, a cumulative period calculated from a specified inception date, or discrete valuation dates at periodic intervals. The rule does not propose to mandate a minimum measurement period, consistent with the flexibility afforded by the statutory text in section 205(b)(3).[90]

We request comment on the proposed condition that the performance-based compensation to an adviser for a regulated fund does not exceed 20% of the fund's net capital gains or net capital appreciation over a specified period or as of definite dates.

7. Should the amended rule allow advisers to regulated funds to enter into advisory agreements that include performance fees that exceed 20% of the fund's net capital gains? Conversely, should the proposal include a lower cap (*e.g.,* 10% or 15% of a regulated fund's net capital gains)? Why or why not?

8. Should the amended rule allow advisers to regulated funds to charge performance fees on unrealized gains in addition to realized gains or should the proposed rule permit advisers to regulated funds to charge performance fees on realized gains only? Why or why not?

9. Should investment advisers to BDCs be permitted to charge performance-based compensation on net unrealized capital gains, consistent with the proposed amendments to rule 205–3, or should they be limited to charging performance-based compensation only on net realized gains, as provided by the statutory exception in section 205(b)(3) of the Advisers Act?

10. The proposed amendments would require that performance fees for regulated funds be calculated over ''a specified period'' or ''as of definite dates,'' but do not prescribe a minimum measurement period or minimum interval between measurement dates. Should the amended rule require a specific time period or minimum measurement period over which net capital appreciation is calculated? For instance, should the rule mandate a quarterly, semi-annual, or annual measurement period? Would a mandated minimum measurement period better protect investors by preventing advisers from structuring short measurement windows that obscure volatility or diminish the practical effect of high-water mark and loss carryforward protections? Are those investor protection benefits outweighed by any reduction in flexibility for regulated funds with structural or liquidity reasons to assess performance on a shorter cadence? For regulated funds that currently pay performance fees to their advisers on capital gains or capital appreciation, what measurement periods are typically used in practice, and would a required annual minimum measurement period be consistent with or disruptive to those existing arrangements?

b. Compliance With the Fund Governance Standards

Regulated funds are typically organized and operated by an investment adviser that is responsible for the day-to-day operations of the fund. The adviser is a separate and distinct entity from the regulated fund it advises. This framework presents inherent conflicts of interest and potential for abuses that the Investment Company Act and the Commission have addressed in different ways. The primary manner in which the Investment Company Act and the rules thereunder address this conflict is by giving regulated fund boards, in particular disinterested or ''independent'' directors, an important role in fund governance to look after the interests of regulated fund shareholders and provide an independent check upon the fund's adviser.[91] This framework encourages directors to bring to the boardroom a high degree of rigor and skeptical objectivity to the evaluation of management and its plans and proposals. Certain exemptive rules under the Investment Company Act include a condition that requires regulated funds to comply with rule 0–1(a)(7) under the Investment Company Act, a set of requirements intended to reinforce board independence (the ''fund governance standards'').[92] The fund governance standards require that:

- A majority of a regulated fund's board is made up of independent directors;
- The independent directors of the regulated fund select and nominate any other independent directors;
- Any person who acts as legal counsel for the independent directors of the regulated fund is an independent legal counsel as defined in the fund governance standards;
- The board of directors evaluates at least once annually the performance of the board of directors and the committees of the board of directors, which evaluation must include a consideration of the effectiveness of the committee structure of the fund board and the number of funds on whose boards each director serves;
- The independent directors meet at least once quarterly in a session at which no directors who are interested persons of the fund are present; and
- The independent directors have been authorized to hire employees and to retain advisers and experts necessary to carry out their duties.

These fund governance standards, collectively, are designed to enhance the independence and effectiveness of independent directors and currently are conditions to commonly used exemptive rules under the Investment Company Act that rely on the independent judgment and scrutiny of directors, including independent directors, in overseeing activities that involve inherent conflicts of interest between the funds and their managers.[93] Section 205 of the Advisers Act generally prohibits investment advisers from receiving compensation based on a share of capital gains or capital appreciation of a client's funds. The proposed amendments to rule 205–3 would expand the exemption from this

[89] *See infra* section II.A.2.c. (discussing the regulated fund board's responsibility to make written findings addressing the basis upon which any performance-based compensation is determined with reference to realized gains, unrealized gains, or both).

[90] *See* proposed rule 205–3(c)(1)(iv)(C)(2); *see also infra* note 108 and accompanying text (discussing a proposed requirement for the board to make written findings related to the measurement period over which performance fees are assessed).

[91] *See Burks* v. *Lasker,* 441 U.S. 471, 484 (1979); *see also* Protecting Investors Report, *supra* note 42, at pp. 255–256.

[92] *See* rule 0–1(a)(7); *see also* Role of Independent Directors of Investment Companies, Investment Company Act Rel. No. 24816 (Jan. 2, 2001) [66 FR 3734 (Jan. 16, 2001)] (''2001 Independent Directors Adopting Release'') at text following n.20 (stating that the ''amendments are designed to increase the ability of independent directors to perform their important responsibilities under each of these [exemptive] rules''). Investment Company Governance Technical Amendment, Investment Company Act Rel. No. 36282 (Aug. 4, 2026) [91 FR 50707 (Aug. 6, 2026)] (adopting technical amendments to rule 0–1(a)(7) under the Investment Company Act that reflect the 2006 vacatur by a Federal court of appeals of certain 2004 amendments to the fund governance standards).

[93] *See* 2001 Independent Directors Release, *supra* note 92, at n.20 and accompanying text.

prohibition. Consistent with our practice of applying the fund governance standards to other exemptive rules that rely on independent director oversight to address conflicts of interest between regulated funds and their management, we propose to apply the fund governance standards as a condition of the proposed expansion of relief to regulated funds. Compliance with the fund governance standards is appropriate in the context of the negotiation and review of a performance fee arrangement between a regulated fund and its investment adviser that is subject to the proposed amendments to rule 205–3 because a board with a majority of independent directors is better positioned to represent the interest of the fund by more effectively mitigating the potential conflicts of interest inherent in performance fee arrangements. Therefore, proposing to require a regulated fund's board to satisfy the fund governance standards as a condition to the fund being a ''qualified client'' is intended to help ensure appropriate board oversight of any conflicts of interest associated with a performance fee arrangement proposed by the adviser.

We request comment on the proposed requirement that a regulated fund satisfy the fund governance standards as a condition to meeting the definition of a qualified client under the amended rule.

11. Would requiring the regulated fund's board to satisfy the fund governance standards, as a condition to being treated as a qualified client, enhance the independence and effectiveness of the board in negotiating any performance fee arrangement with the fund's adviser?

12. Is the proposed condition that a regulated fund comply with the fund governance standards appropriate? Would it be appropriate to remove reference to the fund governance standards and simply rely on the current requirement that the board of directors, including a majority of disinterested directors, approve the investment advisory contract?

13. Are there certain requirements in the fund governance standards that the proposal should exclude? For instance, should the rule require that disinterested directors meet at least once quarterly in a session at which no directors who are interested persons of the fund are present, as is currently required in the fund governance standards? Alternatively, are there additional fund governance standards we should require in light of the specific conflicts involved in negotiating a performance fee arrangement?

c. Determination by the Board of Directors

The final condition in the proposed rule amendments would require a regulated fund's board of directors to determine, as part of its approval and annual review of an investment advisory contract required under section 15(c) of the Investment Company Act, that the performance-based compensation arrangement is in the best interest of the regulated fund and its shareholders, and to make specific findings regarding the arrangement's appropriateness, structure, and investor protection features.[94]

Section 15(c) of the Investment Company Act requires that the initial approval, and any annual continuance, of an investment advisory contract by a regulated fund be approved by a majority of the fund's board, including a majority of directors who are not interested persons of the adviser.[95] In discharging this responsibility, the board must request and evaluate such information as may be reasonably necessary to evaluate the terms of the advisory contract.[96]

Courts and Commission guidance have stated that this evaluation should encompass what are commonly referred to as the *Gartenberg* factors, which include the nature, extent, and quality of services provided by the investment adviser; the investment performance of the regulated fund and the investment adviser; the costs of the services and the profitability of the advisory relationship to the adviser; economies of scale; and comparisons of advisory fees and services with those of other advisers to similarly situated funds.[97] This annual evaluation process is further reinforced by section 36(b) of the Investment Company Act, which imposes a fiduciary duty on an investment adviser of a regulated fund with respect to the receipt of compensation for services paid by the fund or its shareholders.[98] Because performance-based compensation is a component of the total advisory fee paid to an investment adviser, it is necessarily within the board's existing obligations under both sections 15(c) and 36(b). To the extent applicable, boards already consider performance fees as part of their review of the adviser's total compensation under these provisions.

Section 15(c) contemplates that a fully informed board, particularly its non-interested directors, will scrutinize the regulated fund's advisory relationship on an annual basis, supported by all information reasonably necessary to evaluate the terms of the advisory agreement.[99] For purposes of actions under section 36(b), courts are instructed to give a board's approval of a particular advisory fee arrangement under section 15(c) such consideration as is deemed appropriate under all the circumstances, which may include considerable weight where the board has engaged in a fully informed process in which it requested and considered all material information bearing on the relevant factors identified in *Gartenberg.*[100] Our proposal builds on this framework. By requiring that the board's findings related to the performance fee arrangement be made as part of its section 15(c) review, we are anchoring the timing of the board's review of performance-based compensation to its established section 15(c) process as a matter of practical expediency and to promote coherent, integrated board oversight of the advisory relationship and compensation. This integrated review framework would help ensure that the board evaluates the performance-based compensation within the same deliberative framework that governs all other material terms of the advisory contract, and would help ensure that the appropriateness of a performance fee arrangement will be reassessed annually as the regulated fund's performance, strategy, portfolio composition, and valuation complexity evolve over time. In addition, this approach would allow the board's evaluation of any performance fee arrangement to also include the evaluation of the aggregate

[94] *See* proposed rule 205–3(c)(1)(iv)(C).

[95] Sections 15(a) through (c) of the Investment Company Act.

[96] Section 15(c); *see also* Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Advisers Act Rel. No. 5248 (June 5, 2019) [84 FR 33669 (July 12, 2019)] (stating that under section 206 of the Advisers Act, an investment adviser has an affirmative, independent obligation to disclose to its client all material information regarding conflicts of interest, including any conflict that may arise from the structure of advisory compensation arrangements).

[97] *Gartenberg* v. *Merrill Lynch Asset Mgmt., Inc.,* 694F.2d 923 (2d Cir. 1982); *Jones* v. *Harris Assocs. L.P.,* 559 U.S. 335, 348 (2010) (''*Jones*''); *see also* Disclosure Regarding Approval of Investment Advisory Contracts by Directors of Investment Companies, Securities Act Rel. No. 8433 (June 23, 2004) [69 FR 39797 (June 30, 2004)], at n 31.

[98] *See* 15 U.S.C. 80a–35(b); *see also Jones,* 559 U.S. at 348.

[99] *Jones,* 559 U.S. at 348 (quoting *Burks* v. *Lasker,* 441 U.S. 471, 482 (1979)). Section 15(c) requires that such approval come by the vote of a majority of directors, who are not parties to such contract or agreement or interested persons of such party.

[100] *Jones,* 559 U.S. at 351 (''Where a board's process for negotiating and reviewing investment-adviser compensation is robust, a reviewing court should afford commensurate deference to the outcome of the bargaining process.'').

advisory fee burden on fund shareholders, considering that the total cost borne by shareholders reflects the combined effect of any performance fee and base management fee, among other expenses.[101]

The findings required by the proposed amendments to rule 205–3, however, are not simply a restatement of what sections 15(c) and 36(b) already require, nor are they intended to be redundant with those existing obligations. Rather, the proposed rule 205–3 conditions are designed to operate independently of, and in addition to, the board's existing statutory duties, by requiring findings that are more particularized to the specific features of the performance fee arrangement. For example, the proposed rule amendments would require the board to make specific written findings regarding adequacy of investor protection features in the compensation arrangement, such as considerations of a preferred return or a high-water mark. These are targeted findings about the design of the performance fee itself and go beyond the general assessment of whether the adviser's total compensation is excessive or the product of arm's-length bargaining, which is the focus of the *Gartenberg* analysis under section 15(c) and the judicial standard under section 36(b). In other words, while sections 15(c) and 36(b) require a regulated fund's board to evaluate whether the adviser's compensation, considered as a whole, is reasonable and not excessive, the conditions in proposed rule 205–3 require the board, as part of the 15(c) process, to determine whether the features of the performance fee arrangement are appropriately designed and the arrangement is in the best interests of the regulated fund and its shareholders.

The proposed condition requiring that a regulated fund's board, including a majority of independent directors, determines that a performance-based compensation arrangement is in the best interests of the fund and its shareholders provides important investor protections. Unlike an asset-based advisory fee, a performance-based fee could create an economic incentive for an investment adviser to pursue strategies or assume portfolio risks that it might not otherwise take in the absence of the contingent compensation opportunity. This asymmetric incentive structure, where the adviser participates in upside gains but does not share in the downside losses, has the potential to misalign the interests of the adviser with those of fund shareholders. To the extent an adviser would like to rely on the exemptive rule, requiring an affirmative best-interest finding by the board, grounded in written findings addressing certain factors relevant to the evaluation of performance fees, is designed to provide a check against the regulated fund being managed on behalf of the adviser or other affiliated persons of the regulated fund rather than on behalf of its shareholders.

The proposed best interest determination requirement reflects the Commission's view that the board is best positioned to assess whether the specific contours of a proposed compensation arrangement are appropriate for a given regulated fund. This condition is not intended to operate as a basis for Commission staff to substitute their judgment for that of a diligently engaged board. Just as with the section 15(c) process, to the extent that directors have meaningfully considered the relevant factors and obtained sufficient information to evaluate the performance fee arrangement, their approval of the arrangement is entitled to considerable weight. Separately, the ''best interests of the regulated fund and its shareholders'' in this context is not intended to apply to each regulated fund shareholder individually, but rather to the shareholders generally.

The proposed best interest finding by the board would be required to include a written finding addressing the appropriateness of a performance-based compensation arrangement considering such factors as the regulated fund's investment strategy and valuation practices.[102] With respect to a fund's investment strategy, a board would generally need to consider whether the adviser is managing the fund's assets in a manner consistent with the fund's stated strategies, and should be attentive to whether the compensation structure may be incentivizing the adviser to take on excessive risk in pursuit of higher fees to the detriment of fund shareholders. Boards generally also would need to consider whether an adviser may be increasing the volatility of the fund's portfolio beyond what is consistent with the fund's stated investment objectives and strategies, whether to enhance the prospect of exceeding a performance threshold or to influence the timing of when performance fees are earned or crystallized, and whether the arrangement could harm shareholders by exposing them to risks that may not be reflected in the fund's disclosures. Under the proposed best interests finding, a board would need to consider, for example, whether the adviser's portfolio construction, use of leverage, or concentration of positions has materially shifted in a manner that appears inconsistent with the fund's investment strategy, particularly during periods proximate to performance fee measurement dates.

Performance-based compensation arrangements are most closely associated with private market-oriented strategies or other complex or differentiated strategies, such as private equity, private credit, or liquid strategies employing relative value, long/short equity, market arbitrage, or other active management techniques. Because these strategies aim to generate risk-adjusted outperformance and rely heavily on manager skill, compensation contingent on investment results may be reasonably justified. Unlike asset-based management fees, which compensate an adviser based solely on the size of assets under management and may therefore incentivize growth of a fund without regard to investment outperformance of a benchmark, a performance fee, if properly structured, can align the interests of the adviser and fund shareholders by tying a portion of the adviser's compensation to returns that genuinely exceed a meaningful benchmark or create risk-adjusted outperformance. By contrast, fund board approval of a performance fee arrangement in connection with the fund tracking a broad-based securities market index, where the investment strategy is passive or formulaic in nature and where excess returns above a market benchmark are neither the stated objective nor a realistic expectation, would generally seem unjustifiable.

The proposal's requirement that the board make written findings assessing the appropriateness of the compensation arrangement considering the regulated fund's valuation practices is important. For instance, where a fund holds assets for which there are no readily available market quotations, such as many private market investments, the risk that performance-based compensation would be calculated on valuations that depend on subjective inputs is elevated, and the board would need to assess the appropriateness of a performance fee, or the design of any proposed performance fee, given the inherently subjective

[101] Regulated funds have an existing obligation to retain any documents or written information considered by the board in approving the terms of an investment advisory contract under section 15(c) of the Investment Company Act, including board meeting minutes memorializing the directors' consideration of the contract. *See* rules § 270.31a–1(b)(4) and § 270.31a–2(a)(6). This also would include materials related to the board's findings related to performance fees under the proposed amendments to rule 205–3.

[102] *See* proposed rule 205–3(c)(1)(iv)(C)(1).

nature of the valuation of such private market portfolio securities.

This obligation is familiar to boards of regulated funds, as the Investment Company Act and rules thereunder currently require regulated fund boards to oversee a fund's valuation process.[103] The Commission has made clear that this oversight obligation is not passive.[104] Boards are expected to apply a level of scrutiny commensurate with the degree to which the fair value of the regulated fund's portfolio depends on subjective inputs and assumptions rather than objective market-based measures.[105] Accordingly, a regulated fund that invests primarily in private market assets for which no readily available market quotation exists should demand more intensive board oversight of the valuation process relative to a fund whose portfolio consists principally of exchange-traded or other readily marketable securities. The proposed rule condition is designed to complement the existing valuation oversight framework in rule 2a–5 under the Investment Company Act, with particular emphasis on the risks that could arise when fair value of portfolio assets serves as the basis for calculating performance-based compensation.

In addition, the proposed amendments would require the board's written findings to address the basis upon which performance fees are calculated and, specifically, whether fees are determined with reference to realized gains, unrealized gains, or both.[106] This distinction is of material significance to fund shareholders and implicates fairness considerations that the board should evaluate with reference to the particular structural characteristics of the fund:

- On one hand, calculating performance fees on unrealized appreciation and depreciation may better align the investment adviser's compensation with the actual economic experience of fund shareholders, because shareholders in many types of regulated fund structures purchase and redeem shares at net asset value and therefore benefit or suffer from changes in portfolio value that include unrealized components. For these types of regulated funds, a strictly realized-gains-only performance fee could create a misalignment between when the adviser is compensated and when shareholders actually experience the economic results being compensated. Moreover, limiting performance fees to realized gains could create incentives for investment advisers to prematurely dispose of higher performing positions to achieve a higher performance fee, potentially to the detriment of fund shareholders who might otherwise benefit from continued appreciation in those positions.
- On the other hand, the inclusion of unrealized appreciation in the performance fee base could introduce meaningful risks to shareholders. For instance, when a portfolio asset lacks a readily available market quotation, upward movements in the fair value of the illiquid asset could inflate a performance fee base without corresponding economic realization. This risk of such an asset could be compounded in the near term, as shareholders may bear asymmetric performance fees on unrealized appreciation that is subsequently reversed, eroding net asset value without any mechanism for recovery absent contractual protections. Boards should be alert to valuation practices that inflate the performance fee base without corresponding economic substance. For example, a regulated fund's acquisition of private fund interests at a discount to net asset value, followed by an immediate mark to full net asset value calculated by the private fund, can artificially accelerate reported returns and, by extension, performance fee accrual.[107]

The proposed board oversight conditions are intended to provide a framework to guide boards in evaluating whether a regulated fund's valuation practices produce performance fee outcomes that are truly reflective of fund performance and are in the best interests of the fund and its shareholders.

The board's evaluation of the basis upon which performance fees are calculated would also need to account for the structural relationship between the regulated fund's net asset value and any price at which shareholders are able to transact in fund shares, if different from a price based on net asset value. For instance, the board's evaluation may be more complex for exchange-listed regulated funds, whose shares trade on a secondary market at prices that may diverge materially from net asset value. In many cases, such secondary market trading is the only way investors are able to buy and sell the fund's shares. Where a listed regulated fund's shares trade at a persistent discount to net asset value (common for many exchange-listed registered closed-end funds), a performance fee calculated on net asset value may impose a fee burden on fund shareholders that is disconnected from the economic experience of those shareholders in the secondary market. A shareholder who purchased shares at a discount to net asset value and continues to hold at a discount has not realized, and may never realize, the net asset value appreciation on which the performance fee is based. Boards of exchange-listed regulated funds should therefore consider whether performance fee calculations based on net asset value are appropriately calibrated to the actual returns experienced by shareholders transacting in the secondary market, and whether additional structural protections, such as a discount-adjusted fee calculation or enhanced hurdle rate, would be warranted to address this potential misalignment.

While the Commission does not prescribe a single approach, in evaluating whether a performance fee arrangement is in the best interests of the regulated fund and its shareholders, the board would have to consider, and therefore its written findings would have to reflect, an evaluation of the relevant structural features of the regulated fund and their relationship to the performance fee arrangement and the extent to which the proposed performance fee arrangement equitably aligns adviser compensation with shareholder outcomes across the range of circumstances in which shareholders may transact.

A regulated fund's board also would be required to make written findings addressing the measurement period over which performance is assessed.[108] The length of the performance fee measurement period can have a significant impact on the alignment of adviser compensation with fund performance and the interests of shareholders. The measurement period that may be appropriate for a given fund may depend, among other things, on the fund's investment strategy and the time horizon over which the fund's returns are anticipated. A fund's liquidity profile and portfolio turnover, among other factors, may bear on whether a

[103] *See* rule 2a–5 under the Investment Company Act.

[104] *See* Good Faith Determination of Fair Value, Investment Company Act Rel. No. 34128 (Dec. 3, 2020) [86 FR 748 (Jan. 6. 2021)], at text following n.209.

[105] *See id.,* at text accompanying n.213 (stating that ''[a]s the level of subjectivity increases and the inputs and assumptions used to determine fair value move away from more objective measures, we expect that the board's level of scrutiny would increase correspondingly.'').

[106] *See* proposed rule 205–3(c)(1)(iv)(C)(2).

[107] This typically involves a fund relying on the practical expedient to use net asset value to estimate fair value, subject to certain criteria. *See* Financial Accounting Standards Board (''FASB'') Accounting Standards Codification (''ASC'') Topic 820–10–35–59 through 35–62. This practice is sometimes referred to as ''NAV squeezing.''

[108] *See* proposed rule 205–3(c)(1)(iv)(C)(2).

shorter or longer measurement period is consistent with the nature of the fund's investments and the interests of its shareholders.[109] Boards should evaluate the length of the measurement period holistically and in connection with other investor protection features that are incorporated into the performance fee arrangement and could mitigate some of the risks associated with shorter measurement periods (*e.g.,* high-water marks or loss carryforward mechanisms). Accordingly, the board's written findings should reflect a considered assessment of whether the measurement period, viewed in the context of the overall fee arrangement, is appropriate for the fund and consistent with the best interests of its shareholders.

Lastly, the proposed amendments would require the board's written findings to address the adequacy of any investor protection features embedded in the performance-based compensation arrangement to protect the interests of shareholders, including, where no investor protection features are present, the basis for concluding that the compensation arrangement is adequate to protect the interests of shareholders.[110] Common investor protection features in performance arrangements include preferred returns, hurdles, high-water marks, and/or loss carryforward mechanisms. These structural protections are well-established features of private fund performance fee arrangements and have been refined over decades of negotiations between institutional investors and private fund managers. The development of many of these features postdates the prohibition on performance-based compensation in section 205 of the Advisers Act, and therefore Congress may not have considered these tools when contemplating the prohibition as applied to advisory contracts with regulated funds. Preferred returns and hurdle rates establish a minimum return threshold that must be achieved before any performance-based compensation accrues to the manager. They operate as a floor that is designed to ensure investors receive a baseline return on their investment before the manager participates in profits.[111] High-water mark provisions and/or loss carryforward mechanisms require that any prior losses be fully recovered before additional performance fees may be charged, thereby preventing an adviser from repeatedly extracting performance fees during periods of volatile performance without regard to the investors' cumulative experience.[112]

The implementation of one or more of these features would protect the interest of shareholders because these features would directly counteract the most acute forms of investment adviser overreach that performance-based compensation can generate (*e.g.,* payment of performance fees attributable to unrealized gains that are never realized, fee layering across volatile performance cycles, and the misalignment of adviser compensation with shareholder capital accumulation over time). The Commission recognizes, however, that no single mechanism is universally appropriate for all regulated fund strategies and structures. Accordingly, the proposed amendments do not mandate the use of any particular feature or mechanism in all circumstances. The board is best positioned to evaluate the benefits and drawbacks of any investor protection feature as applied to the individual strategy and structure of the regulated fund. If no investor protection features are included in the performance-based compensation arrangement, the proposed amendments would require that the board's determination include written findings that address the basis for concluding that the compensation arrangement is adequate to protect the interests of shareholders without such investor protection features.

In aggregate, the proposed conditions are designed to permit the adviser to align its economic incentives with shareholders' interests, while mitigating the risks that led Congress to include the general prohibition on performance-based compensation in section 205 of the Advisers Act, namely, that such compensation arrangements would incentivize investment advisers to take excessive risks with client funds to the detriment of fund shareholders. The proposed conditions create a structured, board-centered governance process through which advisers to regulated funds may access performance-based compensation arrangements in a manner that is consistent with investor protection and the purposes of the Advisers Act. The principles-based approach in the proposed amendments draws on the accumulated market experience that has shaped performance fee practices in the private fund context for decades but is also designed to ensure that regulated fund boards have the tools to evaluate and accommodate future innovation in performance fee structures.

We request comment on the proposed condition requiring that the regulated fund's board determine that the performance-based compensation arrangement is in the best interest of the regulated fund and its shareholders and make specific findings regarding the arrangement's appropriateness, structure, and investor protection features.

14. Should the proposal explicitly require that the board conduct a comparative analysis, such as requiring that the board determine that the performance fee structure is more beneficial to shareholders than a conventional asset-based only fee arrangement?

15. The proposed rule amendments would require that the board's written findings be made as part of the regulated fund's annual review and approval of an investment advisory contract under section 15(c) of the Investment Company Act. Should the rule instead require that the board's written findings be made more frequently than annually, for example, on a semi-annual or quarterly basis? Are there circumstances where a more frequent determination by the board would be warranted to protect the interests of fund shareholders; for instance, where a regulated fund's performance fee is calculated over a shorter measurement period?

16. Should a regulated fund's initial approval and any annual continuance of a performance fee arrangement be subject to heightened procedural requirements, such as a supermajority vote of the independent directors or a shareholder vote? Should the proposed rule amendments require the board to retain independent fee consultants or financial advisors when evaluating performance fee arrangements?

[109] *Cf.* Alt. Inv. Mgmt. Ass'n, *AIMA Global Investor Board Perspectives: Alignment of Interests and Fee Preferences* (Oct. 7, 2022) (noting that most investors in hedge funds surveyed prefer that performance fees be paid no more frequently than annually, while acknowledging that ''there can be considerable differences in the crystallisation frequencies applied by different hedge fund strategies—mainly due to the variety of fund liquidity terms used across the universe of hedge fund strategies.'').

[110] *See* proposed rule 205–3(c)(1)(iv)(C)(3).

[111] The board should consider whether the arrangement employs a ''hard hurdle,'' under which the performance fee is calculated only on returns in excess of the threshold or a ''soft hurdle,'' which permits the adviser to earn a performance fee on all profits once the threshold is cleared.

[112] Boards should consider incorporating features within the performance fee arrangement that are common in contracts between institutional investors and private fund managers, to the extent applicable or useful for the fund structure/strategy. For example, including a provision in the investment advisory agreement that accrued performance fees be held in escrow rather than distributed immediately to the adviser would preserve the adviser's ability to satisfy any loss recovery obligations or clawbacks if subsequent fund performance deteriorates.

17. Should the rule affirmatively enumerate categories of fund strategies for which an adviser would be categorically ineligible to charge performance fees under the exemption, rather than leaving this determination to the discretion of the regulated fund's board? For example, should the rule exclude regulated funds employing passive or index-tracking strategies? Alternatively, should the Commission define or offer further guidance on the boundary between complex and differentiated strategies that may rely heavily on manager skill and passive or formulaic strategies where performance fees may be less appropriate?

18. To what degree should the proposed rule amendments specifically address performance fees for regulated funds investing in strategies with highly heterogeneous or mixed asset compositions? For example, a regulated fund that invests most of its assets in private market investments but also maintains a liquidity sleeve of money market instruments or large-capitalization equity securities. Should the proposed condition require that performance-based compensation be calculated only with respect to the portion of the regulated fund's portfolio attributable to private market or alternative asset strategies? Is a blended or sleeve-based performance fee structure administratively workable for regulated funds and their service providers, including funds with multi-manager structures?

19. Should the rule require that portfolio investments subject to unrealized gain-based performance fee calculations be independently valued by a qualified independent third-party valuation agent prior to any payment of performance fees to the adviser attributable to such portfolio investments? Alternatively, should the rule condition payment of any performance fee based on unrealized gains on the board's affirmative finding that the fund's valuation methodology is sufficiently objective and verifiable to support performance fee calculations?

20. In cases where the performance fee base includes unrealized appreciation on assets for which no readily available market quotation exists, is there a heightened risk that the adviser's application of the fair value determination framework established under rule 2a-5 under the Investment Company Act, including its use of FASB ASC Topic 820 methodologies, would fail to sufficiently address the conflicts of interest introduced by charging performance fees on capital gains or capital appreciation? Are there specific aspects of the FASB ASC Topic 820 framework, such as its reliance on unobservable inputs or its use of management assumptions and estimates commonly applied to private market investments, that, when coupled with the risks inherent in charging a performance fee, give rise to particular conflicts of interest that may negatively impact the reliability of fair value estimates as a basis for performance fee calculations? Are there certain incremental safeguards that advisers should be required to put in place to address such conflicts? Alternatively, should the proposed rule amendments condition the ability of an investment adviser to charge performance fees to a regulated fund on the regulated fund's portfolio consisting entirely of assets for which readily available market quotations exist, or, more broadly, on the regulated fund's entire portfolio consisting of assets classified as level 1 or level 2 assets under the FASB ASC Topic 820 fair value hierarchy?

21. The proposed rule amendments would require the board's written findings to address the adequacy of investor protection features embedded in the performance-based compensation arrangement, such as preferred return, hurdles, high-water marks, and/or loss carryforward mechanisms. Should the rule mandate the inclusion of one or more of these investor protection features as a categorical requirement for reliance on the proposed rule, rather than leaving their inclusion to board discretion subject to a written findings requirement?

22. The proposed rule amendments would require that the board's written findings address the adequacy of investor protection features in the performance-based compensation arrangement but would not prescribe a specific form or level of detail for those written findings. Should the Commission provide additional guidance, or establish minimum content requirements, regarding the form and substance of the board's written findings, such as by requiring that the findings specifically identify and respond to any material conflicts of interest identified by the board in connection with its evaluation of the performance fee arrangement?

23. Should the amendments include specific provisions governing the treatment of accrued or anticipated performance fees in the event of the board's termination of an adviser? If so, what form should such provisions take, and how should they be structured to appropriately balance the board's fiduciary obligations to fund shareholders with the adviser's interest in receiving earned compensation? For example, where a board terminates an adviser for cause (such as for fraud, willful misconduct, or a material breach of the advisory agreement), should the amended rule provide that the adviser forfeit some or all accrued but unpaid performance fees, or should the rule distinguish between fees that have already crystallized and those that are merely anticipated? Conversely, where a board terminates an adviser without cause (*e.g.,* as part of a strategic management decision, to transition to a different adviser, or following a change in the fund's investment mandate), the adviser may have a stronger claim to compensation reflecting value it has already created for the regulated fund even if that value has not yet been realized or crystallized into a payable fee. Should the Commission provide guidance identifying factors boards should consider when evaluating adviser termination in light of accrued or anticipated performance fee obligations, or are these matters better left to private contract between the regulated fund and the adviser?

3. Disclosure Related to Performance-Based Compensation

a. Prospectus Disclosure

Currently, regulated funds are required to disclose in their prospectuses information about the investment advisory fees paid to the fund's adviser, including any performance-based compensation. Unlike section 205 of the Advisers Act and rule 205–3 thereunder, the scope of the prospectus disclosure requirements related to performance-based compensation are not limited to compensation based solely on capital gains or appreciation. They also encompass fees based on other performance measures, such as interest, ordinary income, or dividends. We are proposing to maintain this approach.[113] The proposal would require a regulated fund to provide more particularized prospectus disclosure in two locations about any performance-based compensation paid to the investment adviser:

- *Fee table:* the proposal would add a distinct line item regarding any performance-based compensation paid to the adviser or its affiliates, while also alerting the investor about the variability of the performance fees and providing a cross-reference to the more

[113] Accordingly, the use of ''performance-based compensation'' or ''performance fees'' in this section II.A.3.a includes fees paid to the adviser based on all performance measures, consistent with the existing disclosure requirements in Form N–1A and Form N–2.

complete discussion about the performance fees provided later in the prospectus.[114] In addition, the proposal would require that the expense example reflect any performance fees; [115] and

• *Management discussion:* the proposal would require a detailed description of the performance fee arrangement, including a graphical representation illustrating the calculation of the performance fee across a range of hypothetical performance scenarios.[116]

To help implement the proposal's investor protection goals and safeguards discussed above, the proposed disclosure would augment the current registration form requirements that require that a regulated fund provide disclosure in its prospectus and statement of additional information about the compensation of its investment advisers, including performance-based compensation.[117] These amendments are designed to enhance transparency for investors about performance fees paid to the adviser and to complement our proposed amendments to rule 205–3 under the Advisers Act by providing disclosure regarding the expanded ability for regulated funds to pay performance fees based on capital gains or appreciation.[118] Without the amendments, as discussed below, it may be difficult for an investor to easily determine that the adviser is paid a performance fee, which is a material part of the cost structure of the advisory fee, as the performance fee would not be disclosed separately in the regulated fund's fee table.[119] Requiring separate disclosure about the fees that the regulated fund may pay to its adviser would assist an investor in making an informed investment decision as well as enhance the ability of an investor to compare regulated funds.

Fee Table Disclosure

Regulated funds are currently required to disclose certain key information about the funds' fees and expenses in a standardized fee table in their prospectus. The fee table is designed to help investors understand the costs associated with investing in a regulated fund and to facilitate comparisons across funds. The instructions to the fee table require funds to disclose ''management fees,'' as a line item that encompasses all fees paid to the investment adviser for managing the fund's portfolio, including any fees that are based on the fund's performance.[120] The instructions to the prospectus fee table do not currently require a regulated fund to separately identify, as a distinct line item or caption within the fee table, the portion of management fees attributable to performance-based compensation as distinguished from asset-based advisory fees. As a result, if such fees are not separately identified, investors in regulated funds that could charge performance fees may not be able to readily discern from the fee table the extent to which the total management fees they bear reflect asset-based charges exclusively versus fees that would vary with fund performance, potentially obscuring a material aspect of the fund's cost structure and limiting investors' ability to make fully informed investment decisions and to fully compare funds. Some regulated funds where the adviser receives performance fees have developed a practice of including separate disclosure in their fee tables about such fees.[121] The practice of separating performance fees from management fees results in enhanced transparency to investors about performance fees, and thus we are proposing to require separate line-item disclosure in the fee table about performance fees paid to a regulated fund's adviser, to the extent applicable.

Specifically, we are proposing to require that a regulated fund add a caption to its prospectus fee table titled ''performance fees.'' This caption would disclose that the regulated fund has an investment advisory agreement that includes performance-based compensation which may be payable to the investment adviser or its affiliates.[122] The performance fees caption would be located directly below and indented equally to the ''management fees'' caption in the fee table. The regulated fund would be required to disclose the performance fee paid to the adviser during the prior fiscal year as a percentage of the value of the shareholder's investment, for Form N–1A disclosure, or as a percentage of net assets attributable to common shares, for Form N–2 disclosure.

A regulated fund that may pay its adviser performance fees under its investment advisory agreement also would be required to add a footnote to the fee table that would provide concise information about the performance fees with a cross-reference to where the investor could find additional information about the performance fees. Specifically, the footnote would explain briefly the basis on which performance fees are imposed and that performance fees may be substantially higher or lower because these fees are based on the performance of the registrant, which may fluctuate over time.[123] Performance fees are variable, and the footnote disclosure would alert the investor to this variability. In addition, consistent with the Commission's layered disclosure framework, the footnote would include a cross-reference to the more complete disclosure about the performance fees which would be provided later in the prospectus.[124] The proposed prospectus fee table amendments also would address New Funds, as defined in each registration statement form, that will pay their advisers performance fees and existing regulated funds that newly determine to pay their advisers performance fees.[125]

[114] *See* proposed Instruction 3(b) to Item 3 of Form N–1A; proposed Instruction 7.c. to Item 3 of Form N–2.

[115] *See* proposed Instruction 4(f) to Item 3 of Form N–1A; proposed Instruction 12.d. to Item 3 of Form N–2.

[116] *See* proposed Item 10(a)(1)(ii)(B) of Form N–1A; proposed Instruction 2. to Item 9.1.b.(3) of Form N–2.

[117] *See* Items 10 and 19 of Form N–1A; Items 9 and 20 of Form N–2; *see supra* sections II.A.1 and II.A.2. This disclosure would complement information regulated funds currently provide on performance fees, including the current requirement for a regulated fund that charges a performance fee to disclose, in notes to the fund's financial statements, how the performance fee was calculated and the amount of the performance fee that was paid during the reporting period. *See, e.g.,* FASB ASC Topic 850–10–50–1; rule 4–08(k) of Regulation S–X [17 CFR 210.4–08].

[118] Unlike the disclosure required in the initial adoption of rule 205–3 in 1985 and subsequently removed from the 1998 amendments to rule 205–3, our proposed disclosure requirements would be applicable only to performance fee arrangements with regulated funds and are designed to provide retail investors with the information necessary to understand the performance fee arrangement. *See supra* section I.A.3.

[119] *See infra* note 122 and accompanying text.

[120] *See* Instruction 3(a) to Item 3 of Form N–1A; Instruction 7.a. to Item 3 of Form N–2. These instructions apply to fulcrum fees and any other compensation arrangements based on measures of performance.

[121] *See, e.g.,* Blackstone Private Multi-Asset Credit and Income Fund (Investment Company Act File No. 811–23996); Carlyle Tactical Private Credit Fund (Investment Company Act File No. 811–23319); Hamilton Lane Private Assets Fund (Investment Company Act File No. 811–23509).

[122] *See* proposed Instruction 3(b) to Item 3 of Form N–1A; proposed Instruction 7.c. to Item 3 of Form N–2.

[123] *See* proposed Instruction 3(b) to Item 3 of Form N–1A; proposed Instruction 7.c. to Item 3 of Form N–2.

[124] *See, e.g.,* Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Investment Company Act Rel. No. 34731 (Oct. 26, 2022) [87 FR 72758 (Nov. 25, 2022)] at section I.A.2.; *see also* proposed Instruction 3(b) to Item 3 of Form N–1A; proposed Instruction 7.c. to Item 3 of Form N–2.

[125] *See* Instruction 6 to Item 3 of Form N–1A (defining a new fund as a ''Fund that does not include in Form N–1A financial statements reporting operating results or that includes financial

Continued

The proposed amendments would provide that a New Fund, as defined in Form N–1A and Form N–2, would be able to show zero performance fees paid to the investment adviser or its affiliates.[126] A New Fund has no or a limited track record and therefore would not have performance information on which to base its disclosure of performance fees paid to the adviser. Following the regulated fund's first fiscal year, however, a regulated fund with a performance fee arrangement would be required to disclose in the fee table the performance fee paid to the investment adviser or its affiliates during the prior fiscal year.[127] Further, if there are any changes to the annual fund operating expenses disclosure in the fee table that would materially affect the information disclosed in the fee table, which would include the performance fee disclosure for an existing regulated fund that newly determines to pay its adviser performance fees, the regulated fund would be required to restate the expense information using the current fees as if they had been in effect during the previous fiscal year.[128] Accordingly, existing funds (*i.e.,* funds that do not qualify as ''New Funds'' as defined in Form N–1A and Form N–2) that adopt a performance fee arrangement, would disclose in the fee table the performance fee that would have been payable to their investment adviser had the performance fee arrangement been in place during the previous fiscal year and would disclose in a footnote to the fee table that the expense information in the table has been restated to reflect current fees.[129]

To implement our proposed performance fees line-item disclosure, we are proposing to amend the definition of ''Management Fees'' in the fee table instructions to exclude any fees based on the fund's performance.[130] Therefore, the regulated fund's base management fees would be presented separately from any performance-based compensation in the fee table.

Further, we are proposing to require that the fee table expense example include performance fees, to the extent applicable.[131] We recognize that the expense example currently includes management fees, which are defined to include any performance fees. Our proposed requirement is designed to ensure the expense example would reflect the performance fees shown in the fee table line item and would parallel that disclosure requirement.[132]

Requiring separate disclosure regarding performance fees in the prospectus fee table would alert an investor in an easily accessible location and reader-friendly format that performance fees may be payable to the regulated fund's adviser. In addition, because regulated funds already are required to tag their fee tables using the Inline eXtensible Business Reporting Language (''XBRL''), fee table disclosure about performance-based compensation, including the footnote to the fee table and the expense example, would be included in the Interactive Data Files that are required to be submitted to the Commission.[133] The Commission would make taxonomy changes to reflect the disclosure revisions. The Interactive Data Files provide a structured, machine-readable data language, which would make the fee table disclosure about performance fees more readily available and easily accessible for aggregation, comparison, filtering, and other analysis.

Further, our proposed prospectus fee table disclosure about performance fees would be included in a registered open-end fund's summary prospectus, as applicable.[134] A registered open-end fund may satisfy its prospectus delivery obligations by sending or giving a summary prospectus to investors.[135] Most open-end funds satisfy their prospectus delivery requirements with summary prospectuses.

Performance Fee/Management Discussion Disclosure

Currently, in addition to fee table disclosure, the registration statement forms for regulated funds require a description of the investment adviser's compensation, including whether the compensation will be based on a percentage of average net assets.[136] While this disclosure is important, it is not explicitly tailored to dovetail with the requirements of the proposed amendments to rule 205–3 discussed above.[137]

Specifically, if the investment adviser's compensation includes a performance fee, the regulated fund would be required to disclose the following:

- The rate of the performance fee and the basis on which it is calculated, including whether the fee is determined with reference to realized or unrealized gains, investment income, or any combination thereof;
- Whether the performance fee is calculated on the fund's total investment return before or after deducting fees, commissions or expenses;
- The measurement period over which the performance fee is assessed;
- A description of any features that limit or condition the payment of a performance fee to the investment

statements for the Fund's initial fiscal year reporting operating results for a period of 6 months or less'') and proposed Instruction 13. to Item 3 of Form N–2.

[126] *See id.* Further, a regulated fund that is subject to a performance fee but that did not pay a performance fee to its adviser in the prior fiscal year would show zero performance fees paid in the line item disclosure and would include the note to the fee table required by proposed Instruction 3(b) to Item 3 of Form N–1A and proposed Instruction 7.c. to Item 3 of Form N–2.

[127] *See* proposed Instruction 6(c) to Item 3 of Form N–1A and proposed Instruction 7.c. to Item 3 of Form N–2.

[128] *See* renumbered Instruction 3(e)(ii)(A) to Item 3 of Form N–1A; *see also* proposed Instruction 11.b.1 to Item 3 of Form N–2.

[129] *See* proposed renumbered Instruction 3(e)(ii)(B) to Item 3 of Form N–1A; *see also* proposed Instruction 11.b.2 to Item 3 of Form N–2. As in proposed renumbered Instruction 3(e)(iii) to Item 3 of Form N–1A, proposed Instruction 11.c to Item 3 of Form N–2 would explain that a change in ''Annual Fund Expense'' means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal. A change in ''Annual Fund Expenses'' would not include a decrease in annual expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement resulting from an increase in the Registrant's assets.

[130] *See* proposed Instruction 3(a) to Item 3 of Form N–1A; proposed Instruction 7.a. to Item 3 of Form N–2.

[131] *See* proposed Instruction 4(f) to Item 3 of Form N–1A; proposed Instruction 12.d. to Item 3 of Form N–2.

[132] Because the examples in Form N–1A and Form N–2 require registrants to assume a 5 percent annual return, there may be circumstances in which a regulated fund would not reflect a performance fee in the example. For instance, if a New Fund, for which past performance does not exist and the performance fee is only payable on returns exceeding a hurdle rate or benchmark return that is greater than 5 percent, the assumed 5 percent annual return would not trigger a performance fee obligation, and therefore no performance fee would be reflected in the example.

[133] *See* General Instruction C.3.(g) to Form N–1A; General Instruction I. to Form N–2.

[134] *See* 17 CFR 230.498 (rule 498 under the Securities Act). Only certain disclosure items are included in the summary prospectus. While fee table disclosure is included in the summary prospectus, the discussion about management, organization, and capital structure required by Item 10 of Form N–1A is not included in the summary prospectus.

[135] A summary prospectus uses a layered disclosure approach designed to provide investors with key information about the registered open-end fund in a concise more reader-friendly presentation, with access to more detailed information available online, or delivered in paper or electronic format upon request. *See* Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Investment Company Act Rel. No. 28584 (Jan. 13, 2009) [74 FR 4546 (Jan. 26, 2009)].

[136] *See* Item 10(a)(1)(ii)(A) of Form N–1A; Instruction 1 to Item 9.1.b.(3) of Form N–2. These disclosure items are not required to be included in the interactive data files submitted to the Commission.

[137] *See supra* section II.A.2; *see also* proposed rule 205–3(c)(1)(iv)(C).

adviser, including, but not limited to, any preferred return, hurdle rate, high-watermark, loss carryforward mechanism, or any other features that limit or condition the payment of a performance fee to the investment adviser; and

- A graphical representation that illustrates the calculation of the performance fee across a range of hypothetical performance scenarios.[138]

We designed these disclosure requirements to help investors evaluate the principal components of the performance fee arrangement.[139]

Further, while not currently required to do so by the registration statement forms, many regulated funds include graphical representations in their prospectuses to explain how their performance fee is calculated. These representations are helpful in explaining the multiple components that may be part of such fees. Our proposal would codify this practice.[140]

We request comment on the proposed prospectus disclosure requirements regarding performance-based compensation.

24. Form N–1A and Form N–2 require disclosure about all types of performance-based compensation, including compensation based on measures other than capital gains or capital appreciation. Consistent with section 205 of the Advisers Act, however, Form ADV defines performance-based fees as fees based on capital gains on or capital appreciation of the assets of the client.[141] Should the Commission revise the definition of performance-based fees in Form ADV to include other measures of performance besides capital gains or capital appreciation?

25. Currently, management fees are defined, for purposes of the prospectus fee table line-item disclosure, as including performance fees. Under our proposal, the definition of management fees would be revised to exclude performance fees for the fee table line-item disclosure. Would our proposal to exclude performance fees from the definition of management fees and require distinct disclosure of performance fees in the fee table be helpful to investors and provide transparency about the amount of any performance fees? Would there be complications or difficulties with separating performance fees from the management fee line-item in the prospectus fee table? Should we require a different presentation for performance fees in the fee table instead? Please explain.

26. We are proposing to require that the performance fees shown in the fee table be based on the performance fees that were payable to the investment adviser or its affiliates during the regulated fund's most recent prior fiscal year, accompanied by disclosure about fee variability in both a footnote to the fee table and elsewhere in the prospectus. Is this approach appropriate, or would such an approach be misleading to investors? Alternatively, are there other approaches to disclosing the amount of performance fees payable to the investment adviser or its affiliates that would be more appropriate? For example, should the Commission instead require disclosure in the fee table of an average of the performance fees paid over a multi-year period, such as three years?

27. Is the proposed fee table disclosure and the accompanying footnote to the fee table regarding performance fees necessary in light of the information required by proposed Item 10(a)(ii)(B) of Form N–1A and proposed Instruction 2 to Item 9.1.b.(3) of Form N–2?

28. Should we require additional particularized fee table disclosure about fulcrum fees? For example, should we require that regulated funds with fulcrum fee arrangements include line-item disclosure below the performance fees that would disclose the base fee and any performance adjustments associated with the fulcrum fee? Are there additional ways that would facilitate investor understanding about the fulcrum fee in the fee table?

29. We are proposing to require that the basis on which the performance fee is imposed be disclosed briefly in a note to the fee table. Would the proposed note about the basis on which the performance fee is imposed help to facilitate investor understanding about the performance fee and assist the investor in making an informed choice about the regulated fund? Why or why not?

30. We are proposing to require that the distinct performance fees line-item disclosure in the fee table be located directly below the management fees line-item. Are there other places in the fee table where the performance fees line-item should be located?

31. A New Fund, as defined in its registration statement form, that has an investment advisory agreement under which performance fees may be payable to investment adviser or its affiliates would be able to show zero performance fees payable to its investment adviser or its affiliates on the performance fees line-item in the fee table. The proposal would require an existing registered open-end or closed-end fund that newly adopts a performance fee arrangement to disclose in the fee table the performance fee that would have been payable to its investment adviser had the performance fee arrangement been in place during the previous fiscal year. Is this approach appropriate? Alternatively, should we permit the existing regulated fund to show zero performance fees in the fee table, similar to the approach for a New Fund?

32. When presenting the expense examples in Form N–1A and Form N–2, rather than basing any performance fees included in the examples on the amount of the performance fees reflected in the fee table, should the examples instead include the performance fee amounts that would be paid under the stated assumption of a 5 percent annual return and/or an alternative or additional assumed return rate, such as the fund's hurdle rate or another rate sufficient to trigger the performance fee, to ensure that performance fees are captured in the example?

33. Should the Commission require that regulated funds disclose to shareholders, in plain English and with numerical specificity, the amount of performance fees paid or accrued during each reporting period that are attributable to unrealized appreciation and realized gains separately? Should this disclosure be required elsewhere, such as in annual reports for registered open-end funds?

34. Forms N–1A and N–2 currently require that a regulated fund submit an interactive data file to the Commission that includes the prospectus fee table. The data file is designed to facilitate timely availability of important information in a structured format to investors, their investment professionals, and other data users. For data aggregators, the data file allows them to quickly process data and related analysis and to share the analysis with investors. Would having an interactive data file that includes performance fees as a distinct fee table line-item be

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[138] *See* proposed Item 10(a)(1)(ii)(B) of Form N–1A; proposed Instructions 2.a.–2.e. to Item 9.1.b.(3) of Form N–2.

[139] *See* proposed rule 205–3(c)(1)(iv)(C). Further, regulated funds are currently required to disclose in Form N–CSR [17 CFR 274.128] information about the basis upon which the board approved the advisory fee under section 15(c) of the Investment Company Act. *See* Item 11 of Form N–CSR; *see also* Item 13 of Form N–CSR. The disclosure on Form N–CSR also would provide investors with information about the board's evaluation of these factors.

[140] *See* proposed Item 10(a)(1)(ii)(B)(5) of Form N–1A; proposed Instruction 2.e. to Item 9.1.b.(3) of Form N–2.

[141] *See* section 205(a) of the Advisers Act; *see* Glossary of Terms to Form ADV, definition no. 48.

helpful to investors, investment professionals and other data users?

35. The Commission has granted exemptive relief to sponsors to operate actively managed exchange-traded funds (''ETFs'') that do not provide daily portfolio transparency. Under the terms of the exemptive relief, each non-transparent ETF uses a standard risk legend in its prospectus, fund website, and marketing materials that highlight certain differences between non-transparent ETFs and fully transparent ETFs. Would a similar risk legend for regulated funds that highlight the performance fees as compared to regulated funds without performance fees in a standard format be useful for investors, particularly investors in registered open-end funds who may not be familiar with performance fees? For example, this risk legend could address how a regulated fund with performance fees may create additional risks for investors such as the performance fee being payable even if the regulated fund is losing money; that basing performance fees on unrealized gains may create risks for investors in funds that invest primarily in securities or other assets for which market quotations are not readily available; that the performance fees may create an incentive for the adviser to make investments on the regulated fund's behalf that are risky or more speculative than would be the case absent such a compensation arrangement; that the regulated fund with the performance fees may be more expensive than a regulated fund without performance fees; and that these additional risks may be greater in uncertain market conditions. If so, should the legend include a cross-reference to prospectus disclosure about the performance fee?

36. We are proposing to require that a regulated fund include a graphical representation of the performance fee that would include the principal components of the performance fee. Would such a graphical representation aid investors in understanding the economic impact of performance fee arrangements, and are there particular design requirements or standardization elements we should mandate to ensure comparability across registrants? For example, should we require that the graphical representations depict standard scenarios such as a market that has a 10% percent investment return, a negative 10% investment return, and a no investment return? What should the design and/or standard elements be that we mandate across registrants? For instance, should we require that the graphical depiction be in the form of a bar chart, or some other format? Should we require the graphical depiction be reflected in another location in addition to the prospectus, such as on the fund's website?

37. Should the Commission require funds to supplement the required graphical representation with a dynamic or interactive model or spreadsheet that would allow investors to input their own assumptions and observe the resulting performance fee calculations in real time? Should funds be required to provide such an interactive tool, for example, through the fund's website with a link to the interactive tool provided in the fund's prospectus? Would an interactive model provide meaningful additional value to investors beyond the static graphical representation? What are any operational, cost, or compliance burdens associated with creating and maintaining an interactive tool?

38. Our proposed prospectus disclosure requirements about performance fees that may be paid to a regulated fund's adviser are designed to complement the proposed amendments to rule 205–3 under the Advisers Act. Are there other disclosure factors that we should consider requiring in the regulated fund's management discussion about the performance fee that would be helpful to investors?

b. Form N–CSR Disclosure

Form N–CSR, a combined reporting form used by registered management investment companies to transmit shareholder reports to the Commission as well as to report corporate governance and financial data, requires a registered management investment company to provide disclosure about the basis for the board's approval of its investment advisory contract. Specifically, under Item 11 of Form N–CSR, if a fund's board of directors has approved any investment advisory contract during the fund's most recent half-year, the fund is required to discuss in reasonable detail the material factors and the conclusions that formed the basis of the board's approval, including the factors relating to the approval of the advisory fee and any other amounts paid by the registrant to the adviser.[142] Although the current disclosure requirements of Item 11 of Form N–CSR require disclosure regarding a board's approval of advisory contracts with a performance fee of any kind, we are proposing to amend Item 11 to include more particularized disclosure regarding the approval of performance fees based on capital gains in or capital appreciation of a regulated fund whose investment adviser charges the regulated fund a performance fee pursuant to the conditions of proposed rule 205–3(c)(1)(iv).[143] These particularized disclosure requirements under proposed Item 11(3) of Form N–CSR would mirror the written findings that we are proposing that the board would be required to make when it determines that such performance fees are in the best interests of the regulated fund under proposed Advisers Act rule 205–3. This disclosure would be useful for investors because it would provide them with meaningful insight into the board's reasoning and analysis in approving a performance fee arrangement that could impact their returns.

We request comment on the proposed Form N–CSR requirements regarding performance-based compensation.

39. Would the proposed amendments to Item 11 of Form N–CSR be helpful to investors? Why or why not? Are there additional or different disclosure items about performance fees that registrants should be required to disclose on Form N–CSR? If so, what are those disclosures?

40. Disclosures on Form N–CSR are available to investors through the Commission's EDGAR website but are not required to be sent directly to a regulated fund's shareholders. Proxy statements, however, are required to be sent directly to a regulated fund's shareholders. Should the Commission require that the proposed particularized disclosure regarding the approval of performance fees based on capital gains or capital appreciation on Form N–CSR instead be, or also be, included in a proxy statement on Schedule 14A filed in connection with a regulated fund's shareholder meeting? Why or why not?

B. Additional Amendments to the ''Qualified Client'' Definition

In addition to the proposed amendments expanding the qualified client definition to include regulated funds that meet certain conditions, the proposal would amend rule 205–3 to modernize the ''qualified client'' definition by expanding eligibility to include investors that satisfy the ''accredited investor'' definition under Regulation D.[144] Specifically, the proposed changes would amend the definition of ''qualified client'' to include natural persons or entities that meet the ''accredited investor'' definition and relatedly would remove the ''qualified client'' definition's

[142] *See* Item 11 of Form N–CSR.

[143] *See supra* section II.A.2.

[144] Rule 501 of Regulation D, *supra* note 71.

separate net worth test,[145] as well as its assets-under-management test.[146] These amendments would harmonize the regulatory framework governing access to private funds by enabling advisers to funds that already limit their investors to accredited investors (*e.g.,* section 3(c)(1) private funds that rely on Regulation D) to enter into performance fee arrangements without needing to additionally limit investor eligibility by applying a separate qualified client standard. By amending the existing definition of qualified client, the proposed amendments would provide accredited investors, intended to capture persons whose financial sophistication renders the protections of the Securities Act's registration process unnecessary,[147] with greater access to investment products that include performance fees.

Because the ''qualified client'' definition is referenced in the definition of ''investment adviser representative'' in rule 203A–3 and in the exceptions to a registered investment adviser's brochure supplement delivery requirement in rule 204–3 under the Advisers Act, the proposal would include conforming amendments to these rules.

1. Incorporation of the ''Accredited Investor'' Definition

The proposal would amend the ''qualified client'' definition to include any natural person or company (other than a ''private investment company'') [148] that an investment adviser reasonably believes is an ''accredited investor'' at the time of entering into an investment advisory contract with such person or company.[149] Currently, the qualified client and accredited investor definitions use distinct eligibility thresholds. The qualified client definition uses a $1,400,000 assets-under-management test and a $2,700,000 net worth test in the alternative, while certain prongs of the accredited investor definition use a $1,000,000 net worth (excluding primary residence) test and a $200,000 ($300,000 with a spouse) income test in the alternative but does not include an assets-under-management test.[150] The qualified client definition uses a single net worth threshold for natural persons and entities, while the accredited investor definition includes a net worth test for natural persons (as noted above) and separate $5,000,000 total assets (or investments, as applicable) tests for entities.[151] Additionally, the dollar thresholds in the qualified client definition are subject to periodic inflation adjustments at five-year intervals, whereas the accredited investor definition is not subject to inflation adjustment.

Because of these distinct qualification thresholds under the current regulatory framework, an investor may qualify as an accredited investor and thus be eligible to invest in a section 3(c)(1) private fund that relies on Regulation D to offer its interests (as well as other issuers that rely on Regulation D), but may not meet the definition of a ''qualified client'' necessary to invest in a section 3(c)(1) fund with a performance fee, given its higher eligibility thresholds. This effectively prevents some accredited investors from investing in section 3(c)(1) private funds that have performance fee arrangements despite being otherwise qualified under Regulation D. Including accredited investors in the definition of a ''qualified client'' would remove this higher bar on investing in section 3(c)(1) private funds with performance fees, which should improve access to investment products with performance fees for accredited investors.

Additionally, the proposed changes would simplify the application of the qualified client standard with respect to funds that already limit their investor eligibility to accredited investors by making it unnecessary to screen potential investors under a separate qualified client standard in order to charge performance fees. According to Form ADV reporting, as of the end of 2025, approximately 75% of section 3(c)(1) private funds that rely on Regulation D and are managed by registered investment advisers limit their sales to investors who meet the definition of qualified clients under the current rule.

In addition to section 3(c)(1) private funds that rely on Regulation D, separately managed accounts of accredited investors (as well as other types of advisory services to accredited investors) would be eligible for performance fee arrangements under the proposed amendments. Although the proposed amendments would not specify conditions in order for an adviser to enter into a performance fee arrangement with an accredited investor client (other than that the client be an accredited investor), an adviser's services would remain in this context subject to its fiduciary obligations, as well as its other obligations under the federal securities laws. The extent and nature of advisory compensation, including any performance fees, are material facts relating to an advisory relationship, about which an adviser must make full and fair disclosure in order to satisfy its fiduciary duty.[152] As the Commission has stated before, in applying this fiduciary principle, ''the specific obligations that flow from the adviser's fiduciary duty [will] depend upon what functions the adviser, as agent, has agreed to assume for the client, its principal.'' [153] With respect to

[145] Rule 205–3(d)(1)(ii)(A).

[146] Rule 205–3(d)(1)(i).

[147] *See* Accredited Investor Definition, Securities Act Rel. No. 10824 (Aug. 26, 2020) [82 FR 64234 (Oct. 9, 2020)], at n.7 and accompanying text; Regulation D Revisions; Exemption for Certain Employee Benefit Plans, Securities Act Rel. No. 6683 (Jan. 16, 1987) [52 FR 3015 (Jan. 30, 1987)]. *See also SEC* v. *Ralston Purina Co.,* 346 U.S. 119, 125 (1953) (taking the position that the availability of the Section 4(a)(2) exemption ''should turn on whether the particular class of persons affected needs the protection of the Act. An offering to those who are shown to be able to fend for themselves is a transaction 'not involving any public offering' '').

[148] Current rule 205–3(d)(3) (as proposed, rule 205–3(c)(3)) defines ''private investment company'' to include companies that would be ''investment companies'' under the Investment Company Act but for the exception provided by section 3(c)(1) thereof. The proposed amendments would exclude a ''private investment company'' from gaining status as a qualified client solely by virtue of its own status as an accredited investor. Instead, pursuant to proposed rule 205–3(c)(1)(iii), a private investment company may qualify as a qualified client if each of its equity owners (other than those with respect to which compensation on the basis of a share of capital gains or capital appreciation is not provided for) separately qualify as qualified clients, *e.g.,* if each is separately an accredited investor. *See infra* section II.C.

[149] *See* proposed rule 205–3(c)(1)(i)(A). Under Regulation D, a person is an ''accredited investor'' if that person either comes within one or more eligibility categories or is reasonably believed by the *issuer* to do so. *See* rule 501(a). The requirement under the proposed amendments to rule 205–3 that the adviser ''reasonably believe'' a person to be an ''accredited investor'' in order for it to be a ''qualified client'' is not intended to duplicate or otherwise layer the reasonable belief standard set forth in Regulation D. Instead, it is intended to ensure that such standard reaches and applies to the *adviser* for purposes of rule 205–3.

[150] *See* rule 501(a)(5) and (a)(6). *See also supra* note 72 (discussing prongs of the accredited investor definition that are not based on net worth or income).

[151] *See* rule 501(a)(5); *see also* rule 501(a)(1), (3), (7), (9) and (12).

[152] *See, e.g.,* Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Investment Advisers Act Rel. No. 5248 (June 5, 2019) [84 FR 33669 (July 12, 2019)].

[153] *Id.* at text accompanying n.28 (''For example, the obligations of an adviser providing comprehensive, discretionary advice in an ongoing relationship with a retail client (*e.g.,* monitoring and periodically adjusting a portfolio of equity and fixed income investments with limited restrictions on allocation) will be significantly different from the obligations of an adviser to a registered investment company or private fund where the contract defines the scope of the adviser's services and limitations on its authority with substantial specificity (*e.g.,* a mandate to manage a fixed income portfolio subject to specified parameters, including concentration limits and credit quality and maturity ranges).'').

separately managed accounts of clients who are not accredited investors and are not otherwise qualified clients under the proposed amendments, performance fee arrangements would continue to be prohibited.

An additional benefit of including accredited investors in the definition of a qualified client would be to recognize measures of financial sophistication that go beyond monetary thresholds or employment with the adviser as means for meeting the qualified client standard. In particular, the accredited investor definition includes ''[a]ny natural person holding in good standing one or more professional certifications or designations or credentials from an accredited educational institution that the Commission has designated as qualifying an individual for accredited investor status.'' [154] The Commission used this authority in 2020 to designate as accredited investors individuals holding in good standing the General Securities Representative license (Series 7), the Private Securities Offerings Representative license (Series 82), and/or the Investment Adviser Representative license (Series 65), and may designate other professional certifications or designations or credentials in the future as appropriate.[155] As such, including accredited investors as qualified clients would address the current standard's exclusion of persons with professional certifications or designations or credentials who may not meet the rule's current net worth, assets-under-management or knowledgeable employee tests but nonetheless can reasonably be expected to have sufficient knowledge and experience in financial and business matters to evaluate the merits and risks of a prospective investment with performance fees.

The Commission has stated that the ''accredited investor'' definition under Regulation D is intended to capture persons whose financial sophistication renders the protections of the Securities Act's registration process unnecessary.[156] Likewise, the Commission has characterized rule 205–3 as intended to appropriately provide ''flexibility in structuring performance fee arrangements with clients who are financially sophisticated or have the resources to obtain sophisticated financial advice regarding the terms of these arrangements.'' [157] Although the monetary qualification thresholds for natural persons in the accredited investor definition are lower than the thresholds in the qualified client definition, accredited investor status is already recognized as a measure for financial sophistication that is sufficient to indicate whether an investor needs the protections of the Securities Act's registration process or not. An investor who is sufficiently financially sophisticated to render the protections of the Securities Act's registration process unnecessary is also, in the Commission's view, sufficiently financially sophisticated to evaluate and bear the risks of an investment product with performance fees, so as to not need the protections of the Advisers Act's performance fee prohibition.

Although the Commission declined to extend eligibility as a qualified client to persons that satisfied the accredited investor definition when originally adopting rule 205–3 in 1985,[158] the nature and profile of the risks associated with performance fees arrangements have significantly evolved with their development in the private fund industry over the intervening decades. Performance fee arrangements have matured to commonly include features designed to address the prospect of excessive risk-taking that animated early concerns regarding the use of performance fees.[159] At the same time, the potential impact of excluding accredited investors from accessing investment products with performance fees has grown considerably, given the tremendous asset growth of the private markets and the increasing proportion of investment strategies and opportunities that are now primarily offered through the private fund industry.[160] Considering these significant developments since rule 205–3's original adoption, it is in our view no longer necessary for the protection of investors to impose greater restrictions under rule 205–3 to access investment products with performance fees than are imposed under Regulation D to access private investment products.

In connection with including accredited investors in the qualified client definition, the proposal would remove from the definition of qualified client the existing net worth test, which is currently set at $2.7 million.[161] As the accredited investor definition already contains a net worth standard, with natural persons qualifying as accredited investors if their net worth (individually or with spouse or partner) is over $1 million (excluding their primary residence), the existing net worth standard in the qualified client definition would conflict with the use of the accredited investor standard. We recognize that certain entity investors would under the proposal be subject to the investments or assets tests (in each case requiring in excess of $5 million) set forth in the accredited investor definition,[162] where they would have otherwise used the $2.7 million net worth or $1.4 million assets-under-management tests set forth in the current qualified client definition. However, we expect that the number of entity investors that meet the definition of a qualified client under either the net worth or the assets-under-management tests but that are not accredited investors may be minimal as a practical matter, and we request comment in this regard below. Furthermore, to the extent that contractual relationships are

[154] *See* rule 501(a)(10).

[155] *See, e.g., Order Designating Certain Professional Licenses as Qualifying Natural Persons for Accredited Investor Status,* Securities Act Rel. No. 10823 (Aug. 26, 2020) [85 FR 64234 (Oct. 9, 2020)]; *see also Potential Designation of Chartered Financial Analyst Designation as Qualifying Natural Persons for Accredited Investor Status, Potential Designation of Certified Financial Planner Certification as Qualifying Natural Persons for Accredited Investor Status, Potential Designations of the Investment Banking Representative License (Series 79) and the Research Analyst License (Series 86 and Series 87) as Qualifying Natural Persons for Accredited Investor Status, Potential Designation Designate of Passage of an Accredited Investor Exam to Be Developed by FINRA as Qualifying Natural Persons for Accredited Investor Status,* and *Potential Designation of U.S. Certified Public Accountants License as Qualifying Natural Persons for Accredited Investor Status* published elsewhere in this issue of the **Federal Register**.

[156] *See supra* note 147 and accompanying text.

[157] 1985 Adoption, *supra* note 37, at 48557.

[158] In the adopting release for original rule 205–3, the Commission stated that it declined to extend client eligibility to any natural person who met the then-minimum $200,000 individual income test for the purpose of qualifying as an ''accredited investor'' under Regulation D of the Securities Act of 1933. The Commission explained its adoption of the $500,000 assets-under-management and $1 million net-worth tests as proposed based on its view that these ''alternative eligibility tests . . . will provide sufficient flexibility to advisers and clients while adequately protecting investors within the policies and purposes of the Advisers Act.'' 1985 Adoption, *supra* note 37, at 48558.

[159] *See supra* notes 68–70 and accompanying text. We have historically recognized that requiring specific contractual requirements for performance fee arrangements can inhibit the flexibility of advisers and their clients in structuring performance fee arrangements that may benefit both parties. *See supra* notes 53–54 and accompanying text. The proposed amendments likewise would not mandate any specific contractual requirement for performance fee arrangements with accredited investors. Additionally, we note that Item 6 of Form ADV Part 2A requires a registered investment adviser that charges performance-based fees or that has a supervised person who manages an account that pays such fees to disclose this fact. If such an adviser also manages accounts that are not charged a performance fee, the item also requires the adviser to discuss the conflicts of interest that arise from its (or its supervised person's) simultaneous management of these accounts, and to describe generally how the adviser addresses those conflicts.

[160] *See supra* note 67 and accompanying text.

[161] Rule 205–3(d)(1)(ii)(A); 2026 Inflation Adjustment Order, *supra* note 65.

[162] Rule 501(a)(1), (3), (7), (9), and (12).

entered into prior to the effective date of the amendments if adopted, the changes (*i.e.,* addition of accredited investor definition to the definition and removal of the net worth and assets under management tests) 7would not generally apply retroactively to such contractual relationships, subject to the transition rules set forth in rule 205–3.[163]

Finally, the proposal also would remove the existing inflation adjustment provision from rule 205–3. Under current rule 205–3(e), the Commission adjusts the net worth test and assets-under-management test every five years by order.[164] Because the proposal would remove these tests from the qualified client definition, the inflation adjustment provision in rule 205–3 would become inapplicable.

We request comment on whether the Commission should amend the ''qualified client'' definition in rule 205–3 to incorporate accredited investors under Regulation D.

41. Would amending rule 205–3 as proposed to incorporate accredited investors into the definition of ''qualified client'' be appropriate? Are there alternative tests or thresholds (monetary or otherwise) that the Commission should consider for this purpose?

42. Would the proposed amendments to close the eligibility gap between accredited investors and qualified clients for purposes of the performance fee prohibition provide investors with greater access to private market opportunities in practice? Would advisers that sponsor investment products seek to expand their offerings to the newly eligible group?

43. Would the proposed amendments broaden the pool of eligible investors for private offerings generally or would the impact be mostly confined to the pool of potential section 3(c)(1) private fund investors?

44. Do accredited investors in practice have a sufficient level of financial sophistication to evaluate and bear the risks of an investment product with performance fees, so as to not need the protections provided by the Advisers Act's performance fee prohibition? Are the existing qualified client thresholds more appropriate with respect to investor qualification and protection against the risks of performance fees?

45. Should we include any specific contractual requirements for performance fee arrangements with accredited investors and, if so, which?

46. Is the removal of the net worth test from the qualified client definition appropriate? To what extent, if any, would a separate net worth test not conflict with the net worth test that is in the accredited investor definition?

47. Is the dollar amount threshold of the net worth test in the accredited investor definition a more appropriate measure for the financial sophistication necessary to not need the protection provided by the Advisers Act's performance fee prohibition? If not, how should the Commission modify the proposal or what alternatives should it consider? For example, should the Commission maintain the dollar amount threshold of the net worth test in the qualified client definition?

48. What types of and how many entity investors, if any, would meet the net worth test (or assets under management test) in the existing qualified client definition but not meet the qualification thresholds to be an accredited investor? Should the Commission retain the current net worth test in the definition?

49. Are there private fund sponsors for which the proposed amendments could lead to an increased (or decreased) use of rule 506(c) under Regulation D? If so, please describe why and how the proposed amendments could be expected to impact the use of rule 506(c) by these private fund sponsors.

2. Removal of the Assets Under Management Test

The proposal would remove the existing assets-under-management test in the qualified client definition, which is currently $1.4 million.[165] Removing the assets-under-management test may simplify the rule without meaningfully reducing the number of clients that currently meet the qualified client definition, given the expansion of eligibility to accredited investors generally.

We request comment on whether the Commission should remove the assets-under-management test from the qualified client definition in connection with the other proposed amendments to rule 205–3 described above.

50. Given the proposed amendments to incorporate accredited investors as qualified clients, would the assets-under-management test still be a meaningful distinct test for meeting the definition of a qualified client? Should the Commission retain the current assets-under-management test in the definition of a qualified client?

51. Are there investors that would no longer qualify as a qualified client because the investor previously relied on the assets-under-management test and would now be subject to either the income or net worth test (in the case of a natural person) or the investments or assets test (in the case of an entity) to be an accredited investor (and therefore qualify as a qualified client)? If so, how common is this scenario?

3. Amending References to the ''Qualified Client'' Definition in Rule 203A–3, Rule 204–3 and Form ADV

The definition of ''qualified client'' in rule 205–3(d)(1)—as proposed, rule 205–3(c)(1)—is currently also referenced in the definition of ''investment adviser representative'' in rule 203A–3(a)(3)(i) under the Advisers Act, the exceptions to a registered investment adviser's brochure supplement delivery requirement in rule 204–3(c)(2)(iii) under the Advisers Act, and the definition of a ''high net worth individual'' for purposes of Form ADV reporting. The proposal would include technical conforming amendments to rules 203A–3(a)(3)(i) and 204–3(c)(2)(iii) under the Advisers Act to replace the existing references to the ''qualified client'' definition in rule 205–3(d)(1) with references instead to rule 205–3(c)(1), corresponding to the proposed redesignation of current paragraph (d)(1) to (c)(1). Additionally, because the proposed changes to the underlying ''qualified client'' definition would impact the scope of rule 203A–3 as well as the information that would be reportable on Form ADV, we request comment below on whether these references to the ''qualified client'' definition should be substantively amended.

a. The ''Investment Adviser Representative'' Definition in Rule 203A–3

Section 203A of the Advisers Act preempts most state regulatory requirements for SEC-registered investment advisers and their

[163] *See* rule 205–3(c)(1) (''If a registered investment adviser entered into a contract and satisfied the conditions of this section that were in effect when the contract was entered into, the adviser will be considered to satisfy the conditions of this section; Provided, however, that if a natural person or company who was not a party to the contract becomes a party (including an equity owner of a private investment company advised by the adviser), the conditions of this section in effect at that time will apply with regard to that person or company.'').

[164] *See* section 205(e) of the Advisers Act*; see also* 2026 Inflation Adjustment Order, *supra* note 65.

[165] *See* rule 205–3(d)(1)(i); 2026 Inflation Adjustment Order, *supra* note 65. In connection with removing the ''net worth'' and ''assets under management'' tests, the proposal would also remove rule 205–3(d)(5) (defining the term ''most recent order'') and rule 205–3(e) (setting forth the inflation adjustment mechanism) as these two elements of rule 205–3 would also become unnecessary.

supervised persons,[166] but permits a state to license, register, or otherwise qualify an ''investment adviser representative'' who has a place of business in the state.[167] Under the current definition of ''investment adviser representative'' in rule 203A–3(a)(1), supervised persons of registered investment advisers are not deemed to be investment adviser representatives and are thus not subject to state qualification requirements if they have no more than five clients that are natural persons (other than ''excepted persons'') or no more than ten percent of their clients are natural persons (again, other than ''excepted persons'').[168] Rule 203A–3(a)(3)(i) defines ''excepted person'' to mean ''a natural person who is a qualified client as described in [rule 205–3(d)(1)].'' [169]

We propose to retain this reference in rule 203A–3(a)(3)(i) to the ''qualified client'' definition but to amend it to refer to rule 205–3(c)(1), corresponding to the proposed redesignation of current paragraph (d)(1) to (c)(1). Section 203A and section 205(e) under the Advisers Act were adopted by Congress together in 1996, and as the Commission has previously explained, Congress reasonably could have expected persons with whom the Commission permits advisers to enter into performance fee arrangements pursuant to its authority under section 205(e) to similarly not need the protections of the state qualification requirements for investment adviser representatives under section 203A.[170] The proposal would retain this connection and continue to treat qualified clients for purposes of the performance fee prohibition as also excepted persons for purposes of the investment adviser representative requirements.

As a consequence of retaining this reference and the proposed amendments to generally incorporate the definition of ''accredited investor'' under Regulation D into the definition of ''qualified client,'' excepted persons for purposes of the ''investment adviser representative'' definition would include natural persons that are accredited investors. Under this approach, investors deemed sufficiently financially sophisticated to forgo the protections of the Securities Act's registration process would similarly be considered sufficiently financially sophisticated to forgo the protections of state qualification requirements.[171] Thus expanding the category of excepted persons for purposes of determining whether a supervised person is an investment adviser representative may result in some supervised persons no longer being subject to state licensing requirements to which they are currently subject.

We request comment on whether the Commission should adopt as proposed or substantively amend the reference in rule 203A–3 to the ''qualified client'' definition.

52. What would be the expected impacts of expanding excepted persons for purposes of the ''investment adviser representative'' definition to include natural persons that are accredited investors? How many supervised persons, overall and/or at an individual firm, would this cause to be excluded from status as an investment adviser representative and thus to no longer be subject to state licensing requirements?

53. Instead of retaining the reference to qualified clients in the definition of ''excepted person'' in rule 203A–3(a)(3)(i), should we amend this definition to replace and/or modify its reference to qualified clients? For example, should we replace the reference with the criteria of the current ''qualified client'' definition, so as to preserve the current operation of rule 203A–3 and leave it unimpacted by the proposed amendments to the ''qualified client'' definition? Should we modify the reference, so that only certain types of accredited investors could ultimately be deemed as excepted persons (*e.g.,* those who qualify by virtue of the ''accredited investor'' definition's monetary net worth or income tests)?

b. The Exception to the Brochure Supplement Delivery Requirement in Rule 204–3(c)(2)(iii)

Rule 204–3 requires that each adviser firm brochure be accompanied by brochure supplements providing information about the advisory personnel on whom the particular client receiving the brochure relies for investment advice.[172] The brochure supplements contain, among other things, information about the educational background, business experience, and any disciplinary history of the supervised persons who provide advisory services to the client.[173] However, advisers are not required to deliver brochure supplements to clients who are ''an officer, employee, or other person related to the adviser that would be a 'qualified client' of your firm under [rule 205–3(d)(1)(iii)].'' [174] Under current rule 205–3(d)(1)(iii), qualified clients include clients that are certain executive officers or employees of the adviser.[175] The Commission adopted this exception because ''[s]ophisticated clients are likely to request this type of information, even if not affirmatively provided by an investment adviser.'' [176] We propose to retain this reference and make a conforming amendment, so that the provision would refer to rule 205–3(c)(1)(ii), corresponding to the proposed redesignation of current paragraph (d)(1)(iii) to (c)(1)(ii). Because the referenced prong of the ''qualified client'' definition would not be impacted by the proposed amendments beyond this redesignation, this conforming amendment would not have any substantive effect on the number of clients that would be exempted from receiving the brochure supplement.

We request comment on whether the Commission should revise as proposed or make other amendments to the reference in rule 204–3(c)(2)(iii) to the ''qualified client'' definition.

54. Instead of retaining the reference to ''qualified client'' in the exception to the brochure supplement delivery

[166] Section 202(a)(25) of the Advisers Act defines ''supervised person'' to include ''any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.''

[167] *See* section 203A(b)(1)(A) of the Advisers Act.

[168] Supervised persons who do not on a regular basis solicit, meet with, or otherwise communicate with clients of the investment adviser or who provide only impersonal investment advice are excluded from the definition of an ''investment adviser representative.'' *See* rule 203A–3(a)(2). Supervised persons are not required to count clients that are not residents of the United States. *See* rule 203A–3(a)(4).

[169] *See* Exemption for Investment Advisers Operating in Multiple States; Revisions to Rules Implementing Amendments to the Investment Advisers Act of 1940; Investment Advisers With Principal Offices and Places of Business in Colorado or Iowa, Investment Advisers Act Rel. No. 1733 (July 17, 1998) [63 FR 39708 (July 24, 1998)]; Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Rel. No. 1633 (May 15, 1997) [62 FR 28112 (May 22, 1997)] (''The Commission believes that such individuals [who are permitted with their investment advisers to enter into performance fee arrangements] similarly do not need the protections of state qualification requirements. Because of the historical treatment of wealthy and sophisticated individuals under the federal securities laws, Congress reasonably could have expected these persons not to be considered retail investors.'').

[170] *See id.* at nn.111–112 and accompanying text (discussing why the Commission looked to the performance fee prohibition to determine the scope of excepted persons for the original adoption of rule 203A–3); *see also* NSMIA, *supra* note 10.

[171] *See supra* notes 147, 155–156 and accompanying text.

[172] *See* Amendments to Form ADV, Investment Advisers Act Rel. No. 3060 (Jul. 28, 2010) [75 FR 49234 (Aug. 12, 2010)] (''Brochure Supplement Adopting Release''), at n.213 and accompanying text.

[173] *See id.* at text following n.213.

[174] Rule 204–3(c)(2)(iii).

[175] *See supra* note 56.

[176] Brochure Supplement Adopting Release, *supra* note 172, at 49251.

requirement in rule 204–3(c)(2)(iii), should we amend this definition in any way? Why or why not?

c. Reporting in Form ADV

Form ADV is the investment adviser registration form and exempt reporting adviser reporting form filed with the Commission under the Advisers Act. Form ADV contains several references to the term ''qualified client,'' either directly or indirectly via additional defined terms. The term ''qualified client'' is defined as ''A client that satisfies the definition of qualified client in SEC rule 205–3.'' [177] The term ''high net worth individual'' is defined as ''An individual who is a qualified client or who is a 'qualified purchaser' as defined in section 2(a)(51)(A) of the Investment Company Act of 1940.'' [178] Relatedly, the number of ''high net worth individual'' clients is used as a reference point for how the term ''investment adviser representative'' is defined.[179] Finally, Question 5 of the General Instructions references ''qualified clients'' when a filer is determining if it can file an umbrella registration.[180]

We are not proposing any amendments to Form ADV, but the meaning of these terms would change. Accordingly, filers may need to alter how they complete some of the questions on Form ADV. For example, in Part 1A, Item 5, the form asks how many of an adviser's employees are registered with one or more state securities authorities as investment adviser representatives. We anticipate that this number could decline for some filers based on the underlying changes to the definition of an ''investment adviser representative.'' Item 5 also asks about the number of clients who are high net worth individuals and individuals who are not high net worth individuals. Under the proposal to incorporate the definition of ''accredited investor'' under Regulation D into the definition of ''qualified client,'' we anticipate that filers would generally record more high net worth individuals and fewer individuals who are not high net worth individuals.

We request comment related to Form ADV reporting in connection with our proposed amendments to the definition of ''qualified client.''

55. Would it be burdensome for filers of Form ADV to adjust their reporting, either as an initial matter or going forward, based on the proposed amendments to the qualified client definition?

56. How would the proposed amendments to the qualified client definition alter the amount or quality of data that filers provide on Form ADV?

57. Are there any changes that we should make to Form ADV in connection with the proposed amendments to the definition of ''qualified client''? Why or why not?

C. Client Look-Through

The proposal would amend the form of the current client ''look-through'' provision, without altering the ultimate function of this provision.[181] Currently, the ''look-through'' provision set forth in rule 205–3(b) provides that, in the case of a section 3(c)(1) private investment company or a regulated fund, each equity owner thereof (except for the investment adviser and any other equity owners not charged a fee on the basis of a share of capital gains or capital appreciation) will be considered a ''client'' of the adviser for purposes of rule 205–3(a). As a result of this provision, when determining the qualified client status of a section 3(c)(1) private fund or a regulated fund, an adviser must look through the fund to determine whether each applicable equity owner of the fund would be a qualified client.

The proposal would remove the existing client ''look-through'' provision and instead add two new provisions, which would together function similarly to the existing ''look-through'' provision. Under these two provisions, a section 3(c)(1) private investment company or regulated fund would be a qualified client if each equity owner thereof, other than an equity owner with respect to which a performance fee is not provided for, meets the definition of a qualified client.[182] In this way, the amendments would specify conditions for a section 3(c)(1) private fund or regulated fund to itself be a qualified client, rather than require that each of the fund's equity owners be identified as a ''client'' for purposes of the rule, as under current rule 205–3(b). This change is intended to reflect that, in the case of a fund client, an adviser's ''client'' under the Advisers Act and the rules thereunder is the fund itself rather than the equity owners of the fund.[183]

We request comment on the proposed amendments to the ''look-through'' provision in rule 205–3.

58. Should the Commission make the proposed amendments to the ''look-through'' provision set forth in rule 205–3?

59. As noted above, unlike the current ''look-through'' provision, the proposal would not specifically except ''the investment adviser entering into the contract'' from the qualified client test, as investment advisers would generally be qualified clients due to their inclusion in the definition of ''accredited investor.'' Should the Commission instead retain the specific reference to ''the investment adviser entering into the contract''? If so, why?

D. Compliance Period

We propose to provide a 12-month compliance period for regulated funds to come into compliance with the proposed amendments to Forms N–1A, N–2, and N–CSR, if adopted. The proposed 12-month compliance period would give investment advisers and regulated funds sufficient time to adjust their prospectus and shareholder report disclosures to comply with the proposed amendments to the forms.

Notwithstanding this compliance period, any adviser and regulated fund that relies on new paragraph (c)(1)(iv) of the proposed amendments to rule 205–3 must rely on the amended rule as amended in its totality and must comply with the proposed amendments to Forms N–1A, N–2, and N–CSR at the time it first relies on that provision.

We request comment on the proposed compliance period.

60. Is the proposed compliance period appropriate? Is a longer or shorter period necessary to allow advisers and regulated funds to comply with one or more of these particular amendments? If so, which proposed amendments, and what would be an appropriate compliance period?

III. Economic Analysis

A. Introduction

The Commission is mindful of the economic effects, including the costs

[177] Form ADV, Glossary of Terms.

[178] *Id.*

[179] *See id.*

[180] *See* Form ADV, General Instruction 5.

[181] *See* rule 205–3(b).

[182] *See* proposed rule 205–3(c)(1)(iii) and (c)(1)(iv). Proposed rule 205–3(c)(1)(iii) would provide that a private investment company is a qualified client only if each equity owner thereof is a qualified client, except for equity owners with respect to which compensation on the basis of a share of capital gains or capital appreciation is not provided for. Unlike current rule 205–3(b), this provision would not also refer to an ''investment adviser entering into the contract.'' This language would be unnecessary under the proposed amendments because investment advisers would be qualified clients due to their inclusion in the definition of ''accredited investor.'' *See* rule 501(a)(1) of Regulation D. In addition, proposed rule 205–3(c)(1)(iv) would not include the exception for equity owners not charged a performance fee because regulated funds may not vary the terms of the advisory fee from shareholder to shareholder. *See* section 18(a) of the Investment Company Act; *see also* rule 18f–3 under the Investment Company Act.

[183] *Id.*

and benefits, of the proposed amendments. Section 2(c) of the Investment Company Act, section 202(c) of the Advisers Act, section 2(b) of the Securities Act, and section 3(f) of the Exchange Act provide that when the Commission is engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in or consistent with the public interest, the Commission shall also consider whether the action will promote efficiency, competition, and capital formation, in addition to the protection of investors.[184] The analysis below addresses the likely economic effects of the proposed amendments, including the anticipated benefits and costs of the amendments and their likely effects on efficiency, competition, and capital formation.[185] The Commission also discusses the potential economic effects of certain alternatives to the approaches taken in this proposal.

The Commission is proposing amendments to rule 205–3 and Forms N–1A, N–2, and N–CSR that would:

1. Expand the ability of investment advisers to charge performance-based compensation on capital gains or capital appreciation (''performance fees on capital gains'') to regulated funds, provided that certain requirements related to fund governance are met; [186]

2. Expand the ability of investment advisers to charge performance fees on capital gains to regulated and private funds with shareholders that are accredited investors and to other non-fund clients that meet the definition of accredited investor;

3. Require separate disclosure of all performance-based compensation paid by regulated funds; and

4. Require a written determination by the board that the performance fee is in the best interests of the fund and its shareholders.

Performance-based compensation arrangements commonly allow advisers the opportunity to participate in the upside resulting from their management of a client's portfolio. Such agreements are often associated with strategies that are more complex and require more specialized knowledge or a higher degree of involvement from an investment adviser.[187] Investment strategies that are generally associated with performance fees on capital gains may help investors diversify their portfolios and improve their risk-adjusted returns.[188] However, currently these strategies are not equally available to all investors, as less wealthy investors have fewer avenues to access these strategies compared to high net worth individuals and institutional investors. The current regulatory framework, among other factors, has contributed to this unequal access among investors because it allows advisers to charge performance fees on capital gains only to wealthier clients and funds consisting of such clients. As a result, less affluent investors are generally excluded from strategies often associated with performance fees on capital gains, such as those with exposure to private equity or more complex public equity strategies.

However, these less affluent investors are generally *not* excluded from participation in other strategies that may be as complex. For example, access to strategies with performance compensation tied to other measures, such as interest income, has generally not been restricted to a particular set of investors or adviser clients because performance compensation based on income is not prohibited, regardless of how complex such a strategy may be.[189] As another example, access to equity BDC strategies, which may also be complex, has also not been restricted to a particular set of investors, because advisers to BDCs can take advantage of a statutory exception to the performance fee prohibition.[190] Moreover, while less affluent accredited investors are generally not prohibited from investing in section 3(c)(1) private funds that rely on Regulation D, the advisers to these funds are not permitted to charge these investors performance fees on capital gains unless these investors also meet generally more stringent financial thresholds in the qualified client definition.

As such, the regulatory landscape for investor access to certain strategies or vehicle structures with performance compensation agreements is driven by performance measures and vehicle type, and not necessarily by investors' financial sophistication.[191] This may lead to inefficient investment decisions for less affluent investors. In particular, these investors may have aggregate portfolios that are less efficiently constructed compared to those of higher-net-worth individuals and institutional investors, because such portfolios exclude alternative asset strategies—despite their similar complexity to other options available to them—that may offer diversification benefits and thereby increase risk-adjusted returns.[192]

The proposal aims to mitigate disparate access to these investments by allowing investment advisers to charge performance fees on capital gains to a wider pool of investors, thereby lowering barriers to advisory contracts with less affluent investors and with funds that have such investors. First, the proposed amendments would provide advisers flexibility in the implementation of performance fee contracts with regulated funds that either (i) meet the proposed governance requirements without restricting a fund's investor base,[193] or (ii) restrict their investor base to investors that satisfy the requirements of the qualified client definition, which would be expanded to include accredited

[184] *See* 15 U.S.C. 80a–2(c), 80b–2(c), 77b(b),78c(f).

[185] Concurrently with this proposal, the Commission is separately proposing amendments to, among other things, allow closed-end management investment companies and business development companies to make repurchase offers to shareholders at net asset value at periodic intervals pursuant to a fundamental policy. *See* Interval Fund Modernization; Expansion of Multiple Share Class Relief to Registered Closed-End Management Investment Companies and Business Development Companies, Rel. No. 33–11444 (Sep. 30, 2026) 2026 (''Interval Fund Modernization Proposal''). The Commission has considered whether there are interactive effects between this proposal and the Interval Fund Modernization Proposal and has concluded that, if adopted as proposed, there would be no substantial impact on the proposal from the Interval Fund Modernization Proposal.

[186] Throughout the Economic Analysis, we use the term ''performance fees on capital gains'' to refer to performance-based compensation based on capital gains or capital appreciation.

[187] *See infra* section III.B.3.a.

[188] *See infra* notes 192 and 195 and accompanying discussion.

[189] Specifically, both private equity strategies (which mainly generate capital gains) and private credit strategies (which mainly generate gains from income) can be complex and may result in excessive risk-taking by a fund adviser due to misaligned incentives between adviser and fund investors. However, performance fees on income are not currently prohibited.

[190] *See* section 205(b)(3) of the Advisers Act; *see also infra* section III.B.1.a. We note that BDCs can rely on this exception provided that the fee does not exceed 20% of the BDC's net realized capital gains over a defined period.

[191] However, while advisers that charge performance fees to BDCs and to funds with strategies where performance compensation is based on measures other than capital gains or capital appreciation do not have explicit regulatory constraints on their investor base, investor access to these vehicles may still be constrained by fund-imposed investment minimums or as a result of limited availability of certain funds across distribution channels. *See infra* section III.B.3.c for a discussion of fund distribution channels; *see also infra* section III.B.3.d for a discussion of investment minimums. The proposed amendments would not address investment minimums or distribution channels for regulated funds.

[192] Portfolio diversification refers to investing in different asset classes and asset types to reduce overall portfolio risk associated with price volatility. Adding investments with returns that have a low correlation with those of the other portfolio investments would make the expected portfolio return less volatile. To that extent, a return adjusted for risk (risk-adjusted return) could increase.

[193] *See* proposed rule 205–3(c)(1)(iv).

investors. This flexibility could lead to the creation of new regulated funds, whether offering strategies currently unavailable to investors in the regulated fund space or more conventional strategies, to the extent that advisers seek to charge performance fees on capital gains. Second, the proposed amendments would allow advisers to 3(c)(1) funds and separately managed accounts to admit accredited investors that do not currently meet the qualified client definition or to create new 3(c)(1) funds or separately managed accounts that admit such investors.[194]

In doing so, the proposed amendments could improve investors' access to strategies typically associated with performance fees on capital gains, such as certain alternative public market strategies and private market strategies,[195] within regulated and private funds.[196] Moreover, lowering the barriers for investment advisers to enter into advisory contracts with performance fees on capital gains may improve the ability of advisers to design more incentive-compatible contracts, meaning that the interests of advisers would be more aligned with the interests of investors, because advisers acting in their own self-interest to increase their compensation could also produce positive outcomes for fund investors through enhanced investment returns. The incentives these compensation arrangements provide may improve risk-adjusted returns for investors, to the extent that such incentive-based compensation does not result in risk-shifting behavior for fund advisers.[197] However, while exposure to such strategies can increase expected risk-adjusted returns, less affluent investors that are less familiar with these risks may position themselves sub-optimally.

The proposed disclosure requirements for regulated funds would make it easier to discern the contribution of performance fees to fund expenses over time and across funds and would make disclosure of performance fees more uniform across regulated funds, which may reduce investor search costs. This, in turn, may reduce the risk of a mismatch between investor preferences and investor choice, and may help investors make more efficient investment decisions.

Many of the benefits and costs discussed below are difficult to quantify because the data needed to do so are not currently available. For example, we cannot quantify the degree to which various types of regulated funds would adopt performance fees on capital gains, or the degree to which investors would choose to invest in such funds. While the staff has attempted to quantify economic effects where possible, much of the discussion is qualitative. Accordingly, we seek comment on all aspects of the economic analysis, especially any data or information that would enable quantification of the proposal's economic effects.[198]

B. Economic Baseline

The baseline against which the costs, benefits, and the effects on efficiency, competition, and capital formation of the proposed amendments are measured consists of the current regulatory framework, the current state of the market, and market participants' current practices.[199]

1. Regulatory Baseline

a. Performance Compensation

Registered investment advisers may enter into advisory contracts with different types of clients, such as registered funds, BDCs, private funds, or individual clients. Under the Advisers Act, a registered investment adviser generally may not be compensated on the basis of a share of capital gains in or capital appreciation of an advisory client's account.[200] Compensation arrangements based on other measures of performance, such as interest, ordinary income, or dividends, are not prohibited by section 205(a)(1) and are therefore outside the scope of the proposed amendments to rule 205–3 for investment advisers.

The general prohibition on performance fees on capital gains has several exceptions. First, a statutory exception permits agreements with registered funds, or with other accounts with $1 million or more under management, that provide for performance fees symmetrically structured as fulcrum fees.[201] Under this exception, an adviser may charge a fee that increases and decreases proportionately on the basis of the accounts' investment performance measured against an appropriate securities index or other appropriate measure of performance. An adviser would thus receive its full ''baseline'' fee when the accounts' performance equaled that index or other appropriate measure, additional compensation for outperformance, and symmetrically reduced compensation for underperformance.[202]

Second, section 205(b)(3) of the Advisers Act provides a statutory exception to the prohibition on performance fees on *realized* capital gains of externally-managed BDCs, allowing these funds to pay performance-based compensation up to 20 percent of net realized capital gains.[203] An adviser relying on this

[194] 3(c)(1) private funds are limited to 100 investors, which may limit the willingness of fund advisers to admit less affluent accredited investors that likely would commit less capital than investors satisfying the current qualified client definition. *See infra* sections III.B.1.a and III.B.3.d.

[195] As used herein ''private market strategies'' refers to: (i) strategies that directly or indirectly invest in private markets, and (ii) hedge fund-like strategies, which commonly utilize leverage, derivatives, and short-selling, and may invest in both public and private markets.

[196] The proposed amendments would expand the ability of advisers to enter into contracts with performance fees on capital gains in separately managed accounts to clients that meet the definition of accredited investor. However, we do not anticipate a meaningful increase in usage of performance fees in this space, as adviser compensation for management of retail-oriented separately managed accounts generally does not include performance-based compensation. *See infra* sections III.B.3.d and III.C.1.d.

[197] *See infra* section III.B.3 for a discussion of the literature.

[198] *See infra* section III.F.

[199] *See, e.g., Nasdaq* v. *SEC,* 34 F.4th 1105, 1111–14 (D.C. Cir. 2022). This approach also follows SEC staff guidance on economic analysis for rulemaking. *See* SEC Staff, *Current Guidance on Economic Analysis in SEC Rulemaking* (Mar. 16, 2012), *available at https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.* (''The economic consequences of proposed rules (potential costs and benefits including effects on efficiency, competition, and capital formation) should be measured against a baseline, which is the best assessment of how the world would look in the absence of the proposed action.''); *id.* at 7 (''The baseline includes both the economic attributes of the relevant market and the existing regulatory structure.'').

[200] *See* 15 U.S.C. 80b–5(a)(1). This prohibition also applies to advisers required to be registered with the Commission but does not apply to exempt reporting advisers. As such, exempt reporting advisers may be compensated on the basis of a share of capital gains in, or capital appreciation of, an advisory client's account.

[201] *See* 15 U.S.C. 80b–5(b).

[202] *See also supra* note 29 and accompanying text.

[203] Section 2(a)(48) of the Investment Company Act (15 U.S.C. 80a–2) defines a BDC as a domestic closed-end company that operates for the purpose of making investments in the securities specified in Section 55(a) of the Investment Company Act (15 U.S.C. 80a–54) and that makes available significant managerial assistance to the issuers of those types of securities. BDCs may be publicly traded, non-traded but publicly offered, and privately offered (relying on Regulation D). A BDC may be internally or externally managed. An externally managed BDC must enter into an advisory agreement which would be subject to the Advisers Act. BDCs can rely on either the issuer tender rule under the Exchange Act (rule 13e–4) for investor repurchases and have discretionary or irregular repurchase intervals or on rule 23c–3 under the Investment Company Act to make periodic repurchase offers as a fundamental policy and/or to make discretionary repurchase offers no more frequently than once every two years. BDCs are permitted to lever equity capital up to a 200% debt-to-equity ratio, which corresponds to leverage of approximately 66.7% of total capital under the Small Business Credit Availability Act of 2018 (15 U.S.C. 80a–60(a)(1)).

statutory exception cannot charge performance-based compensation on unrealized gains.

Third, rule 205–3 provides an exemption from the general prohibition on performance fees on capital gains when the client entering into the contract is a qualified client. The rule establishes several paths by which a natural person or a company is considered a qualified client: the client has at least $1.4 million in assets under management with the adviser; [204] the adviser reasonably believes the client has a net worth exceeding $2.7 million; [205] the client is a ''qualified purchaser''; [206] or the client is a knowledgeable employee of the adviser.[207] When the adviser's client is a registered investment company, BDC, or a 3(c)(1) private investment company, the qualified client designation applies on a look-through basis to each of the fund's equity holders that are charged a fee on the basis of capital gains or capital appreciation (the ''look-through'' provision).[208] These vehicles are discussed below in relation to the qualified client exception.

Registered Investment Companies and BDCs.[209] Rule 205–3(b) requires that, when an adviser's client is a registered investment company, under the look-through provision, all underlying equity holders must meet the definition of a qualified client. Similarly, under the look-through provision, advisers to a BDC can treat the BDC as a qualified client (instead of relying on the broad statutory exception provided to them in section 205(b)(3) of the Advisers Act) if all underlying equity holders of the BDC are qualified clients. Separately, the Investment Company Act does not permit regulated funds to issue different share classes based on differences in advisory fees, including performance fees.[210] Thus, the current regulatory framework requires that registered investment companies and BDCs paying performance fees on capital gains to their investment advisers restrict their entire investor base to qualified clients, because performance fees are paid at the fund level rather than by individual investors.

Private Funds. Private investment companies are funds that are excepted from the definition of an investment company pursuant to section 3(c)(1) or 3(c)(7) of the Act.[211] Advisers to 3(c)(1) private funds can charge performance fees on capital gains only to fund investors that are qualified clients.[212] Unlike regulated funds, however, 3(c)(1) funds may generally have performance fees that vary across investors. 3(c)(1) funds are limited to a maximum of 100 beneficial owners (or, in the case of a qualifying venture capital fund, 250 persons).[213] Advisers to 3(c)(1) funds with performance fees on capital gains are required to assess the qualified client status of each investor.[214] In addition to the qualified client restriction applicable to 3(c)(1) funds paying performance fees on capital gains, 3(c)(1) funds that offer interests pursuant to Regulation D exempt offerings are also required to limit their investors to accredited investors (and up to 35 non-accredited investors for offerings relying on 506(b)).[215]

b. Accredited Investor Definition

Individuals may qualify as accredited investors by: (i) having net worth over $1 million, excluding primary residence (individually or with spousal equivalent); [216] (ii) having income over $200,000 (individually) or $300,000 (with spouse or spousal equivalent) in each of the prior two years, with a reasonable expectation of reaching the same income level in the current year; [217] (iii) holding in good standing one or more professional certifications or designations or credentials from an accredited educational institution that the Commission has designated as qualifying an individual for accredited investor status; [218] (iv) being directors,

[204] *See* rule 205–3(d)(1)(i); *see also* 2026 Inflation Adjustment Order, *supra* note 65.

[205] *See* rule 205–3(d)(1)(ii)(A); *see also* 2026 Inflation Adjustment Order, *supra* note 65.

[206] *See* rule 205–3(d)(1)(ii)(B). Section 2(a)(51)(A) of the Investment Company Act defines a ''qualified purchaser''. This definition is generally more stringent than the definition of a ''qualified client''.

[207] *See* rule 205–3(d)(1)(iii).

[208] *See* rule 205–3(b).

[209] Registered investment companies may be open-ended or closed-ended. Open-end funds offer daily subscriptions and redemptions, while closed-end funds may vary in their share repurchase programs. Among closed-end funds, tender-offer funds rely on the issuer tender rule 13e–4 under the Exchange Act for investor repurchases and may have discretionary or irregular repurchase intervals. Interval funds rely on rule 23c–3 under the Investment Company Act for investor repurchases and must conduct repurchases at scheduled intervals. Under the Investment Company Act, open-end funds are prohibited from issuing senior securities other than bank borrowing and must maintain asset coverage of at least 300% with respect to such borrowings (leverage of approximately 33.3%). Closed-end funds are similarly subject to a 300% asset coverage requirement for senior securities representing indebtedness but are not limited to bank borrowings and may also issue preferred stock, subject to a separate asset coverage requirement of at least 200%. *See* 15 U.S.C. 80a–18(a)(1)(A)–(B), 15 U.S.C.80a–18(f)(1).

[210] Specifically, sections 18(a)(1) and 18(f)(1) restrict the issuance of ''senior securities'' by closed-end and open-end registered investment companies, respectively. Section 61(a) applies the restrictions in section 18(a) to BDCs. Open-end registered investment companies may issue multiple share classes by relying on exemptive rule 18f–3, but this rule does not permit share classes based on differences in advisory fees, including performance fees. *See* rule 18f–3(a)(1)(iii). Likewise, while exemptive relief may be granted for registered closed-end funds and BDCs to offer multiple share classes, the exemptive conditions to obtain this relief require compliance with rule 18f–3, and thus have not allowed for share classes based on differences in advisory fees. *See e.g.,* Ares Core Infrastructure Fund, et al., Investment Company Act Rel. No. 35523 (Apr. 8, 2025); Antares Strategic Credit Fund, et al., Investment Company Act Rel. No. 35528 (Apr. 9, 2025); Jefferies Credit Management LLC and Jefferies Credit Partners BDC Inc., Investment Company Act Rel. No. 35527 (Apr. 9, 2025); Carlyle Global Credit Investment Management L.L.C., et al., Investment Company Act Rel. No. 35534 (Apr. 14, 2025).

[211] *See* rule 205–3(d)(3). Funds excepted under section 3(c)(7) of the Investment Company Act are only permitted to admit investors that are qualified purchasers as defined under 2(a)(51)(A), and such funds are statutorily excepted from the Advisers Act's performance fee prohibition (and thus are not included in rule 205–3) in accordance with section 205(b)(4) thereof.

[212] *See* rule 205–3(b).

[213] A beneficial owner means any natural person or company whose securities are counted toward the 100-person limit under section3(c)(1), including a company whose holdings are treated as a single owner unless it holds 10% or more of the issuer's outstanding voting securities and including any person who acquires securities through an involuntary transfer such as legal separation, divorce, or death. *See* 15 U.S.C. 80a–3(c)(1) and17 CFR 270.3c–1(b).

[214] *See* rule 205–3(b).

[215] Rule 506(b) of Regulation D permits private funds to admit up to 35 non-accredited investors (in any 90-calendar-day period) that, either alone or with a purchaser representative, meet the legal standard of having sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of the prospective investment. *See* 17 CFR 230.506(b). Funds must disclose the number of non-accredited investors in a notice that they are required to file with the Commission on Form D within 15 days after the first sale of securities in the offering. *See* 17 CFR 230.503(a). Offerings made in reliance on rule 506(c), which permits issuers to engage in general solicitation and advertising, requires that all purchasers be accredited investors and that the issuer takes reasonable steps to verify their accredited investor status. *See* 17 CFR 230.506(c).

[216] *See* rule 501(a)(5) of Regulation D. The rule contains detailed provisions regarding the treatment of primary residence debt in calculating net worth.

[217] *See* rule 501(a)(6) of Regulation D.

[218] *See* rule 501(a)(10) of Regulation D. In 2020, the Commission issued an order designating the General Securities Representative license (Series 7), Private Securities Offerings Representative license (Series 82), and Investment Adviser Representative license (Series 65) as qualifying a holder of such licenses in good standing for accredited investor status. *See Order Designating Certain Professional Licenses as Qualifying Natural Persons for Accredited Investor Status,* Release No. 33–10823 (Aug. 26, 2020) [85 FR 64234 (Oct. 9, 2020)]. The Commission is considering potentially designating each of the following as qualifying natural persons for accredited investor status under Rule 501(a)(10): (1) chartered financial analyst (CFA); (2) chartered financial planner (CFP); (3) FINRA Series 79 and Series 86 and 87; (4) individuals that pass an accredited investor exam to be developed by FINRA; and (5) certified public accountant (CPA). As the result, the number of persons qualifying as accredited investors could increase. *See Potential Designation of Chartered Financial Analyst Designation as Qualifying Natural Persons for*

executive officers, or general partners of the issuer selling the securities; [219] (v) for investments in a private fund, being ''knowledgeable employees'' of the fund as defined in rule 3c–5(a)(4) under the Investment Company Act.[220] Entities may qualify as accredited investors by meeting one of the following criteria: (i) financial institutions such as banks, insurance companies, registered investment companies, business development companies, broker-dealers, investment advisers, and employee benefit plans, among others; [221] (ii) corporations, partnerships, limited liability companies, Massachusetts or similar business trusts, 501(c)(3) organizations, and trusts, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5 million; [222] (iii) entities in which all equity owners are accredited investors; [223] (iv) ''family offices'' with assets under management in excess of $5 million and their ''family clients''; [224] and (v) entities of a type not otherwise listed, not formed for the specific purpose of acquiring the securities offered, owning investments in excess of $5 million.[225] Issuers of private funds relying on rule 506(b) of Regulation D are required to have a reasonable belief that purchasers of securities sold in the offering are accredited investors or furnish certain information to non-accredited investor purchasers.[226] Issuers relying on rule 506(c) may only sell to accredited investors and must take reasonable steps to verify that purchasers of securities sold in the offering are accredited investors.[227]

c. Fund Board Requirements and Performance Fee Disclosure

Section 15(c) of the Investment Company Act requires that the initial approval, and any annual continuance, of an investment advisory contract by a regulated fund be approved by a majority of the fund's board, including a majority of directors who are not interested persons of the adviser.[228] In discharging this responsibility, the board must request and evaluate such information as may be reasonably necessary to evaluate the terms of the advisory contract.[229] The Investment Company Act, however, does not prescribe a particular form of advisory compensation, such as whether it should be based on a percentage of assets under management, on the fund's performance, or on some other basis.

Regulated funds that currently pay their advisers any type of performance fees, including fulcrum fees or asymmetric performance fees on capital gains or income, are required to disclose such fees on Forms N–1A (registered open-end funds) and N–2 (registered closed-end funds and BDCs) as part of the overall Management Fees line in the fee table. However, the instructions to the prospectus fee table do not currently require a registered fund to separately identify, as a distinct line item or under a subheading within the fee table, the portion of the management fees attributable to performance-based compensation.[230]

In addition to fee table disclosure, the registration statement forms for regulated funds require a description of the investment adviser's compensation, including whether it is based on a percentage of average net assets and, if not, the basis of the compensation, such as a performance fee.[231] Regulated funds are also currently required to disclose in Form N–CSR information about the basis upon which the board approved the advisory fee under section 15(c) of the Investment Company Act.[232]

Unlike regulated funds, private funds are not required to make standardized public disclosures. However, as with other private placements, private fund offerings are subject to various antifraud provisions, including section 17(a) of the Securities Act, section 10(b) of the Exchange Act and rule 10b–5 thereunder. Investment advisers are likewise subject to prohibitions under sections206(1), (2), and (4) of the Advisers Act on employing any device, scheme, or artifice to defraud clients or prospective clients, engaging in any transaction, practice, or course of business that operates upon any client or prospective client as a fraud or deceit, or engaging in any act, practice, or course of business that is fraudulent, deceptive, or manipulative.[233] Additionally, all registered investment advisers, including those that advise private fund clients, must disclose elements of their compensation on Form ADV, Part 2, including whether they or their supervised persons are compensated on the basis of capital gains or capital appreciation of client assets.[234] While ScheduleD of FormADV requires extensive fund-level disclosures, these disclosures do not include information about fees actually paid to the adviser for each fund.

d. References to the ''Qualified Client'' Definition

Currently, the definition of ''qualified client'' is referenced in certain rules and Form ADV. First, Form ADV requires investment advisers to report the number of high net worth individuals, and the definition of a high net worth individual is tied to the qualified client

Accredited Investor Status, Potential Designation of Certified Financial Planner Certification as Qualifying Natural Persons for Accredited Investor Status, Potential Designations of the Investment Banking Representative License (Series 79) and the Research Analyst License (Series 86 and Series 87) as Qualifying Natural Persons for Accredited Investor Status, Potential Designation Designate of Passage of an Accredited Investor Exam to Be Developed by FINRA as Qualifying Natural Persons for Accredited Investor Status, and *Potential Designation of U.S. Certified Public Accountants License as Qualifying Natural Persons for Accredited Investor Status* published elsewhere in this issue of the **Federal Register**.

[219] *See* rule 501(a)(4) of Regulation D. The rule also includes directors, executive officers, or general partners of a general partner of the issuer.

[220] *See* rule 501(a)(11) of Regulation D. This category applies only where the issuer would be an investment company but for the exclusion provided by section 3(c)(1) or 3(c)(7) of the Investment Company Act.

[221] *See* rules 501(a)(1) and 501(a)(2) of Regulation D. Employee benefit plans qualify as accredited investors if: (a) the investment decision is made by a plan fiduciary that is a bank, savings and loan association, insurance company, or registered investment adviser; (b) the plan has total assets in excess of $5 million; or (c) the plan is self-directed with investment decisions made solely by accredited investors. *See* 17 CFR 230.501(a)(1).

[222] *See* rules 501(a)(3) and 501(a)(7) of Regulation D. Trusts must additionally have their purchase directed by a sophisticated person as described in rule 506(b)(2)(ii). *See* 17 CFR 230.501(a)(3); 17 CFR 230.501(a)(7).

[223] *See* rule 501(a)(8) of Regulation D.

[224] *See* rules 501(a)(12) and 501(a)(13) of Regulation D. As used therein, ''family office'' and ''family client'' are as defined in rule 202(a)(11)(G)–1 under the Advisers Act. The family office must additionally not be formed for the specific purpose of acquiring the securities offered, and the prospective investment must be directed by a person with sufficient knowledge and experience to evaluate the merits and risks of the prospective investment.

[225] *See* rule 501(a)(9) of Regulation D. As used therein, ''investments'' is as defined in rule 2a51–1(b) under the Investment Company Act.

[226] *See* rule 501(a) of Regulation D; rule 502(b) of Regulation D. If the issuer is selling to non-accredited investors such investors must possess such knowledge and experience in financial and business matters that they are capable of evaluating the merits and risks of the prospective investment, and the issuer may only sell to 35 such non-accredited purchasers in offerings under rule 506(b) in any 90-calendar-day period. *See* rule 506(b)(2).

[227] *See* rule 506(c) of Regulation D.

[228] Sections 15(a) through (c) of the Investment Company Act.

[229] *See* section 15(c) of the Investment Company Act. *See also supra* section II.A.2.c.

[230] *See* Instruction 3(a) to Item 3 of Form N–1A; Instruction 7 to Item 3 of Form N–2.

[231] *See* Item 10(a)(1)(ii) of Form N–1A; Instruction 1 to Item 9.1.b.(3) of Form N–2. *See also* Form N–1A Item 10(A)(1)(ii)(B); Instruction 2 of Item 9.1.b.(3) of Form N–2.

[232] *See* Item 11 of Form N–CSR; *see also* Item 13 of Form N–CSR.

[233] Under section 206(4) of the Advisers Act, the Commission is authorized to ''by rules and regulation define, and prescribe means reasonably designed to prevent, such acts, practices and courses of business as are fraudulent, deceptive or manipulative.''

[234] *See* Form ADV, Part 2, Item 6.

definition.[235] In addition, Question 5 of the General Instructions to Form ADV references ''qualified clients'' when a filer is determining if it can file an umbrella registration.

Second, the qualified client definition is used for purposes of determining whether a supervised person meets the federal definition of an ''investment adviser representative'' in rule 203A–3. Under this rule, supervised persons of registered investment advisers are not deemed to be investment adviser representatives—and thus are not subject to state qualification requirements—if they have five or fewer clients that are natural persons (other than ''excepted persons'') or ten percent or less of their clients are natural persons (other than ''excepted persons''). Rule 203A–3 defines ''excepted persons'' as natural persons who are qualified clients under rule 205–3(d)(1).[236]

Third, the qualified client definition is used for purposes of determinations for the exceptions to the brochure supplement delivery in rule 204–3.[237] The rule provides that no brochure supplement need be delivered to a client who is an officer, employee, or similar person related to the adviser and who would be a ''qualified client'' of the adviser under rule 205–3(d)(1)(iii).[238]

2. Affected Parties

a. Registered Investment Advisers

The proposed amendments would affect registered investment advisers that enter into advisory contracts with different types of clients. Table 1 presents the number of advisers and their aggregate regulatory assets under management (RAUM) by client type.

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[235] *See* Form ADV, Glossary of Terms. Part 1A, Item 5.D. of Form ADV requires advisers to categorize their clients (*e.g.,* individuals, banks, pension plans) and to identify high net worth individuals as a separate subset of individuals. Relatedly, the number of ''high net worth individual'' clients is used as a reference point for how the term ''investment adviser representative'' is defined. *See also supra* section II.B.3.c.

[236] *See* 17 CFR 275.203A–3(a)(3)(i). *See also supra* section II.B.3.a.

[237] *See* 17 CFR 275.204–3(c)(2)(iii). The rule implements the brochure (Part 2A) and brochure supplement (Part 2B) delivery obligations. *See also supra* section II.B.3.b.

[238] The rule likewise also provides exemptions from delivery requirements (i) where no firm brochure is required (*e.g.,* certain investment company clients) and (ii) where the client receives only impersonal advice.

Table 1. Registered Investment Advisers by Client Type, as of December 31, 2025[a]

Client Type	Number of Advisers	Client RAUM,[b] $ Trillion	Adviser RAUM,[c] $ Trillion
1. Regulated funds:			
- RICs:	1,673	$56.8	$101.8
- Open-end funds	777	$42.9	$74.9
- Closed-end funds	224	$0.4	$45.6
--- Traditional	88	$0.1	$15.3
--- Interval	102	$0.2	$17.8
--- Tender-offer	72	$0.1	$12.5
- BDCs:	132	$0.6	$5.6
2. Other pooled investment vehicles:[d]	6,272	$46.8	$124.6
- 3(c)(1) funds	3,572	$2.8	$65.2
- 3(c)(7) funds	4,793	$29.6	$111.8
3. Separately managed accounts:[e]	12,413	$61.9	$133.9
- Individuals	10,512	$27.7	$89.6
--- High net worth individuals[f]	10,091	$18.7	$87.7
--- Other individuals[g]	9,400	$8.9	$73.0
Total:	16,427	$166.0	$166.0

[a] The estimates are based on Form ADV and Form N-CEN as of December 2025, incorporating filings received through May 31, 2026. 3(c)(7) private funds would not be affected by this rulemaking but are included in the table for context.

[b] Client RAUM represents the share of RAUM attributable to each particular client type, as reported on Form ADV, Part 1A, Item 5.D.(3) and Item 5.F.(2)(c). Form ADV does not collect data for each type of registered investment company. We estimate client counts and RAUM for open-end and closed-end funds from average net assets reported on Form N-CEN. *See infra* Table 2. Note that Form N-CEN is filed by investment companies while Form ADV is filed by advisers. Funds report their advisers with corresponding identifiers, including Central Registration Depository (CRD) numbers, on Form N-CEN. We use CRD numbers to match advisers reported on Form N-CEN with advisers to these funds on Form ADV. The adviser match is reliant on a valid CRD number reported on Form N-CEN and a match on Form ADV. There may be differences between the values reported on the two forms due to timing differences or reporting inconsistencies; therefore, the CRDs reported on N-CEN may not always have a valid match on Form ADV. As such, the estimates for the number of advisers to each registered fund type may be underestimated.

[c] Adviser RAUM totals eliminate RAUM for sub-advisory relationships identified through analysis of reporting on Form ADV, Part 1A, Item 5.D.(3) and Item 5.F.(2)(c), and reported investment adviser affiliations, to avoid double-counting.

[d] Other pooled investment vehicles include 3(c)(1) funds, 3(c)(7) funds and other pooled investment vehicles which are not private funds or regulated funds. For example, entities that would be investment companies as defined in section 3 of the Investment Company Act but for sections 3(c)(5) or 3(c)(11) of that Act would typically be considered pooled investment vehicles (other than investment companies and BDCs) in Item 5.D. Similarly, UCITS funds that are regulated by the European Commission and that are not registered under the Investment Company Act would also typically be considered pooled investment vehicles (other than investment companies and BDCs) in Item 5.D. Other pooled investment vehicles which are not 3(c)(1) or 3(c)(7) funds are not reported on Form ADV, Schedule D, Section 7.B.(1).

As of December 31, 2025, there were 16,427 advisers registered with the Commission. Among advisers to registered funds, approximately 22.2 percent advise only registered funds; approximately 13.5 percent of advisers to 3(c)(1) funds advise only 3(c)(1) funds; and approximately 20.4 percent advise individual clients only.

b. Regulated Funds

The proposed amendments would affect funds that are regulated by the Commission, including RICs and BDCs and their investors. Table 2 presents the number of funds and net assets under management by category of registered investment company.

[e] Form ADV defines separately managed accounts as accounts of clients other than those listed in Part 1A, Item 5.D.(3), lines (d) through (f). As such, separately managed accounts include accounts of clients that are individuals (including high net worth individuals), banking or thrift institutions, pension and profit sharing plans, charitable organizations, state or municipal government entities, investment advisers, insurance companies, sovereign wealth funds and foreign official institutions, corporations or other businesses, and other clients, as reported in Part 1A, Item 5.D., lines (a) through (c) and (g) through (n).

[f] As reported on Form ADV in Part 1A, Item 5.D., line (b).

[g] As reported on Form ADV in Part 1A, Item 5.D., line(a).

Table 2. Regulated Funds by Type, as of December 31, 2025[a]

Fund Type	All Funds[b]		Index Funds[c]		Funds of Funds[d]	
	Count	Net Assets, $Trillion	Count	Net Assets, $Trillion	Count	Net Assets, $Trillion
Registered investment companies:						
- Open-end funds:	12,674	$42.92	2,789	$15.69	1,695	$4.22
--- Mutual funds[e]	8,484	$29.92	657	$3.68	1,490	$4.16
--- ETFs[f]	4,190	$13.00	2,132	$12.01	205	$0.06
- Closed-end funds:[g]	706	$0.43	1	$0.00	71	$0.06
--- Traditional[h]	393	$0.10	-	-	11	$0.01
--- Interval[i]	139	$0.23	-	-	4	$0.00
--- Tender offer[j]	174	$0.10	1	$0.00	56	$0.04
Business Development Companies:[k]	176	$0.28	-	-	-	-
- Listed	51	$0.07	-	-	-	-
- Unlisted	125	$0.21	-	-	-	-
Total	13,556	$43.63	2,790	$15.69	1,766	$4.28

Table notes:

[a] The estimates are based on the most recent N-CEN filings of funds that report on Form N-1A and Form N-2, received for reporting periods ending on or before December 31, 2025, with filings through May 29, 2026.

[b] The estimates for net assets are based on average net assets reported on Form N-CEN, Item C.19.

[c] Index funds are identified as those that are reported as an index fund on Form N-CEN, Item C.3.b or as a fund that seeks to achieve a multiple of an index, as reported on Form N-CEN, Item C.3.c.

[d] Funds of funds are identified as a fund of funds on Form N-CEN, Item C.3.e.

[e] Mutual funds are identified as those funds registered on Form N-1A, excluding ETFs registered on Form N-1A as indicated on Form N-CEN, Item C.3.a.i.

[f] ETFs registered as open-ended funds are identified in Item C.3.a.i of Form N-CEN. UIT ETFs and exchange-traded managed funds are excluded from these ETF totals, as they will not be affected by the proposed rule.

[g] Closed-end funds are identified in Form N-CEN, Item B.6.b.

[h] Traditional closed-end funds are identified as those that are not reported as interval or tender offer funds.

[i] Interval funds are identified on Form N-CEN, Item C.3.d.

[j] Tender offer funds are identified as closed-end funds that are neither traditional nor interval funds.

[k] Based on quarterly BDC filings data from Refinitiv BDC Collateral, as of December 31, 2025. The estimates for the counts of listed and unlisted BDCs are based on the tickers associated with these BDC.

As of December 31, 2025, there were 13,556 regulated funds representing approximately $43.6 trillion in cumulative net assets. Out of these funds, 20.6 percent were index funds representing approximately 36 percent of cumulative net assets, and 13 percent were funds of funds representing approximately 9.8 percent of cumulative net assets.

c. Private Funds

The proposed amendments would affect private funds and their investors. Table 3 presents the distribution of private funds by exclusion and strategy.

Table 3. Private Fund Types, as of December 31, 2025[a]

Private Fund Type	All Private Funds		Funds Restricted to Qualified Clients[b]		Funds with an Investment Minimum[c]		Number of Beneficial Owners[d]	
	Count	GAV, $ Trillion	Count	GAV, $ Trillion	Count	GAV, $ Trillion	Median	90th Percentile
3(c)(1):[e]	14,138	$1.2	10,308	$0.9	10,707	$0.8	21	81
- Hedge Fund	2,019	$0.4	1,650	$0.3	1,856	$0.3	23	77
- Private Equity	6,546	$0.4	4,882	$0.3	4,681	$0.3	21	82
- Venture Capital	2,086	$0.1	1,356	$0.0	1,356	$0.1	21	74
- Other	3,491	$0.3	2,423	$0.2	2,818	$0.2	20	87
3(c)(1) and 3(c)(7):[f]	5,999	$1.6	5,631	$1.6	3,881	$1.2	8	63
- Hedge Fund	609	$0.3	600	$0.3	416	$0.3	10	60
- Private Equity	3,485	$0.8	3,331	$0.8	2,234	$0.6	10	67
- Venture Capital	527	$0.1	462	$0.1	370	$0.1	12	63
- Other	1,379	$0.4	1,239	$0.3	862	$0.2	5	49
3(c)(7):[g]	45,357	$27.9	N/A		32,826	$21.5	11	132
- Hedge Fund	9,047	$13.8	N/A		7,363	$11.5	10	149
- Private Equity	20,767	$8.6	N/A		13,794	$5.9	13	119
- Venture Capital	2,172	$0.6	N/A		1,311	$0.3	26	153
- Other	13,408	$5.0	N/A		10,389	$3.9	7	136
Total:	65,494	$30.7			47,414	$23.5	13	104

Table notes:

[a] The data is based on the analysis of Form ADV data for the reporting period ending December 31, 2025 with filings received through May 31, 2026. The estimates include private funds advised by registered investment advisers, including funds advised by registered investment advisers which are also sub-advised by exempt reporting advisers. The estimates do not include private funds advised by exempt reporting advisers (because exempt reporting advisers are not subject to rule 205-3). Gross Asset Value (GAV) is reported on Form ADV, Part 1A, Section 7.B.(1).A of Schedule D, Question 11.

[b] This item is reported for 3(c)(1) private funds only on Form ADV, Part 1A, Section 7.B.(1).A of Schedule D, Question 15(b). We note that this question is specific to 3(c)(1) funds because contracts with 3(c)(7) funds are excepted from the prohibition in section 205. We also note that, because 3(c)(7) funds are restricted to qualified purchasers, which are scoped in the current qualified client definition, all investors in 3(c)(7) funds are assumed to be qualified clients.

[c] Minimum investment commitment required of an investor in a private fund is reported on Form ADV, section 7.B.(1)A Question 12.

[d] An approximate number of beneficial owners is reported for each private fund on Form ADV, Part 1A, Section 7.B.(1).A of Schedule D, Question 13.

[e] This category includes private funds that qualify for the exclusion from the definition of investment company under section 3(c)(1) of the Investment Company Act but do not qualify for the exclusion under section 3(c)(7), as reported on Form ADV, Part 1A, section 7.B.(1).A of Schedule D, Questions 4(1) and 4(2). We note that some private funds report qualifying for both exclusions--such funds are reported in a separate category below.

[f] This category includes private funds that qualify for both 3(c)(1) and 3(c)(7) exclusions, as reported on Form ADV, Part 1A, Section 7.B.(1).A of Schedule D, Questions 4(1) and 4(2).

[g] This category includes private funds that qualify for the exclusion from the definition of investment company under section 3(c)(7) but do not qualify for the exclusion under section 3(c)(1), as reported on Form ADV, Part 1A, Section 7.B.(1).A of Schedule D, Questions 4(1) and 4(2).

We estimate that, out of $30.7 trillion in cumulative gross assets held by 65,494 private funds, approximately 21.6 percent of funds are funds relying on the 3(c)(1) exclusion exclusively. These funds represent approximately 3.8 percent of cumulative gross assets held by private funds. In addition, approximately 9.2 percent of funds rely on both the 3(c)(1) and 3(c)(7) exclusions. These funds represent approximately 5.3 percent of cumulative gross assets held by private funds. We estimate that approximately 75 percent of 3(c)(1) funds rely on Regulation D.[239] We also estimate that approximately 21.1 percent of funds relying on the 3(c)(1) exclusion exclusively are private funds of funds, representing approximately 22.6 percent of cumulative gross assets held by section 3(c)(1) funds.

3. Performance-Based Compensation: Current Market Practices

a. Rationale and Design

When investors delegate asset management to investment advisers, their interests may not automatically align with those of the adviser. In particular, when advisers are compensated based on the level of assets under management, such a compensation structure may create incentives that may not necessarily align with the goal of maximizing investor returns. For example, advisers may have an incentive to prioritize asset gathering or an incentive to unnecessarily avoid risk if doing so maintains or increases their assets under management. Various direct and indirect (implicit) incentive mechanisms exist to address this misalignment.[240] While academic literature is mixed on which form of managerial incentives is optimal for aligning adviser and client interests,[241] managerial incentives can materially affect adviser behavior and investor outcomes and may be an important driver of performance.[242]

Among these mechanisms, performance-based compensation is one of the most direct tools for aligning adviser and client interests because it ties adviser compensation to investment outcomes. Performance-based compensation may take various forms, including fees, carried interest, or deferred compensation tied to performance.[243] Further, performance-based compensation can be structured symmetrically or asymmetrically. Symmetric performance compensation (*e.g.,* a fulcrum fee) adjusts in both directions relative to a base fee rate—it increases when performance exceeds the benchmark and decreases when the portfolio underperforms, such that the adviser shares in both outperformance and underperformance.

Asymmetric performance compensation is triggered only when a portfolio outperforms (*e.g.,* relative to a high-water mark, a hurdle rate, or a benchmark) and does not impose a corresponding reduction in compensation when the portfolio underperforms. This structure creates a payoff for the adviser similar to that of a call option, where the option is exercised only when the gain exceeds the strike price (a benchmark or a hurdle rate). Therefore, asymmetric performance compensation can incentivize excessive risk-taking on the part of an adviser—because volatility increases the likelihood of a higher performance fee—and exposes investors to increased risk of loss.[244] The academic literature is mixed, however, as to whether asymmetric performance fees lead to increased risk-taking on the part of advisers.[245]

[239] This estimate is based on responses to Questions 4 and 21 of Section 7.B.(1) in Schedule D of Form ADV. Section 3(c)(1) funds may also rely on exclusions from registration under the Securities Act other than Regulation D, such as Regulation S (with respect to non-U.S. offerings) or section 4(a)(2) of the Securities Act directly. Section 3(c)(1) of the Investment Company Act generally requires that a relying issuer ''is not making and does not presently propose to make a public offering of its securities.''

[240] Direct incentive mechanisms include managerial ownership in the fund, performance-based compensation, threat of dismissal if the portfolio performs poorly, compensation contracts between the advisers and sub-advisers, among others. For example, although investment advisers of regulated funds are limited in charging performance fees to the funds they advise, individual portfolio managers, who are employees of the adviser, are not restricted in receiving compensation linked to fund performance from the adviser. As such, a practice for asymmetric, option-like performance-based incentives for individual portfolio managers has developed to be the predominant compensation for portfolio managers in the mutual fund sector. For example, one academic study uses data for 4,597 U.S. mutual funds from 2006 and 2011 and finds that portfolio manager compensation is directly tied to fund investment performance for 79% of the funds in the sample. *See* Linlin Ma, Yuehua Tang, and Juan-Pedro Gomez, *Portfolio Manager Compensation in the U.S. Mutual Fund Industry,* 74.2 J. Fin. 587–638 (2019) (Ma, Tang, and Gomez (2019)). While this study concerns portfolio managers' compensation rather than that of registered investment advisers themselves, it highlights the role that performance-based pay has in design of compensation structures that may better align interests of advisers and their employees with those of investors. Examples of indirect incentive mechanisms include the relationship between performance and flows (inferior performance discourages capital inflow) and investor sophistication (the more sophisticated investors are, the better they can monitor and discipline adviser risk-taking behavior).

[241] For example, some studies suggest that portfolio manager ownership in the fund mitigates managers' incentives to engage in risk-taking behavior and that actively-managed mutual funds with greater managerial ownership are associated with lower levels of risk and better performance. *See, e.g.,* Ajay Khorana, Henri Servaes, Lei Wedge, *Portfolio Manager Ownership and Fund Performance: An Empirical Analysis,* 85(1) J. Fin. Econ. 179–204 (2007); Linlin Ma, and Yuehua Tang, *Portfolio Manager Ownership and Mutual Fund Risk Taking,* 65.12 Mgmt. Sci. 5518–34 (2019). Another study finds that investor sophistication and the threat of dismissal serve as substitutes for explicit performance-based incentives for portfolio managers. The same study does not find significant evidence of differences in future fund performance associated with any particular compensation arrangement, which is consistent with optimal contract equilibrium (performance-based compensation is optimal when agency conflicts are severe enough and suboptimal when agency conflicts are less severe because of the costs associated with performance-based compensation). As a result, authors do not find evidence of a relation between the type of portfolio manager compensation and subsequent fund performance. *See* Ma, Tang, and Gomez (2019). *See also supra* note 240.

[242] *See, e.g.,* Michael C. Jensen, and Kevin J. Murphy, *Performance Pay and Top-Management Incentives,* 98(2) J. Pol. Econ. 225–64 (1990); Bing Liang, *On the Performance of Hedge Funds,* 55.4 Fin. Analysts J. 72–85 (1999); Vikas Agarwal, Naveen D. Daniel, and Narayan Y Naik, *Role of Managerial Incentives and Discretion in Hedge Fund Performance,* 64.5 J. Fin. 2221–56 (2009). For a comprehensive review of studies of performance in private equity funds, *see* Na Dai, *Empirical Research on Private Equity Funds: A Review of the Past Decade and Future Research Opportunities,* 2–3 Rev. Corp. Fin., 427–50 (2022). *See also* Florian Fuchs et al., *Should Investors Care Where Private Equity Managers Went to School?,* Rev. Corp. Fin. (2022).

[243] Carried interest is a form of performance-based compensation where a portion of profits is allocated to a general partner before the remaining profits are distributed to limited partners. Deferred compensation refers to an arrangement where a portion of adviser's performance-based compensation is held back and paid at a later date, subject to certain conditions, generally tied to future performance.

[244] A key insight from an option pricing theory is that the value of a call option increases with the volatility of the underlying asset. *See* Fischer Black and Myron Scholes, *The Pricing of Options and Corporate Securities,* 81 J. Pol. Econ. 637 (1973). This is because higher volatility increases the probability that the underlying asset's value will exceed the strike price, generating a payout; while the downside for the option holder remains fixed at zero (because the option expires unexercised if the underlying asset's value remains below the strike price). Similarly, with an asymmetric performance fee, an adviser benefits from increased portfolio volatility—higher volatility increases the likelihood that the portfolio will outperform its benchmark or hurdle rate, generating a fee payout—while the corresponding downside remains fixed at zero if the increased volatility causes the portfolio to underperform (because the performance fee payout would simply equal to zero). This dynamic can incentivize an adviser to take on excessive portfolio risk at the expense of investors.

[245] For example, some theoretical and empirical studies have found that both management fees and asymmetric performance fees can create incentives to increase the risk of a portfolio. *See, e.g.,* Jennifer N. Carpenter, *Does Option Compensation Increase Managerial Risk Appetite?,* 55.5 J. Fin. 2311–31 (2000); Suleyman Basak, Anna Pavlova, and Alexander Shapiro, *Optimal Asset Allocation and*

Continued

This issue is more pronounced for strategies where returns are driven by capital appreciation, such as equity strategies, where advisers have greater control over the timing of disposition of depreciating assets. By delaying such dispositions, an adviser can avoid realizing a loss that would reduce or eliminate any current period performance compensation based on realized capital gains, while delaying any such reduction in compensation resulting from future losses, which may exacerbate excessive risk-taking. In contrast, when an adviser receives performance compensation on income, such as interest income, any asset underperformance that results in a default or delinquency on a loan would reduce interest income and, with it, the adviser's performance fees. Because such interest income cannot be timed, advisers cannot increase the likelihood of a large performance compensation payout through excessive risk-taking without also increasing the likelihood that the income stream from underlying assets would be eroded due to their increased default probabilities. Therefore, advisers with compensation tied to income may be less incentivized to take excessive risk than advisers with compensation tied to capital gains.

Advisory contracts that include a performance fee commonly feature investor protections designed to align managerial incentives with investor interests. For instance, many such arrangements stipulate that an adviser may collect performance fees only on returns above a ''high-water mark,'' which is the fund's prior peak NAV. Advisory contracts may also feature clawback provisions that make a previously paid performance fee subject to recoupment when current performance erodes past gains. In addition, performance fee arrangements may include hurdle rates, which are minimum performance thresholds that can be numeric or tied to a specific benchmark. A benchmark used to determine a performance fee can be an important factor for investor outcomes.[246]

The structure of performance compensation arrangements and associated investor protections may depend on a fund's or account's lifespan, liquidity profile, and strategy type, among other things. For example, for drawdown funds, which are funds with a finite lifespan that do not permit investor redemptions, performance compensation is charged based on realized gains because investments are held until realization. While performance compensation may be collected on a deal-by-deal basis, such contracts for drawdown funds typically include clawback provisions, such that previously distributed compensation is returned if aggregate realized performance at fund termination falls short. In contrast, performance compensation for funds that permit periodic redemptions and do not have a fixed life (evergreen funds) may be based on unrealized gains, which introduces the risk that compensation collected on mark-to-market gains may later be reversed. For these funds, a high-water mark can serve as a stronger investor protection mechanism because it prevents the payment of performance compensation on the same unrealized gains multiple times. In addition, the frequency of compensation crystallization and the length of the measurement period are important features of performance compensation arrangements for evergreen funds. The less frequently performance compensation is locked in and paid, and the longer the measurement period, the lower the risk that performance compensation is paid on gains that are subsequently reversed.

b. Structural Constraints on Performance Compensation Design

The ability of investment advisers to implement performance compensation contracts depends on whether a fund is a regulated fund or a private fund. Private funds may be organized as limited partnerships, in which the general partner typically is an affiliate of the adviser, and the investors are limited partners.[247] The terms governing performance compensation for a partnership are set out in the fund's operating agreement (as well as the adviser's advisory contract with the fund), and each investor individually agrees to the terms of the agreement upon subscription. The fund's operating agreement typically permits advisers and investors to negotiate modifications to performance compensation arrangements through side letters, which are bilateral agreements between the general partner or adviser (or both) and the investor. As such, performance compensation obligations may differ at the investor level within the same fund. Private funds employ different mechanisms to subject individual fund investors to the payment of performance compensation, in order to account for an individual investor's performance experience rather than the fund's aggregate performance. For example, funds structured as limited partnerships generally account for each partner's individual capital account on the fund's books. Performance compensation attributable to the general partner is computed for each capital account relative to each partner's contributions, distributions, and profit and loss allocations.[248]

In regulated funds, the advisory contract is between the fund as an entity and the investment adviser. Individual investors are not parties to this contract—instead, the fund's board of directors acts as the representative of shareholder interests and reviews and approves the advisory contract on their behalf annually. As such, fund investors cannot individually negotiate performance compensation terms.[249] This structural difference has implications for how performance compensation is assessed and borne by investors in regulated funds.

In particular, in regulated funds, performance compensation is assessed on the fund itself and, therefore, accrues in liabilities of the fund. Rule 2a–4 for open-end funds requires fund expenses, including any investment advisory fees, to be reflected in the NAV at which investors transact, with estimates of the accrued amounts used when the actual value is not available. Separately, FASB ASC Topic 946, *Financial Services—Investment Companies,* requires that

Risk Shifting in Money Management, 20.5 Rev. Fin. Stud. 1583–1621 (2007). Other studies find different results. For example, one study covers European mutual funds (UCITS) that charge performance fees, most of which are asymmetric, and finds that funds with performance fees generally do not take more risk overall relative to other funds but they may increase risk in the second half of the year when the sensitivity of changes in the performance fee contract payoffs to changes in risk is highest. *See* Henri Servaes and Kari Sigurdsson, *The Costs and Benefits of Performance Fees in Mutual Funds,* 50 Fin. Intermediation, 100959 (2022).

[246] *See, e.g.,* Richard Evans et al., *Peer Versus Pure Benchmarks in the Compensation of Mutual Fund Managers,* 59.7 J. Fin. & Quantitative Analysis 3101–38 (2024); Anna Pavlova and Taisiya Sikorskaya, *Benchmarking Intensity,* 36.3 Rev. Fin. Stud. 859–903 (2023); Juan Sotes-Paladino and Fernando Zapatero, *Carrot and Stick: A Role for Benchmark-Adjusted Compensation in Active Fund Management,* 52 J. Fin. Intermediation 100981 (2022).

[247] In addition to limited partnerships, private funds may be organized as limited liability companies or corporations, among other forms. Regardless of organizational form, its operating agreement will set out the terms of performance compensation, and investors agree to such terms upon subscription.

[248] Some other examples are series accounting, where each investor subscription creates a separate series of fund interests with its own cost basis and high-water mark, and equalization accounting, where incoming investors subscribe at NAV plus or minus an adjustment. Series accounting and equalization accounting are typically used for funds structured as corporations.

[249] In addition, all shares of the same class must be treated identically under section 18(i) of the Investment Company Act; therefore, performance compensation cannot vary within a share class.

performance fees be accrued based on actual performance through the accrual date, meaning that performance fees must be accrued in fund liabilities as they are incurred. This requirement applies to all regulated funds.[250] As such, investors in regulated funds that pay performance fees bear the performance fee costs through NAV reductions rather than through direct charges.[251] This has two implications.

First, in practice, performance compensation cannot be assessed or charged at the individual investor level, and mechanisms that allocate performance compensation owed by individual investors that are available to private funds cannot be implemented to account for individual investors' experiences in regulated funds. This, in turn, results in a free-rider problem among regulated fund shareholders. Because performance fees reduce a fund's NAV uniformly across all outstanding shares, regardless of the time investors subscribed to the fund, investors who subscribe at different times would not have net-of-fee returns that account for their individual investment experience, in contrast to how they would be in many private funds. In particular, investors who subscribe midway through a measurement period participate in all the gains after their subscription, but the performance fee they bear is based only on a portion of the gains rather than their full gains, which may result in a lower effective fee rate for those investors for that period compared to what is stated in the fund's advisory contract.[252] Therefore, the structural inability of registered funds to implement investor-level equalization mechanisms produces an inherent inequality among investors—investors in the same fund may bear different effective performance fees depending on the timing of their subscriptions or redemptions. This is in contrast to private funds where investors pay performance fees based on their own performance experience.

Second, because the final performance fee cannot be determined until the end of a measurement period, the amount of accrued performance fee has to be estimated each time that NAV calculation is performed. In particular, because the accrued fee estimate may be reversed if performance reverses within the period, investors who enter or exit the fund in the middle of the period may bear impacts from fees that are ultimately not paid. This effect is more pronounced for funds that are required to calculate their NAV daily. For closed-end regulated funds that allow periodic repurchases, the estimation effect is less pronounced and may not be present at all, if the NAV calculation is aligned with the frequency of repurchases.

c. Distribution Channels

Access to a fund depends on the channels through which it is distributed, and these channels differ in how readily investors can purchase interest in a particular fund. Private funds are distributed only by the fund sponsor or a placement agent, and investors are generally admitted to the fund by subscribing directly, rather than purchasing the fund through an intermediary.

On the other hand, regulated funds can sometimes be purchased directly through the fund's principal underwriter or transfer agent, or through an investment adviser or broker-dealer, which can vary in cost and accessibility. For example, accounts receiving recommendations or advice, whether through a broker-dealer or through a registered investment adviser, are typically charged higher costs and in general require higher account minimums, compared to self-directed brokerage accounts.

We understand that unlisted regulated closed-end funds that make periodic or discretionary repurchase offers are generally not available for self-directed purchase through a brokerage platform.[253] Accordingly, in practice, these funds can be purchased primarily by subscribing directly with the fund's transfer agent or through a financial professional (either a broker-dealer or investment adviser). This limitation could be due to operational constraints of self-directed brokerage platforms. For example, if a fund restricts investors to a particular set (*e.g.,* to qualified clients or accredited investors), we understand that self-directed brokerage platforms are generally not equipped with automated systems that would perform and track the required investor eligibility checks—which is in contrast to a financial professional at a broker-dealer or an investment adviser. As another example, a self-directed brokerage platform may be built on a system that assumes daily redeemability, and funds that do not issue redeemable shares (*e.g.,* interval funds or tender-offer funds) generally cannot be transacted through the ordinary self-directed order flow.[254]

These operational constraints may compound for retirement plans, specifically defined contribution plans, because recordkeeping systems are built on daily participant-level valuation and daily processing of contributions, loans, and distributions (which are applied proportionally to portfolio holdings). Closed-end funds are accordingly rare on defined contribution plan menus as standalone options for investors. While a plan may obtain exposure to a target-date or balanced fund that holds closed-end funds in its portfolio, investor access to regulated funds that do not issue redeemable shares may currently be hindered by operational constraints of fund intermediaries.

[250] *See* FASB ASC Topic 946–20–25–10.

[251] We note that, because performance compensation in regulated funds is allocated to fund investors through NAV reductions, certain forms of performance-based compensation, such as carried interest, are not practicable in the regulated fund context. This is because carried interest is a preferential profit allocation that is attainable in funds structured as partnerships. For regulated funds, which generally are structured as corporations or trusts, profits and distributions flow through share ownership and, therefore cannot differ within the same share class. Therefore, when discussing regulated funds, we assume that performance-based compensation is structured as a performance fee.

[252] For example, consider a fund with a 20% performance fee relative to the fund's high-water mark, crystallized annually. Assume that the fund's high-water mark is $100 at the beginning of the year. Investor A subscribes at the start of the year at a NAV of $100. At mid-year, the fund's investments have appreciated by $10, and a $2 performance fee is accrued, resulting in a NAV increase of $10 − $2 = $8 and a NAV of $108. Investor B subscribes at this price. By year-end, the fund's investments appreciate by another $10, and an additional $2 of performance fees accrues. At this point, the fee is crystallized, and the NAV is $116. Because the performance fee is based on appreciation at the fund level, Investors A and B experience different effective performance fees. In particular, Investor A bears $4 in performance fees on $20 = $120 − $100 of her gains or exactly the stated 20% performance fee. Investor B, however, bears $2 on $12 = $120 − $108 of her gains, resulting in an effective performance fee of just 16.7%. This difference arises because the high-water mark is set at the fund level ($100) rather than at Investor B's entry price ($108), meaning Investor B does not bear a $2 fee on the $10 gain already included in the NAV at her subscription, yet still benefits from this gain. In effect, Investor A's early capital generated returns that Investor B captured at a discount.

[253] *See e.g.,* Morningstar Manager Research, Jason Kephart, Jack Shannon and Brian Moriarty, *The State of Semiliquid Funds 2025* (June 24, 2025; revised July 1, 2025), *available at https://www.morningstar.com/content/cs-assets/v3/assets/blt9415ea4cc4157833/bltcf5a9d2acb058df7/68652d27e8e8e649c55d114e/The_State_of_Semiliquid_Funds_2025_(revised_July_1_4 p.m.).pdf.*

[254] For example, open-end fund orders are processed through Fund/SERV operated by National Securities Clearing Corporation whose automated model depends on the daily redeemability. Orders for funds whose shares are not redeemable, therefore, need to be processed through a separate infrastructure such as Alternative Investment Product service offered by DTCC or through a manual subscription process.

d. Market Practices and Investor Access to Alternative Strategies

(1) Private Funds

Currently, performance-fee arrangements are most closely associated with private funds, which employ various strategies such as private equity, private credit, and hedge fund strategies. Advisers to private funds may charge performance fees based on capital gains or other measures, such as income and dividends, to participate in the profits generated by their investment activities. Although various academic studies suggest that private funds may offer superior risk-adjusted returns to investors,[255] these funds vary in their accessibility to investors.

3(c)(7) private funds are restricted to qualified purchasers only and predominantly serve institutional investors (the Advisers Act prohibition on performance fees based on capital gains does not apply to 3(c)(7) funds and the proposed amendments would not affect advisory contracts with such funds). 3(c)(1) private funds are open to individual investors but are generally restricted to accredited investors (if the fund relies on Regulation D) or accredited investors that are also qualified clients (if the fund's adviser relies on both Regulation D and the exemption for qualified clients in rule 205–3 in order to charge performance fees on capital gains). Because the qualified client definition generally has more stringent thresholds than the accredited investor standard, in practice most 3(c)(1) funds are available to accredited investors that are also qualified clients. We estimate that approximately 72.9 percent of 3(c)(1) funds require their investors to be qualified clients.[256] As a result, less affluent accredited investors have limited access to these investment opportunities.

Private funds may also restrict their investor set by imposing an investment minimum. We estimate that approximately 75.7 percent of private funds relying exclusively on the section 3(c)(1) exclusion require minimum investments to participate in the fund.[257] Table 4 reports information on these minimum investments as reported on Form ADV.

Table 4. Minimum Investment Requirements of 3(c)(1) Funds, as of December 31, 2025[a]

Investment Minimum Range	Fund Count	Gross Assets, $ Billion	Investment Minimum[b]	
			Median, $	Mean, $
No minimum	3,431	$325.2	$0	$0
< $10,000	592	$54.1	$2,619	$2,982
$10,000 to $100,000	4,806	$176.2	$50,000	$61,815
$100,000 to $300,000	1,770	$102.2	$250,000	$235,514
$300,000 to $500,000	911	$62.1	$500,000	$495,418
$500,000 to $1 million	1,688	$235.1	$1,000,000	$993,550
$1 million to $5 million	612	$126.6	$5,000,000	$4,064,408
$5 million to $10 million	207	$62.6	$10,000,000	$9,686,053
> $10 million	121	$24.7	$29,155,000	$65,001,291
Total	14,138	$1,168.7	$100,000	$1,075,239

Table notes:

[a] The data is based on the analysis of Form ADV data for the reporting period ending December 31, 2025 with filings received through May 31, 2026. *See* note [a] to Table 3. The table includes private funds that qualify for the exclusion from the definition of investment company under section 3(c)(1) of the Investment Company Act but do not qualify for the exclusion under section 3(c)(7), as reported on Form ADV, Part 1A, Section 7.B.(1).A of Schedule D, Questions 4(1) and 4(2). *See* note [e] to Table 3.

[b] Based on data reported on Form ADV, Part 1A, Schedule D, Section 7.B.(1).A, Question 12.

We estimate that out of 14,138 private funds relying on the 3(c)(1) exclusion exclusively, approximately 28.5 percent either do not require an investment minimum or require a minimum less than $10,000. These funds represent approximately 32.4 percent of cumulative gross assets reported by private funds relying on the 3(c)(1) exclusion exclusively. Less affluent accredited investors may be unable to meet higher investment minimums,

[255] *See, e.g.,* David T. Robinson and Berk A. Sensoy, *Do Private Equity Fund Managers Earn Their Fees? Compensation, Ownership, and Cash Flow Performance,* 26 Rev. Fin. Stud. 2760 (2013). *See also* Harris et al., *Private Equity Performance: What Do We Know?* J. of Fin. (2014), finding performance in a sample of 1,400 buyout funds, in which advisers participate ''carry'' in the upside of profitable deals, consistently outperformed the S&P 500 net of fees by more than 3% annually. Results for venture capital funds are mixed, with these funds outperforming public equities in the 1990s but underperforming them in the early 2000s. *See also* Kosowski et al., Do *Hedge Funds Deliver Alpha? A Bayesian and Bootstrap Analysis,* J. of Fin. Econ. (2007), finding that top hedge fund performance cannot be explained by luck and that hedge fund performance persists at annual horizons. Other studies suggest that this outperformance of private funds only compensates investors for illiquidity or other risks they bear in their investment. *See e.g.,* Franzoni et al., *Private Equity Performance and Liquidity Risk,* J. of Fin. (2012). *See also* Sorensen et al., *Valuing Private Equity,* Rev. of Fin. Stud. (2014).

[256] *See* Table 3. We note that this estimate is for all 3(c)(1) funds, regardless of whether they pay performance fees on capital gains or not.

[257] *Id.*

regardless of whether those funds restrict their client base to qualified clients or not.

(2) Separately Managed Accounts

In contrast to regulated and private funds that are managed on behalf of a group of investors, separately managed accounts are managed directly for individual clients.[258] Each separately managed account owner directly owns underlying portfolio investments and has transparency into those investments and portfolio transactions. Similarly to mutual funds and ETFs, separately managed accounts offer various investment strategies; however, direct asset ownership allows for portfolio customization, such as an investor's ability to impose a unique set of guidelines for investment allocation or the investor's ability to use customized tax treatment to avoid the forced realization of capital gains or losses that can occur with mutual fund share ownership, such as in-kind account funding (*e.g.,* transfer of a security from another account into a separately managed account without selling it). Direct ownership of portfolio assets also provides investors with full transparency of portfolio holdings and account transactions.

Together, transparency and customization benefits for investors may translate into operational challenges for investment advisers: the more customized accounts an adviser manages, the more operationally burdensome it can become to employ strategies, track compliance, and provide detailed reports on holdings, performance, and transaction activity to each account holder.[259] Because of this potential limitation on economies of scale, for the same level of aggregate client assets managed by an adviser, it may be less operationally complex to manage a small number of large separately managed accounts than many smaller separately managed accounts. Generally, smaller accounts allow limited customization and may focus on public market strategies that replicate mutual fund portfolios managed by the same adviser or portfolios tracking an index (''direct indexing'').[260]

Retail-oriented separately managed accounts typically carry higher expenses and may therefore underperform their institutional counterparts on a net return basis, according to a recent study.[261] In addition, separately managed accounts often require substantial investment minimums, with thresholds for institutional accounts starting at $100,000 and thresholds for retail accounts ranging between $50,000 and $100,000, according to a recent academic study.[262]

Advisers to retail-oriented separately managed accounts typically charge fees based on a stated percentage of assets under management, rather than a performance fee.[263] For example, a subset of separately managed accounts is offered through wrap fee programs,[264] where investors are charged a single, bundled ''wrap'' or ''model'' fee for investment advice, brokerage services, administrative expenses, and other fees and expenses.[265]

(3) Regulated Funds

Regulated funds offer a variety of strategies to investors, historically focusing on public markets, and vary in their adoption of performance fees. Although advisers to regulated funds have been permitted to charge symmetric performance fees (fulcrum fees), the use of fulcrum fees remains limited in recent years. We estimate that at least 85 active mutual funds pay fulcrum fees.[266] Of these funds, 72 are reported as equity funds, 9 as fixed income funds, 3 as allocation funds, and 1 as a hybrid fund.[267]

In recent years, regulated funds began offering more complex alternative strategies to investors and entering into advisory contracts with asymmetric performance fees on both income gains and capital gains. Regulated closed-end

[258] As used in this Economic Analysis, the term ''separately managed accounts'' refers to managed investment advisory accounts, consistent with the use of the term in Part 1A, Item 5.K.(1) of Form ADV. *See* note [e] to Table 1 above.

[259] In addition, different separately managed accounts may have different service providers, such as administrators and custodians, which thwarts centralized workflow for investment advisers. *See* Richard B. Evans et al., *Diseconomies of Scale in Quantitative and Fundamental Investment Styles,* J. of Fin. & Quantitative Analysis, 58(6), 2417–2445 (2023). Authors use data on separately managed accounts to compare economies of scale between accounts implementing fundamental (more complex and customized process) and quantitative (more algorithmic) investment approaches and find that separately managed accounts with fundamental strategies exhibit greater diseconomies of scale than those with quantitative strategies.

[260] For example, an industry report by Cerulli Associates estimates that, as of year-end 2024, direct indexing strategies account for 37.6% of manager-traded assets reported by SMA asset managers. *See* Cerulli Associates, *Direct Indexing Assets Close Year-End 2024 at $864.3 Billion* (Apr. 10, 2025), *https://www.cerulli.com/press-releases/direct-indexing-assets-close-year-end-2024-at-864.3-billion* (last accessed Aug.14, 2026).

[261] *See* Martin Rohleder et al., *Do Investor Types Matter? A Comparative Analysis of Separate Account Characteristics and Performance,* 43(1) Rev. of Fin. Econ., 95–110 (2025). Authors analyze a sample of 4720 actively-managed U.S. domestic equity separately managed accounts for the period July 1998 to June 2022 and find that, with an equal-weighted annualized alpha of 1.76%, institutional accounts exhibit a significantly higher performance than their mixed (1.39%) or pure retail (1.30%) counterparts. *See also* Howard Jones, Jose Vicente Martinez, and Alexander Montag, *What Twins Tell us about the Performance of Separate Accounts, Mutual Funds, and Their Investors* (May 28, 2025), *available at http://dx.doi.org/10.2139/ssrn.3883499* (retrieved from SSRN Elsevier database).

[262] *See* Martin Rohleder, et al., *Do Investor Types Matter? A Comparative Analysis of Separate Account Characteristics and Performance,* 43 Rev. Fin. Econ. 95 (2025). Authors find that a median investment minimum for retail account is $100,000 and the median investment minimum for institutional account is $3 million. Authors use Morningstar's definition of a retail investor. As an example, Fidelity's minimums for separately managed accounts range between $100,000 and $350,000, depending on the strategy. *See* Fidelity, *What Is a Separately Managed Account and How Does It Work? https://www.fidelity.com/learning-center/trading-investing/separately-managed-accounts* (last accessed Aug. 16, 2026). As another example, Nuveen's minimums for separately managed accounts range between $100,000 and $250,000 for fixed income strategies. *See,* Nuveen, *Investing in Separately Managed Accounts, https://documents.nuveen.com/Documents/Nuveen/Default.aspx?uniqueid=7bef76e2-7f63-4148-a371-d7551bdf2c31* (last accessed Aug. 16, 2026). *See also e.g.,* Hartford Funds, *Model-Delivery SMAs, https://www.hartfordfunds.com/products/core-equity-SMA-strategy.html* (last accessed Aug. 14, 2026).

[263] *See, e.g.,* Clearwater, *A Guide to Separately Managed Accounts, https://cwan.com/resources/blog/guide-to-separately-managed-accounts/* (last accessed Aug. 16, 2026); Nuveen, *Investing in Separately Managed Accounts, https://documents.nuveen.com/Documents/Nuveen/Default.aspx?uniqueid=7bef76e2-7f63-4148-a371-d7551bdf2c31* (last accessed Aug. 16, 2026); JPMorgan, *Portfolios Made Personal, https://am.jpmorgan.com/content/dam/jpm-am-aem/americas/us/en/smas/bro-sma.pdf* (last accessed Aug. 16, 2026). As another example, gross annual advisory fees for Fidelity's separately managed accounts range between 0.2% and 0.7%, depending on the strategy. *See* Fidelity, *What Is a Separately Managed Account and How Does It Work? https://www.fidelity.com/learning-center/trading-investing/separately-managed-accounts* (last accessed Aug. 16, 2026).

[264] Rule 204–3(g)(5) defines a wrap fee program as an advisory program under which a specified fee or fees not based directly upon transactions in a client's account is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and the execution of client transactions. *See* 17 CFR 275.204–3.

[265] *See, e.g.,* Axos Invest, *Wrap Fee Program Brochure, https://www.axos.com/documents/axos-invest-wrap-fee-program* (last accessed Aug. 16, 2026); Merrill Lynch, *Wrap Fee Program Brochure, https://olui2.fs.ml.com/Publish/Content/application/pdf/GWMOL/mliap-wrap-fee-program-brochure-adv2a.pdf* (last accessed Aug. 16, 2026); TIAA, *TIAA Personal Portfolio Wrap Fee Program Disclosure Brochure, https://www.tiaa.org/public/pdf/t/TIAA_Personal_Portfolio_Fee_Wrap_Program_Disclosure_Brochure_FormADV.pdf* (last accessed Aug. 16, 2026).

[266] This estimate is based on data reported in Morningstar Direct as of June 10, 2026. Fulcrum fees are reported among other performance fees without a separate designation; however, based on a review of selected filings, fulcrum fees are typically reported as performance adjustments to the ''basic'' management fee, expressed as a percent of a fund's net assets (*e.g.,* ±0.20% of average net assets over the performance period). For the purpose of this estimate, we assume that any performance fee paid by an open-end fund is a fulcrum fee.

[267] Based on Morningstar's broad categories.

funds such as interval funds, tender-offer funds, and BDCs are primarily associated with such performance fees in the regulated fund space. We estimate that out of 706 closed-end funds, at least 95 funds report paying performance fees on either income gains, capital gains, or based on another measure.[268] The range of strategies available through these vehicles may be limited by advisers' compensation preferences, as current market practices favor fee structures that are more compatible with certain investment approaches than others.[269]

BDCs. BDCs are permitted higher leverage than closed-end funds and are permitted to pay performance fees on capital gains under certain conditions without restricting their investor base.[270] As such, BDCs adopt performance fees at a higher rate compared to other regulated funds. We estimate that 152 out of 176 BDCs (representing nearly 100 percent of cumulative BDC net assets) pay performance fees (on either income gains or capital gains) to their advisers.[271] In addition, we estimate that, among unlisted BDCs, there are 102 private BDCs (representing approximately 42.9 percent of cumulative BDC net assets) that voluntarily restrict their investor base to accredited investors.[272]

While BDCs can generally invest in both the equity and debt of small and mid-sized U.S. companies, one study finds that publicly traded BDCs currently specialize primarily in private credit.[273] The same study finds that nearly all BDCs specializing in private credit charge a 20 percent performance fee on cumulative net investment income above a defined hurdle rate and that the compensation structure of BDCs resembles that of a traditional private equity fund,[274] with one notable difference: management fees are typically charged on gross AUM (which includes leverage) rather than on net assets.[275] This results in BDCs having lower net-of-fees risk-adjusted returns compared to private equity funds with the same before-fee performance and level of borrowings. According to the study, retail investors generally sort into BDCs that engage in more hybrid financing and charge higher fees, and institutional investors sort into private equity-affiliated BDCs. A separate report finds that most BDCs have performance fees based on both net investment income and capital gains.[276]

Interval Funds. Interval funds conduct repurchases at scheduled intervals and are subject to a debt-to-asset ratio limit of 1/3, which is a more restrictive leverage limit than that for BDCs.[277] A recent academic study finds that interval funds invest in a broader range of asset classes than BDCs.[278] According to the study, almost 60 percent of interval fund investors are retail investors, and the median minimum investment requirement is $2,500. Another report finds that funds representing approximately 20 percent of interval fund assets require investment minimums less than $100,000, while the rest require investment minimums above $100,000, with 47 percent of interval fund assets in funds requiring a minimum investment over $1 million.[279] Similar to the strategies of BDCs, private credit and real estate are the most prominent strategies among interval funds. The authors find that retail investors in interval funds realize superior returns relative to exchange-traded benchmarks only when they co-invest alongside large and more sophisticated investors. The study estimates that 17.5 percent of interval funds pay performance fees on interest and dividend income.[280] We estimate that at least 29.5 percent (41 out of 139) of interval funds pay performance fees on either capital gains or income.[281]

Tender-Offer Funds. In contrast to BDCs and registered interval funds, registered tender-offer funds are primarily offered to accredited investors and qualified clients. Like interval funds, tender-offer funds are subject to a debt-to-assets ratio limit of 1/3; like most BDCs, they conduct repurchases on a discretionary basis. The same study finds that around 70 percent of tender-offer funds are offered to high net worth individuals, while around 22 percent are offered to retail investors.[282] The study estimates that 44 percent of tender-offer funds pay performance fees on interest and dividend income.[283] We estimate that 33 out of 174 of tender-offer funds pay performance fees on either capital gains or income.[284]

Because tender-offer funds are not required to have a fixed repurchase schedule like interval funds, this type of regulated fund may offer a better match between the limited fund liquidity offered to investors and the illiquidity of investments in private companies. For example, a recent study indicates that 57 percent of tender-offer fund assets are in public and private equity, while only 16 percent of interval fund assets are in public and private equity.[285]

Open-End Funds. Certain regulated open-end funds, including mutual funds

[268] This estimate is based on the data reported in Morningstar Direct as of June 10, 2026 and performance fee data reported on Form N–2, as of Aug. 25, 2026. For Form N–2 data, we use the number of regulated funds that used the ''IncentiveFeesPercent'' Inline XBRL tag to identify a performance fee disclosed on Form N–2, Item 3 (Fee Table and Synopsis) in one or more filings beginning January 1, 2025. *See* Closed-End Fund (CEF) 2026 Taxonomy Guide, available at *https://xbrl.sec.gov/cef/2026/cef-taxonomy-guide-2026-03-16.pdf.*

[269] *See* sections I.B and III.B.3 for a discussion of these limitations.

[270] *See* section III.B.1.a. BDCs are permitted a debt-to-assets ratio of up to 2/3. BDCs also can operate under rule 23c–3 as interval funds. In practice, however, most use the Exchange Act rule 13e–4 framework for discretionary tender offers.

[271] The estimate is based on quarterly BDC filings data from Refinitiv BDC Collateral, as of December 31, 2025, and staff review of selected filings.

[272] *Id.* Private BDCs are a subset of unlisted BDCs. Private BDCs do not file Form N–2. The ''private'' BDC designation is based on cross checking registration filings and designation of ''BDC Type'' in the Refinitiv BDC Collateral dataset.

[273] Most BDCs make income-generating loans to middle-market firms (domestic operating companies with unlisted shares). *See, e.g.,* David T. Robinson and Melanie Wallskog, *The Growth of Private Lending and Retail Access to Alternative Investments,* Nat'l Bureau of Econ. Rsch. Working Paper No. 34617 (2026).

[274] *Id.* The study finds that performance compensation for BDCs closely resembles the carried interest commonly charged by general partners in private equity, both in magnitude and structure, with hurdle rates and catch-up provisions similar to what is observed in traditional private equity funds.

[275] *Id.* Authors use an unbalanced panel of 53 publicly traded BDCs spanning 2001 to 2023 (667 year-fund observations) and find that the mean and median incentive fees were 19.33% and 20%, respectively.

[276] *See* Mayer Brown, *BDC Facts and Stats: (2025), https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2025/06/bdc---factsstats-(2025).pdf%3Frev=644a03d6db80415e9da067a9aba85de6* (last accessed Aug. 12, 2026).

[277] *See* section III.B.1. Closed-end funds are subject to a debt-to-assets ratio limit of 1/3.

[278] *See* Stefano Pegoraro, Sophie Shive, and Rafael Zambrana, *Democratizing Illiquid Assets: Liquidity Transformation and Performance in Interval Funds* (June 12, 2025), *available at http://dx.doi.org/10.2139/ssrn.5365061* (retrieved from SSRN Elsevier database) (Pegoraro et. al (2025)). The study identifies interval fund share classes as ''retail'' or ''high net worth'' based on descriptions in the funds' prospectuses and amendments.

[279] *See* Figure S6, Investment Company Institute, *The Closed-End Fund Market, 2025,* ICI Rsch. Perspective (Apr. 2026), *https://www.ici.org/system/files/2026-04/per-32-03.pdf* (last accessed Aug. 14, 2026).

[280] *See* Pegoraro et. al (2025).

[281] *See supra* note 268. *See also* Table 2.

[282] *See* Pegoraro et. al (2025).

[283] *Id.*

[284] The number of tender-offer funds paying performance fees may be underestimated, as it includes only the funds who voluntarily report performance fees on a separate line of the fee table using the ''IncentiveFeesPercent'' Inline XBRL tag. *See supra* note 268. *See also* Table 2.

[285] *See* Figure 11, Investment Company Institute, *The Closed-End Fund Market, 2025,* ICI Rsch. Perspective (Apr. 2026), *https://www.ici.org/system/files/2026-04/per-32-03.pdf* (last accessed Aug. 14, 2026). Public/private equity includes hedge fund equity and venture capital strategies. For interval funds, this category also includes a small number of funds of hedge funds.

and ETFs, currently offer alternative strategies. These funds primarily offer exposure to established private firms and are more restricted than BDCs and closed-end funds in their ability to utilize leverage. However, liquidity and daily valuation and redeemability requirements for registered open-end funds restrict their ability to allocate a significant portion of their portfolio to less-liquid private market assets.

Certain investment strategies may also be available to investors in regulated funds via regulated funds of private funds. However, such structures may be more expensive for investors, compared to funds directly investing in alternative strategies,[286] to the extent that the advisory fees, including performance fees, that acquired funds pay to their advisers are significant. Regulated funds are required to disclose as a separate line item any acquired fund fees incurred indirectly by the fund as a result of its investment in certain other funds.[287]

e. Market Practices for Performance Compensation Disclosure

While advisers to private funds are not required to make standardized public disclosures regarding the offering terms for private funds, they must comply with certain SEC requirements (if applicable), such as filing Form D for offerings relying on Regulation D, and they are subject to the antifraud provisions of the federal securities laws.[288] While private placement offering memoranda typically include detailed information concerning fund strategy, terms, fees, liquidity provisions, potential conflicts, and risk factors, unlike the disclosures required of registered investment companies, private fund disclosures are neither standardized nor generally as comprehensive, making cross-offering comparison more difficult for investors. For instance, while there are reporting templates for fees, expenses, and carried interest in the private equity industry,[289] adoption of these templates is not a regulatory requirement and may depend in part on the bargaining power of fund investors. Because such disclosures are generally provided only to current and certain prospective fund investors, comparing expenses and potential risks across private funds may involve more significant search costs for investors.

Regulated funds that have performance fees (either on capital gains or income) may present these fees inconsistently in their disclosures on Forms N–1A and N–2, because these forms do not require funds to list performance fees separately in the fee table; instead, performance fees are reported in an aggregate line item together with other investment advisory fees. As a result, some regulated funds that pay performance fees have developed the practice of including separate disclosure of those fees in their fee tables.[290] For example, a regulated fund may include a footnote in its fee table indicating that the reported management fee includes a performance adjustment and disclosing the base fee level absent that adjustment.

C. Benefits and Costs

1. Changes to the Qualified Client Definition

Rule 205–3 permits investment advisers to charge performance fees on capital gains to clients that are qualified clients.[291] The current definition of a qualified client includes natural persons and companies with at least $2.7 million in net worth (excluding primary residence) or at least $1.4 million in assets managed by the adviser; certain officers and employees of the adviser; and qualified purchasers. Additionally, a regulated or private fund can meet the qualified client definition only if each equity owner (except for private fund owners not charged a performance fee) also does so, a requirement known as the ''look-through'' provision.

The proposed changes to rule 205–3 would expand the qualified client definition. Specifically, the changes would: (i) replace the net worth and assets-under-management tests with the ''accredited investor'' test for natural persons and companies; [292] (ii) include regulated funds that meet certain conditions; [293] and (iii) remove the existing look-through provision and embed a similar provision directly into the definition.[294] As a result, the expanded definition of a qualified client would newly include:

(1) Natural persons or companies that are accredited investors;

(2) Regulated funds each of whose equity owners is an accredited investor; [295]

(3) Regulated funds that satisfy the following conditions:

- The compensation does not exceed 20 percent of net capital gains;
- The fund complies with the fund governance standards; and
- The fund's board determines that the performance-based compensation arrangement is in the best interest of the regulated fund and its shareholders and makes specific findings regarding the arrangement's appropriateness, structure, and investor protection features;

(4) 3(c)(1) funds provided that each equity owner that is charged performance compensation based on capital gains is an accredited investor.

The proposed changes to the qualified client definition would expand investor access to investment strategies with performance fees on capital gains through two channels. The first channel (''accredited investor channel'') would

[286] This approach layers on fund-of-fund management fees or performance fees, which can erode overall performance. *See e.g.,* Stephen J. Brown, William N. Goetzmann and Bing Liang, *Fees on Fees in Funds of Funds,* 2 J. Inv. Mgmt. 39–56 (2004). *Also see* Andrew Ang, Matthew Rhodes-Kropf, and Rui Zhao, *Do Funds-of-Funds Deserve Their Extra Fees?* 4 J. Inv. Mgmt. 6 (2008), arguing that funds-of-funds add value given the limited set of direct hedge fund investments an investor with limited capital could make absent the fund-of-funds vehicle.

[287] *See* Form N–1A Item 3 Instruction 3.(f); Form N–2 Item 3 Instruction 10. These Items define an acquired fund as any company in which the regulated fund invests has invested (or for purposes of Form N–2, ''intends to invest'') that is either an investment company or that would be an investment company under section 3(a) of the Investment Company Act but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the Investment Company Act.

[288] *See* rule 503 of Regulation D; 15 U.S.C. 78j(b); 17 CFR. 240.10b-5.

[289] For instance, the Institutional Limited Partners Association maintains/publishes a reporting template for private equity funds to provide quarterly reports on fees and fund performance. *See* ILPA, *ILPA Reporting Template, https://ilpa.org/industry-guidance/templates-standards-model-documents/ilpa-templates-hub/ilpa-reporting-template/* (last accessed Aug. 14, 2026).

[290] *See supra* section II.A.3.

[291] We note that advisers may charge performance fees on capital gains based on the statutory exceptions for BDCs and for fulcrum fees. *See* section III.B.1.a for description of these exceptions. This rulemaking does not address these exceptions.

[292] The definition of accredited investor includes, among other qualifying criteria, individuals with net worth above $1,000,000 (excluding primary residence) or incomes of over $200,000 (individually) or $300,000 (with a spouse or partner) in each of the two most recent years. *See* sections II.B and III.B.1.a and *supra* notes 72 and 220 discussing the qualifying criteria for accredited investor status.

[293] *See supra* section II.A.2.

[294] *See supra* section II.C. The proposed changes to reformulate the look-through provision would not alter its ultimate function and, as such, would not impose new requirements on funds, as regulated and private funds would continue to meet the qualified client definition for purposes of the performance fee prohibition if each equity owner (except for owners not charged a performance fee) satisfies the requirements of the qualified client definition.

[295] We note that, in contrast to private funds, regulated funds are not permitted to vary advisory fees, including performance fees, among their shareholders. Therefore, if a regulated fund implements an advisory contract with a performance fee in reliance on the look-through provision of the rule 205–3, in practice, the advisory fee would be reflected in the fund's NAV and would pass through to all fund shareholders via NAV reductions. *See supra* section III.B.3.b.

allow advisers to charge accredited investors a performance fee on capital gains directly through advisory contracts or indirectly through regulated or private funds in which each of the underlying equity owners is an accredited investor. As a result, investors that meet the definition of an accredited investor but do not meet the current qualified client definition (''less affluent accredited investors'') would be newly included within the proposed qualified client definition.

The second channel (''fund board channel'') would permit advisers to charge a regulated fund a performance fee on capital gains if the fund meets specified investor-protection conditions, regardless of whether fund investors meet the accredited investor definition. As a result, any investor would qualify to access regulated funds that pay a performance fee on capital gains. This could increase access to such strategies for investors who do not meet either the current qualified client definition or the accredited investor definition (''non-accredited investors''), and who are generally excluded from registered fund strategies that carry a performance fee on capital gains.

While we anticipate that the adoption of strategies with performance fees on capital gains would vary by client type and investor base, certain overarching economic considerations apply more generally. We discuss these considerations first, followed by effects particular to each client type.

a. General Considerations

The number of investors that would be able to invest in products with performance fees on capital gains would increase as a result of the proposed amendments. This is because the monetary thresholds for investors to qualify as qualified clients under current rule 205–3 are generally more stringent than those for accredited investor status.[296] In particular, individual investors with at least $1 million in net worth qualify as accredited investors, while individuals and companies with at least $2.7 million in net worth meet the current qualified client definition.[297] Accredited investor status can also be met through income thresholds, regardless of net worth level, in contrast to the current qualified client definition, which does not incorporate income thresholds. In addition, certain individuals qualify as accredited investors by virtue of holding designated professional certifications that can serve as proxies for financial sophistication (*i.e.,* the General Securities Representative (Series 7), Private Securities Offerings Representative (Series 82), or Investment Adviser Representative (Series 65) licenses), rather than by satisfying a wealth- or income-based threshold.[298] These investors do not currently meet the qualified client definition, to the extent that they do not otherwise meet the net worth or assets under management thresholds of the qualified client definition and they are not certain officers or employees of the adviser.[299]

The proposal to include accredited investors in the qualified client definition would bring less affluent accredited investors within the pool of clients eligible to be charged a performance fee on capital gains. A recent report analyzes the data reported in the 2022 Survey of Consumer Finances (SCF) [300] and estimates that approximately 24.3 million (18.5 percent) of U.S. households qualify for accredited investor status and that approximately 16.4 million (12.5 percent) of U.S. households meet the $1 million net worth threshold of the accredited investor definition.[301] Using the same data, we estimate that approximately 29.6 percent of all accredited investors—approximately 7.2 million U.S. households—have a net worth of at least $2.7 million and would meet the current qualified client definition.[302] Accordingly, we estimate that approximately 17.1 million U.S. households qualifying as accredited investors do not currently meet the net worth test of the qualified client definition and would meet the definition of qualified client under the proposal.

The proposed fund board channel could also bring non-accredited investors within the pool of investors eligible to access investment products associated with performance fees on capital gains. The potential number of investors reached through this channel is considerably broader: in principle, the fund board channel could extend to all U.S. households, to the extent that regulated funds relying on this channel

[296] The accredited investor status can be met by satisfying one of several criteria, including both monetary and non-monetary criteria, similarly to how the current qualified client definition can be satisfied through different criteria. *See supra* note 220 and accompanying text.

[297] We note that the accredited investor definition has a $5 million in investments threshold for non-financial companies. In principle, non-financial companies that rely on the $2.7 million net worth test to meet the current qualified client definition may be bound by the higher $5 million in investments threshold to qualify as an accredited investor. However, we do not expect this case to be frequent in practice, as companies that are not accredited investors generally would not be permitted to invest in private funds unless they are among a small number of non-accredited investors that rule 506(b) of Regulation D permits to admit. *See supra* notes 222, 224, and 225 and accompanying text.

[298] *See also supra* note 220 discussing notices to designate individuals holding certain professional licenses or certifications.

[299] A recent study estimates that out of 1.7% of U.S. individuals who qualify as accredited investors based on specialized expertise, 61% do not qualify under other criteria for accredited investor status. *See* Katherine Carman and Alycia Chin, *Accredited Investors in the US Population,* 9(1) Fin. Planning Rev., e70023 (Feb. 13, 2026) (''Carman and Chin (2026)''). As such, to the extent that these professional certification holders do not already meet one or more of the criteria of the current qualified client definition, these investors would be newly scoped in as qualified clients.

[300] The Survey of Consumer Finances (SCF) is a triennial cross-sectional survey of U.S. families published by the Board of Governors of the Federal Reserve System. The survey collects information on families' balance sheets, income, net worth, credit use, and other financial outcomes. The data is available at Board of Governors of the Federal Reserve system, *Survey of Consumer Finances (SCF),* (last updated Apr. 5, 2024), *https://www.federalreserve.gov/econres/scfindex.htm.*

[301] *See* Securities and Exchange Commission, *SEC Statistics & Data Visualizations: Qualifying Households under Accredited Investor Financial Criteria* (Aug. 12, 2025), *https://www.sec.gov/data-research/statistics-data-visualizations/qualifying-households-under-accredited-investor-financial-criteria.* We estimate the number of U.S. households that satisfy the financial qualifications as a proxy for the number of natural persons who would qualify financially as accredited investors. We note that another study with individual as unit of analysis uses the data from the January 2024 wave of THRIVE panel, a nationally representative, longitudinal survey panel maintained by the Office of Investor Research at the US Securities and Exchange Commission, and finds a different estimate of 9.7% for the number of accredited investors that meet the $1 million net worth threshold of the accredited investor definition. *See* Carman and Chin (2026).

[302] The number of qualified clients based on the net worth threshold ($2.7 million) was estimated by aggregating the sample weights of the U.S. households that reported net worth excluding home equity, greater than $2.7 million, assuming there is, at least, one individual from the household that meets the threshold. Total number of U.S. households was estimated by aggregating the sample weights of all the U.S. households that participated in the survey. The fraction of the U.S. households that meet the qualified client definition based on the $2.7 million net worth threshold is estimated by dividing the number of the U.S. households that meet the qualified client net worth threshold by the estimated total number of U.S. households. Net worth is defined as the difference between household assets and household debt. Based on the SCF's definitions, assets include all financial assets (stocks, bonds, mutual funds, cash and cash management accounts, retirement assets, life insurance, managed assets like trusts and annuities, and other financial assets like deferred compensation, royalties, futures, etc.) and non-financial assets; debt includes mortgage and home equity loans, lines of credit, credit card debt, installment loans including vehicle loans, margin loans, pension loans, and other debt (*e.g.,* loans against insurance). The estimate excludes the value of the household's principal residence and any outstanding mortgages associated with the principal residence.

would be made available to non-accredited investors.

The proposed amendments would also remove the $1.4 million in assets under management test from the qualified client definition. Because accredited investor criteria are not tied to a specific level of assets managed by a particular investment adviser, investors who are not accredited investors but currently meet the qualified client definition by virtue of the $1.4 million managed assets test would be excluded from the proposed qualified client definition.[303] This may occur for non-accredited investors with substantial liabilities that reduce their net worth below the $1 million threshold in the accredited investor definition. However, we do not expect this group of investors to be large because non-accredited investors generally may not participate in exempt offerings, including those made by private funds.

A more diverse pool of investment options may become available to more investors as a result of the proposed changes to the qualified client definition. For example, the proposed amendments could lead to the creation of new regulated funds offering broader exposure to various markets and strategies to less affluent accredited investors and non-accredited investors,[304] as well as new 3(c)(1) private funds to the extent that sponsors find it profitable to operate such funds at the scale attainable by an investor base that includes less affluent accredited investors. This could allow investors to more efficiently select investments that meet their goals.[305] To the extent that newly available strategies would enhance portfolio returns, investors could benefit from adding them to their portfolios. For example, to the extent that the current prohibition on performance fees on capital gains places constraints on advisers to regulated funds in offering private equity strategies and limits the investment options to primarily income-based private market strategies,[306] the proposal may promote the creation of regulated funds that offer exposure to private equity strategies with performance fees on capital gains, which could increase investors' risk-adjusted returns.[307]

While performance fees on capital gains are most commonly associated with private market strategies, the proposed amendments to rule 205–3 would permit any regulated fund adhering to the proposed conditions to charge such fees. Agreements providing for a regulated fund's adviser to be compensated based on capital gains could benefit fund investors by rewarding portfolio management that increases the fund's returns.[308] Some investors may additionally prefer to invest in regulated funds in which a larger percentage of fees is contingent on the funds' performance.

While the number of investors that would be able to invest in funds whose advisers charge performance fees on capital gains could increase, we cannot estimate how many new and existing funds would become available to the investors who currently do not meet the definition of qualified client. For example, to the extent that advisers have reasons to restrict the shareholder base to more affluent investors beyond the current constraints on charging performance fees on capital gains to non-qualified clients,[309] an adviser could continue to restrict the fund's shareholder base. One avenue through which advisers can do so is establishing investment minimums for funds and accounts they advise.[310]

Nonetheless, to the extent that access to more complex investment strategies would expand as a result of the proposed amendments, such expanded access carries certain risks associated with those strategies. For instance, investment strategies that are commonly associated with performance fees, such as private market strategies, generally offer lower liquidity and less valuation transparency to investors, and may employ more leverage, compared to their public counterparts.[311] While exposure to risk can increase expected risk-adjusted returns, investors unfamiliar with these risks may position themselves sub-optimally or face unexpected losses. Thus, one possible cost of expanding the pool of investors is the potential for uninformed or insufficiently informed investing by newly eligible investors. To the extent that advisers may offer inferior strategies while charging performance fees to less wealthy investors who are less familiar with such strategies, those investors may be negatively affected. In addition, less wealthy investors may experience higher search costs for high-quality advisers, and thus may not realize the same net returns as wealthier investors, to the extent that less wealthy investors are limited to products offered by lower-quality advisers. For example, a recent study suggests that the returns realized by individual investors investing in private equity funds vary significantly depending on their wealth level.[312] In particular, the most affluent

[303] We do not have information or data about how many investors fall into this category.

[304] We anticipate that, in the regulated fund space, the primary mechanism affecting investors' access to a broader range of strategies would be new funds offering strategies that are currently unavailable to these investors. While we recognize that existing regulated funds that do not charge performance fees on capital gains could, with board and shareholder approval, implement a performance fee (but keep the adviser and the strategy the same as before) as a result of the proposed amendments, we do not anticipate that this would be a significant channel. We also recognize that existing regulated funds could, with board and shareholder approval, change their strategies or merge with other funds to accommodate performance fees as a result of this proposal. For the purposes of this discussion, we also refer to these funds as new funds; however, we do not anticipate that this would be a significant channel.

[305] We note that less affluent accredited investors in private funds may face higher costs relative to wealthier investors. For instance, given that many private funds require minimum investment amounts, less affluent accredited investors may need to invest through funds-of-funds to obtain exposure to multiple private funds. This approach layers on fund-of-fund management fees or performance fees, which can erode overall performance. *See e.g.,* Stephen J. Brown, William N. Goetzmann and Bing Liang, *Fees on Fees in Funds of Funds,* 2 J. Inv. Mgmt. 39–56 (2004). *But see* Andrew Ang, Matthew Rhodes-Kropf, and Rui Zhao, *Do Funds-of-Funds Deserve Their Extra Fees?* 4 J. Inv. Mgmt. 6 (2008), arguing that funds-of-funds add value given the limited set of direct hedge fund investments an investor with limited capital could make absent the fund-of-funds vehicle.

[306] *See* section III.B.3.d. *See also* note 285 and related text.

[307] As discussed in *infra* section III.C.1.b, we anticipate that registered closed-end funds would be better suited to provide private market exposure given the liquidity and leverage limitations on registered open-end funds.

[308] *See, e.g.,* Jennifer Huang, Kelsey D. Wei and Hong Yan, *Participation Costs and the Sensitivity of Fund Flows to Past Performance,* 62(3) J. of Fin (2007). *See also* Judith Chevalier and Glenn Ellison, *Risk Taking by Mutual Funds as a Response to Incentives,* 105(6) J. Pol. Econ. 1167–1200 (1997).

[309] For example, if it is operationally less burdensome to have fewer investors, an adviser may prefer higher capital commitments per investor.

[310] Regulated and private funds can set investment minimums without regulatory restrictions. *See* section III.B.3.c for the discussion of practices related to the minimum investment requirements.

[311] *See* section III.B.3 for a more detailed discussion. *See also e.g.,* Ben Bates, *Retail Access to Private Markets: What Are the Risks? (Feb. 18, 2026), available at http://dx.doi.org/10.2139/ssrn.5381902* (retrieved from SSRN Elsevier database); William W. Clayton and Elisabeth de Fontenay, *Private Equity for All: The Paradoxical Push to Democratize Private Markets* (Feb. 28, 2026), *available at https://corpgov.law.harvard.edu/2026/02/28/private-equity-for-all-the-paradoxical-push-to-democratize-private-markets/;* Michael Ewens and Jacob Faber, *Liquid Claims on Illiquid Assets: The Economics of Retail Access to Private Markets,* Ctr. for Open Sci., No. 5897u_v1. (2026).

[312] *See* Cynthia Ballochet al., *Democratizing Private Markets: Private Equity Performance of Individual Investors* (June 25, 2026), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5319498.* The study finds that the most affluent individual investors in private equity funds outperform the least affluent individual investors

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investors have returns that are nine percentage points (in risk-adjusted public market equivalent) higher compared to the least affluent investors. This result is primarily explained by variation in investment adviser quality—wealthier clients match with better-performing advisers—and differences in fees (including intermediation costs) also contribute to the effect. The study also indicates that, after accounting for advisers' fees, the least wealthy investors did not achieve higher returns relative to the public markets.[313] To the extent that wealthier investors match with better advisers because they are able to provide more upfront capital required for higher-performing strategies, and to the extent that wealthier investors have greater bargaining power to negotiate performance fees, less affluent investors may continue to be excluded from higher-performing strategies offered by high-quality advisers. In addition, to the extent that strategies newly available to less affluent investors would be offered by lower-quality advisers, such investors may experience a decrease in risk-adjusted returns. Further, to the extent that adding performance fees would increase funds' operating expenses without a corresponding increase in risk-adjusted returns that would generate offsetting cash flows, and to the extent that funds would need to deplete their liquid assets to pay these operating expenses, funds with performance fees may have less liquid assets compared to funds with the same strategies that do not pay performance fees.

The proposed amendments would allow performance fees on both realized and unrealized capital gains. Certain strategies, such as income-based strategies where realized gains on income occur when interest payments from portfolio assets are made, or certain vehicle types, such as private funds with lockup periods where performance fees are not paid until the capital gains are realized, can more easily accommodate performance fees on realized gains. By contrast, vehicles with frequent subscriptions and redemptions that have strategies that do not post substantial realized gains as frequently, such as equity strategies, are able to accommodate performance fees based on unrealized gains. As such, advisers to regulated funds that pursue equity strategies may be at a structural disadvantage relative to advisers of funds with income strategies, given that equity strategies generate capital appreciation primarily through unrealized gains in the short term. Therefore, permitting performance fees on unrealized gains may level the playing field for advisers to regulated funds with equity strategies by better aligning their incentive structure to that of advisers to income strategies. This, in turn, may benefit investors in regulated funds, to the extent that it would expand the range and quality of strategies offered in the regulated fund space.

Estimating unrealized gains can be complex and may depend on many assumptions underlying the fair value of an investment for which market quotations are not readily available: the less information about an investment is available in the market, the more complex fair value estimation becomes. Investors may not fully understand this process and the risks it poses, as it requires specialized knowledge, and, therefore, they may underestimate the risks related to valuation of complex products. For example, for open-end funds (both private and regulated), undesirable outcomes may arise when a fund purchases equity assets (*e.g.,* a private equity stake) in a secondary market at a discount to the NAV of such assets. In particular, at the time of the purchase, the asset's value is recorded at cost. However, when a fund applies the NAV practical expedient to estimate fair value, the fund may recognize an immediate unrealized gain equal to the difference between the asset's cost and its NAV.[314] As a result, advisers may have an incentive to allocate disproportionately large amounts of investor capital to such assets and record gains for the fund without any change to the fundamental characteristics of the underlying assets, because these unrealized gains may trigger a performance fee. However, if the fund later must accommodate redemptions or fund operating expenses, such as management or performance fees, by selling these assets in the same secondary market at a discount, remaining investors would absorb the loss, which may in turn trigger further redemptions and additional losses.[315]

We anticipate these potential risks would be mitigated by the safeguards accompanying each channel. The proposed conditions for relying on the fund board channel would mitigate these risks in the regulated fund space by limiting the magnitude of performance fees as a percentage of net capital gains,[316] by requiring compliance with fund governance standards, and by requiring a best-interest determination by regulated fund boards.[317] For the accredited investor channel, any expansion in investor access would affect less affluent accredited investors who are already eligible to invest in exempt offerings (including in 3(c)(1) private funds) and who are recognized as having a degree of financial sophistication that may better position them to evaluate the risks of complex investment strategies than non-accredited investors.[318] Additionally, to the extent that fund boards (for regulated funds) or investors in 3(c)(1) funds and separately managed accounts negotiate provisions such as high-water marks and hurdle rates (as applicable), these risks could be further mitigated. Together, these conditions would provide advisers with appropriate incentives to maximize risk-adjusted returns for their clients without encouraging excessive risk-taking.

b. Regulated Funds

Investors in regulated funds that cannot adopt asymmetric performance fees on capital gains may be at a disadvantage compared to investors in funds whose advisers can freely charge performance fees to these funds. This is because an inability to charge

by 9 percentage points in risk-adjusted public market equivalent. The public market equivalent measure compares the returns generated by an investment relative to a hypothetical investment made in public equities. The study finds evidence suggesting that less affluent investors have worse advisers that deliver persistently lower returns, and that those investors pay significantly higher fees (including intermediation costs), compared to more affluent individual investors. *See also* Steven N. Kaplan and Antoinette Schoar, *Private Equity Performance: Returns, Persistence, and Capital Flows,* 60 J. Fin. 1791 (2005).

[313] *Id. See also* Robert S. Harris et al. *Has Persistence Persisted in Private Equity? Evidence from Buyout and Venture Capital Funds,* 81 J. Corp. Fin. 102361 (2023). This study shows similar results for wealth-performance gap for venture capital funds.

[314] *See also supra* note 107. This process is typically referred to as ''NAV squeezing'' and has recently become a growing concern in the secondary market for private equity stakes. *See, e.g.,* EDHEC, *Evergreens: The Tree That Never Sheds, A Closer Look at Performance, Risk, and Valuation Practices in Private Equity Evergreens* (October 2025), *available at https://edhecinfra privateassets.com/wp-content/uploads/2025/10/2025_private_equity_evergreens.pdf.*

[315] *Id.* The study estimated that since 2021, more than 70% of gains across SEC-registered evergreen funds, which primarily invest in private equity through secondary markets, remain unrealized, with the number exceeding 90% for newer funds.

[316] *See supra* section II.A.2.a.

[317] *See supra* sections II.A.2.b and II.A.2.c.

[318] Accredited investors are already deemed under the federal securities laws to have sufficient financial sophistication to participate in private offerings without the full protections afforded to the general investing public. To the extent that this determination reflects meaningful differences in financial sophistication, accredited investors may be relatively better equipped to assess and negotiate the terms of performance fee arrangements.

asymmetric performance fees may discourage capable advisers from allocating their best-performing strategies to regulated funds, and because fulcrum fees are associated with higher operational risk to advisers and, therefore, do not provide strong enough incentives to bring such strategies to regulated funds.[319]

Expanding the ability to charge performance fees could similarly lead advisers currently operating in the private markets to bring strategies into the regulated fund wrapper by providing an alternative to the fulcrum fee structure for performance-based compensation. It would also allow advisers to regulated funds with strategies that are already available in regulated funds to enter into agreements that provide for compensation that varies asymmetrically with the fund's performance, potentially better aligning advisers' interests with those of regulated funds' shareholders by incentivizing advisers to maximize fund returns. Accordingly, the proposed amendments could promote innovation in regulated funds and expand investor choice.

Advisers to regulated funds considering advisory agreements that provide for compensation based on capital gains would choose through which channel to implement a performance fee on capital gains: some may choose the accredited investor channel and others may choose the fund board channel. For example, it could be more feasible for advisers to open-end funds and listed closed-end funds to implement performance fees via the fund board channel, to the extent that investor-level conditions prevent certain intermediaries from offering funds restricted to a particular set of investors on such platforms.[320] On the other hand, for advisers to regulated funds that primarily market and distribute their funds through intermediaries and prefer higher initial investments, it could be less costly to implement performance fees on capital gains via the accredited investor channel.

Non-accredited investors in funds that would choose to implement performance fees on capital gains through the fund board channel may be less familiar with these fee structures than accredited investors,[321] may not fully understand the associated risks related to financial products that include performance fee structures,[322] and may be less well positioned to bear any increased risks relative to accredited investors. However, the proposed conditions for reliance on the fund board channel are designed to address these concerns by requiring that the board, as part of its 15(c) process, evaluate the specific structural features of the performance fee arrangement and make particularized findings. This approach would help ensure that the performance fee arrangement is reassessed annually as the regulated fund's performance, strategy, portfolio composition, and valuation complexity evolve over time.

The proposed best interest finding by the board would also be required to include a written finding addressing the appropriateness of a performance-based compensation arrangement in light of the fund's investment strategy and valuation practices.[323] In addition, the proposal would amend Item 11 of Form N–CSR to include more particularized disclosure regarding the approval of performance fees on capital gains to mirror these written findings. Together, these requirements would help safeguard shareholders' interests and reinforce the board's oversight of adviser compensation arrangements.

While exposure to novel strategies, such as private market strategies or strategies that are similar to those of hedge funds, may improve risk-adjusted returns of investors in regulated funds, the extent to which these investors would be able to capture these returns may be limited by several factors. First, due to liquidity and leverage constraints of regulated funds, the implementation of strategies that are similar to those of private funds may not be feasible, as such strategies may require long lock-up periods (in the case of private equity funds) or high leverage usage (*e.g.,* in some hedge fund strategies). Where liquid alternative strategies can be implemented, such strategies may yield lower net-of-fees risk-adjusted returns, which could turn out to be similar to returns of strategies already available to the general public.[324] This return offset effect would be the strongest for funds with more restrictive liquidity and leverage requirements, such as registered open-end funds with daily subscriptions and redemptions. Conversely, net-of-fees risk-adjusted returns of regulated funds with the least restrictive liquidity and leverage requirements, such as BDCs and tender-offer funds, may have more potential for higher net-of-fees risk-adjusted returns compared to those of strategies already available to the general public. Therefore, we anticipate that return-enhancing benefits of the proposed amendments would primarily affect investors in registered closed-end funds because closed-end funds are generally more suited to less liquid investments such as private market strategies.

While the proposal would also allow advisers to regulated funds with more conventional strategies to enter into agreements that provide for compensation that varies asymmetrically with the fund's performance, many registered open-end fund strategies may not be deemed by fund boards to be appropriate candidates for performance fees. For example, a performance fee on capital gains would be difficult to justify for a fund that tracks a market index—because the strategy is largely mechanical to implement, there is limited basis for measuring adviser outperformance.[325] As another example, a performance fee on capital gains would be difficult to justify for a registered fund of funds, to the extent the underlying funds already pay performance fees.[326] Lastly, a performance fee on capital gains would be difficult to justify for a fund investing in primarily fixed-income securities, such as money market funds or bond funds, because usually the gains of such funds are primarily income gains rather than capital gains.[327] Moreover, as many

[319] *See supra* section III.B.3.

[320] *See* discussion in section III.B.3.c.

[321] *See* discussion in section III.B.3 and note 278.

[322] *See e.g.,* Itzhak Ben-David, Jiacui Li, Andrea Rossi & Yang Song, *What Do Mutual Fund Investors Really Care About?,* 35 Rev. Fin. Stud. 1723 (2022). The authors suggest that investors do not engage in sophisticated learning about managers' alpha.

[323] *See* proposed rule 205–3(c)(1)(iv)(C)(1).

[324] *See, e.g.,* Michael Ewens, and Jacob Faber, *Liquid claims on illiquid assets: The economics of retail access to private markets,* Center for Open Science, No. 5897u_v1. (2026). *See also supra* note 274.

[325] We estimate that, as of December 31, 2025, approximately 22% of open-end funds, representing approximately 36.6% of cumulative open-end fund net assets, are index funds.

[326] We estimate that, as of December 31, 2025, approximately 13.4% of open-end funds, representing approximately 9.8% of cumulative open-end fund net assets, are funds of funds.

[327] We estimate that, as of December 31, 2025, approximately 2.4% of open-end funds, representing approximately 17.8% of cumulative open-end fund net assets, were money market funds. These estimates are based on the data reported in a recent staff report, reflecting data collected from Form N–CEN filings received through May 13, 2026 for reporting periods from December 2019 through December 2025. *See* Annual Registered Investment Company Update, Report of the Staff of the Division of Investment Management's Analytics Office of the U.S. Securities and Exchange Commission, available at *https://www.sec.gov/files/annual-registered-investment-company-update-20260512.pdf* (last accessed Aug. 25, 2026). We also estimate that approximately 26.7% of mutual funds representing 20.3% of aggregate mutual fund assets, 25.3% of ETFs representing 18.3% of aggregate ETF assets, and 49.7% of closed-end funds representing 51.4% of aggregate closed-end fund assets invest primarily

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such funds already compete on management fees, adding additional fees may make a fund less attractive to new and existing investors and potentially lead to shareholder attrition, because net-of-fees risk-adjusted returns may decrease.[328] This effect may be reinforced as the implementation of performance fees on capital gains in open-end funds produces unequal outcomes among investors, where investors in the same fund may bear different effective performance fees depending on the timing of their subscriptions or redemptions.[329] Therefore, we anticipate that the uptake of performance fees on capital gains in existing open-end funds would be limited.

To the extent that regulated funds would choose to pay performance fees on capital gains, shareholders of funds that pay performance fees based on unrealized gains may be at risk of paying performance fees that do not correspond to future realized gains. Regulated funds with equity strategies would be most affected by this part of the proposal, as equity strategies primarily have unrealized gains. However, funds with income strategies may also be affected, to the extent that advisers would choose to charge performance fees on both income and capital gains. In particular, the proposal would permit adviser contracts with registered funds, in which compensation based on interest or income is already permissible, to also include a performance fee on realized or unrealized gains, provided the conditions of the proposed rule are satisfied. This effect would be less pronounced for BDCs because advisers to BDCs can already charge performance fees on realized capital gains, to the extent that they qualify for the statutory BDC exclusion. The proposal would allow them to also charge fees on unrealized capital gains.[330]

Because BDCs primarily invest in credit instruments, unrealized capital gains may be a smaller part of their total return.[331] To the extent that BDCs continue to invest primarily in credit instruments, we do not expect this part of the proposal to have a significant effect on access to alternative strategies in the regulated fund space. This is because advisers to BDCs can already charge performance fees on both income gains and realized capital gains, provided that performance-based compensation does not exceed 20 percent of net realized capital gains over a defined period and the BDC does not have other incentive compensation structures in place.[332] However, to the extent that boards and investors of existing BDCs approve adding unrealized gains to the performance fee calculation, those investors may pay higher fees. On the other hand, to the extent that BDCs are already more expensive to investors than other funds offering similar strategies and additional fees may result in investor attrition, this amendment may not result in BDCs adopting additional performance fees.[333]

In addition, to the extent that BDCs are currently limited in their range of strategies because of the current prohibition on performance fees based on unrealized capital gains, BDC advisers may expand the range of strategies they offer as a result of the proposal, and such a broader array of strategies may benefit investors. In particular, because certain equity strategies, such as private equity, do not post realized gains often, and BDCs are permitted to pay performance fees only on realized capital gains currently, advisers to BDCs may not be sufficiently incentivized to offer private equity strategies (because capital gains would be realized only upon a sale of portfolio companies, which typically does not occur in the short term).

A regulated fund's compliance with the fund governance standards of rule 0–1(a)(7) is a condition of relying on the fund board channel. Funds that already satisfy these standards would not incur incremental governance costs, to the extent they choose to implement performance fees on capital gains. We estimate that there are at least 8,336 registered funds that currently satisfy the fund governance standards.[334] Funds that do not currently satisfy fund governance standards and choose to implement performance fees on capital gains through the fund board channel would experience a cost increase. These costs could include one-time costs related to restructuring fund boards and governance processes (such as the costs of a shareholder vote to add independent directors), as well as ongoing costs, such as additional director fees, costs of additional board meetings, and costs of counsel to the independent directors. One report indicates that, as of year-end 2024, 89 percent of fund complexes reported that independent directors held 75 percent or more of seats on boards at the complex, indicating that fund boards are overwhelmingly independent.[335] The same report states that 95 percent of fund complexes report that independent directors are represented either by dedicated counsel or by counsel separate from the adviser's counsel.[336] To the extent these regulated funds would choose to adopt performance fees on capital gains through the fund board channel, they will not incur the one-time costs of adding additional directors or the costs of independent director counsel.

In addition to meeting the fund governance standards, an existing regulated fund that adopts a performance fee on capital gains would generally need to obtain shareholder approval of the amended advisory contract under section 15(c) of the

in taxable and municipal bonds. These estimates are based on the data reported in a recent staff report and are based on Form N–CEN filings received for reporting periods from January 2025 through December 2025. *See* Registered Fund Statistics for period ending December 2025, Report of the Staff of the Division of Investment Management's Analytics Office of the U.S. Securities and Exchange Commission, available at *https://www.sec.gov/files/investment/im-investment-registered-fund-statistics-202512.pdf* (last accessed Aug. 24, 2026). The report defines prevalent asset class if the fractional allocation toward an asset class is greater than 75%.

[328] *See* section III.B.3.

[329] *See* section III.B.3.b.

[330] *See* proposed rule 205–3(c)(1)(iv).

[331] *See supra* section III.B.3.d(3).

[332] *See* section 205(b)(3) of the Advisers Act; *see also* Small Business Investment Incentive Act of 1980, Public Law 96–477, 94 Stat. 2275 (1980).

[333] *See supra* notes 274 and 275 and accompanying discussion.

[334] A fund must satisfy the board governance standards if it relies on one or more of the following exemptive rules: rule 10f–3(c)(11), rule 12b–1(c), rule 15a–4(b)(2)(vii), rule 17a–7(f), rule 17a–8(a)(4), rule 17d–1(d)(7)(v), rule 17e–1(c), rule 17g–1(j)(3), rule 18f–3(e), or rule 23c–3(b)(8). The estimates for funds relying on rules 10f–3(c)(11), rule 17a–7(f), rule 17a–8(a)(4), and rule 17e–1(c) are derived from Form N–CEN, Item C.7, which asks funds to report reliance on certain statutory exemptions and rules under the Investment Company Act. For reliance on rule 18f–3(e), we use the number of authorized share classes reported in Item C.2.a as a proxy, treating any fund reporting more than one authorized class as relying on rule 18f–3. Item C.7 does not separately enumerate rule 12b–1, rule 17d–1(d)(7), or rule 17g–1, so reliance on these three rules is not reflected in this estimate. To the extent funds rely on these rules without also relying on one of the other rules on this list, the estimate understates the true count. Item C.7 also does not distinguish reliance on rule 15a–4(b)(2) from reliance on rule 15a–4 generally; we therefore use reported reliance on rule 15a–4 as a proxy, which may overstate reliance on the (b)(2) provision specifically. For rule 23c–3 we use the interval fund indicator reported in Item C.3.d, which is defined as a closed-end management investment company that makes periodic repurchases of its shares pursuant to rule 23c–3. The estimate is based on each fund's most recently filed Form N–CEN for reporting periods ending on or before December 31, 2025, with filings through May 29, 2026. Funds relying on multiple exemptions are counted only once.

[335] *See* Independent Directors Council, ''*Overview of Fund Governance Practices*'', *available at https://www.idc.org/system/files/2025-10/25-idc-overview-of-fund-governance-practices.pdf.* (last accessed Aug. 13, 2026).

[336] *Id.*

Investment Company Act and would incur the associated costs of preparing a proxy statement, soliciting proxies, and conducting a shareholder meeting. These are one-time costs that would vary with the fund's shareholder base and distribution structure, and they would not be incurred by newly organized funds that include a performance fee in their initial advisory contract.

Funds that choose to implement performance fees on capital gains through the fund board channel would experience compliance costs. We estimate that the ongoing costs would amount to $83,881 per fund per year.[337] Funds that would choose to implement performance fees through the accredited investor channel would experience compliance costs related to establishing the accredited investor status of fund shareholders. Funds that already charge asymmetric performance fees on capital gains and currently need to determine whether investors meet the definition of qualified client may experience a cost reduction because, under the proposal, funds operating through the accredited investor channel would need to assess only accredited investor status for their investors, rather than both accredited investor status and qualified client status, as the current framework requires.

c. Private Funds

Section 3(c)(1) private funds that rely on Regulation D generally limit their investors to accredited investors under the baseline.[338] However, under rule 205–3, advisers to 3(c)(1) funds may not charge performance fees to investors who, despite being accredited investors, do not meet the qualified client definition—for example, because they lack $2.7 million in net worth, $1.4 million in assets under management with the adviser, or satisfaction of another prong of the current definition.

The proposed inclusion of accredited investor status as a basis for satisfying the qualified client standard would harmonize the regulatory frameworks governing access to private funds by enabling advisers to funds that already limit their investors to accredited investors to enter into performance fee arrangements without separately applying the qualified client standard.

As a result, more 3(c)(1) funds may become available to accredited investors, providing them with a wider set of investment options and the potential for diversification benefits offered by those funds' strategies.[339] This expanded access could increase investors' exposure to certain risks associated with private funds. For example, private funds generally offer less liquidity to investors than registered investment companies and other funds (*e.g.,* public BDCs) that are available to investors without eligibility restrictions.[340]

Aligning the accredited investor and qualified client thresholds would reduce the cost burden associated with establishing the eligibility of new investors in 3(c)(1) funds. In particular, advisers to 3(c)(1) funds that rely on rules 506(b) and 506(c) to exempt their offerings from registration under the Securities Act generally must either have a reasonable belief that their investors are accredited investors (under rule 506(b)) or take reasonable steps to verify that their investors are accredited investors (under rule 506(c)). Separately, however, advisers to these funds must verify that fund investors that will be charged performance fees also are qualified clients. The proposed amendments would render that separate analysis unnecessary, as an accredited investor would be a qualified client.

However, we anticipate that the magnitude of these economic effects on accredited investors may be limited. Because 3(c)(1) funds are generally limited to 100 investors, advisers to these funds may prefer investors with a higher net worth than an accredited investor who does not meet the current qualified client standard, because such investors with higher net worth may be able to commit larger amounts of capital both initially and as more investment opportunities arise. Additionally, large capital commitments may open opportunities for better deals within the private equity space, which in turn may increase the risk-adjusted returns of a fund. As a result, accredited investors that do not meet the current qualified client definition may not represent sufficient assets, either now or in the future, for advisers to justify creating 3(c)(1) funds designed specifically for these investors or to open 3(c)(1) funds to these investors in addition to investors that meet the current qualified client definition. As such, advisers to 3(c)(1) funds may continue to set investment minimums that would in practice exclude less affluent accredited investors, particularly those whose net worth or income is near or below the applicable accredited investor monetary thresholds.[341] We estimate that approximately 31 percent of 3(c)(1) funds require minimum investments of $10,000 or less, and 59.3 percent require an average investment minimum size of $100,000 or less.[342] This suggests that there nevertheless is meaningful scope for private funds to accommodate relatively small investments.

d. Separately Managed Accounts

Although the proposed amendments would newly include less affluent accredited investors within the qualified client definition and permit them to enter into direct advisory contracts that include a performance fee on capital gains, we do not expect that investment opportunities for less affluent accredited investors through separately managed accounts would increase significantly. This is because we do not anticipate that less affluent accredited investors would individually represent sufficient assets for advisers to justify the operational costs of separately managed accounts offering strategies that are typically associated with performance fees.[343] Because advisers to retail-oriented separately managed accounts do not employ a market practice of charging performance fees on separately managed accounts with limited customization and because the proposed amendments would not alter advisers' ability to scale customized separately managed accounts for smaller accounts, we do not expect that there would be a substantial change in this market practice.[344] In addition, to the extent that advisers introduce performance fees for retail-oriented separately managed accounts as a result of the proposed

[337] This estimate is the sum of monetized internal and external burdens for the proposed rule 205–3 requirements and the proposed Form N–CSR requirements. The estimated burden for the proposed rule 205–3 requirements is based on an annual internal burden hours increase of 6 hours per fund, monetized at a blended rate of $12,186 and an annual external burden hours increase of 5 hours per fund, monetized at $774 wage rate: (6 × $12,186) + (5 × $774) = $76,986. *See infra* section IV.B, PRA Table 1. The estimated burden for the proposed Form N–CSR requirements is based on an annual internal burden hours increase of 5 hours per fund, monetized at a blended rate of $605 and an annual external burden hours increase of 5 hours per fund, monetized at $774 wage rate: (5 × $605) + (5 × $774) = $6,895. *See infra* section IV.B, PRA Table 4.

[338] *See* section III.B.1.a.

[339] *See supra* sections III.B.3 and III.C.1 for a more detailed discussion of benefits offered by strategies that are associated with performance fees.

[340] Venture capital and private equity funds require investors to commit their capital for several years, with the complete investment returned (subject to the possibility of losses) only when the portfolio companies are sold and the fund retires. Hedge funds often redeem investors periodically, but redemptions are often conditional on the availability of liquidity, which depends on market conditions and whether other investors seek to redeem as well. Secondary markets for the shares of private funds are not widespread.

[341] *See supra* section III.B.1.

[342] *See supra* Table 4.

[343] *See supra* section III.B.3.d(2).

[344] *Id.*

amendments, we do not expect that investor demand for these products would increase, and we do not anticipate that investor access to strategies typically associated with performance fees on capital gains would increase significantly through separately managed accounts.

2. Amending References to the Qualified Client Definition

The qualified client definition is currently also referenced in the definition of investment adviser representative in rule 203A–3(a)(3)(i) under the Advisers Act, the exceptions to a registered investment adviser's brochure supplement delivery requirement in rule 204–3(c)(2)(iii) under the Advisers Act, and the definition of a ''high net worth individual'' for purposes of Form ADV reporting.[345] The proposal would include technical conforming amendments to rules 203A–3(a)(3)(i) and 204–3(c)(2)(iii) under the Advisers Act to replace the existing references to the ''qualified client'' definition in rule 205–3(d)(1) with references instead to rule 205–3(c)(1), corresponding to the proposed redesignation of current paragraph (d)(1) to (c)(1).[346]

With respect to rule 204–3, because the referenced prong of the qualified client definition would not be impacted by the proposed amendments beyond the proposed redesignation of rule 205–3(d)(1) to rule 205–3(c)(1), the conforming amendment would not have any substantive effect on the number of clients that would be exempted from receiving the brochure supplement.[347]

With respect to rule 203A–3, the proposed expansion of the qualified client definition would broaden the category of excepted persons, meaning that a greater number of clients would not count toward the thresholds that trigger investment adviser representative status. As a result, some supervised persons who are currently subject to state licensing and qualification requirements may no longer be subject to those requirements. This would reduce ongoing compliance costs for affected supervised persons and their firms. However, investors working with such supervised persons may lose the investor-protection benefits related to the state qualification requirements that currently apply to their supervised persons, such as examination requirements, state oversight, and bonding requirements, among other things.[348]

Because the definition of high net worth individuals on Form ADV is based on the qualified client definition, the proposed changes would require all advisers with individual clients to reclassify which of their clients are high net worth for reporting purposes, regardless of whether an adviser is affected by the proposed changes to rule 205–3.[349] We estimate that, as of December 31, 2025, approximately 64 percent of registered investment advisers report advising individual clients,[350] and, therefore, would be subject to the Form ADV reporting changes, regardless of whether they charge performance fees on capital gains or not. As a result, the high net worth individual data reported on Form ADV would no longer be necessarily representative of any particular level of net worth, because accredited investor status can be met based on non-net-worth-related qualifications, which would reduce the usefulness of this data for monitoring trends in advisers' client net worths over time.

Together, the conforming amendments would impose one-time costs on advisers related to updating their internal systems that track clients and client suitability questionnaires, as well as their systems for preparing Form ADV, regardless of whether an adviser is otherwise affected by the proposed changes to rule 205–3.

3. Performance Fee Disclosure for Regulated Funds

The proposal would require regulated funds to provide more detailed prospectus disclosure on Forms N–1A and N–2 about performance-based compensation paid to the investment adviser.[351] In particular, regulated funds would be required to disclose performance fees as a separate line item in the fee table [352] and to reflect performance fees in the required expense example demonstrating the cost of investing in the fund over various time horizons.[353] In addition, the proposed amendments would require a detailed description of the performance fee arrangement, including a graphical representation illustrating the calculation of the performance fee in the management discussion section of Forms N–1A and N–2.[354] We estimate that the proposed disclosure requirements would result in an ongoing annual cost increase of $8,487 per fund for both N–1A and N–2 filers.[355]

a. Scope of the Proposed Amendments

In contrast to section 205 of the Advisers Act and rule 205–3, the scope of the proposed prospectus disclosure requirements related to performance fees would not be limited to compensation based solely on capital gains or appreciation; it also would encompass performance fees based on other performance measures, such as interest, ordinary income, or dividends. The proposed changes to the disclosure requirements would apply to any type of performance fee paid to the fund's adviser, including both symmetric and asymmetric performance fees on capital gains and performance fees based on other measures, such as interest income. As a result, all regulated funds that pay performance fees to their advisers would be subject to the proposed disclosure requirements—including funds that would otherwise not be affected by the proposed amendments to rule 205–3, such as regulated funds that pay fulcrum fees, regulated funds that pay performance compensation not based on capital gains, and BDCs that pay performance fees on capital gains in reliance on the statutory exception rather than the ''look-through'' provision in rule 205–3.

b. Prospectus Fee Table

Currently, funds that pay performance fees are required to present them in a line item for management fees aggregated with base management fees,[356] which represents the total advisory fee. However, the current

[345] *See supra* section III.B.1.d.

[346] *See also supra* section II.B.3.

[347] *See also supra* section II.B.3.b.

[348] State registration of investment adviser representatives allows state securities regulators to monitor and examine their activities pursuant to applicable state securities laws. Investment adviser representatives may also be required to pass the Uniform Investment Adviser Law Examination (Series 65) or the Uniform Combined State Law Examination (Series 66), administered by FINRA on behalf of North American Securities Administrators Association (NASAA). Some states require investment adviser representatives to maintain a surety bond, providing a source of recovery for investors in the event of misconduct.

[349] Advisers would need to revise their answers to Item 5.D. of Part 1A of Form ADV.

[350] *See* Table 1.

[351] *See supra* section II.A.3.

[352] *See* proposed Form N–1A Item 3 Instruction 3.(b) and Form N–2 Item 3 Instruction 7.c.

[353] *See* proposed Form N–1A Item 3 Instruction 4.(f) and proposed Form N–2 Item 3 Instruction 11.(d).

[354] *See* proposed Form N–1A Item 10.(a)(1)(ii)(B) and proposed Form N–2 Item 9.1.b.(3) Instructions 2 and 3.

[355] This estimate is based on the sum of annual internal burden hours increase of 10 hours per fund, monetized at a blended rate of $462 and annual external burden hours increase of 5 hours per fund, monetized at $774 wage rate: (10 × $462) + (5 × $774) = $8,487. *See infra* section IV.B, PRA Tables 2 and 3.

[356] *See* Form N–1A Item 3 Instruction 3.(a); Form N–2 Item 3 Instruction 7.a.

requirements for the example accompanying the fee table do not require a presentation of performance fees disaggregated from the total advisory fees paid.[357] As such, the current requirement to present advisory fees inclusive of any performance adjustment aggregates information that could be material for some investors. While some regulated funds have developed a practice of reporting performance fees separately from other advisory fees, either in the fee table or in the notes to the table, the detail and salience of such disclosure may vary across funds because it is voluntary. This inconsistency may affect investors' ability to choose regulated funds efficiently and in accordance with their investment and risk-tolerance objectives. In addition, while performance fee data for some regulated funds is available through third-party data aggregators, these data are not standardized and may therefore be outdated, incomplete, or inconsistently available across funds or over time, which may contribute to inefficient investment decisions.

Further, BDCs already provide performance fee disclosures in periodic reports, some of which are in an Interactive Data File (*i.e.,* tagged in Inline XBRL, a machine-readable data language).[358] Specifically, BDCs disclose in an Interactive Data File investment advisory, management, and service fees in the statement of operations, with notes describing the rate, base, and method of fee computation, as well as any fee reductions, reimbursements, or offsets.[359] Additionally, while not part of the Interactive Data File, any material performance fees must be explained and quantified in the Management's Discussion and Analysis of Financial Condition and Results of Operations section, particularly where they materially affect earnings or cash flow.[360] As a result, performance fee information for BDCs is available in periodic reports and, for those disclosures in the Interactive Data File, generally more accessible to investors and information intermediaries, such as data aggregators and financial analysts.

The proposal to require all regulated funds to report performance fees in a separate line item of the fee table and the related example would enhance the transparency and salience of the performance fees. This may increase investor awareness and could lead to a reduction in these fees, to the extent that they are higher than those of other funds with similar strategies.[361]

Moreover, because fee table disclosures in Forms N–1A and N–2 are required to be tagged in Inline XBRL,[362] the proposed performance fee disclosures in the fee table, including the caption and the associated note, would also be required to be tagged in Inline XBRL, making this information easier to access and analyze for investors, Commission staff, and information intermediaries such as financial analysts and data aggregators.[363] Research from the operating company context suggests that XBRL requirements lower information processing costs, leading to lower informational asymmetry, greater price efficiency, enhanced artificial intelligence capabilities, and other market effects.[364]

However, because the fee table requires fund expenses to be expressed as a percentage of average net assets, and because performance fees are generally not designed to be proportional to fund size, presenting past performance fees as a percentage of net assets may limit some of the benefits of fee table disclosures for investors. In addition, because the fee table requires showing only the fees paid during the most recent fiscal year, if a fund with a performance compensation arrangement did not perform in a way that would trigger a performance fee (*e.g.,* it did not have capital gains or did not outperform an established benchmark or a preferred return), the fund would report ''zero'' in the line for performance fees, which may create potential confusion for investors. In addition, because the expense example is required to assume a five percent annual return, funds with a performance fee arrangement where the hurdle rate or a benchmark return generally exceeds five percent would not necessarily include performance fee expenses in the example (to the extent that the assumed five percent annual return would be below the hurdle rate or benchmark). This may limit the usefulness of the required example for illustrating the operating costs of a fund with a performance fee arrangement and may lead to investor confusion and inefficient investment decisions.

Because the fee table is primarily aimed at helping investors make informed decisions about whether to invest or remain invested in a fund, presenting actual performance fees paid rather than the performance fee arrangement itself may lead to inefficient investment decisions, as investors may underestimate the potential range of the contribution of performance fees to the fund's operating expenses. However, the proposed layered disclosure approach would mitigate these concerns: the required footnote would alert investors about fee variability and direct them to the prospectus discussion, which would include a graphical representation of the performance fee across a range of hypothetical scenarios, including the cases where a zero is reported in the fee table or where the fee table example does not capture potential performance fees.[365] While investors may pay more attention to information that is presented more prominently in the disclosure,[366] the layered approach

[357] *See* section II.A.3 and III.B.3.b.

[358] *See* Form 10–K and rule 405 of Regulation S–T.

[359] *See* 17 CFR 210.6–07.

[360] *See* 17 CFR 229.303. *See also* Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations, Securities Act Rel. Nos. 33–8350, 34–48960 (Dec. 19, 2003), 82 FR 75056 (Dec. 29, 2003).

[361] For example, a recent academic study uses a sample of open-end U.S. domestic equity mutual funds between 1998 and 2015 and estimates that, as a result of the 2004 SEC requirement to include the dollar amount of fund fees in shareholders' reports, retail fund fees decreased by 0.27% during the five years after the rule change compared to the five years before. The author suggests that the rule change made fund fees more salient among investors, forcing mutual funds to decrease fees. *See* Parida, Sitikantha Parida, *The impact of salient fees: Evidence from the mutual fund market,* 92 Int'l Rev. Fin. Analysis 103058 (2024).

[362] *See* General Instruction C.3.g to Form N–1A; General Instruction I to Form N–2; 17 CFR 232.405(a)(3).

[363] *See, e.g.,* Yu Cong et al., *Are XBRL Files Being Accessed? Evidence from the SEC EDGAR Log File Dataset,* 32 J. Info.Sys.3 (2018); Chunhui Liu et al., *XBRL's Impact on Analyst Forecast Behavior: An Empirical Study,* 33 J. Acct. Pub. Pol. 1 (2014); Jo Guo of Morningstar, *Using XBRL: A Data Aggregator's Perspective, available at https://www.xbrl.org/guidance/using-xbrl-a-data-aggregators-perspective/.*

[364] *See, e.g.,* Xin Luo et al., *Initial Evidence on the Market Impact of the iXBRL Adoption,* 37 Acct. Horizons 143 (2023); Ju-Chun Yen and Tawei Wang, *The Association Between XBRL Adoption and Market Reactions to Earnings Surprises,* 29 J. Info. Sys. 51 (2015); Yi Dong et al., *Does Information-Processing Cost Affect Firm-Specific Information Acquisition? Evidence from XBRL Adoption,* 51 J. Fin. & Quant. Analysis 435 (2016); Marcelo Farr et al., *Can AI Be Trusted with Financial Data?* (Sept. 15, 2025), *available at https://ssrn.com/abstract=5316518* (retrieved from SSRN Elsevier database); Revathy Ramanan, *Why Structured Data and Definitions Vastly Outperform Unstructured PDFs in LLM Analysis,* XBRL (Dec. 19, 2024), *available at https://www.xbrl.org/why-structured-data-and-definitions-vastly-outperform-unstructured-pdfs-in-llm-analysis/;* Yanan Zhang et al., *XBRL Adoption and Expected Crash Risk,* 38 J. Acct. Pub. Pol. 1 (2019).

[365] *See supra* section II.A.3.a and *infra* section III.C.3.c.

[366] For example, academic studies suggest that investor confusion or reduced understanding of the key elements of the disclosure are likely to increase as disclosure documents become longer, more complex, or more reliant on narrative text. *See, e.g.,* Samuel B. Bonsall and Brian P. Miller, *The Impact of Narrative Disclosure Readability on Bond Ratings*

Continued

would leverage the existing framework for the fee table and related discussion already used across regulated funds and would be less costly compared to an entirely different disclosure format for performance fee where the implementation costs would likely outweigh the incremental benefits of more prominent performance fee disclosure.

The proposed disclosure requirements would lead to new costs for funds that pay performance fees or those funds' advisers, which might be passed on to fund investors. Depending on the current disclosure practices of regulated funds that already pay performance fees, the increase in compliance burdens would vary. For example, compliance costs for funds that already disclose performance fees as a separate line item would not increase. We estimate that 142 regulated funds reporting on Form N–2 already report performance fees separately in XBRL format.[367]

By contrast, regulated funds that pay performance fees but do not separately disclose them or such funds' advisers would experience a bigger increase in compliance burdens as a result of the proposed disclosures, which might be passed on to the funds' investors. Because regulated funds are already tagging the fee table, the incremental cost of the tagging requirement for additional disclosures would be minimal.

c. Prospectus Discussion of Performance Compensation

While the current instructions to Form N–1A and Form N–2 require a fund that pays performance fees to describe the basis for these fees, they do not provide a list of specific items to disclose.[368] This may result in varying disclosure practices across funds that pay performance fees, with some funds providing more or less detail on the methodology for calculating the performance fee. The proposed amendments would require a standardized list of performance fee items in the discussion in Forms N–1A and N–2.[369] Disclosure of this information in a more standardized format could help investors better assess particular features of a fund's performance fee agreement with its adviser, including the presence or absence of certain protective features that determine when a performance fee applies and at what level.

Requiring a graphical representation illustrating the performance fee across a range of hypothetical scenarios would aid investors in understanding the mechanics and complexities of performance fee arrangements at regulated funds in which they are considering an investment. It would also aid investors in comparing adviser compensation structures across funds, which in turn could facilitate more efficient matching of investors to advisers. For instance, an investor seeking exposure to a particular market strategy would be better equipped to assess the magnitude and potential variability of fund operating expenses depending on whether the advisory contract includes certain features, such as a hurdle rate, or whether fees are assessed on realized or unrealized gains. This may aid investors in comparing fund cost structures and allow them to make a more informed choice among funds with similar strategies based on their preferences regarding the potential variability of fund expenses.[370]

4. Aggregate Monetized Benefits and Costs

Throughout this economic analysis, we have estimated monetized benefits and costs per affected entity. In this section, we present aggregate measures of these monetized effects across entities and time. These aggregates include only benefits and costs that are monetized in the economic analysis and thus do not encompass all of the proposed amendments' benefits and costs. In particular, we were unable to monetize the main benefits of the proposal. As discussed qualitatively above, the proposal may improve investor access to strategies typically associated with performance fees on capital gains; and the incentives such compensation arrangements provide may improve risk-adjusted returns for investors. We also were unable to monetize certain costs that are discussed qualitatively above. For example, while exposure to risk can increase expected risk-adjusted returns, investors unfamiliar with these risks may position themselves sub-optimally or face unexpected losses. Finally, we note that benefits or costs may vary across entities depending on their existing practices and whether those practices continue after the proposed amendments.

a. Initial and Annual Aggregate Monetized Benefits and Costs

Table 5 reports costs that are monetized in this economic analysis, aggregated across affected entities and instances of compliance each year. To aggregate these monetized effects we use estimates of the number of affected parties [371] and burdens under the Paperwork Reduction Act in section IV (''PRA'').[372] We estimate that the proposed rule would result in aggregate annual costs for covered entities of approximately $62,563,223.[373]

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and the Cost of Debt, 22 Rev. Acct. Stud. 608 (2017) and Alistair Lawrence, *Individual Investors and Financial Disclosure,* 56 J. Acct. & Econ. 130 (2013). *Also see* Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Investment Company Act Rel. No. 34731 (Oct. 26, 2022) [87 FR 72758 (Nov. 25, 2022)] at section IV.C.1 and IV.C.2 for a review of literature related to investor attention.

[367] Based on Form N–2 data as of Aug. 25, 2026. The estimate is based on the number of regulated funds that used the ''IncentiveFeesPercent'' Inline XBRL tag to identify a performance fee disclosed on Form N–2, Item 3 (Fee Table and Synopsis) in one or more filings beginning January 1, 2025. *See* Closed-End Fund (CEF) 2026 Taxonomy Guide, available at *https://xbrl.sec.gov/cef/2026/cef-taxonomy-guide-2026-03-16.pdf.*

[368] Basis refers to the overall methodology for calculating the performance fee. For example, the underlying metrics used to calculate the fee (*e.g.,* is the fee charged on realized gains only, unrealized gains, or some combination of those), any benchmark that is used to measure performance against, whether the calculation is based on net or gross profits, etc.

[369] *See* proposed Form N–1A Item 10.(a)(1)(ii)(B); proposed Form N–2 Item 9.1.b.(3).2. This additional information includes: the rate of the performance fee and the basis upon which it is calculated, including whether the fee is determined with reference to realized gains, unrealized gains, investment income, or any combination thereof; whether the performance fee is calculated on the fund's total investment return before or after deducting fees, commissions or expenses; the measurement period over which the performance fee is assessed; a description of any features that limit or condition the payment of a performance fee to the investment adviser, including, but not limited to, any preferred return, hurdle rate, high-water mark, loss carryforward mechanism, or any other features that limit or condition the payment of a performance fee to the adviser; and a graphical representation that illustrates the calculation of the performance fee across a range of hypothetical performance scenarios.

[370] *See supra* note 367 discussing literature on how investor understanding varies based on disclosure presentation.

[371] *See supra* section III.B.2.

[372] *See infra* section IV.

[373] *See infra* Table 7 for present value of monetized benefits and costs over 10 years.

Table 5. Aggregate Annual Monetized Cost Estimates by Source (2026 dollars)

Requirement	Total Annual Monetized Cost per Fund[a]	Number of Affected Funds	Aggregate Annual Cost Increase[b]
Rule 205-3[c]	$76,986	678	$52,196,508
Form N-1A[d]	$8,487	634	$5,380,547
Form N-2[e]	$8,487	44	$373,413
Form N-CSR[f]	$6,895	669	$4,612,755
		Total:	$62,563,223

Table notes:

[a] *See supra* notes 337 and 355 for details of the calculations. *See also infra* section IV.B.

[b] The estimate for the aggregate annual cost increase is calculated by multiplying the number of affected funds by the total annual monetized cost per fund.

[c] We estimate that advisers to 13,556 funds could potentially rely on rule 205-3. This estimate is based on the estimated number of open-end funds (12,674), closed-end funds (706), and BDCs (176). *See* Table 2. Consistent with the PRA, we assume that 5% of regulated funds would enter into investment advisory contracts that include performance fees on capital gains subject to the conditions of the proposed amendments to rule 205-3. Accordingly, for the purposes of this section, we estimate the number of funds affected by the proposed rule 205-3 to be 678 = 5% x 13,556. *See infra* PRA Table 1.

[d] We assume that the number of affected funds that would file Form N-1A to be equal to the number of open-end funds (12,674). *See* Table 2. Consistent with the PRA, we assume that 5% of regulated funds that file Form N-1A would enter into investment advisory contracts that include performance fees based on capital gains or based on other measures. Accordingly, for the purposes of this section, we estimate the number of funds affected by the proposed changes to Form N-1A to be 634 = 5% x 12,674. *See infra* PRA Table 2.

[e] We estimate the number of funds that would file Form N-2 to be 882, which is the sum of the estimated number of closed-end funds (706) and estimated number of BDCs (176). Consistent with the PRA, we assume that 5% of regulated funds that file Form N-2 would enter into investment advisory contracts that include performance fees based on capital gains or based on other measures. Accordingly, for the purposes of this section, we estimate the number of funds affected by the proposed changes to Form N-2 to be 44 = 5% x 882. *See infra* PRA Table 3.

[f] We estimate the number of funds that would file Form N-CSR to be 13,380, which is the sum of the numbers of open-end funds (12,674) and closed-end funds (706). Consistent with the PRA, we assume that 5% of regulated funds would enter into investment advisory contracts that include performance fees on capital gains subject to the conditions of the proposed amendments to rule 205-3. Accordingly, for the purposes of this section, we estimate the number of funds affected by the proposed changes to Form N-CSR to be 669 = 5% x 13,380. *See infra* PRA Table 4.

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b. Present Values and Annualized Values of Aggregate Monetized Benefits and Costs

Consistent with the requirements of Executive Order 12866, the Commission reports estimated total monetized benefits and costs for all affected entities in two additional ways specified in OMB Circular A–4.[374] The two presentations are intended to address the fact that the various benefits and costs of the proposed rule would not all accrue at the same point in time, and that benefits and costs realized sooner are generally more valuable than those that occur later in time.[375]

We report (1) the present values of expected benefits and costs that are monetized in our Economic Analysis, aggregated across all affected entities, over a 10-year time horizon, starting in 2026, and (2) the annualized values over the same time horizon, derived from the present values. This time horizon represents the period over which the principal benefits and costs that are monetized in the Economic Analysis are expected to accrue.[376] The present values and annualized values account for the timing of benefits and costs through discounting, which is a procedure that accounts for the time value of money.[377]

Table 6 reports the present values of the aggregate annual monetized costs from Table 5. The analysis uses annual real discount rates of three percent and seven percent over a 10-year time horizon, starting in 2026.[378] Table 6 does not show a present discounted value for benefits of the proposed rule because no benefits were monetized. In addition, we estimate that the present value of total monetized costs is about $541,622,982 using a three percent discount rate and about $454,537,408 using a seven percent discount rate.

Table 6. Present Value of Monetized Benefits and Costs over 10 years from 2026 to 2035 (2026 dollars)[a]

Estimated Effects[b]	3% Real Discount Rate	7% Real Discount Rate
Benefits	Not monetized	Not monetized
Costs	$541,622,982	$454,537,408

Table notes:

[a] This table includes only benefits and costs that are monetized. *See* Table 5. As discussed in this economic analysis, there are other benefits and costs that we are not able to monetize. *See*, *e.g.*, *supra* section III.C.4 (introduction).

[b] For each discount rate, the present value calculations are based on the following assumptions: (i) all recurring annual monetized benefits and costs begin to accrue in the first year in which affected entities rely on the proposed rule; (ii) recurring monetized benefits and costs occur in a steady stream. We use a mid-year discount rate.

Table 7 reports annualized aggregate monetized benefits and costs using real discount rates of 3 percent and 7 percent over a 10-year horizon.[379] The lump sum present values of aggregate monetized benefits and costs reported in Table 6 are converted in Table 7 into a constant stream of annualized benefits and costs over a 10-year time horizon, starting in 2026.[380] Annualized benefits and costs may differ from an aggregation of the recurring monetized annual benefits and costs discussed earlier in the Economic Analysis because they incorporate the timing of benefits and costs, through discounting, and combine one-time and recurring benefits and costs.[381] Table 7 does not provide a value for annualized total monetized benefits because no benefits were monetized for this analysis. We estimate that annualized total monetized costs are about $62,563,223 per year using a three percent discount rate and about $62,563,223 per year using a seven percent discount rate.

[374] *See* E.O. No. 12866 (Sept. 30, 1993), 58 FR 51735, 51741 (Oct. 4, 1993) (requiring agencies to provide an analysis of benefits, costs, and regulatory alternatives to OIRA for significant regulatory actions); OMB, Circular A–4, at 31–34, 45 (Sept. 17, 2003) (providing guidance to agencies regarding compliance with E.O. 12866); *see also* E.O. No. 14215 (Feb. 18, 2025), 90 FR 10447, 10448 (Feb. 24, 2025) (requiring all Federal agencies, including the Securities and Exchange Commission, to comply with E.O. No. 12866). In addition, E.O. 14192 requires agencies to provide their best approximation of the total costs or savings associated with each new regulation or repealed regulation consistent with the analyses required by E.O. 12866. *See* E.O. No. 14192 (Jan. 31, 2025), 90 FR 9065, 9066 (Feb. 6, 2025).

[375] *See* Circular A–4, at 32.

[376] *See Id.* at 31 (stating that ''[t]he ending point should be far enough in the future to encompass all the significant benefits and costs likely to result from the rule''). For the purposes of this analysis, we assume the effective date of the proposed rule, as well as the start year for the analysis's time horizon, is the present year. The analysis uses calendar years and accounts for the compliance periods included in the release (*see* note [a] in Table 5).

[377] *See id.* at 32 (''The Rationale for Discounting'') and 45 (''Treatment of Benefits and Costs over Time''); *see also* OIRA, Regulatory Impact Analysis: A Primer, at 11 (Aug. 15, 2011), *available at https://www.reginfo.gov/public/jsp/Utilities/circular-a-4_regulatory-impact-analysis-a-primer.pdf* (''To provide an accurate assessment of benefits and costs that occur at different points in time or over different time horizons, an agency should use discounting. Agencies should provide benefit and cost estimates using both 3 percent and 7 percent annual discount rates expressed as a present value as well as annualized.''); Harvey S. Rosen & Ted Gayer, Public Finance 151 (8th ed. 2008) (defining present value as ''the value today of a given amount of money to be paid or received in the future'').

[378] This approach is consistent with OMB Circular A–4. *See* Circular A–4, at 31–34 (stating that, ''[f]or regulatory analysis, [agencies] should provide estimates of net benefits using both 3 percent and 7 percent'' discount rates and discussing why those rates are reasonable default rates). Also, we use a mid-year discount rate. *See OMB,* Circular A–94, at 21–22 (Oct. 19, 1992) (stating that, ''When costs and benefits occur in a steady stream, applying mid-year discount factors is more appropriate.'').

[379] This approach is consistent with the recommended treatment of benefits and costs over time in Circular A–4. *See id.* at 45 (''You should present annualized benefits and costs using real discount rates of 3 and 7 percent'').

[380] For each discount rate, the annualized monetized benefits (costs, respectively) in Table 6 represent the constant annual stream of benefits (costs, respectively) whose present value over the time horizon equates the corresponding present value in Table 5. *See* note [a] in Table 6, for additional calculation details.

[381] The annualized benefits and costs present these values over the 10-year time horizon, starting in the present year.

Table 7. Annualized Monetized Benefits and Costs over 10 years from 2026 to 2035 (2026 dollars)[a]

Estimated Effects[b]	3% Real Discount Rate	7% Real Discount Rate
Benefits	Not monetized	Not monetized
Costs	$62,563,223	$62,563,223

Table notes:

[a] This table includes only benefits and costs that are monetized. *See* Table 5. As discussed in this economic analysis, there are other benefits and costs that we are not able to monetize. *See, e.g., supra* section III.C.4 (introduction).

[b] For each discount rate, the annualized values are calculated by dividing the corresponding present values in Table 6 by the sum of discount factors over the time horizon. The discount factor in year t of the time horizon is equal to $1/(1 + \text{discount rate})^{(t-0.5)}$. The annualized costs are identical under both the 3 percent and 7 percent discount rates, which is mathematically expected because all costs are recurring annual costs and there are no one-time initial costs.

D. Effects on Efficiency, Competition, and Capital Formation

1. Efficiency

The proposed amendments could better align investors' portfolios with their preferences and improve allocative efficiency. To the extent that the proposed amendments to rule 205–3 incentivize advisers to offer regulated funds with strategies that cannot be currently accessed by less affluent investors and to the extent that these strategies offer risk-return combinations not otherwise replicable through existing investment options, investors in these funds may be better able to construct portfolios that improve expected investment return given their individual risk tolerances. The amendments to rule 205–3 may also improve allocative efficiency to the extent that adviser talent and the investment strategies offered by advisers can be better matched with an appropriate fund structure and investors.

The proposed amendments expanding the qualified client definition to include accredited investors could similarly increase the set of strategies available to accredited investors by providing further incentive for advisers to 3(c)(1) private funds to admit these investors.[382] In particular, these changes could allow investors to better achieve exposures to certain return-enhancing factors that are more readily available through private fund strategies. For instance, investors with longer investment horizons and greater willingness to tolerate illiquidity, who currently may have limited access to vehicles that harvest any such premium, could have more options to construct portfolios that potentially benefit from it.

These efficiency gains may be offset, however, to the extent that performance fees on unrealized gains distort the allocation of capital across assets. As discussed in section III.B.3.a, permitting performance fees on unrealized gains may create an incentive for advisers to favor assets whose recorded value can be increased without a corresponding change in fundamental value (*e.g.,* acquiring assets in the secondary market and marking them up to net asset value under the practical expedient) because the resulting mark-to-market gains may trigger a performance fee. To the extent advisers allocate capital on the basis of an asset's capacity to generate such recorded gains rather than its expected risk-adjusted return, the proposed amendments could reduce allocative efficiency. In addition, valuations of funds holding less liquid assets that are inherently difficult to value may cause investors to over- or under-allocate to those funds, further reducing any efficiency gains from the proposed amendments. The proposed conditions for the fund board channel (including the cap on performance fees, the fund governance standards, and the board's valuation-related findings) are designed to mitigate these effects, though the degree to which they would do so in practice is uncertain.

Additionally, the proposed amendments to Forms N–1A and N–2 requiring more detailed disclosure of performance fees may allow investors to more efficiently evaluate performance fee information when considering investments in regulated funds. As such, these disclosures could facilitate more efficient matching between investors and advisers that both prefer compensation structures more closely aligned with fund performance, which could contribute to the allocative efficiency gains discussed above. As these disclosures would apply to all forms of performance-based advisory compensation in regulated funds, including compensation not directly affected by the proposed amendments to rule 205–3, they may better enable a market consensus regarding appropriate forms of compensation across different strategies, investment vehicles, and investor characteristics. For instance, if investors in certain strategies would tend to prefer symmetric performance fees, the disclosures would better enable these investors to select funds accordingly, which in turn would provide a signal to fund sponsors offering funds with those strategies. Alternatively, if advisers to funds in certain strategies require higher management fees to offset the downside risk inherent in symmetric performance fees, the proposed disclosures would make such information more readily available to investors.

2. Competition

The proposed amendments may affect competition in various ways. First, the proposed amendments may affect competition among investment advisers. To the extent that performance fees may attract new advisers to the regulated fund space, competition may increase among advisers in that space. In particular, advisers to registered funds may face incentives to compete on fees, offering quality, or other dimensions. To the extent that these funds face agency problems (such as misaligned incentives

[382] *See supra* section III.C.1.c.

between fund advisers and investors),[383] increased competition could incentivize fund boards to implement measures to address them. However, differences in economies of scale and other structural differences between smaller and larger investment advisers may produce asymmetric effects from the proposed amendments, which in turn could affect the competitive balance between them. Larger fund advisers, which generally benefit from economies of scale, may more readily promote and launch new funds and attract investor capital relative to smaller fund advisers. As a result, smaller advisers may be less able to compete in providing individual investors with exposure to private fund strategies, which may in turn weaken their overall competitive position.

Relatedly, the advisers best positioned to bring capital-gains-oriented and other private market strategies into the regulated fund space may be established alternative asset managers with existing private fund track records in those strategies. To the extent such managers expand into the regulated fund space more readily than smaller or traditional asset managers, the proposed amendments could contribute over the longer term to greater concentration among regulated fund advisers, which would partially offset the competitive benefits described above. The magnitude of this effect is uncertain and would depend on the degree to which smaller advisers are able to develop competitive private market offerings in the regulated fund space.

Second, competition among regulated funds offering different private market strategies may increase. In particular, returns in private equity strategies frequently take the form of capital gains. Because the current regulatory framework prohibits asymmetric performance fees on capital gains except under certain circumstances, including fees paid by qualified clients, advisers cannot enter into performance-based compensation agreements with funds pursuing a private equity strategy without restricting their investor base to more affluent clients.[384] By contrast, the current regulatory framework does not prohibit advisers from charging performance fees based on income, which more commonly comprises fund returns in private credit strategies. This gives regulated funds offering private credit exposure a competitive advantage relative to regulated funds offering private equity exposure to investors. The proposed amendments would increase competitive parity between these private market strategies offered in the regulated fund space. As a result, the number of new closed-end funds offering private equity strategies may increase. This may in turn promote fee competition among funds offering private market strategies, which could benefit fund investors by improving after-fee risk-adjusted returns.

Third, competition may increase between regulated funds and private funds offering similar strategies. By permitting advisers to regulated funds to charge performance fees on capital gains to a broad investor base, the proposed amendments could allow regulated funds to offer certain capital-appreciation strategies (*e.g.,* private equity strategies) and other strategies that have in practice been available primarily through private funds. To the extent regulated funds can offer these strategies with the additional investor protections, transparency, and liquidity associated with the Investment Company Act framework, they may compete with private funds for investor capital, which could benefit investors by expanding the range of vehicles through which comparable strategies are available. Conversely, private fund advisers in strategy categories that have not previously faced a regulated fund competitor may experience increased competitive pressure. The direction and magnitude of these effects would depend on the extent to which regulated fund structures can replicate the return characteristics of private fund strategies, which are limited by the liquidity and leverage constraints discussed in section III.B.3.d.

Fourth, competition between BDCs and closed-end funds may increase as a result of the proposed amendments. BDCs have a broad statutory exception to the prohibition on charging performance fees on capital gains, while closed-end funds charging these fees generally must restrict their investor base to qualified clients. As a result, advisers currently have a greater incentive to pursue certain private market strategies in BDCs rather than in closed-end funds. The proposed amendments may thus make closed-end funds more competitive with BDCs.

Fifth, the proposed amendments to Forms N–1A and N–2 could promote competition with respect to fund adviser compensation. The amendments to the fee tables may make it easier for investors to determine the sources of a regulated fund's overall expenses.[385] In particular, for funds that pay performance-based compensation, the amended tables may make clearer the portion of total fund expenses that derives from fund over- or under-performance, as applicable. In doing so, the proposed table may better allow fund investors to assess the cost of investing in the fund in light of its recent performance, and similarly may better enable investors to project fund expenses in potential performance scenarios. By making this information available in the fee tables of registered open- and closed-end funds in their Form N–1A and N–2 filings, respectively, and in the Form N–2 filings of BDCs, the proposed amendments would require regulated funds to provide investors with information that may help promote competition among funds in terms of both advisory fee levels and structure.

Sixth, competition between regulated funds and other investment vehicles available to investors through retail channels (such as collective investment trusts (CITs) within the 401(k) space) may be affected. To the extent that CITs currently offer private market strategies that newly created regulated funds would also offer, regulated funds may become more competitive within the retirement space for investors who value the additional protection that regulated funds provide. On the other hand, to the extent that regulated funds would become relatively more expensive compared to CITs as a result of this proposal, such funds may become less competitive with CITs.[386]

3. Capital Formation

The proposed amendments would promote capital formation to the extent that increased investor access to private fund strategies, including those investing in private markets, results in new investor capital channeled to operating companies. This effect may occur through two related channels: the demand side, as more investors could gain access to regulated and private funds pursuing private market strategies, and the supply side, as advisers could become more willing to offer certain strategies in the regulated fund space.

[383] *See supra* section III.B.3.

[384] *See supra* section III.B.1.

[385] *See* proposed Form N–1A Item 3 Instruction 3.(b) and proposed Form N–2 Item 3 Instruction 7.c.

[386] For example, recent academic studies document a shift from mutual funds to CITs in the 401(k) space and suggest that CITs are adopted due to lower fees. *See e.g.,* Jiaxing Tian, and Jiahong Shi, *Why Mutual Funds Decline in 401(k)s* (September 18, 2024), *available at https://ssrn.com/abstract=4960502* (retrieved from SSRN Elsevier database); *also see e.g.,* Alexey Vasilenko, Veronika Krepely Pool, Nicolas P.B. Bollen, and Irina Stefanescu, *Asset Reclassification and Mutual Fund Flows* (June 18, 2026), *available at https://ssrn.com/abstract=6963739* (retrieved from SSRN Elsevier database).

On the demand side, some inflows to private markets that could result from the proposed amendments would be redirected from existing investment options and thus would have a neutral effect on aggregate capital formation. To the extent, however, that the availability of previously inaccessible investment options increases the risk-adjusted returns of investors' portfolios, investors may increase their total investments, channeling additional capital to both private and public companies.[387] The net effect on aggregate capital formation would depend on the degree to which investors substitute between public and private investment vehicles rather than expand their overall investment.

On the supply side, the proposed amendments may expand the set of strategies offered in regulated funds, particularly for capacity-constrained strategies in which advisers limit fund size to preserve expected performance. For such strategies with reduced scale, asset-based fees may not adequately compensate the adviser, creating an incentive to deploy the strategy outside the regulated fund space or not at all in a regulated vehicle. By permitting asymmetric performance fees on capital gains, the proposed amendments would allow advisers to be compensated in proportion to returns generated, which may reduce this disincentive. To the extent this results in regulated vehicles that raise capital that would not otherwise have been raised in the regulated fund space (rather than capital redirected from private funds or other existing options), the effect would contribute to capital formation beyond what the demand-side channel alone would produce. The magnitude of this supply-side effect would depend on the number of advisers pursuing capacity-constrained strategies that would find a regulated fund structure attractive under the proposed framework, which we are unable to estimate.

In addition, capital formation effects from the proposed amendments would depend on whether investor access is constrained via channels unrelated to the prohibition on performance fees on capital gains, such as high investment minimums that less affluent accredited investors could not meet, or continued limited access to distribution channels for offerings of vehicles with more complex strategies. To the extent that these other channels would constrain investors' ability to access new strategies, the effects on capital formation may be reduced.

E. Reasonable Alternatives Considered

1. Performance Fees Only on Realized Capital Gains

As an alternative, we could have proposed an exemption from the section 205(a)(1) prohibition for performance fees only on realized gains instead of an exemption for performance fees on both realized and unrealized gains. Under this alternative, regulated fund investors would be less prone to the risk of overpaying performance fees because NAVs of funds with equity strategies are primarily based on unrealized gains, which could be reversed in the future.

Charging performance fees only on realized gains may also reduce an incentive for fund managers to overstate values of underlying portfolio investments and an incentive to allocate disproportionately large amounts of investor capital to assets whose value can show instant gains if the value is recorded at NAV, but the asset is purchased at a discount.[388] The alternative of a blanket prohibition on basing performance fees on unrealized gains would closely align with the current regulatory environment for BDCs.

In addition, allowing performance fees on unrealized gains in the private fund context but not in advisory contracts with regulated funds could be an approach that is more tailored to the level of the above risks in different vehicles. For example, as discussed in section III.B.3.b, regulated funds cannot implement mechanisms that would account for the individual experience of a fund investor, and investors of regulated funds would pay performance fees indirectly through NAV reductions (which are the same across fund investors regardless of subscription or redemption time), in contrast to private funds. For certain private funds, such as private equity funds, performance fees are typically subject to clawback provisions, which reduce the relevance of the valuation concerns related to unrealized gains. However, open-end fund shares are redeemable daily, and clawback provisions may be difficult to implement in that context. Therefore, the risks associated with including unrealized gains as a base for performance fees are increased for open-end funds with portfolio holdings that do not have widely available prices, such as less liquid assets that are challenging to value.

However, permitting performance fees only on realized gains may result in several issues. First, a performance fee on realized gains only would compensate the adviser on a basis that does not correspond to the economic experience of investors who transact at NAV, which reflects unrealized appreciation and depreciation on a mark-to-market basis for many strategies, potentially misaligning adviser compensation with the returns that investors actually realize. Second, this alternative could create incentives for advisers to prematurely dispose of portfolio positions in order to trigger a performance fee, reducing risk-adjusted returns of investors who could benefit from continued appreciation in these positions. Third, this alternative may disadvantage advisers to regulated funds pursuing equity strategies (where investor returns are generated primarily through unrealized capital appreciation rather than through frequent realization of capital gains) relative to advisers pursuing income-based strategies (where gains occur regularly through interest and dividend payments). Permitting performance fees on unrealized gains would address this structural disadvantage and may expand the range and quality of strategies available to regulated fund investors.

2. Performance Fee on Capital Gains for Contracts With a Subset of Regulated Funds

As alternative approaches, we could have limited the proposed amendments to closed-end funds only or to the fund board channel only for closed-end funds. For example, investors in closed-end funds may face a lower risk of overpaying performance fees on capital gains relative to investors in open-end funds. As discussed in section III.B.3.b, because the final performance fee cannot be determined until the end of the performance measurement period, regulated funds must estimate the amount of accrued performance fees at each NAV calculation.[389] Because open-end funds are required to calculate NAV daily, they need to estimate accrued performance fees at each daily calculation, which increases the frequency a fund must estimate accrued fees. In contrast, because closed-end fund investors do not transact at daily prices and NAV calculations for repurchases can be better aligned with the performance measurement period, accrued performance fee estimates reflected in the closed-end fund's NAV are more aligned with the actual performance of the fund. Therefore, an

[387] As hedge funds, which are privately offered, generally invest primarily in public securities, any investor capital net of fees that would be allocated to hedge funds from public vehicles would not decrease the total capital available to public companies.

[388] *See supra* section III.C.1.a.

[389] *See supra* sections III.B.3.b and III.C.1.a.

alternative to restrict the proposed amendments to rule 205–3 to closed-end funds only could reduce investors' exposure to the frequency of estimating accrued performance fees. In addition, to the extent that the costs of estimating accrued performance fees are passed on to investors, investors would experience lower costs under this alternative.

Similarly, an alternative of further restricting the proposed amendments to rule 205–3 to the fund board channel only for closed-end funds could provide a more uniform set of investor protections to regulated fund investors, relative to an approach that also permits a regulated fund to enter into advisory contracts featuring performance fees on capital gains through the accredited investor channel. Under this alternative, all regulated funds paying performance fees on capital gains would be subject to the proposed governance conditions, thereby applying these investor protection conditions to all regulated fund investors, including accredited investors.

However, with respect to restricting performance fees on capital gains to closed-end funds only, the proposed board requirements, including the best interest finding, are designed specifically to address the risks associated with performance fees on capital gains in regulated funds, including the estimation and overpayment risks described above. To the extent that fund boards of open-end funds would not approve advisory contracts with performance fees on capital gains where these risks are not adequately mitigated, the proposed conditions would operate as a functional restriction without the need for a categorical restriction to closed-end funds only. Similarly, for open-end regulated funds that would implement performance fees through the accredited investor channel, the requirement that each equity owner be an accredited investor would restrict access to investors who are already recognized as having a degree of financial sophistication sufficient to evaluate the risks of performance fee arrangements, providing an analogous investor protection through investor eligibility rather than board oversight. Therefore, such a categorical restriction would not create additional benefits to investors while it would introduce additional regulatory complexity for fund advisers. Similarly, to the extent that advisers to regulated funds would prefer the fund board channel because it may be more feasible for implementing performance fees on capital gains given the potential operational and distribution constraints,[390] a categorical restriction to the fund board channel only may not add meaningful investor protections beyond what the proposed conditions already aim to provide. In particular, mandating the fund board channel for all regulated funds, including those that primarily serve accredited investors, would impose the costs and operational complexity of the board governance conditions on funds and advisers for whom the accredited investor channel is operationally better suited, without a corresponding investor protection benefit for accredited investors who are already subject to a separate eligibility standard designed to protect their interests.

3. Additional Conditions for the Fund Board Channel

As an alternative, we could have proposed additional conditions for regulated fund boards choosing adviser contracts with performance fees on capital gains, such as requiring a regular approval of the advisory contract by shareholder vote (*e.g.,* annually) or requiring an evaluation of the performance fee arrangement by an independent consultant. These alternatives could provide additional safeguards, such as an unbiased assessment of the arrangement, benefitting regulated fund investors. However, such approaches may be challenging in practice because of their related costs.

4. Disclosure Alternatives

a. Performance Fee Disclosures

As an alternative to the proposed management discussion amendments, we could have proposed a structured disclosure for various performance fee arrangement components, either in registration forms or funds' ongoing disclosures, such as Form N–CEN or other forms. For example, we could have proposed Inline XBRL disclosure for: (i) whether the fund has a performance compensation arrangement (Yes or No); (ii) if yes, the basis of performance compensation (income, realized capital gains, unrealized capital gains, or a combination thereof); (iii) the frequency of payment or accrual, or measurement period; (iv) whether a hurdle rate applies; (v) the percentage of profit subject to the performance fee; (vi) whether a catch-up provision applies; (vii) the dollar or percentage amount of fee paid; and (viii) any other material structural features of the performance fee arrangement. For example, some funds already use custom XBRL tags to report certain components of their performance fee arrangements, such as hurdle rates.

Under this alternative, performance fee information would be easily accessible to investors and information intermediaries in a standardized, machine-readable format. Structured XBRL disclosure would enable systematic comparison of performance fee arrangements across funds, reduce investor search costs, and facilitate Commission staff examination and analysis. This approach would also complement the proposed fee table disclosure by providing granular, field-level data that the fee table's line-item format cannot capture.

However, structured XBRL disclosure of individual performance fee components would impose significant initial implementation burdens on regulated funds and their service providers, requiring the application of new elements from updated data taxonomies and adjustment of tagging infrastructure. More importantly, the nuanced and varied nature of performance fee arrangements (including the interaction among hurdle rates, high-water marks, measurement periods, and fee calculation bases) may not be adequately captured in a binary or categorical structured format. The proposed management discussion requirements, which require a narrative description and graphical representation of the performance fee arrangement, may be better suited to conveying the complexity and variability of these arrangements, which could be difficult to compare to one another.

b. Other Disclosures

As an alternative, we could have proposed to require regulated funds to disclose whether they have minimum investment requirements and the amount of any such minimum, which could be consistent with the goals of the proposed structured disclosure of performance fees—although investment minimums are already disclosed in prospectuses and statements of additional information (similarly to performance fees), they are not disclosed in a structured format that is readily aggregable or comparable across funds. This alternative may complement investor analysis of performance fee arrangements because it could allow investors to consider performance fees in conjunction with practical barriers to accessing regulated funds paying performance fees, reducing investors' search costs when it comes to choosing funds that offer alternative strategies. This is because even if an investor meets the proposed qualified client

[390] *See supra* section III.B.3.c.

threshold and would therefore be eligible to invest in a fund that pays performance fees on capital gains, investment minimums may represent a comparable practical barrier to access.

Investment minimums are currently reported for private funds on Form ADV in a structured, machine-readable format, aiding in systematic analysis of practical access barriers for investors across the private fund universe. However, regulated funds do not have such a requirement, and investment minimum requirements are presented in a non-structured format in prospectuses and statements of additional information, which are not readily aggregable. Currently, data on investment minimums is inconsistently available across regulated funds. For example, third-party aggregators (*e.g.,* Morningstar) provide data points related to investment minimums for regulated funds. In addition, recent research has analyzed these data for a subset of regulated funds.[391]

Nonetheless, the primary objective of the proposed amendments related to disclosure is to improve disclosure of performance fee arrangements. Requiring disclosure of investment minimums for regulated funds, while potentially useful to investors, could entail implementation costs for regulated funds that could be passed on to investors.

F. General Request for Comment

We request comment on all aspects of the economic analysis of the proposed amendments. To the extent possible, we request that commenters provide supporting data and analysis with respect to the benefits, costs, and effects on competition, efficiency, and capital formation of adopting the proposed amendments or any reasonable alternatives. In particular, we ask commenters to consider the following questions:

1. What additional qualitative or quantitative information should be considered as part of the baseline for the economic analysis of these amendments?

2. Are the benefits and costs of the proposed amendments accurately characterized? If not, why not? Should any of the costs or benefits be modified? What, if any, other costs or benefits should be taken into account? If possible, please offer ways of estimating these benefits and costs. What additional considerations can be used to estimate the benefits and costs of the proposed amendments?

3. Are the benefits and costs of the proposed amendments to the qualified client definition accurately characterized? If not, why not? What, if any, other costs or benefits should be taken into account? If possible, please offer ways of estimating these benefits and costs.

4. Are the effects on competition, efficiency, and capital formation arising from the proposed amendments accurately characterized? If not, why not?

5. Are the economic effects of the above alternatives accurately characterized? If not, why not? Should any of the costs or benefits be modified? What, if any, other costs or benefits should be taken into account?

6. Are the economic effects of the alternative approaches to disclosure adequately characterized? If not, why not? Should any of the costs or benefits be modified? What, if any, other costs or benefits should be taken into account?

7. Are there other reasonable alternatives to the proposed amendments that should be considered? What are the costs, benefits, and effects on competition, efficiency, and capital formation of any other alternatives?

8. What effects would the proposed changes have on (1) investment options available to investors if certain asset classes are not available or are less available in open-end vehicles; and (2) the markets for those underlying assets, including, but not limited to, private markets?

9. How likely is it that open-end fund managers will choose to offer new strategies as a result of the proposed amendments? Relatedly, how likely is it that investors will move assets from private funds to regulated funds in response to the proposed amendments?

10. How likely is it that existing regulated funds would implement performance fees on capital gains? What would be the costs of doing so? What would be the benefits? Are certain fund types more likely to implement performance fees on capital gains?

11. How likely are regulated funds to implement performance fees on capital gains via the fund board channel? Would this channel be less or more costly compared to the accredited investor channel?

12. How many regulated funds would implement performance fees on capital gains via each channel?

13. Are there data sources or data sets that can help refine the estimates of the benefits and costs associated with the proposed amendments? If so, please identify them.

14. Are there data sources that can help us estimate the aggregate number of affected investors with more accuracy? If so, please identify them.

15. Which third-party service providers would be affected the most by the proposed amendments? Please explain why. If possible, please provide data on the number and size of such entities.

16. What would be the costs to advisers of reclassifying their high net worth clients on Form ADV as a result of the proposed change to the qualified client definition? Are there ways to reduce those costs while still achieving the goals of the proposal?

17. Are there costs or benefits associated with the proposed conforming amendments to rule 203A–3 and rule 204–3 that we have not identified or adequately considered?

IV. Paperwork Reduction Act Analysis

A. Summary of the Collections of Information

Certain provisions of the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[392] We are submitting the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[393] The hours and costs associated with preparing and filing the forms and responses required under the applicable rules constitute paperwork burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number. Compliance with the information collections is mandatory or mandatory to receive benefits. Responses are not kept confidential.

The proposed amendments to rule 205–3 under the Advisers Act would result in a new collection of information requirement under the PRA, as follows:

- ''Rule 205–3 under the Investment Advisers Act of 1940—Exemption from the compensation prohibition of section 205(a)(1) for investment advisers.'' OMB has not yet assigned control numbers for this title.

The titles for the existing collections of information are:

- ''Form N–1A under the Investment Company Act of 1940 and the Securities Act of 1933, Registration Statement of Open-End Management Investment

[391] *See, e.g.,* ICI Research Perspective, The Closed-End Fund Market, 2025, *available at https://www.ici.org/system/files/2026-04/per-32-03.pdf* (last accessed Jul. 8, 2026).

[392] 44 U.S.C. 3501 through 3521.

[393] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

Companies'' (OMB Control No. 3235–0307);

• ''Form N–2 under the Investment Company Act of 1940 and the Securities Act of 1933, Registration Statement of Closed-End Management Companies'' (OMB Control No. 3235–0026); and

• ''Form N–CSR under the Securities Exchange Act of 1934 and under the Investment Company Act of 1940, Certified Shareholder Report of Registered Management Investment Companies'' (OMB Control No. 3235–0570).

The forms and rules listed above were adopted under the Securities Act, the Exchange Act, the Investment Company Act, and/or the Advisers Act. A description of the proposed amendments, including the need for the information and its proposed use, as well as a description of the likely respondents and a discussion of the potential economic effects of the proposed amendments can be found in sections II and III above.

B. Summary of the Proposed Amendments' Estimated Effects on the Collections of Information

We estimate below the changes in paperwork burden as a result of the proposed amendments. These estimates represent the average burden for all respondents, both large and small. In deriving our estimates, we recognize that the burdens will likely vary among individual respondents based on a number of factors, including the number of investment advisers and regulated funds electing to rely on the proposed exemption permitting investment advisers to include performance fees in investment advisory agreements with regulated funds, the number of regulated funds that pay any performance fees to their investment adviser, as well as the size and complexity of their business. These estimates include the time and the cost of preparing and reviewing disclosure and filing documents. We believe that some respondents would experience costs in excess of this average and some respondents would experience less than the average costs. Our methodologies for deriving these estimates are discussed below. For purposes of this PRA analysis, the burden is generally allocated between burden hours and costs. The cost burden generally reflects the portion of the burden carried by outside professionals, while the burden hours generally reflect the portion of the burden carried by the issuer internally.

Rule 205–3 PRA Estimates

As of December 31, 2025, there were approximately 13,556 regulated funds. We estimate that 5 percent of regulated funds would enter into an investment advisory contract with an investment adviser that includes a performance-based compensation arrangement subject to the conditions of the proposed amendments to rule 205–3. As a result, 678 regulated funds and their investment advisers would be subject to the proposed determination amendments to rule 205–3 under the Advisers Act. The proposed amendments to rule 205–3 would require one response per year. The table below summarizes our PRA annual burden estimates associated with the amendments to rule 205–3.

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PRA Table 1. Estimated Paperwork Burden Effects of the Proposed Amendments to Rule 205-3

Annual Hours[1]	Total Monetized Burden Hours[2]	Total Annual Cost Burden[3]
4,068 hours	$49,572,648	$2,623,860

Notes

[1] We estimate that there would be an average burden of 6 hours per response spent by the regulated funds' board of directors in connection with the proposed amendments to rule 205-3 (6 hours x 678 funds = 4,068 hours)

[2] The total monetized burden hours are based on the total annual hours estimate times a $12,186 wage rate for a regulated funds' board of directors (4,068 hours x $12,186 = $49,572,648). To estimate the $12,186 hourly rate for a fund board of directors, Commission staff used an occupational hourly rate of $1,354 f for Chief Executives to estimate the hourly rate for a single director and assumed an average of 9 directors per board.

[3] The total annual cost burden is the cost of goods and services purchased in connection with PRA-related burdens related to the proposed amendments to rule 205-3, such as for the services of independent auditors and outside counsel. The cost burden estimate is based upon the estimated wage rate of $774/hour for an attorney in the securities industry multiplied by 5 hours of work (5 hours x $774 wage rate = $3,870 per fund). 678 regulated funds x $3,870 = $2,623,860.

To calculate the occupational hourly rates used in this release, the Commission uses the May 2025 occupational mean hourly wage data from the Occupational Employment and Wage Statistics (OEWS) program of the Bureau of Labor Statistics (BLS) for "Securities, Commodity Contracts, and Other Financial Investments and Related Activities" (NAICS 523). *See* Occupational Employment and Wage Statistics, U.S. Bureau of Labor Statistics, https://www.bls.gov/oes/; *see also* Standard Occupational Classification, U.S. Bureau of Labor Statistics, https://bls.gov/soc/ (describing occupational classification system used by BLS); Exec. Off. of the President, Off. of Mgmt. & Budget, North American Industry Classification System (2022), *available at* https://www.census.gov/naics/reference_files_tools/2022_NAICS_Manual.pdf (describing the industry classification system used by BLS and other agencies). The mean hourly wage for each occupation is multiplied by an employment cost index (ECI) factor of 1.0227, calculated as one plus the percentage change in the seasonally adjusted ECI for wages and salaries of private industry workers from the second quarter of 2025 (ECI=173.563), which contains the May 2025 OEWS reference period, to the first quarter of 2026 (ECI=177.498), which is the date of the most recently available ECI observations when the occupational hourly rates used in this release were calculated. *See* Employment Cost Index, U.S. Bureau of Labor Statistics, Seasonal Data 2001-Present, available at https://www.bls.gov/eci/tables.htm. The adjusted mean hourly wage is then multiplied by a nonwage cost adjustment factor of 5.734, which accounts for nonwage costs borne by employers, such as bonuses, benefits, and overhead. This factor is calculated as the average, over 2016-2025, of the ratio of the Bureau of Economic Analysis's gross output for NAICS 523 to total annual wages across all occupations for NAICS 523 in the OEWS data. *See* Gross Output by Industry, U.S. Bureau of Economic Analysis, https://www.bea.gov/data/industries/gross-output-by-industry; Occupational Employment and Wage Statistics, U.S. Bureau of Labor Statistics, https://www.bls.gov/oes/. For example, the $774 occupational hourly rate for lawyers is calculated as $131.91 x 1.0227 x 5.734, or approximately $774 (where $131.91 is the May 2025 mean hourly wage for lawyers in NAICS 523). The final product is the occupational hourly rate. *See generally* Updated Methodology for Calculating Occupational Hourly Rates (Dec. 19, 2025), *available at* https://www.sec.gov/files/method-occupational-hourly-rates.pdf.

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1. Form N–1A PRA Estimates

As of December 31, 2025, there were approximately 12,674 regulated funds that file Form N–1A. We estimate that 5 percent of these regulated funds would enter into an investment advisory contract with an investment adviser that includes a performance-based compensation arrangement based on capital gains or based on other measures. As a result, we estimate that 634 regulated funds will be subject to the enhanced disclosure regarding performance-based compensation paid to the investment adviser on Form N–1A. The table below summarizes our PRA annual burden estimates associated with the amendments to Form N–1A.

PRA Table 2. Estimated Paperwork Burden Effects of the Proposed Amendments to Form N-1A

Annual Hours[1]	Total Monetized Burden Hours[2]	Total Annual Cost Burden[3]
6,340 hours	$2,929,080	$2,453,580

Notes

[1] We estimate that the amendments would increase the annual hour burden for Form N-1A by 10 hours per fund or 6,340 hours in aggregate (10 hours x 634 funds = 6,340 hours).

[2] The total monetized burden hours are based on the total annual hours estimate times a $462 blended wage rate (6,340 hours x $462 = $2,929,080). The $462 wage rate reflects current estimates of the blended hourly rate for an accountant and auditor ($330), paralegal and legal assistant ($281), and attorney ($774) in the securities industry (($330 + $281 + $774)/3 = $462).

[3] The total annual cost burden is the cost of goods and services purchased to prepare and amend registration statements on Form N-1A in connection with the proposed amendments, such as for the services of independent auditors and outside counsel. The cost burden estimate is based upon the estimated wage rate of $774/hour for an attorney in the securities industry multiplied by 5 hours of work (5 hours x $774 wage rate = $3,870 per fund). 634 regulated funds x $3,870 = $2,453,580.

2. Form N–2 PRA Estimates

As of December 31, 2025, there were approximately 882 regulated funds that file Form N–2. We estimate that 5 percent of these funds would enter into an investment advisory contract with an investment adviser that includes a performance-based compensation arrangement based on capital gains or based on other measures. As a result, we estimate that 44 regulated funds will be subject to the enhanced disclosure regarding performance-based compensation paid to the investment adviser on Form N–2. The table below summarizes our PRA annual burden estimates associated with the amendments to Form N–2.

PRA Table 3. Estimated Paperwork Burden Effects of the Proposed Amendments to Form N-2

Annual Hours[1]	Total Monetized Burden Hours[2]	Total Annual Cost Burden[3]
440 hours	$203,280	$170,280

Notes

[1] We estimate that the amendments would increase the annual hour burden for Form N-2 by 10 hours per fund or 440 hours in aggregate (10 hours x 44 funds = 440 hours).

[2] The total monetized burden hours are based on the total annual hours estimate times a $462 blended wage rate (440 hours x $462 = $203,280). The $462 wage rate reflects current estimates of the blended hourly rate for an accountant and auditor ($330), paralegal and legal assistant ($281), and attorney ($774) in the securities industry (($330 + $281 + $774)/3 = $462).

[3] The total annual cost burden is the cost of goods and services purchased to prepare and amend registration statements on Form N-2 in connection with the proposed amendments, such as for the services of independent auditors and outside counsel. The cost burden estimate is based upon the estimated wage rate of $774/hour for an attorney in the securities industry multiplied by 5 hours of work (5 hours x $774 wage rate = $3,870 per fund). 44 regulated funds x $3,870 = $170,280.

3. Form N–CSR PRA Estimates

We estimate that 669 regulated funds would be subject to the particularized disclosure requirements regarding the approval of performance fees based on capital gains in or capital appreciation of a regulated fund whose investment adviser charges the regulated fund a performance fee pursuant to the conditions of proposed rule 205–3(c)(1)(iv). This estimate is based on the number of regulated funds (except for BDCs, which do not file Form N–CSR) that would pay its investment adviser a performance fee based on capital gains or capital appreciation of the regulated fund pursuant to the conditions of proposed rule 205–3(c)(1)(iv).[394] The table below summarizes our PRA annual burden estimates associated with the amendments to Form N–CSR.

PRA Table 4. Estimated Paperwork Burden Effects of the Proposed Amendments to Form N-CSR

Annual Hours[1]	Total Monetized Burden Hours[2]	Total Annual Cost Burden[3]
3,345 hours	$2,023,725	$2,589,030

Notes

[1] We estimate that the amendments would increase the annual hour burden for Form N-CSR by 5 hours per fund and 3,345 hours in aggregate (5 hours x 669 funds = 3,345 hours).

[2] The total monetized burden hours are based on the total annual hours estimate times a $605 blended wage rate (3,345 hours x $605 = $2,023,725). The $605 wage rate reflects current estimates of the blended hourly rate for a computer programmer ($436) and an attorney ($774) in the securities industry (($436 + $774)/2 = $605).

[3] The total annual cost burden is the cost of goods and services purchased to prepare and amend registration statements on Form N-CSR in connection with the proposed amendments, such as for the services of independent auditors and outside counsel. The cost burden estimate is based upon the estimated wage rate of $774/hour for an attorney in the securities industry multiplied by 5 hours of work (5 hours x $774 wage rate = $3,870 per fund). 669 regulated funds x $3,870 = $2,589,030.

[394] 5 percent of 13,376 funds = 669 funds.

C. Changes in Paperwork Burdens Under the Proposed Amendments

The following PRA Table 5 summarizes the current and requested paperwork burdens and calculates the changes to affected information collections' estimated responses and total burdens under the proposed amendments.

PRA Table 5. Changes in Paperwork Burdens under the Proposed Amendments

	Current Burden (from OMB inventory)			Program Change			Revised Burden (from PRA Table 2)		
Form/Rule	Current Annual Responses	Current Burden Hours	Current Cost Burden	Estimated Increase or (Decrease) in Number of Annual Responses	Estimated Increase or (Decrease) in Burden Hours	Estimated Increase or (Decrease) in Cost Burden	Estimated Annual Responses[1]	Estimated Burden Hours	Estimated Cost Burden
Rule 205-3	0	0	$0	678	4,068	$2,623,860	678	4,068	$2,623,860
Form N-1A	6,002	1,787,043	$143,540,098	0	6,340	$2,453,580	6,002	1,793,383	$145,993,678
Form N-2	298	102,525	$6,940,207	129	440	$170,280	427	102,965	$7,110,487
Form N-CSR	29,308	228,037	$6,129,524	0	3,345	$2,589,030	29,308	231,382	$8,718,554

Notes:

1 The estimated number of annual responses is largely calculated based upon the number of responses currently reflected in the OMB inventory as modified by the change in responses per the proposed amendments, other than for rule 205-3, for which there are no responses currently reflected in the OMB inventory and for Form N-2, which reflects the three-year average of total Form N-2 filings made for the last three years.

D. Request for Comments

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

- Evaluate whether the proposed changes to the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Evaluate the accuracy of our estimates of the changes in burden hours and cost burden that would result from adoption of the proposed amendments;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;
- Evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- Evaluate whether the proposed amendments would have any effects on any other collection of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct their comments to the OMB Desk Officer for the Securities and Exchange Commission, *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov,* and should send a copy to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, using any of the methods in the **ADDRESSES** section, with reference to File No. 2026–28. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. 2026–28, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication.

V. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with section 3(a) of the Regulatory Flexibility Act (''RFA'').[395] It relates to proposed amendments to rules 203A–3(a)(3)(i), 204–3(c)(2)(iii), and 205–3 under the Advisers Act and Forms N–1A, N–2, and N–CSR under the Investment Company Act (collectively, the ''proposed amendments'').

[395] 5 U.S.C. 603(a).

A. Reasons for and Objectives of the Proposed Actions

1. Proposed Amendments to Rule 205–3

We are proposing amendments to rule 205–3, a generally applicable exemptive rule to the performance fee prohibition under the Advisers Act that provides an exception to the prohibition for clients that satisfy the definition of ''qualified client'' within the rule. The current rule defines a ''qualified client'' in one of three ways: (1) a natural person or company that meets a minimum net worth or assets-under-management requirement; (2) a natural person or company that is a ''qualified purchaser'' under section 2(a)(51)(A) of the Investment Company Act; and (3) a natural person that is a certain executive officer or employee of the investment adviser who actively participates in the investment activities of the adviser. We are proposing amendments to rule 205–3 to expand the definition of a ''qualified client'' to include (1) regulated funds that satisfy certain conditions and (2) natural persons or entities that meet the ''accredited investor'' definition under Regulation D. The proposed amendments are designed to enhance, simplify, and modernize the regulatory framework related to performance-based compensation, as well as to facilitate access for a wider group of investors to investment strategies and products that include performance-based compensation

arrangements, while maintaining appropriate investor protections and safeguards.

In addition, the proposal would include technical conforming amendments to rules 203A–3(a)(3)(i) and 204–3(c)(2)(iii) under the Advisers Act to replace the existing references to the ''qualified client'' definition in rule 205–3(d)(1) with references instead to rule 205–3(c)(1), corresponding to the proposed redesignation of current paragraph (d)(1) to (c)(1).

2. Proposed Amendments to Forms N–1A, N–2, and N–CSR

We are also proposing amendments to Forms N–1A and N–2, the forms on which registered open-end funds and registered closed-end funds and BDCs, respectively, are required to disclose information about performance-based compensation paid to the investment adviser. Currently, regulated funds are required to disclose certain key information about the fund's fees and expenses in a standardized fee table in their prospectus. In addition to fee table disclosure, the registration statement forms for regulated funds require a description of the investment adviser's compensation. The proposal would require (1) a distinct line item to the fee table regarding performance-based compensation paid to the adviser, to the extent applicable; and (2) a detailed description of the performance fee arrangement, including a graphical representation illustrating the calculation of the performance fee later in the prospectus. These proposed amendments are designed to enhance transparency by requiring clearer disclosure of performance-based advisory fees in the prospectus.

In addition, Form N–CSR, a combined reporting form used by registered management investment companies to transmit shareholder reports to the Commission as well as to report corporate governance and financial data, requires a registered management investment company to provide disclosure about the basis for the board's approval of its investment advisory contract. We are proposing to amend Form N–CSR to require more particularized disclosure regarding the approval of performance fees based on capital gains in or capital appreciation of a regulated fund whose investment adviser charges the regulated fund a performance fee pursuant to the conditions of proposed rule 205–3(c)(1)(iv). This disclosure would be useful for investors because it would provide them with meaningful insight into the board's reasoning and analysis in approving a performance fee arrangement that could impact their returns. It would also be useful for Commission staff in reviewing compliance with the proposed rules.

The reasons for, and objectives of, the proposed amendments are discussed in more detail in sections I and II, above. The burdens of these requirements on small advisers are discussed below as well as above in sections III and IV, which discuss the burdens on all advisers. The professional skills required to meet these specific burdens are also discussed in section IV.

B. Legal Basis

The Commission is proposing the rule and form amendments contained in this document under the authority set forth in the Advisers Act, particularly sections 203A, 204, 205(e), 206A, 206(4), and 211(a) thereof, the Investment Company Act, particularly sections 6, 8, 24, 30, 31, 37, 38, 59, and 63 thereof; the Securities Act, particularly sections 5, 7, 10, 19(a), and 28 thereof; and the Securities Exchange Act of 1934, particularly sections 12, 13(a), 14, 15(d), 23(a), 35A, and 36 thereof.

C. Small Entities Subject to the Rule Amendments

The proposed amendments would affect registered investment advisers, registered investment companies, and BDCs, including entities that are considered to be a small business or small organization (each, a ''small entity'') for purposes of the RFA. For the purposes of the RFA, under the Advisers Act, an investment adviser generally is a small entity if it: (1) has assets under management having a total value of less than $25 million; (2) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[396] Under the Investment Company 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.[397] Based on Commission filings, we estimate that there are approximately 66 investment companies[398] and 466 SEC-registered advisers[399] that are small entities. The number of small entities that would be affected by the proposed amendments to rule 205–3 would generally depend on the number of small entities that would rely on the exemptive rule to charge performance fees. It is not mandatory that any small entity comply with the proposed amendments, as the proposed amendments operate as an exemption from an otherwise applicable statutory prohibition and imposes no affirmative obligations on any adviser or regulated fund that does not seek to avail itself of the exemption. To the extent a small entity would charge performance fees, even if not by availing itself of the proposed exemptive rule, it would then be required to make the applicable disclosures in Forms N–1A, N–2, and/or N–CSR, as appropriate.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

1. Proposed Rule 205–3 Amendments

Proposed amendments to rule 205–3 would impose certain compliance requirements on investment advisers, including those that are small entities, to the extent they enter into performance-based compensation arrangements with certain clients. All registered investment advisers to regulated funds that enter into

[396] 17 CFR 275.0–7. In a separate rulemaking, the SEC is proposing to increase the thresholds for an investment adviser to qualify as a small entity (the ''Small Entity Proposal''). Under the Small Entity Proposal, an investment adviser would generally be a small entity for purposes of the Advisers Act and the RFA if the adviser (1) has assets under management of less than $1 billion, (2) did not have total assets of $5 million or more on the last day of the most recent fiscal year, and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $1 billion or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of the most recent fiscal year, all thresholds of which would have a mechanism for future inflation adjustments. *See* Amendments to the ''Small Business'' and ''Small Organization'' Definitions for Investment Companies and Investment Advisers for Purposes of the Regulatory Flexibility Act, Release No. IA–6935 (Jan. 7, 2026) and proposed 17 CFR 275.0–7.

[397] *See* 17 CFR 270.0–10(a); *see also* Small Entity Proposal. Under the Small Entity Proposal, an investment company would generally be a small entity for purposes of the Investment Company Act and the RFA if the investment company, together with other investment companies in the same family of investment companies, has net assets of $10 billion or less as of the end of its most recent fiscal year. The Commission encourages commenters to review the proposal to determine whether it might affect their comments on this IRFA.

[398] This estimate is derived from an analysis of data obtained from Morningstar Direct and data reported to the Commission (*e.g.,* N–PORT, N–CSR, 10–Q and 10–K) as of Dec. 2025 (estimate includes 27 registered open-end funds, 34 registered closed-end funds, and 5 BDCs).

[399] Based on a review of Form ADV filings for the reporting period ending December 2025, with filings received through March 31, 2026.

investment advisory contracts that include performance-based compensation arrangements based on capital gains would be required to comply with the proposed amendments' conditions for reliance on the expanded exemptions to from performance fee prohibition. The proposed amendments are summarized in this IRFA. In addition, the proposal would include technical conforming amendments to rules 203A–3(a)(3)(i) and 204–3(c)(2)(iii) under the Advisers Act to replace the existing references to the ''qualified client'' definition in rule 205–3(d)(1) with references instead to rule 205–3(c)(1), corresponding to the proposed redesignation of current paragraph (d)(1) to (c)(1). All of these proposed requirements are also discussed in detail, above, in sections I and II, and these requirements and the burdens on respondents, including those that are small entities, are discussed above in sections III and IV (the Economic Analysis and PRA Analysis, respectively) and below. The professional skills required to meet these specific burdens are also discussed in section IV.

As discussed above, there are approximately 466 advisers currently registered with us that are small entities, and we estimate that 5 percent of advisers registered with us would be subject to the proposed amendments to rule 205–3. We therefore estimate that approximately 23 advisers that are small entities would be impacted by the proposed amendments to rule 205–3.

2. Proposed Disclosure and Reporting Requirements

The proposed amendments to Forms N–1A, N–2, and N–CSR would impose certain disclosure and reporting requirements on regulated funds, including those that are small entities, to the extent they enter into any performance-based compensation arrangements with an adviser. All regulated funds that enter into investment advisory contracts that include performance-based compensation arrangements, including arrangements based on measures other than capital gains, would be required to disclose performance-based advisory fees in the prospectus fee table and provide detailed information regarding performance fee arrangements later in the prospectus. In addition, regulated funds whose investment adviser charges the regulated fund a performance fee based on capital gains in or capital appreciation of the fund pursuant to the conditions of proposed rule 205–3(c)(1)(iv) would need to include particularized disclosure regarding the approval of performance fees on Form N–CSR. The proposed amendments are summarized in this IRFA. All of these proposed requirements are also discussed in detail, above, in sections I and II, and these requirements and the burdens on respondents, including those that are small entities, are discussed above in sections III and IV (the Economic Analysis and PRA analysis, respectively) and below. The professional skills required to meet these specific burdens are also discussed in section IV.

As discussed above, there are approximately 66 regulated funds that are small entities, and we estimate that 5 percent of regulated funds would be subject to the proposed amendments to Forms N–1A, N–2, and N–CSR. We therefore estimate that approximately three regulated funds that are small entities would be impacted by the proposed amendments to Forms N–1A, N–2, and N–CSR.

E. Duplicative, Overlapping, or Conflicting Federal Rules

1. Proposed Amendments to Rule 205–3

Section 205(a)(1) of the Advisers Act prohibits registered investment advisers from entering into, extending, or performing advisory contracts that provide for performance fees on the basis of a share of capital gains in or capital appreciation of an advisory client's account. Statutory exceptions to the prohibition are provided in sections 205(b)(1) through (b)(5) of the Advisers Act, and the Commission has authority to promulgate exemptions from the prohibition under sections 205(e) and/or 206A thereof. One of those exceptions, section 205(b)(3), permits an investment adviser to a BDC to receive compensation based on a share of capital gains, not to exceed 20 percent of realized capital gains upon the funds of the BDC over a specified period or as of definite dates (computed net of all realized capital losses and unrealized capital deprecation). This existing statutory exception differs from our proposed amendment to rule 205–3, which would permit an investment adviser to a BDC to charge performance fees based on net realized and net unrealized capital gains or appreciation. We do not think that this difference in approach would conflict with the statute because the proposed amendment would require the investment adviser and BDC to meet certain other conditions and disclosure requirements that are designed to protect the fund and its shareholders.

Additionally, section 15(c) of the Investment Company Act requires that the initial approval, and any annual continuance, of an investment advisory contract by a regulated fund be approved by a majority of the fund's board, including a majority of directors who are not interested persons of the adviser. In addition, section 10(a) of the Investment Company Act requires that 40% of any regulated fund's board be composed of disinterested directors. Relatedly, rule 0–1(a)(7) under the Investment Company Act contains certain fund governance standards to enhance the independence and effectiveness of independent directors. The proposed amendments to rule 205–3 would leverage sections 15(c) and 10(a) and rule 0–1(a)(7) under the Investment Company Act to help strengthen investor protections and fund and adviser oversight. Therefore, there are no duplicative, overlapping, or conflicting Federal rules with respect to the proposed amendments to rule 205–3.

Furthermore, there are no federal rules that are duplicative, overlapping, or conflicting with the proposed technical conforming amendments to rules 203A–3(a)(3)(i) and 204–3(c)(2)(iii) under the Advisers Act to replace the existing references to the ''qualified client'' definition in rule 205–3(d)(1) with references instead to rule 205–3(c)(1), corresponding to the proposed redesignation of current paragraph (d)(1) to (c)(1).

2. Proposed Amendments to Forms N–1A, N–2, and N–CSR

The instructions to both Forms N–1A and N–2 require registered open-end funds and registered closed-end funds and BDCs, respectively, to disclose ''management fees,'' a line item that encompasses all fees paid to the investment adviser for managing the fund's portfolio, including any fees that are contingent on the fund's performance. The instructions to the prospectus fee table do not currently require a regulated fund to separately identify, as a distinct line item or caption within the fee table, the portion of management fees attributable to performance-based compensation as distinguished from asset-based advisory fees. Our proposed amendments to Forms N–1A and N–2 would add a caption to the prospectus fee table, where applicable, titled ''performance fees'' to disclose to the investor any performance-based compensation payable to the investment adviser.

Similarly, the current versions of both forms require a regulated fund to describe the investment adviser's

compensation, including whether the compensation will be based on a percentage of average net assets, but they do not separately address performance fees and how such fees may be calculated. Our proposed amendments would require tailored disclosure about performance fees. Given that performance fees are different from base management fees, the proposed amendments to Forms N–1A and N–2 do not conflict with the existing disclosure regime.

Lastly, Form N–CSR currently requires a registered management investment company to provide disclosure about the basis for the board's approval of its investment advisory contract. We are proposing to amend Form N–CSR to require particularized disclosure regarding the approval of performance fees based on capital gains in or capital appreciation of a regulated fund whose investment adviser charges the regulated fund a performance fee pursuant to the conditions of proposed rule 205–3(c)(1)(iv). Generally, the investor protection benefits of the disclosure provisions of the proposed amendments justify the additional costs of their application.

F. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. We considered the following alternatives for small entities in relation to the proposed amendments to rules 205–3, 203A–3(a)(3)(i), and 204–3(c)(2)(iii) and Forms N–1A, N–2, and N–CSR: (i) differing compliance or reporting requirements that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rule for such small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed rule, or any part thereof, for such small entities.

Regarding the first and fourth alternatives, the Commission believes that establishing different compliance, reporting, or disclosure requirements for small entities, or exempting small entities from the proposed amendments, or any part thereof, would be inappropriate under these circumstances. Because the protections of the Advisers Act, Investment Company Act, and Securities Act are intended to benefit equally clients or investors of both large and small entities, it would be inconsistent with the purposes of the Advisers Act, Investment Company Act, and Securities Act to specify different requirements for small entities under the proposed amendments. As discussed above, we believe that the proposed amendments would result in multiple benefits. For example, the proposed amendments could provide investors with opportunities to gain exposure to expanded investment strategies and to participate in their asset growth. At the same time, the proposed conditions and disclosures are intended to align the investment adviser's economic incentives with the interests of a regulated fund and its shareholders or with other advisory clients and mitigate the potential for excessive risk-taking and speculation. We believe that these benefits should benefit clients of smaller entities as well as larger entities. In addition, as discussed above, our staff would use the corresponding information that advisers or regulated funds would document or disclose to help prepare for examinations of investment advisers and regulated funds. Establishing different conditions or types of disclosures for large and small entities that serve many types of investors would negate these benefits.

Regarding the second alternative, we believe the current proposal is clear and that further clarification, consolidation, or simplification of the compliance requirements is not necessary. As discussed above: the proposed amendments would expand the ability for investment advisers to regulated funds to enter into investment advisory contracts that include performance-based compensation arrangements, provided they meet three specific conditions, and would require specific disclosures on Forms N–1A, N–2, and N–CSR, as appropriate, about performance-based compensation. These provisions would modernize our regulatory programs to reflect and enhance investment product innovation and the ever-broadening investor choice available in today's asset management industry, while also taking into account the risks associated with increasingly diverse portfolio compositions and operations. The proposed amendments also would amend the definition of ''qualified client'' to include natural persons or entities that meet the ''accredited investor'' definition and remove the ''qualified client'' definition's separate net worth test and assets-under-management test, thereby harmonizing the regulatory framework governing access to private funds by enabling advisers to funds that already limit their investors to accredited investors (*e.g.,* section 3(c)(1) private funds that rely on Regulation D) to enter into performance fee arrangements without needing to apply a separate qualified client standard.

Regarding the third alternative, we determined to use design standards rather than performance standards. Performance standards allow for increased flexibility in the methods firms can use to achieve the objectives of the requirements. Design standards specify the behavior or manner of compliance that regulated entities must adopt. While the proposed amendments to rule 205–3 would expand the ability of registered investment advisers and certain of their clients to enter into performance-based compensation arrangements—and would not dictate their terms—they would impose specific conditions and restrictions, to meet the proposed exemption, and the proposed amendments to Forms N–1A, N–2, and N–CSR would impose certain related disclosures. These conditions, restrictions, and disclosures are principles-based and narrowly tailored to protect regulated funds and their shareholders, and to be consistent with the purposes fairly intended by the policy and provisions of the Advisers Act and the Investment Company Act.

G. Request for Comment

The Commission encourages written comments on the matters discussed in this IRFA. We request comment on the number of small entities that would be subject to our proposal and whether our proposal would have any effects that have not been considered. We request that commenters describe the nature of any effects on small entities subject to our proposal and provide empirical data to support the nature and extent of such effects. We also request comment on the estimated compliance burdens of our proposal and how they would affect small entities.

VI. Congressional Review Act

For purposes of Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act),[400] the Commission must seek OMB's determination as to whether a final regulation constitutes a ''major rule.'' Under the Congressional Review Act, a rule is considered ''major'' where, if adopted, it results in or is likely to result in:

- An annual effect on the U.S. economy of $100 million or more;

[400] *See* 5 U.S.C. chapter 8.

• A major increase in costs or prices for consumers or individual industries; or

• Significant adverse effects on competition, investment, or innovation.[401]

To help inform OMB's determination as to whether any final rule that results from the proposal would be a ''major rule,'' the Commission solicits comment and data on:

• The potential effect of the proposed amendments on the U.S. economy on an annual basis;

• Any potential increase in costs or prices for consumers or individual industries; and

• Any potential adverse effect on competition, investment, or innovation.

Commenters are requested to provide empirical data and other factual support for their views to the extent possible, to inform OMB's determination regarding whether any final rule following this proposal is likely to be a ''major rule'' for the purposes of the Congressional Review Act.

VII. Other Matters

This action is an economically significant regulatory action under section 3(f)(1) of Executive Order 12866 and has been reviewed by OMB, consistent with Executive Order 14215. This action, if finalized as proposed, is expected to be an Executive Order 14192 deregulatory action.

Statutory Authority

The Commission is proposing the rule and form amendments contained in this document under the authority set forth in the Advisers Act, particularly sections 203A, 204, 205(e), 206A, 206(4), and 211(a) thereof; the Investment Company Act, particularly sections 6, 8, 24, 30, 31, 37, 38, 59, and 63 thereof; the Securities Act, particularly sections 5, 7, 10, 19(a), and 28 thereof; and the Securities Exchange Act of 1934, particularly sections 12, 13(a), 14, 15(d), 23(a), 35A, and 36 thereof.

List of Subjects

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 249

Brokers, Fraud, Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 275

Reporting and recordkeeping requirements; Securities.

Text of Proposed Rules and Rule and Form Amendments

For the reasons set out in the preamble, the Commission proposes to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 1. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m,78n, 78o(d), 78o–7 note, 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37; and sec. 107, Pub. L. 112–106, 126 Stat. 312, unless otherwise noted.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 2. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112–106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112–106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114–94, 129 Stat. 1312 (2015), unless otherwise noted.

* * * * *

Section 249.331 is also issued under 15 U.S.C. 78j–1, 7202, 7233, 7241, 7264, 7265; and 18 U.S.C. 1350.

* * * * *

■ 3. Amend Form N–CSR (referenced in §§ 249.331 and 274.128) by:

■ a. Revising Item 11.

Note: Form N–CSR is attached as Appendix A to this document. Form N–CSR will not appear in the Code of Federal Regulations.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940.

■ 4. The authority 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.

■ 5. Amend Form N–1A (referenced in §§ 239.15A and 274.11A) by:

■ a. Revising Item 3; and

■ b. Revising Item 10; and

■ c. Redesignate Instructions 3(b) through 3(f) to 3(c) through 3(g) to Item 3 of Form N–1A.

Note: Form N–1A is attached as Appendix B to this document. Form N–1A will not appear in the Code of Federal Regulations.

■ 6. Amend Form N–2 (referenced in §§ 239.14 and 274.11a–1) by:

■ a. Revising Item 3;

■ b. Redesignate Instruction 11 as Instruction 12 to Item 3 of Form N–2;

■ c. Redesignate Instruction 12.d. as Instruction 12.e. to Item 3 of Form N–2; and

■ d. Revising Item 9.

Note: Form N–2 is attached as Appendix C to this document. Form N–2 will not appear in the Code of Federal Regulations.

PART 275–RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 7. The general authority citation for part 275 continues to read, in part, as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(11)(H), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

■ 8. Amend § 275.203A–3 by revising paragraph (a)(3)(i) to read as follows:

(i) ''Excepted person'' means a natural person who is a qualified client as described in § 275.205–3(c)(1).

■ 9. Amend § 275.204–3 by revising paragraph (c)(2)(iii) to read as follows:

(iii) Who is an officer, employee, or other person related to the adviser that would be a ''qualified client'' of your firm under § 275.205–3(c)(1)(ii).

■ 10. Revise and republish § 275.205–3 to read as follows:

§ 275.205–3 Exemption from the compensation prohibition of section 205(a)(1) for investment advisers

(a) *General.* The provisions of section 205(a)(1) of the Act (15 U.S.C. 80b–5(a)(1)) will not be deemed to prohibit an investment adviser from entering into, performing, renewing or extending an investment advisory contract that provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of a client, *Provided,* That the client entering into the contract subject to this section is a qualified client, as defined in paragraph (c)(1) of this section.

(b) *Transition rules—*

(1) *Registered investment advisers.* If a registered investment adviser entered into a contract and satisfied the conditions of this section that were in effect when the contract was entered into, the adviser will be considered to satisfy the conditions of this section; *Provided,* however, that if a natural person or company who was not a party

[401] *See* 5 U.S.C. 804(2) (defining ''major rule'').

to the contract becomes a party (including an equity owner of a private investment company advised by the adviser), the conditions of this section in effect at that time will apply with regard to that person or company.

(2) *Registered investment advisers that were previously not registered.* If an investment adviser was not required to register with the Commission pursuant to section 203 of the Act (15 U.S.C. 80b–3) and was not registered, section 205(a)(1) of the Act will not apply to an advisory contract entered into when the adviser was not required to register and was not registered, or to an account of an equity owner of a private investment company advised by the adviser if the account was established when the adviser was not required to register and was not registered; *Provided,* however, that section 205(a)(1) of the Act will apply with regard to a natural person or company who was not a party to the contract and becomes a party (including an equity owner of a private investment company advised by the adviser) when the adviser is required to register.

(3) *Certain transfers of interests.* Solely for purposes of paragraphs (b)(1) and (b)(2) of this section, a transfer of an equity ownership interest in a private investment company by gift or bequest, or pursuant to an agreement related to a legal separation or divorce, will not cause the transferee to ''become a party'' to the contract and will not cause section 205(a)(1) of the Act to apply to such transferee.

(c) *Definitions.* For the purposes of this section:

(1) The term *qualified client* means:

(i) A natural person who, or a company (other than a private investment company, as defined in paragraph (c)(3) of this section) that, the investment adviser entering into the contract (and any person acting on his behalf) reasonably believes either:

(A) Is an accredited investor as defined in rule 501(a) of Regulation D under the Securities Act of 1933 (17 CFR 230.501(a)) at the time the contract is entered into; or

(B) Is a qualified purchaser as defined in section 2(a)(51)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(51)(A)) at the time the contract is entered into;

(ii) A natural person who immediately prior to entering into the contract is:

(A) An executive officer, director, trustee, general partner, or person serving in a similar capacity, of the investment adviser; or

(B) An employee of the investment adviser (other than an employee performing solely clerical, secretarial or administrative functions with regard to the investment adviser) who, in connection with his or her regular functions or duties, participates in the investment activities of such investment adviser, provided that such employee has been performing such functions and duties for or on behalf of the investment adviser, or substantially similar functions or duties for or on behalf of another company for at least 12 months;

(iii) A private investment company, as defined in paragraph (c)(3) of this section, *Provided,* that each equity owner of any such company (except equity owners with respect to which compensation on the basis of a share of capital gains or capital appreciation is not provided for) meets the requirements of paragraph (c)(1) of this section; or

(iv) A regulated fund, *Provided,* that each equity owner of any such regulated fund meets the requirements of paragraph (c)(1) of this section, or that the following conditions are satisfied:

(A) The compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of the regulated fund, does not exceed 20% of the regulated fund's net capital gains or net capital appreciation over a specified period or as of definite dates;

(B) The board of directors of the regulated fund satisfies the fund governance standards defined in rule 0–1(a)(7) under the Investment Company Act of 1940 (15 U.S.C. 270.0–1(a)(7)); and

(C) As part of the regulated fund's annual review and approval of an investment advisory contract required under section 15(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–15(c)), the board of directors, including a majority of directors who are not interested persons of the regulated fund, determine that the compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of the regulated fund, is in the best interests of the regulated fund and its shareholders. Such determination must include written findings addressing:

(*1*) The appropriateness of such compensation arrangement considering such factors as the regulated fund's investment strategy and valuation practices;

(*2*) The basis upon which such compensation is calculated, including the measurement period over which performance is assessed, and whether such compensation is determined with reference to realized gains, unrealized gains, or both; and

(*3*) The adequacy of any investor protection features in such compensation arrangement to protect the interests of shareholders (*e.g.,* a preferred return or hurdle that requires a specified return or yield to be achieved before the investment adviser may receive compensation, or a high-watermark or loss carryforward mechanism that allows shareholders to recoup losses before compensation is paid to the investment adviser), including, where no such investor protection features are present, the basis for concluding that the compensation arrangement is adequate to protect the interests of shareholders.

(2) The term *company* has the same meaning as in section 202(a)(5) of the Act (15 U.S.C. 80b–2(a)(5)), but does not include a company that is required to be registered under the Investment Company Act of 1940 but is not registered.

(3) The term *private investment company* means a company that would be defined as an investment company under section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a)) but for the exception provided from that definition by section 3(c)(1) of such Act (15 U.S.C. 80a–3(c)(1)).

(4) The term *executive officer* means the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, for the investment adviser.

(5) The term *regulated fund* means a management investment company registered under the Investment Company Act of 1940, or a business development company, as defined in section 202(a)(22) of the Act (15 U.S.C. 80b–2(a)(22), but does not include separate accounts that are registered management investment companies offering variable annuity contracts registered on Form N–3.

By the Commission.

Dated: September 30, 2026.

Vanessa A. Countryman,

Secretary.

Appendix A—Form N–CSR

* * * * *

Item 11. Statement Regarding Basis for Approval of Investment Advisory Contract

* * * * *

(3) If the investment advisory contract approved by the board provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of the Fund (a

''performance fee''), and the board made the findings required under rule 205–3(c)(1)(iv) under the Investment Advisers Act of 1940 (17 CFR 275.205–3(c)(1)(iv)), discuss in reasonable detail the factors and the conclusions with respect to the approval of such contract that formed the basis for the board's determination that the performance fee is in the best interests of the Fund and its shareholders, including:

(A) The appropriateness of the performance fee arrangement, considering such factors as the Fund's investment strategy and valuation practices;

(B) The basis upon which the performance fee is calculated, including the measurement period over which performance is assessed, and whether the performance fee is determined with reference to realized gains, unrealized gains, or both; and

(C) The adequacy of investor protection features in the performance fee arrangement, such as a preferred return or hurdle rate that requires a specified return or yield to be achieved before the investment adviser may receive a performance fee, or a high-water mark or loss carry forward mechanism that allows shareholders to recoup losses before a performance fee is paid to the investment adviser, including where no such investor protection features are present, the basis for concluding that the performance fee arrangement is adequate to protect the interests of shareholders.

Appendix B—Form N–1A

* * * * *

Part A—Information Required In a Prospectus

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Item 3. Risk/Return Summary: Fee Table

* * * * *

Instructions

* * * * *

3. *Annual Fund Operating Expenses.*

(a) ''Management Fees'' include investment advisory fees (excluding any fees based on the Fund's performance), any other management fees payable to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates that are not included as ''Other Expenses.''

(b) If the Fund is subject to investment advisory fees payable to the investment adviser or its affiliates that are based on the performance of the Fund (''performance fees''), disclose these fees in a caption to the ''Annual Fund Operating Expenses'' portion of the table directly below and indented equally to the caption titled ''Management Fees.'' Title the additional caption: ''Performance Fees.'' The basis on which performance fees are imposed should be described briefly in a note to the table. The note should provide a cross-reference to the discussion in Item 10(a)(1)(ii)(B) for a more complete description of the performance fee. The note also should explain that performance fees may be substantially higher or lower because these fees are based on the performance of the Fund, which may fluctuate over time.

* * * * *

4. *Example.*

* * * * *

(f) Reflect any performance fee, consistent with instruction 3(b), above, to the extent applicable.

(g) Include the second 1-, 3-, 5-, and 10-year periods and related narrative explanation only if a sales charge (load) or other fee is charged upon redemption.

* * * * *

6. *New Funds.* For purposes of this Item, a ''New Fund'' is a Fund that does not include in Form N–1A financial statements reporting operating results or that includes financial statements for the Fund's initial fiscal year reporting operating results for a period of 6 months or less. The following Instructions apply to New Funds.

* * * * *

(c) A New Fund may show zero performance fees payable to the investment adviser or its affiliates in the performance fees caption of the fee table. Thereafter, the Fund must show the performance fees paid to the investment adviser or its affiliates during the prior fiscal year as a percentage of the value of your investment.

* * * * *

Item 10. Management, Organization, and Capital Structure

(a) *Management.*

(1) *Investment Adviser.*

(i) Provide the name and address of each investment adviser of the Fund, including sub advisers. Describe the investment adviser's experience as an investment adviser and the advisory services that it provides to the Fund.

(ii) Describe the compensation of each investment adviser of the Fund as follows:

(A) If the Fund has operated for a full fiscal year, state the aggregate fee paid to the adviser for the most recent fiscal year as a percentage of average net assets. If the Fund has not operated for a full fiscal year, state what the adviser's fee is as a percentage of average net assets, including any breakpoints.

(B) If the investment adviser's compensation includes a performance fee, provide the following information:

(1) the rate of the performance fee and the basis upon which it is calculated, including whether the fee is determined with reference to realized gains, unrealized gains, investment income, or any combination thereof;

(2) whether the performance fee is calculated on the Fund's total investment return before or after deducting fees, commissions or expenses;

(3) the measurement period over which the performance fee is assessed;

(4) a description of any features that limit or condition the payment of a performance fee to the investment adviser, including, but not limited to, any preferred return, hurdle rate, high-water mark, loss carryforward mechanism, or any other features that limit or condition the payment of a performance fee to the investment adviser; and

(5) a graphical representation that illustrates the calculation of the performance fee across a range of hypothetical performance scenarios.

(C) If any portion of the investment adviser's compensation is not based on a percentage of average net assets and is not a performance fee, describe the basis of the adviser's compensation.

(iii) Include a statement, adjacent to the disclosure required by paragraph (a)(1)(ii) of this Item, that a discussion regarding the basis for the board of directors approving any investment advisory contract of the Fund is available in the Fund's reports filed on Form N–CSR, and providing the period covered by the most recent Form N–CSR report that includes this discussion.

* * * * *

Appendix C—Form N–2

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Part A—Information Required in a Prospectus

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Item 3. Fee Table and Synopsis

* * * * *

Instructions

* * * * *

Annual Expenses

* * * * *

7. a. ''Management Fees'' include investment advisory fees (excluding any component thereof based on the performance of the Registrant), any other management fees payable to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates not included as ''Other Expenses,'' and any expenses incurred within the Registrant's own organization in connection with the research, selection, and supervision of investments. Where management fees are ''tiered'' or based on a ''sliding scale,'' they should be calculated based on the fund's asset size after giving effect to the anticipated net proceeds of the present offering. With respect to a best-efforts offering with breakpoints, assume the maximum fee will be payable.

b. In lieu of the information about management fees required by Item 3.1, a business development company with a fee structure that is not based solely on the aggregate amount of assets under management should provide disclosure concerning the fee arrangement to allow investors to assess its impact on the Registrant's expenses; a business development company may use any appropriate expense categories and may include items that may not, for accounting purposes, be treated as expenses. A business development company with special fee arrangements should provide a cross-reference, where applicable, to the discussion in Item 9.1.a of special management compensation plans.

c. If the Registrant is subject to investment advisory fees payable to the investment adviser or its affiliates that are based on the performance of the Registrant (''performance fees''), disclose these fees in a caption to the ''Annual Expenses'' portion of the table directly below and indented equally to the caption titled ''Management Fees.'' Title the

additional caption: ''Performance Fees.'' The basis on which performance fees are imposed should be described briefly in a note to the table. The note should provide a cross-reference to the discussion in Item 9.1.b for a more complete description of the performance fee. The note also should explain that performance fees may be substantially higher or lower because these fees are based on the performance of the Registrant, which may fluctuate over time.

A New Fund may show zero performance fees payable to the investment adviser or its affiliates in the performance fees caption of the fee table. Thereafter, the Registrant must show the performance fees paid to the investment adviser during the prior fiscal year as a percentage of the net assets attributable to common shares.

* * * * *

11. a. Base the percentages of ''Annual Expenses'' on amounts incurred during the Registrant's most recent fiscal year, but include in expenses amounts that would have been incurred absent expense reimbursement or fee waiver arrangements. If the Registrant has changed its fiscal year and, as a result, the most recent fiscal year is less than three months, use the fiscal year prior to the most recent fiscal year as the basis for determining ''Annual Expenses.''

b. If there have been any changes in ''Annual Expenses'' that would materially affect the information disclosed in the table:

(1) Restate the expense information using the current fees as if they had been in effect during the previous fiscal year; and

(2) In a footnote to the fee table, disclose that the expense information in the table has been restated to reflect current fees.

c. A change in ''Annual Fund Expenses'' means either an increase or decrease in expenses that incurred during the most recent fiscal year or that is expected to occur during the current fiscal year. A change in ''Annual Fund Expenses'' does not include a decrease in annual expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement resulting from an increase in the Registrant's assets.

* * * * *

Example

* * * * *

12. For purposes of the Example in the table:

* * * * *

d. reflect any performance fee, consistent with instruction 7.c. above, to the extent applicable; and

* * * * *

13. *New Fund.* A ''New Fund'' is a Registrant that does not include in Form N–2 financial statements reporting operating results or that includes financial statements for the Registrant's initial fiscal year reporting operating results for a period of 6 months or less.

* * * * *

Item 9. Management

1. General. Describe concisely how the business of the Registrant is managed, including:

* * * * *

b. Investment Advisers. For each investment adviser of the Registrant:

* * * * *

(3) a description of its compensation; and

Instructions.

1. State generally what the adviser's fee is or will be as a percentage of average net assets, including any break-point. It is not necessary to include precise details as to how the fee is computed or paid.

2. If the adviser's compensation includes a performance fee, provide the following information:

a. the rate of the performance fee and the basis upon which it is calculated, including whether the fee is determined with reference to realized gains, unrealized gains, investment income, or any combination thereof;

b. whether the performance fee is calculated on the Registrant's total investment return before or after deducting fees, commissions or expenses;

c. the measurement period over which the performance fee is assessed;

d. a description of any features that limit or condition the payment of a performance fee to the adviser, including, but not limited to, any preferred return, hurdle rate, high-water mark, loss carryforward mechanism, or any other features that limit or condition the payment of a performance fee to the adviser; and

e. a graphical representation that illustrates the calculation of the performance fee across a range of hypothetical performance scenarios.

3. If any portion of the adviser's fee is not based on a percentage of average net assets and is not a performance fee, describe the basis of the adviser's compensation.

* * * * *

[FR Doc. 2026–20474 Filed 10–5–26; 8:45 am]

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FEDERAL REGISTER

Vol. 91 Tuesday,
No. 192 October 6, 2026

Part III

Department of the Treasury

Internal Revenue Service
Department of Labor
Employee Benefits Security Administration

Department of Health and Human Services

26 CFR Part 54
29 CFR Part 2590
45 CFR Part 147
Transparency in Coverage; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[TD 10058]

RIN 1545–BR51

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AC30

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 147

[CMS–9882–F]

RIN 0938–AV64

Transparency in Coverage

AGENCY: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: These final rules set forth requirements that amend the regulations under the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code regarding price transparency reporting requirements for non-grandfathered group health plans and health insurance issuers offering non-grandfathered group and individual health insurance coverage. Specifically, these final rules are intended to improve the standardization, accuracy, and accessibility of public pricing disclosures in line with the goals of Executive Order 14221, ''Making America Healthy Again by Empowering Patients With Clear, Accurate, and Actionable Healthcare Pricing Information.'' With respect to the In-network Rate and out-of-network Allowed Amount machine-readable files, these final rules aim to achieve these goals by adding new contextual files and additional data elements like product type, provider network name, and provider network identifier; changing the reporting level for aggregation of data; removing in-network rates for unlikely provider-to-service mappings; increasing the reporting period and lowering the claims threshold for out-of-network historical data; and reducing the reporting cadence. These final rules also aim to improve the findability of all publicly disclosed machine-readable files required under the Transparency in Coverage rules, including the prescription drug file, by requiring a text file containing contact information for the files, and a footer with website URLs. These final rules also require pricing information that is made available through an online consumer tool and on paper (upon request), to also be made available by phone, and establish that the satisfaction of such requirement also satisfies the requirements of section 114 of the No Surprises Act (including for grandfathered group health plans and health insurance issuers offering grandfathered group and individual health insurance coverage that are not otherwise subject to these final rules).

DATES: These regulations are effective on December 7, 2026.

FOR FURTHER INFORMATION CONTACT: Kendra May or Jeremy Rotner, Centers for Medicare and Medicaid Services, (301) 492–4293.

Colin Harmeyer or David Sydlik, Employee Benefits Security Administration, (202) 693–8335.

Alexander Krupnick, Internal Revenue Service, Department of the Treasury, (202) 317–5500.

Individuals interested in obtaining information from the Department of Labor (DOL) concerning employment-based health coverage laws may call the Employee Benefits Security Administration (EBSA) Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the DOL's website (*www.dol.gov/agencies/ebsa*). In addition, information from the Department of Health and Human Services (HHS) on private health insurance coverage and coverage provided by non-Federal governmental group health plans can be found on the Centers for Medicare & Medicaid Services (CMS) website (*http://www.cms.gov/marketplace*), information on health care reform can be found at *http://www.healthcare.gov,* and information on surprise medical bills can be found at *http://www.cms.gov/nosurprises.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose

The Departments of Labor, Health and Human Services (HHS), and the Treasury (collectively, the Departments) issued proposed requirements in the 2019 Transparency in Coverage proposed rules (2019 proposed rules) [1] and finalized the rules in 2020 (the 2020 final rules).[2] The rules aimed to provide consumers with price and benefit information that would enable them to better evaluate health care options and make cost-conscious decisions; reduce surprises in consumers' out-of-pocket costs for health care services; create a competitive dynamic that would begin to narrow price differences for the same services in the same health care markets; foster innovation by providing industry the information necessary to support informed, price-conscious consumers in the health care market; and, over time, potentially lower overall health care costs.[3]

The public disclosures made under the 2020 final rules led to the release of an enormous amount of previously hidden pricing data. However, post-implementation, the Departments received feedback from users of the machine-readable files emphasizing the need to address certain gaps in reporting, shrink file size by reducing duplication and removing unnecessary data, and improve the usability of the files.

On February 25, 2025, President Trump issued Executive Order 14221, ''Making America Healthy Again by Empowering Patients With Clear, Accurate, and Actionable Healthcare Pricing Information'' (Executive Order 14221).[4] Among other things, Executive Order 14221 directs the Departments to take all necessary and appropriate action, including issuing proposed regulatory action to promote more transparency in health care pricing information. To better inform a response to Executive Order 14221, on June 2, 2025, the Departments published a Request for Information (RFI) seeking the public's input on ways to effectively implement or amend the prescription drug machine-readable file requirement in the 2020 final rules including information on existing prescription drug file data elements, the ability of health plans to access necessary data for reporting, as well as state approaches and innovation.[5] The Departments plan to begin working to implement the prescription drug file in short order.

To address statutory requirements and fulfill their responsibility under Executive Order 14221, the Departments proposed to amend certain requirements of the 2020 final rules in the December

[1] 84 FR 65464 (November 27, 2019).

[2] 85 FR 72158 (November 12, 2020).

[3] 85 FR 72158, 72160 (November 12, 2020).

[4] Exec. Order No. 14221, 90 FR 11005 (February 28, 2025).

[5] 90 FR 23303 (June 2, 2025).

23, 2025, Transparency in Coverage proposed rules (the proposed rules).[6] The proposed rules addressed what the Departments identified as three main barriers to fully achieving the goals of the 2020 final rules: inaccessibility due to the large size of the machine-readable files, data ambiguity due to lack of contextual information alongside the raw data, andareas of misalignment with the Hospital Price Transparency rules [7] that make comparing data across disclosures challenging. The proposed rules' Executive Summary further discussed the need for price transparency, including how it would benefit employers leveraging the data to lower their health care costs and app developers conducting analyses to offer pricing tools to individuals and employers, in addition to past regulatory and sub-regulatory action (section I.A.).[8]

After consideration of public comment to the proposed rules and to address the need for regulatory action, the Departments are finalizing these rules pursuant to the authority under section 2715A of the Public Health Service (PHS) Act, included in section 715 of the Employee Retirement Income Security Act (ERISA) and section 9815 of the Internal Revenue Code (Code), which provide that non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage must comply with section 1311(e)(3) of the Patient Protection and Affordable Care Act (Affordable Care Act).[9] This section of the Affordable Care Act addresses transparency in health coverage and imposes certain reporting and disclosure requirements on health plans that are seeking certification as qualified health plans (QHPs) that may be offered on an Exchange (as defined by section 1311(b)(1) of the Affordable Care Act).

The Departments are also finalizing these rules pursuant to the authority under the No Surprises Act, which amended chapter 100 of the Code, part 7 of ERISA, and title XXVII of the PHS Act. Among other protections, the No Surprises Act provides Federal protections against surprise billing by limiting out-of-network cost sharing and prohibiting balance billing in many of the circumstances in which surprise bills most frequently arise. Section 114 of the No Surprises Act, which added Code section 9819, ERISA section 719, and PHS Act section 2799A–4, requires group health plans and health insurance issuers to offer price comparison guidance by telephone and make a ''price comparison tool'' available on the plan's or issuer's website.

B. Summary of Costs and Cost Savings

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TABLE 1a: Summary of Annual Costs

Provision Description	Annual Cost ($)
Information Collection Requests (ICRs) Regarding Requirements for Disclosures to Participants, Beneficiaries, or Enrollees Under 26 CFR 54.9815-2715A2, 29 CFR 2590.715-2715A2, and 45 CFR 147.211*	$60,450,000
ICRs Regarding Requirements to Implement the Disclosures Required for the Utilization File (26 CFR 54.9815-2715A3(b)(2)(i), 29 CFR 2590.715-2715A3(b)(2)(i), and 45 CFR 147.212(b)(2)(i))	$9,552,155
ICRs Regarding Requirements to Respond to Machine-Readable File Inquiries (26 CFR 54.9815-2715A3(b)(2)(iii), 29 CFR 2590.715-2715A3(b)(2)(iii), and 45 CFR 147.212(b)(2)(iii))	$7,475,608
ICRs Regarding Requirements to Attest to the Accuracy and Completeness of Machine-Readable Files (26 CFR 54.9815-2715A3(b)(1)(iv), 29 CFR 2590.715-2715A3(b)(1)(iv), and 45 CFR 147.212(b)(1)(iv))	$2,961,863
Total	**$80,439,626**

* High-end estimates are represented in the table and used to determine the overall average annual cost.

[6] 90 FR 60432 (December 23, 2025).

[7] Medicare and Medicaid Programs: CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates. Price Transparency Requirements for Hospitals To Make Standard Charges Public, 84 FR 65524 (November 27, 2019); Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; Radiation Oncology Model, 86 FR 63458 (November 16, 2021); Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems; Quality Reporting Programs; Payment for Intensive Outpatient Services in Hospital Outpatient Departments, Community Mental Health Centers, Rural Health Clinics, Federally Qualified Health Centers, and Opioid Treatment Programs; Hospital Price Transparency; Changes to Community Mental Health Centers Conditions of Participation, Changes to the Inpatient Prospective Payment System Medicare Code Editor; Rural Emergency Hospital Conditions of Participation Technical Correction, 88 FR 81540 (November 22, 2023); Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems; Quality Reporting Programs; Overall Hospital Quality Star Rating; Hospital Price Transparency; and Notice of Closure of a Teaching Hospital and Opportunity To Apply for Available Slots, 90 FR 53448 (November 25, 2025).

[8] 90 FR 60432 (December 23, 2025).

[9] Except that under section 2715A of the PHS Act, a plan or coverage that is not offered through the Exchange is only required to submit information to the applicable Secretary and the State insurance commissioner, and to make such information available to the public.

TABLE 1b: Summary of One-Time Costs

Provision Description	Total Cost ($)
ICRs Regarding Requirements to Update Cost-Sharing Disclosure Reflecting Federal Balance Billing Protections (26 CFR 54.9815-2715A2, 29 CFR 2590.715-2715A2, and 45 CFR 147.211)	$45,934
To Train Customer Service Representatives and Supervisors to Provide Cost-Sharing Information for ICRs Regarding Requirements for Disclosures to Participants, Beneficiaries, or Enrollees to Provide Pricing Information via Phone (26 CFR 54.9815-2715A2, 29 CFR 2590.715-2715A2, and 45 CFR 147.211*)	$14,597,802
ICRs Regarding Requirements to Organize Files by Provider Network, Allow Service Providers or Other Parties to Organize by Provider Network Across Multiple Self-Insured Group Health Plans, and Include a Common Provider Network Name and Provider Network Identifier (26 CFR 54.9815-2715A3(b)(1)(i) and (b)(5)(iii), 29 CFR 2590.715-2715A3(b)(1)(i) and (b)(5)(iii), and 45 CFR 147.212(b)(1)(i) and (b)(5)(iii))	$51,671,077
ICRs Regarding Requirements to Include Product Type in Both In-network Rate and Allowed Amount Files (26 CFR 54.9815-2715A3(b)(1)(i)(C) and (b)(1)(ii)(A), 29 CFR 2590.715-2715A3(b)(1)(i)(C), and (b)(1)(ii)(A), and 45 CFR 147.212(b)(1)(i)(C) and (b)(1)(ii)(A))	$7,688,387
ICRs Regarding Requirements to Report Dollar Amounts Except for Only "Percentage-of-Billed Charges" Payments (26 CFR 54.9815-2715A3(b)(1)(i)(E)(1), 29 CFR 2590.715-2715A3(b)(1)(i)(E)(1), and 45 CFR 147.212(b)(1)(i)(E)(1))*	$7,688,387
ICRs Regarding Requirements to Exclude Certain Providers From In-network Rate Files and to Publish Taxonomy Files (26 CFR 54.9815-2715A3(b)(1)(i)(F), 29 CFR 2590.715-2715A3(b)(1)(i)(F) and 45 CFR 147.212(b)(1)(i)(F), and 26 CFR 54.9815-2715A3(b)(2)(iii), 29 CFR 2590.715-2715A3(b)(2)(iii), and 45 CFR 147.212(b)(2)(iii))	$46,130,323
ICRs Regarding Requirements to Aggregate Allowed Amount Files by Market Type and Allow Service Providers or Other Parties to Aggregate by Market Type Across Multiple Self-Insured Group Health Plans (26 CFR 54.9815-2715A3(b)(1)(ii), 29 CFR 2590.715-2715A3(b)(1)(ii), and 45 CFR 147.212(b)(1)(ii) and Permit Such Aggregation at the Third-Party Administrator (TPA) Level (26 CFR 54.9815-2715A3(b)(5)(iv), 29 CFR 2590.715-2715A3(b)(5)(iv), and 45 CFR 147.212(b)(5)(iv))	$15,376,774
ICRs Regarding Requirements to Implement the Utilization File (26 CFR 54.9815-2715A3(b)(2)(i), 29 CFR 2590.715-2715A3(b)(2)(i), and 45 CFR 147.212(b)(2)(i))	$175,037,782
ICRs Regarding Requirements to Add a Text File and Identify Point-of-Contact Information for Inquiries to Improve Discoverability and Accessibility of Machine-Readable Files (26 CFR 54.9815-2715A3(b)(2)(iii), 29 CFR 2590.715-2715A3(b)(2)(iii), and 45 CFR 147.212(b)(2)(iii))	$5,356,416
ICRs Regarding Requirements to Publish Machine-Readable Files in a Single Non-Proprietary, Open-Standards Format 26 CFR 54.9815-2715A1(b)(3)(i), 29 CFR 2590.715-2715A1(b)(3)(i), and 45 CFR 147.212(b)(3)(i))	$4,483,653
ICRs Regarding Requirements to Attest to the Accuracy and Completeness of Machine-Readable Files (26 CFR 54.9815-2715A3(b)(1)(iv), 29 CFR 2590.715-2715A3(b)(1)(iv), and 45 CFR 147.212(b)(1)(iv))	$5,046,281
ICRs Regarding Requirements for Phased Implementation of New and Amended Machine-Readable File Requirements (26 CFR 54.9815-2715A3(c)(1)(ii)-(iii), 29 CFR 2590.715-2715A3(c)(1)(ii)-(iii), and 45 CFR 147.212(c)(1)(ii)-(iii))	$66,624,563
Total	**$399,747,381**

* High-end estimates are represented in the table and used to determine the overall average one-time costs.

TABLE 1c: Summary of Annual Cost Savings[10]

Provision Description	Annual Amount ($)
For third-party developers and other file users: ICRs Regarding (1) Requirements to Reduce Data Cleaning Computational Costs (26 CFR 54.9815-2715A3(b)(1)(i)(F), 29 CFR 2590.715-2715A3(b)(1)(i)(F) and 45 CFR 147.212(b)(1)(i)(F)), and (2) Changing Timing Requirements for Machine-Readable Files Reporting From Monthly to Quarterly (26 CFR 54.9815-2715A3(b)(4), 29 CFR 2590.715-2715A3(b)(4), and 45 CFR 147.212(b)(4))	-$9,147,120
For plans, issuers, third-party developers, employers, and other file users: ICRs Regarding (1) Requirements to Reduce Storage Costs (26 CFR 54.9815-2715A3(b)(1)(i)(F), 29 CFR 2590.715-2715A3(b)(1)(i)(F) and 45 CFR 147.212(b)(1)(i)(F)), and (2) Changing Timing Requirements for Machine-Readable Files Reporting From Monthly to Quarterly (26 CFR 54.9815-2715A3(b)(4), 29 CFR 2590.715-2715A3(b)(4), and 45 CFR 147.212(b)(4))	-$73,317,600
For plans and issuers: ICRs Regarding (1) Requirements to Reduce Network Egress Costs (26 CFR 54.9815-2715A3(b)(1)(i)(F), 29 CFR 2590.715-2715A3(b)(1)(i)(F) and 45 CFR 147.212(b)(1)(i)(F)), and (2) Changing Timing Requirements for Machine-Readable Files Reporting From Monthly to Quarterly (26 CFR 54.9815-2715A3(b)(4), 29 CFR 2590.715-2715A3(b)(4), and 45 CFR 147.212(b)(4))	-$171,126,000
For third-party developers and other file users: ICRs Regarding Requirements to Reduce Time Locating Files by Requiring a Text File and Footer Links to Quickly Find Machine-Readable Files (26 CFR 54.9815-2715A2(b)(2)(iii) and (b)(3)(iii), 29 CFR 2590.715-2715A2(b)(2)(iii) and (b)(3)(iii), and 45 CFR 147.212(b)(2)(iii) and (b)(3)(iii))	-$1,344,120
Total	**-$254,934,840**

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II. Background

A. Statutory Background and Enactment of the Affordable Care Act and the No Surprises Act

The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010, and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) was enacted on March 30, 2010 (collectively the Affordable Care Act). As relevant here, the Affordable Care Act reorganized, amended, and added to the provisions of part A of title XXVII of the PHS Act relating to health coverage requirements for group health plans and health insurance issuers. The term group health plan includes both insured and self-insured group health plans.

The Affordable Care Act also added section 715 to ERISA and section 9815 to the Code to include the provisions of part A of title XXVII of the PHS Act, PHS Act sections 2701 through 2728, into ERISA and the Code, making them applicable to group health plans and health insurance issuers providing coverage in connection with group health plans.

Section 2715A of the PHS Act, included in section 715 of ERISA and section 9815 of the Code, provides that plans and issuers must comply with section 1311(e)(3) of the Affordable Care Act, which addresses transparency in health coverage and imposes certain reporting and disclosure requirements for health plans that are seeking certification as qualified health plans that may be offered on an Exchange. A plan or coverage that is not offered through an Exchange (as defined by section 1311(b)(1) of the Affordable Care Act) is required to submit the information required to the relevant Secretary and the relevant State's insurance commissioner, and to make that information available to the public.

Title I of Division BB of the Consolidated Appropriations Act of 2021, which included the No Surprises Act, added new provisions applicable to plans and issuers in subchapter B of chapter 100 of the Code, part 7 of ERISA, and parts D and E of title XXVII of the PHS Act. As relevant here, section 107 of the No Surprises Act added new section 9816(e) of the Code, section 716(e) of ERISA, and section 2799A–1(e) of the PHS Act, which contain requirements for plans and issuers to include certain information, in clear writing, on any physical or electronic plan or insurance identification card issued to the participants or beneficiaries in the plan or coverage. This information includes any deductible applicable to such plan or coverage, any out-of-pocket maximum limitation applicable to such plan or coverage, and a telephone number and internet website address through which such individual may seek consumer assistance information.

Further, section 114 of the No Surprises Act added section 9819 of the Code, section 719 of ERISA, and section 2799A–4 of the PHS Act, which require plans and issuers to offer price comparison guidance by telephone and make available on the internet website of the plan or issuer a price comparison tool that (to the extent practicable) allows an individual enrolled under such plan or coverage, with respect to such plan year, such geographic region, and participating providers with respect to such plan or coverage, to compare the amount of cost sharing that the individual would be responsible for paying under such plan or coverage with respect to the furnishing of a specific item or service by any such provider.

[10] For purposes of the Summary of Annual Cost Savings table and Executive Order 14192, negative values reflect reductions in costs with respect to monetized cost savings.

B. Executive Orders and Regulations

On June 24, 2019, President Trump issued Executive Order 13877, ''Improving Price and Quality Transparency in American Healthcare to Put Patients First.'' [11] Executive Order 13877 sought to improve transparency in health care and empower patients to make fully informed decisions about their health care. As Executive Order 13877 noted, ''patients often lack both access to useful price and quality information and the incentives to find low-cost, high-quality care.'' The ''opaque pricing structures'' may harm the market by protecting ''powerful special interest groups, such as large hospital systems and insurance companies'' while ''leav[ing] patients and taxpayers worse off than would a more transparent system.'' [12]

Executive Order 13877 directed the Departments to take action that would combat this issue by making meaningful price and quality information more broadly available to more Americans, thereby increasing competition, innovation, and value in the health care system. Specifically, section 3(b) of Executive Order 13877 directed the Secretaries of the Departments to issue an advance notice of proposed rulemaking, consistent with applicable law, soliciting comment on a proposal to require health care providers, health insurance issuers, and self-insured group health plans to provide or facilitate access to information about expected out-of-pocket costs for items or services to patients before they receive care.

To fulfill their responsibility under Executive Order 13877, the Departments proposed [13] and subsequently finalized the Transparency in Coverage rules in the 2020 final rules.[14] The 2020 final rules, published by the Departments on November 12, 2020, implemented section 2715A of the PHS Act, which requires group health plans and health insurance issuers offering group or individual health insurance coverage to comply with section 1311(e)(3) of the Affordable Care Act.

The 2020 final rules required non-grandfathered health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage to disclose cost-sharing information for all covered items and services to participants, beneficiaries, and enrollees through an internet-based self-service tool or, if requested by the individual, on paper. Those provisions of the 2020 final rules implemented paragraph (C) of section 1311(e)(3) of the Affordable Care Act.

The 2020 final rules also required non-grandfathered plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage to disclose on a public website three separate machine-readable files containing certain information regarding health care pricing under the plan or coverage. Those provisions of the 2020 final rules, requiring plans and issuers to disclose in-network negotiated rates, out-of-network allowed amounts and the associated billed charges, and negotiated rates and historical net prices for prescription drugs, implemented paragraph (A) of section 1311(e)(3) of the Affordable Care Act. In particular, the provisions requiring the disclosure of out-of-network allowed amounts specifically implemented the requirement in section 1311(e)(3)(A)(vii) of the Affordable Care Act that require issuers of qualified health plans (QHPs) to provide information on ''payments with respect to any out-of-network coverage.'' In addition, the Secretary of HHS determined that requiring disclosure of payment information on in-network rates and prescription drugs was appropriate under section 1311(e)(3)(A)(ix) of the Affordable Care Act.

After the 2020 final rules were issued, interested parties used GitHub and other forums to bring to the Departments' attention specific questions related to implementation and compliance. In response, the Departments have issued Frequently Asked Questions (FAQs) [15] and technical guidance.[16]

On February 25, 2025, President Trump issued Executive Order 14221,[17] ''Making America Healthy Again by Empowering Patients With Clear, Accurate, and Actionable Healthcare Pricing Information.'' Executive Order 14221 stated that ''[m]aking America healthy again will require empowering individuals with the best information possible to inform their life and healthcare choices'' with the goal to ''make more meaningful price information available to patients to support a more competitive, innovative, affordable, and higher quality healthcare system.'' To that end, the Executive Order directs the Departments to ''promote universal access to clear and accurate healthcare prices[;] . . . to improve existing price transparency requirements; increase enforcement of price transparency requirements; and identify opportunities to further empower patients with meaningful price information, potentially including through the expansion of existing price transparency requirements.'' [18]

Section 3 of Executive Order 14221 directs the Secretaries of the Departments to rapidly implement and enforce the health care price transparency regulations issued pursuant to Executive Order 13877,[19] including action to: ''(a) require the disclosure of the actual prices of items and services, not estimates; (b) issue updated guidance or proposed regulatory action ensuring pricing information is standardized and easily comparable across hospitals and health plans; and (c) issue guidance or proposed regulatory action updating enforcement policies designed to ensure compliance with the transparent reporting of complete, accurate, and meaningful data.'' [20] To fulfill their responsibility under Executive Order 14221, on December 23, 2025, the Departments published the proposed rules to amend the 2020 final rules.

C. Statutory Background for Enforcement With Regard to the Affordable Care Act and the No Surprises Act

The enforcement responsibilities of HHS and the States, with respect to oversight of compliance with the Federal insurance market reforms, are set forth in the PHS Act. Pursuant to section 2723(a)(1) of the PHS Act, as amended by the No Surprises Act, States have primary enforcement authority over health insurance issuers regarding the provisions of parts A and

[11] Exec. Order No. 13877, 84 FR 30849 (June 27, 2019).

[12] *Id.*

[13] 84 FR 65464 (November 27, 2019).

[14] 85 FR 72158 (November 12, 2020).

[15] U.S. Department of Labor, U.S. Department of Health & Human Services & U.S. Department of the Treasury, *FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 49* (August 20, 2021), available at *https://www.cms.gov/cciio/resources/fact-sheets-and-faqs/downloads/faqs-part-49.pdf* and *https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-49; FAQs About Affordable Care Act Implementation Part 53* (April 19, 2022), available at *https://www.cms.gov/files/document/faq-part-53.pdf* and *https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-53; FAQs About Affordable Care Act Implementation Part 61* (September 27, 2023), available at *https://www.cms.gov/files/document/faqs-about-affordable-care-act-implementation-part-61.pdf* and *https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-61.*

[16] Centers for Medicare & Medicaid Services, *Transparency in Coverage,* GitHub, available at *https://github.com/CMSgov/price-transparency-guide* (last visited June 15, 2026).

[17] Exec. Order No. 14221, 90 FR 11005 (February 28, 2025).

[18] *Id.*

[19] Exec. Order No. 13877, 84 FR 30849 (June 27, 2019).

[20] Exec. Order No. 14221, 90 FR 11005 (February 25, 2025).

D of title XXVII of the PHS Act. Under this framework, HHS has enforcement authority over issuers in a State if the State indicates it cannot or will not enforce a provision (or provisions) of part A or D of title XXVII of the PHS Act, or the Secretary of HHS makes a determination that the State is failing to substantially enforce a provision (or provisions) of part A or D of title XXVII of the PHS Act.[21] HHS also has primary enforcement authority with respect to the same provisions over non-Federal governmental plans, such as those sponsored by State and local government employers.[22]

The Departments of Labor and the Treasury generally have primary enforcement authority over private sector employment-based group health plans. The Internal Revenue Service (IRS) has jurisdiction over certain church plans.

D. Public Comments Received in Response to the Proposed Rules

The Departments received comments from 132 commenters in response to the proposed rules from a wide variety of interested parties, including private citizens; consumer and advocacy organizations; employers and other plan sponsors; health information technology, health care consulting, and health care staffing companies; health care providers and facilities, and health systems; health insurance issuers; service providers, including third-party administrators (TPAs); trade and professional associations; and researchers and academics. Many commenters provided detailed feedback on multiple aspects of the proposed rules and in response to various specific comment solicitations included in the preamble to the proposed rules.

The Departments received many comments expressing general support for the proposed rules, stating that the proposals would help control health care costs and empower consumers to make more informed decisions by improving the accuracy and usability of Transparency in Coverage data, reducing administrative burden for plans and issuers, and aligning with the Hospital Price Transparency requirements. The Departments also received many comments supporting technical and structural changes, including moving to network-level reporting, standardizing file structures, requiring additional contextual information, moving to a quarterly reporting cadence, requiring footer links to the location of the machine-readable files, and excluding from the data set providers who are unlikely to provide services typically outside their scope of practice. The Departments also received several comments supporting alignment with the Hospital Price Transparency requirements, stating that such alignment would reduce duplication, facilitate comparisons, and support more meaningful analyses of health care cost drivers. The Departments respond to these comments in section III. of this preamble.

The Departments also received several comments expressing general disagreement with the proposed rules and concern with the Departments' broader approach to Transparency in Coverage, stating that the proposals leave significant gaps that would undermine the goals of the statute. Several commenters expressed concern that the proposed rules could reduce competition in concentrated health insurance markets and place insufficient emphasis on quality as a factor in health care decision-making and suggested that the Departments work directly with physicians and other providers to inform price transparency. The Departments also received several comments stating that, despite the proposed improvements, fundamental issues of machine-readable file incompleteness, ambiguity, and usability would persist and continue to hinder data interpretation. In addition, several commenters did not support the proposed rules because they believed the proposals would increase costs and administrative burden for group health plans, particularly small and regional plans, and make the machine-readable files more complex for users to access. The Departments also received several comments expressing concern that the proposed rules favor researchers and academics over the development of consumer decision-support tools and focus on price without including quality or outcomes data needed to inform consumer decision-making.

The Departments received many comments suggesting additional ways in which the Departments could use their statutory authority to strengthen the Transparency in Coverage requirements, particularly by reducing barriers to accessibility and improving data usability. The Departments received a few comments recommending standardized, plain-language, consumer-facing summaries that translate machine-readable file data into estimated out-of-pocket costs, including deductible status, coinsurance, and network tier information. The Departments also received a few comments noting that issuers relying on TPAs to comply with Transparency in Coverage requirements may face barriers to accessing their own data. A few commenters recommended requiring the establishment of a unified national standards authority, creation of a national database compiling machine-readable file rates, and expansion of reporting requirements to additional payers or coverage programs, such as Medicaid managed care plans and Medicare Advantage plans.

Many commenters requested the Departments increase their enforcement activity, including through an increased use of audits, warning letters, corrective action plans, and monetary fines. Additionally, a commenter encouraged the Departments to take steps to publicly disclose information related to non-compliance warnings, corrective action plans, and civil money penalties, similar to existing enforcement protocols under the Hospital Price Transparency requirements.

The Departments respond to these comments in more detail in the relevant subsections of section III. of this preamble. The Departments recognize that plans and issuers may need to examine contracts with TPAs to identify if changes are necessary to enable access to the data required under these final rules. The Departments are not requiring standardized summaries of estimated out-of-pocket costs, including deductible status, coinsurance, and network tier information, because the data in the machine-readable files are rates and historic billed charges only and cannot reflect an individual consumer's personalized estimated cost-sharing liability, including accumulators and deductible progress. Requiring this information to be made available in the machine-readable files would be duplicative of the personalized cost-sharing information available through the internet-based self-service tool.[23] Nevertheless, the Departments anticipate that researchers, employers, and other file users will use the machine-readable file data to analyze and compare health care prices and that third-party developers will build tools and apps that make the information more accessible and useful to consumers and other purchasers of health care, thereby promoting greater transparency for the broader public benefit.

The Departments appreciate commenters' suggestion to create a national database of compiled machine-

[21] *See* PHS Act section 2723(a)(2) and (b)(1)(A); 45 CFR 150.203.

[22] PHS Act section 2723(b)(1)(B).

[23] 26 CFR 54.9815–2715A2(b)(2)(i), 29 CFR 2590.715–2715A2(b)(2)(i), and 45 CFR 147.211(b)(2)(i).

readable file negotiated rates and allowed amounts, but note that plans and issuers have been posting their files in an established manner for more than four years, creating consistency in their operations and for the public in finding the files. Additionally, findability will be further enhanced through the Text File as discussed in section III.C.8.d. of this preamble and the footer requirement as discussed in section III.C.10. of this preamble. Creating a new system to submit such information to the Departments would be overly burdensome in light of the other new requirements in these final rules. Further, rules regarding Medicaid managed-care and Medicare Advantage plans are beyond the scope of section 2715A of the PHS Act and these final rules.

A commenter noted that some payers have not meaningfully updated machine-readable file data in years and warned that without an enforcement mechanism tied to update frequency, the quarterly cadence risks allowing widespread noncompliance to persist.

A commenter recommended that the Departments clarify the distinct role of States and the Federal Government and their jurisdictions in enforcement responsibility. Another commenter recommended that the Departments assign primary enforcement authority to a Federal entity, such as the Center for Consumer Information and Insurance Oversight (CCIIO), to improve compliance with the Transparency in Coverage requirements. Another commenter encouraged the Departments to increase coordination with State departments of insurance.

A commenter requested that the Departments create a safe harbor or non-enforcement policy for employers who report non-compliance to the Departments, given that many health insurance purchasers hire service providers to handle their machine-readable file responsibilities. Another commenter wanted the Departments to require owners of the provider networks to share a complete and accurate set of health claims data with a self-insured plan sponsor and their service providers. A commenter requested that the Departments defer to States when regulating ERISA plans, as well as strengthen enforcement authority over ERISA plan administrators. A few commenters encouraged the Departments to establish new enforcement procedures, and one of these commenters criticized the Departments for relying on a discretion-based enforcement approach. A commenter encouraged the Departments to increase coordination with State departments of insurance.

The Departments look forward to the reforms put forth by these final rules helping achieve the promise of price transparency to empower Americans and lower costs. The Departments agree that enforcement of the Transparency in Coverage requirements is critical to the ongoing usefulness of the published data and share commenters' concerns about plans and issuers failing to maintain updated and accurate files as required. The Departments also recognize that there is continued public interest in learning about compliance and enforcement actions with respect to the Transparency in Coverage requirements.

The Departments have been engaged in compliance and enforcement efforts since the 2020 final rules requirements became effective. With the implementation of these final rules, the Departments will prioritize compliance and enforcement through existing authorities and will work to ensure that any enforcement actions will be transparent to the public.

Under chapter 100 of the Code, Part 7 of ERISA, and title XXVII of the PHS Act, as applicable, the Departments may require corrective actions and impose civil monetary penalties, or seek equitable or other forms of remedial relief[24] through voluntary compliance or otherwise, to the extent permitted under applicable law, when the Departments find violations through market conduct examinations and investigations of plans and issuers within their jurisdiction.

With respect to the commenter who requested clarity on which entities have enforcement authority, the Departments reiterate the applicable jurisdictions of enforcement authority stated at the beginning of section II.C. of this preamble. The Department of Labor has primary enforcement authority over ERISA plans. State regulators maintain enforcement authority over health insurance coverage offered by health insurance issuers in the group and individual markets unless the State notifies HHS that it has not enacted legislation to enforce or HHS determines that a State has failed to substantially enforce such requirements, as described in section 2723(a)(2) of the PHS Act and implementing regulations under 45 CFR 150 subpart B. HHS has direct enforcement authority over non-Federal governmental plans in all jurisdictions.

In response to the commenter who requested that the Departments require owners of provider networks to share a complete and accurate set of health claims data with a self-insured plan sponsor and their service providers, the Departments remind plans and issuers of the prohibitions on gag clauses under the Consolidated Appropriations Act, 2021. Specifically, section 9824 of the Code, section 724 of ERISA, and section 2799A–9(a)(1) of the PHS Act prohibit group health plans and health insurance issuers offering group health insurance coverage from entering into an agreement with a health care provider, network or association of providers, TPA, or other service provider offering access to a network of providers that would directly or indirectly restrict the plan or issuer from electronically accessing de-identified claims and encounter information or data for each participant, beneficiary, or enrollee in the plan or coverage upon request, consistent with certain Federal privacy regulations.[25]

With respect to the commenter who expressed concerns about employers' and self-insured plans' ability to comply with the requirements of these final rules, the Departments point to the special rules as finalized in this rule at 26 CFR 54.9815–2715A3(b)(5), 29 CFR 2590.715–2715A3(b)(5), and 45 CFR 147.212(b)(5), which articulate responsibility for group plans that enter into a written agreement with a health insurance issuer or a third party to provide the required machine-readable file information. If a self-insured plan sponsor is concerned that the plan's TPA may not be capable of fulfilling the requirements of the rule on its behalf, the plan should take all necessary steps to address such concern in its contract with the TPA.

The Departments received one comment seeking confirmation that, as stated in the preamble to the 2020 final rules,[26] ''denominational health plans'' are outside the scope of the Transparency in Coverage requirements. In the preamble to the 2020 final rules, the Departments stated that all plans subject to section 2715A of the PHS Act must comply with the rule's requirements. The Departments also stated that section 2715A of the PHS Act applies to group health plans and health insurance issuers offering group or individual health insurance coverage and not to, among others, ''denominational health plans,'' without defining the term. These final rules do not exclude denominational health plans that are church plans within the

[24] Including under ERISA section 502(a)(5).

[25] As added by section 201 of title II (Transparency) of division BB of the Consolidated Appropriations Act, 2021.

[26] 85 FR 72158, 72252 (November 12, 2020).

meaning of section 3(33) of ERISA and section 414(e) of the Code because church plans are group health plans and the Departments have concluded that the statute provides no authority to exclude them.

Many commenters wanted the Departments to focus enforcement not just on whether the machine-readable files are being made publicly available, but to ensure that the data contained within the files are complete and accurate. Another commenter recommended Department-hosted ''connectathon'' events to validate Transparency in Coverage data. Many commenters urged stronger accountability for the validity and accuracy of the data by including attestation requirements, with commenters stating that, without such safeguards, the data would be of limited value to consumers.

In addition to the above enforcement tools, the Departments are finalizing an attestation requirement as an additional step to address the concerns about the accuracy of the information provided and help ensure its validity. The Departments discuss this and respond to the above comments in more detail in section III.C.7. of this preamble.

Many commenters submitted comments that were not within the scope of the policies proposed under the proposed rules, including comments on requirements related to the 2019 Hospital Price Transparency rule,[27] Advanced Explanation of Benefits,[28] the claims review process and timeline, enforcement of the No Surprises Act balance billing protections,[29] price transparency for Medicare plans, future rulemaking plans on additional price transparency policies, and quality data transparency.

After reviewing the comments received, the Departments are finalizing the proposed rules, with some changes in response to comments, as described in more detail later in this preamble, to make pricing information more accurate, more accessible, and more actionable.

E. Technical Amendments

These final rules include a series of technical amendments to the way group health plans and health insurance issuers offering group or individual health insurance coverage are referenced in 26 CFR 54.9815–2715A2 and 54.9815–2715A3, 29 CFR 2590.715–2715A2 and 2590.715–2715A3, and 45 CFR 147.211 and 147.212. In the 2020 final rules, the Departments generally adopted the convention of referring to those entities using the terms ''group health plan'' and ''health insurance issuer'' throughout the regulations, except that where the Departments referred to those entities more than once in the same paragraph, the terms ''plan'' and ''issuer'' were used after the initial instance. However, that convention was not applied evenly.

Therefore, in the proposed rules, the Departments proposed technical amendments to align the terms used to describe those entities with that convention in paragraphs (b)(1)(i)(A), (b)(1)(i)(B), (b)(2)(ii), (b)(3)(i), and (b)(3)(ii) of the internet-based self-service tool disclosure requirements in 26 CFR 54.9815–2715A2, 29 CFR 2590.715–2715A2, and 45 CFR 147.211; and paragraphs (b)(1)(i)(D), (b)(5)(i), and (b)(5)(ii) the machine-readable file disclosure requirements in 26 CFR 54.9815–2715A3, 29 CFR 2590.715–2715A3, and 45 CFR 147.212. The Departments did not receive any comments on these technical amendments and are therefore finalizing them as proposed. These changes are technical in nature and do not affect the rights or obligations of any plan, issuer, or other entity.

In addition, the Departments proposed to modify 26 CFR 54.9815–2715A3(b)(3)(ii), 29 CFR 2590.715–2715A3(b)(3)(ii), and 45 CFR 147.212(b)(3)(ii) to clarify, as written elsewhere in paragraphs (b)(3)(i) and (b)(3)(iii), the machine-readable files being described are in paragraphs (b)(1) and (2) of the section.

For consistency with Department of the Treasury and Department of Labor regulations, HHS is amending the section heading of 45 CFR 147.211 to ''Transparency in coverage—required disclosures to participants, beneficiaries, and enrollees'' instead of ''Transparency in coverage—required disclosures to participants, beneficiaries, or enrollees.''

III. Overview of the Final Rules

A. Definitions

To support proposed amendments to the Allowed Amount File provision (discussed in more detail in section III.C.6. of this preamble) and to promote consistency in data organization, the Departments proposed to add new paragraphs 26 CFR 54.9815–2715A1(a)(2)(xi), 29 CFR 2590.715–2715A1(a)(2)(x), and 45 CFR 147.210(a)(2)(xi) to define the term ''health insurance market'' and to redesignate the paragraphs that follow accordingly.[30] The Departments proposed that ''health insurance market'' would mean, irrespective of State, one of the following:

- The individual market, as defined in 45 CFR 144.103 (other than short-term, limited-duration insurance or individual health insurance coverage that consists solely of excepted benefits).
- The large group market, as defined in 45 CFR 144.103 (other than coverage that consists solely of excepted benefits).
- The small group market, as defined in 45 CFR 144.103 (other than coverage that consists solely of excepted benefits).
- For purposes of self-insured group health plans (other than account-based plans, as defined in 26 CFR 54.9815–2711(d)(6)(i), 29 CFR 2590.715–2711(d)(6)(i), and 45 CFR 147.126(d)(6)(i), and plans that consist solely of excepted benefits), all self-insured group health plans maintained by the plan sponsor.

The Departments sought comment on this proposed definition. After consideration of public comments, the Departments are finalizing this definition with modifications that add cross-reference citations to the relevant definitions of excepted benefits for additional clarity. Specifically, the Departments are adding a cross-reference to the definition of excepted benefits in 45 CFR 148.220 to 26 CFR 54.9815–2715A1(a)(2)(xi)(A), 29 CFR 2590.715–2715A1(a)(2)(x)(A), and 45 CFR 147.210(a)(2)(xi)(A). This definition of the term applies to coverage in the individual health insurance market. The Departments also are adding a cross-reference to the definition of excepted benefits in 26 CFR 54.9831–1(c), 29 CFR 2590.732(c), or 45 CFR 146.145(b) to 26 CFR 54.9815–2715A1(a)(2)(xi)(B) through (D), 29 CFR 2590.715–2715A1(a)(2)(x)(B) through (D), and 45 CFR 147.210(a)(2)(xi)(B) through (D), respectively. This definition of the term applies to group health plans.

Several commenters supported the Departments' proposed definition of ''health insurance market'' for the purposes of the proposed amendments to the Allowed Amount File provision. These commenters expressed that clearly and consistently defining the health insurance market categories

[27] 83 FR 41141 (August 17, 2018).

[28] Public Law 116–260 (Dec. 27, 2020).

[29] Title I of Division BB of the Consolidated Appropriations Act, 2021.

[30] 90 FR 60432, 60442 (December 23, 2025) (proposing to redesignate paragraphs (a)(2)(xi) through (xxii) as paragraphs (a)(2)(xii) through (xxiii) under 26 CFR 54.9815–2715A1 and 45 CFR 147.210; and to redesignate paragraphs (a)(2)(x) through (xxi) as paragraphs (a)(2)(xi) through (xxii) under 29 CFR 2590.715–2715A1).

would reduce ambiguity and variability in reporting. A few commenters also noted that delineating four separate markets and requiring separate out-of-network Allowed Amount machine-readable files for each market would support the comparability of the files and enable more accurate evaluation of affordability, network adequacy, and cost drivers across the system. A few commenters highlighted that this proposed definition aligns concepts of the Transparency in Coverage requirements with requirements included in the No Surprises Act. Another commenter stated that the proposed definition would provide additional information to the public about negotiated rates as they are anchored in qualifying payment amount (QPA) calculations and provide better insight to the Federal agencies tasked with enforcing QPA calculation requirements.

The Departments agree with commenters that the definition of the term ''health insurance market'' promotes consistent data organization across plans and issuers in the market-level Allowed Amount Files, for which the Departments are finalizing requirements, as discussed in section III.C.6. of this preamble, with modifications to cross-reference the relevant definitions of excepted benefits for clarity. The Departments also agree that clearly delineating each market included in the definition and requiring separate machine-readable files for each market supports the analytic value of these files.

A commenter disagreed with the Departments' proposed definition of ''health insurance market.'' The commenter expressed that including self-insured group health plans in the definition would lead to confusion for those plans as well as file users given the variability in State definitions of this term. The commenter recommended that self-insured group health plans be defined as ''self-insured'' separately from ''health insurance market.'' Additionally, another commenter recommended that the Departments use the term ''health coverage market'' rather than ''health insurance market'' given that the proposed definition includes self-insured group health plans.

The Departments acknowledge the commenter's concern about confusion regarding the variability in State definitions of the term, ''health insurance market.'' However, these final rules specify that the definition of ''health insurance market'' for the purposes of organizing the Allowed Amount Files is established ''irrespective of the State.'' Additionally, the Departments are not aware of any confusion among self-insured group health plans based on a similar definition of ''insurance market'' included in the method for calculating the QPA at 26 CFR 54.9816–6(a)(8), 29 CFR 2590.716–6(a)(8), and 45 CFR 149.140(a)(8).[31] The Departments have determined that employing similar definitions for purposes of calculating the QPA under the No Surprises Act and for the Transparency in Coverage regulations reduces burden on interested parties that must fulfill reporting requirements under both regulatory frameworks. To further clarify the definition, the Departments have added cross-reference citations to the relevant definitions of excepted benefits. Therefore, the Departments are finalizing the definition with those modifications.

B. Requirements for Disclosing Cost-Sharing Information to Participants, Beneficiaries, and Enrollees

1. Balance Billing Protection Statement

The Departments proposed to amend the balance billing protection statement that plans and issuers are currently required to include along with the required cost-sharing disclosures to participants, beneficiaries, and enrollees under 26 CFR 54.9815–2715A2(b)(1)(vii)(A), 29 CFR 2590.715–2715A2(b)(1)(vii)(A), and 45 CFR 147.211(b)(1)(vii)(A). The proposed amendments would require language in the balance billing protection statement that the cost-sharing information in the self-service tool does not account for potential additional amounts in situations where applicable State and Federal law allow out-of-network providers to bill participants, beneficiaries, or enrollees for the difference between a provider's billed charges and the sum of the amount collected from the plan or issuer and the amount collected from the participant, beneficiary, or enrollee in the form of a copayment, coinsurance, or deductible amount (the difference referred to as balance billing). These changes were proposed to reflect the existence of the Federal balance billing protections set forth in the No Surprises Act, which were not yet enacted when the current balance billing protection statement language was finalized in the 2020 final rules. This balance billing protection statement would not be required if the State in which the item or service was furnished prohibits all out-of-network providers from balance billing for all items and services payable by the group health plan or health insurance issuer.

The Departments sought comment on this proposal. After consideration of public comments, the Departments are finalizing the amendments to the balance billing protection statement as proposed.

Several commenters supported the proposed amendment to the balance billing protection statement language for the self-service tool. These commenters mentioned that this amendment would clarify patients' No Surprises Act protections and any remaining balance billing risk, giving patients clearer, actionable information to support informed decisions.

The Departments agree with commenters that amending the balance billing protection statement clarifies the protections patients have at both the State and Federal level and informs them of the potential for additional cost-sharing when using the self-service tool for estimates from an out-of-network provider.

A commenter opposed requiring plans and issuers to amend the balance billing protection statement. The commenter noted that statements should inform rather than overwhelm consumers, as excessive notifications can obscure cost information and reduce comprehension. A few other commenters requested flexibility in the wording plans and issuers are allowed to use and recommended the Departments allow plans and issuers to continue using existing disclaimer language, which currently communicates the core point that cost-sharing estimates may not reflect additional amounts that an out-of-network provider may bill when permitted by applicable law.

The Departments have determined that this balance billing protection statement increases comprehension by informing patients of the limits of the balance billing protections they may have under State and Federal laws, which will help mitigate unexpected health care costs when seeing an out-of-network provider. The Departments also note that the balance billing protection statement is an existing requirement and these final rules only amend the existing language to more accurately reflect consumers' rights under the No Surprises Act, which was not yet enacted when the current language in this statement was finalized in the 2020 final rules. The Departments also recognize that plans and issuers have existing balance billing protection statement language. The Departments note that paragraph (b)(1)(vii) does not require disclaimers to be reproduced verbatim. Plans and issuers may

[31] 90 FR 60432, 60442 (December 23, 2025).

continue to use existing disclaimer language to the extent that the language includes the required balance billing information as set forth in these final rules and is written in plain language, as defined in 26 CFR 54.9815–2715A1(a)(2)(xxi), 29 CFR 2590.715–2715A1(a)(2)(xx), and 45 CFR 147.210(a)(2)(xxi). This requirement is designed to ensure that each plan's or issuer's balance billing protection statement accurately describe the scope of the No Surprises Act balance billing protections. The Departments have determined that the balance billing protection statement as amended by these final rules sufficiently informs patients of their potential for additional costs when seeing an out-of-network provider.

2. New Required Method and Format for Disclosing Information to Participants, Beneficiaries, and Enrollees

The Departments proposed to add new 26 CFR 54.9815–2715A2(b)(2)(iii), 29 CFR 2590.715–2715A2(b)(2)(iii), and 45 CFR 147.211(b)(2)(iii) to require plans and issuers to make available to participants, beneficiaries, and enrollees, at their request, the cost-sharing estimates and other disclosures required under 26 CFR 54.9815–2715A2(b)(1), 29 CFR 2590.715–2715A2(b)(1), and 45 CFR 147.211(b)(1) via a telephone number. Under the proposal, the information required via a telephone number would be required to be accurate at the time of the request and provided at the time of the request. Plans and issuers would be required to use the same telephone number that Code section 9816(e), ERISA section 716(e), and PHS Act section 2799A–1(e), as added by section 107 of the No Surprises Act, require be indicated on any physical or electronic plan or insurance identification card issued to participants, beneficiaries, and enrollees for obtaining customer assistance. The Departments also proposed to redesignate paragraph (b)(2)(ii)(D) as new paragraph (b)(2)(iv) and amend paragraph (b)(2)(iv) to remove phone as an example of an alternative means for providing the disclosures by which a participant, beneficiary, or enrollee may request the disclosures required in paragraph (b)(1), because providing the disclosures by telephone is newly required under these rules.

In the proposed rules, the Departments also indicated their intention for these proposals to satisfy the No Surprises Act requirement that plans and issuers provide price comparison guidance by telephone, as set forth in Code section 9819, ERISA section 719, and PHS Act section 2799A–4. The Departments further explained that implementing this requirement would respond to feedback the Departments have received from participants, beneficiaries, and enrollees since the publication of the 2020 final rules, indicating a limited ability to receive cost-sharing information over the phone when requested from plans and issuers. Requiring plans and issuers to provide cost-sharing information in this way would further promote the price transparency goals of providing accurate, real-time pricing to consumers, and making that information accessible to more consumers.

In addition, at paragraph (b)(2)(iii), the Departments proposed to allow group health plans and health insurance issuers to limit the number of providers, about which cost-sharing information for covered items and services is provided, to no fewer than 20 providers per day. The Departments also proposed to require plans and issuers that choose to apply the 20 providers-per-day limit to disclose such limitation to the participant, beneficiary, or enrollee when the request for information is made for disclosures by phone. A similar 20-provider limit was already in place with respect to paper requests at 26 CFR 54.9815–2715A2(b)(2)(ii), 29 CFR 2590.715–2715A2(b)(2)(ii), and 45 CFR 147.211(b)(2)(ii). The Departments noted in the proposed rules that nothing precludes a participant, beneficiary, or enrollee from obtaining cost-sharing information from more than one method, consistent with the requirements for each method. Similarly, for consistency with the requirements for the paper method of delivery under the 2020 final rules, the Departments proposed to require plans and issuers to satisfy requests for cost-sharing information over the phone at the time of the request, and in accordance with the method and format requirements in paragraphs (b)(2)(i)(A) through (C), to ensure that participants, beneficiaries, and enrollees receive information as quickly as possible.

The Departments clarify that the 20-provider limit applies separately to the paper and phone methods. Accordingly, a plan or issuer must disclose cost-sharing information for no fewer than 20 providers by paper per day and no fewer than 20 providers by phone per day, if both are requested. However, there may be overlap with respect to the provider information provided via either method, to the extent a participant requests cost-sharing information both on paper and by phone for any of the same providers. There is no additional requirement that a plan or issuer avoid duplicative responses in that situation.

The Departments requested comment on whether this proposal should include phone service standards to ensure that consumers have access to timely and reliable information, including, in particular, what such standards should include and what parameters should be applied to each criterion. The Departments also requested comment on whether there are other relevant Federal, State, or local standards for phone service quality or any industry practices that the Departments should consider. After consideration of public comments, the Departments are finalizing these requirements as proposed, with minor, non-substantive edits to improve clarity.

Many commenters supported the Departments' proposal to require plans and issuers to make available to participants, beneficiaries, and enrollees, at their request, cost sharing estimates and other required disclosures by phone, noting that this approach aligns with existing obligations under the No Surprises Act, enhances transparency, and supports consumers' ability to plan for out-of-pocket costs and make more informed decisions about their health care. Several commenters emphasized that adding a phone option would help address barriers faced by consumers with limited internet access or lower digital literacy, including individuals residing in rural areas, and appreciated the Departments' efforts to provide multiple ways for individuals to obtain cost sharing information as a means of promoting equity and reducing disparities in access to health care pricing information. A commenter, while supportive of the proposal, expressed concern that this requirement could lead to higher plan costs that may ultimately be passed on to consumers in the form of increased premiums, and encouraged the Departments to explore a unified data center to handle phone requests. Another commenter expressed support for multi-modal access to price comparison tools, including digital platforms and telephonic assistance, but recommended that such access relies on a shared data architecture rather than parallel compliance builds, with a unified information backbone that feeds both digital and phone-based interfaces without duplicating reporting structures.

The Departments agree that aligning the Transparency in Coverage and the No Surprises Act requirements reduces regulatory burden for group health plans and health insurance issuers and minimizes confusion among payers and consumers regarding two overlapping statutory obligations. The Departments

also agree that the phone method of disclosing cost-sharing estimates helps address access concerns by providing an additional method for participants, beneficiaries, and enrollees, including those with lower digital literacy, limited internet access, and disparate geographic location, to obtain cost-sharing information and other required disclosures. The Departments are not pursuing a unified data center to handle phone requests in order to allow each plan or issuer to pursue its own approach to providing cost-sharing estimates over the phone. The Departments acknowledge concerns about potential increases in plan costs but have determined that the benefits of improved access to cost-sharing information justify any potential increases in costs, which the Departments expect would be marginal given that plans and issuers can rely on existing customer service processes to satisfy the requirement.

The Departments further emphasize that nothing in these final rules requires plans and issuers to build separate data systems or back-end infrastructure to support the requirements of the Transparency in Coverage disclosures to participants, beneficiaries, and enrollees across the required methods. The cost-sharing information required to be disclosed via phone is the same information required to be disclosed through the internet-based self-service tool and in paper form. Plans and issuers may use the same underlying data systems to generate cost-sharing information across all three modalities, provided the information disclosed meets the requirements of paragraph (b)(1) and (2), including that it is accurate at the time of the request.

A few commenters expressed concerns about the proposed 20-provider-per-day limit for phone disclosures. These commenters stated that verbally conveying cost-sharing estimates for up to 20 providers during a single call would be impracticable and time-intensive, and could increase the likelihood of consumer confusion, undermining the intended consumer experience. One of those commenters further noted that the higher limit could trigger unpredictable call volumes that reduce service quality for all callers. Some other commenters recommended that the Departments limit the requests to no more than 3 to 5 providers per phone call, while another commenter recommended a limit of 10 providers per business day, stating that this approach would better align with the practical constraints of phone-based interactions while still providing a meaningful ability for participants, beneficiaries, and enrollees to compare provider options.

In the 2020 final rules, the Departments established a limit of no fewer than 20 providers per request for paper-based disclosures. The Departments have determined the phone disclosure limit should be consistent with the paper limit to ensure that these primary alternatives to the internet-based self-service tool ensure consumers receive the same level of access to cost-sharing information regardless of whether they request it by paper or phone because the information is likely sourced in the same manner and only shared differently with the requestor, by paper, or read over the phone. Reducing the phone limit below the paper limit would create a disparity in access to information between these two comparable request-based methods that would disadvantage consumers who rely on the phone-based method, including those with limited digital literacy or limited internet access. The Departments acknowledge the possibility of consumer confusion from having to navigate through up to 20 providers over the phone, but plans and issuers are encouraged to work with consumers to provide cost-sharing estimates in the best way for each individual consumer, including reminding them that information is available by paper, or email, upon request. The Departments further clarify that the 20-provider-per-day limit applies on a per-operational-day basis—that is, per day on which the plans or issuers customer service call center is open and available to receive calls.

The Departments emphasize that the 20-provider limit, if adopted by a plan or issuer, will not necessarily result in cost-sharing information being provided for 20 providers on every call. It represents a maximum limit plans and issuers may impose for participants, beneficiaries, and enrollees who request information. The Departments expect that most consumers will seek relatively straightforward information, such as their out-of-pocket costs for a service from a specific provider or within a limited geographic area. The Departments agree with commenters about the possibility that some phone interactions may result in longer engagements, depending on the number of providers requested. However, the direct engagement afforded through phone interaction also provides an opportunity to ensure the consumer better understands the data and how to use it.

Several commenters opposed adopting additional phone-based service standards, stating that plans and issuers are already subject to customer service expectations, contractual requirements, and applicable State and Federal oversight. A commenter noted the difficulty of evaluating this proposal given that the Departments did not specify the standards under consideration and expressed concern that additional prescriptive requirements could increase cost and complexity without improving consumer access to pricing estimates. The commenter recommended not requiring plans to provide cost estimates on a 24-hour basis but rather allow plans and issuers to align hours of operation with existing customer service hours. Another commenter stated that the ability to fulfill requests by phone varies widely based on plan scale, technical capabilities, and the complexity of requests, and that promulgating one-size-fits-all standards would cause unintended consequences, wasteful expenditure, and administrative burden. A commenter expressed confidence that plans would take reasonable steps to provide the required information within reasonable timelines taking into consideration the facts and circumstances of plan administration and capabilities. Conversely, another commenter encouraged the Departments to finalize additional phone-based service standards and consider establishing clear performance expectations, such as tracking and reporting call wait times, to ensure that phone-based access is reliable and meets consumer needs.

The Departments agree with commenters that plans and issuers are already subject to customer service expectations, contractual requirements, and State oversight applicable to their overall consumer assistance operations. The Departments therefore decline to finalize additional standards beyond those proposed. The Departments have determined that plans and issuers are best positioned to set their own additional customer service standards, including based on standards they may already have in place for handling calls to the customer assistance number on the plan's or policy's identification card. Requiring additional standards, such as hours of operation, would likely be duplicative and unnecessarily burdensome.

A commenter requested that the Departments clearly articulate what operational change is required, noting that the proposal appears to formalize, and potentially expand, expectations for providing phone-based cost-sharing information. The commenter urged the Departments to clarify whether the proposed regulatory change codifies

existing practice or creates new obligations, stating that such clarification would allow plans and issuers to assess whether they are already in compliance with this requirement.

In the 2020 final rules, the Departments finalized phone-based cost-sharing disclosure as an optional means of providing the information required under paragraph (b)(1). Following enactment of the No Surprises Act, which requires plans and issuers to offer price comparison guidance by phone under Code section 9819, ERISA section 719, and PHS Act section 2799A–4, the Departments stated in FAQs Part 49 [32] that they expected to propose rulemaking requiring that the same pricing information that is available through the online tool or in paper form also be provided over the telephone upon request. These final rules codify that expectation by incorporating the phone disclosure requirement into the Transparency in Coverage regulations. For plans and issuers already providing cost-sharing information by phone consistent with the No Surprises Act and the guidance set forth in FAQs Part 49, this rule provides regulatory clarity by establishing a single, consolidated set of requirements across the online, paper, and phone disclosure modalities.

A commenter highlighted potential challenges regarding the operational readiness of service providers to provide real-time, accurate cost-sharing information, including potential underestimation of call volumes. Additionally, the commenter cautioned that service providers are likely to pass compliance costs onto plans through increased administrative fees rather than absorbing these reasonable costs.

As stated in prior rulemaking, including the 2020 final rules, and reiterated in the proposed rules, the obligation to comply with the disclosure requirements under 26 CFR 54.9815–2715A2, 29 CFR 2590.715–2715A2, and 45 CFR 147.211 rests with the group health plan or health insurance issuer offering coverage, even when the plan or issuer contracts with a service provider to perform certain functions on its behalf. The Departments recognize that service providers operating on behalf of plans and issuers may incur costs associated with implementing these requirements and may recover those costs through administrative fees. As discussed in section IV.A. of this preamble, the Departments assume that self-insured group health plans will rely on service providers to implement these requirements and, accordingly, estimate the costs of these changes as costs to plans' service providers. In addition, the Departments expect any resulting increases in administrative fees to be limited because the final requirements largely build on existing infrastructure, systems, and processes, including internet-based self-service tools that many plans, issuers, and service providers have already developed.

A few commenters raised issues outside the scope of the phone-based disclosure provision. A commenter noted that the accuracy of consumer-facing tools ultimately depends on the quality of the underlying machine-readable file data. Another commenter recommended that these final rules establish dispute protections for insured individuals who rely on phone-based cost-sharing estimates, similar to the good faith estimate protections available to uninsured individuals under the No Surprises Act. An additional commenter recommended that the Departments acknowledge in this preamble that price transparency is a necessary but insufficient condition for cost discipline and that the competitive benefit of transparency data depends on incentive alignment among intermediaries.

The Departments appreciate these comments but note that they are outside the scope of the phone disclosure provision finalized in this rule.

3. Compliance With Code Section 9819, ERISA Section 719, and PHS Act Section 2799A–4

The Departments proposed to add new 26 CFR 54.9815–2715A2(c)(7), 29 CFR 2590.715–2715A2(c)(7), and 45 CFR 147.211(c)(7) stating that a group health plan or health insurance issuer satisfies the requirements of Code section 9819, ERISA section 719, and the PHS Act section 2799A–4, as added by section 114 of the No Surprises Act, by providing the information required under paragraph (b)(1) of this section to participants, beneficiaries, and enrollees in accordance with the method and format requirements specified in paragraph (b)(2) of this section.

The Departments also proposed that grandfathered health plans and issuers offering grandfathered individual and group health insurance coverage may comply with the requirements of PHS Act 2715A, as codified in 26 CFR 54.9815–2715A2, 29 CFR 2590.716–2715A2 and 45 CFR 147.211, to satisfy the requirements of Code section 9819, ERISA section 719, and PHS Act section 2799A–4.

The Departments sought comment on all aspects of this proposal. After consideration of public comments, the Departments are finalizing these provisions as proposed.

A few commenters strongly supported the Departments' proposal to treat compliance with the Transparency in Coverage cost-sharing disclosure requirements as satisfying the No Surprises Act price comparison tool obligations under Code section 9819, ERISA section 719, and PHS Act section 2799A–4. These commenters stated that requiring plans and issuers to build two separate self-service tools would impose significant unnecessary operational burdens and duplicate infrastructure costs. A commenter noted that a single, unified self-service tool would be an administrative simplification that would allow health plans and issuers to direct implementation resources toward improving the availability and accuracy of cost-sharing estimates made available through their existing self-service tools. Other commenters emphasized that a single tool would prevent considerable consumer confusion and support a more consistent consumer experience across channels. Another commenter supported the proposed alignment of the Federal statutory requirements and noted appreciation that State law variations need not be addressed within this provision.

The Departments agree that maintaining two functionally equivalent but separately administered self-service tools would impose significant burdens on plans and issuers without a corresponding benefit to consumers. The Departments also agree that subjecting plans and issuers to overlapping regulatory obligations to build separate tools offering substantially similar information would be administratively inefficient and contrary to the consumer-oriented goals of these statutes.

The Departments note that the policy finalized in this provision is limited to the alignment of Federal requirements, and specifically, that plans and issuers providing the information in accordance with the Transparency in Coverage cost-sharing disclosure requirement regulations satisfies the Federal price comparison tool mandates set forth in Code section 9819, ERISA section 719, and PHS Act section 2799A–4, including for grandfathered group health plans and health insurance issuers offering grandfathered group and individual health insurance coverage

[32] U.S. Department of Labor, U.S. Department of Health & Human Services & U.S. Department of the Treasury, *FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 49* (August 20, 2021), available at *https://www.cms.gov/cciio/resources/fact-sheets-and-faqs/downloads/faqs-part-49.pdf* and *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-49.pdf*.

that are not otherwise subject to such requirements. The Departments clarify that satisfying the overlapping Federal statutory requirements does not alter, address, or preempt applicable State laws. Pursuant to section 2724(a) of the PHS Act, and consistent with the framework established in the 2020 final rules, State laws regulating health insurance issuers are not preempted except to the extent they prevent the application of Federal requirements. Therefore, health insurance issuers must continue to independently comply with any applicable State laws.

A commenter recommended that the Departments expand the tool requirements to mandate the disclosure of policies regarding the treatment of cost-sharing assistance. Specifically, the commenter requested that the Departments require group health plans and health insurance issuers to disclose the use of accumulator adjustment programs (AAPs), copay maximizers, and alternative funding programs (AFPs). The commenter also stated that providing this information would help patients and employers avoid benefit designs that may negatively impact patient access, adherence, and outcomes.

The Departments have determined that adding new, substantive disclosure elements to the Transparency in Coverage and No Surprises Act requirements, such as specific flags for AAPs, copay maximizers, or AFPs, is outside the scope of this rulemaking. The purpose of this provision is to align the existing operational requirements of the Transparency in Coverage and No Surprises Act tools, not to introduce new data elements. The Departments note that, under existing Transparency in Coverage regulations, plans and issuers are already required to provide a notice in plain language with the internet-based self-service tool disclosures that includes a statement ''disclosing whether the plan counts copayment assistance and other third-party payments in the calculation of the participant's, beneficiary's, or enrollee's deductible and out-of-pocket maximum.'' [33]

4. Applicability

The Departments proposed to revise 26 CFR 54.9815–2715A2(c)(1), 29 CFR 2590.715–2715A2(c)(1), and 45 CFR 147.211(c)(1) to state that the proposed amendments to paragraphs (b)(1)(i)(A), (b)(1)(i)(B), (b)(1)(vii)(A), (b)(2)(ii), (b)(3)(i), and (b)(3)(ii) and new paragraphs (b)(2)(iii) and (iv), and (c)(7) of these sections would apply for plan years (in the individual market, policy years) beginning on or after January 1, 2027. Until such time, the current provisions of paragraph (b) of these sections would continue to apply.

The Departments sought comment on this proposed applicability date. After consideration of comments, the Departments are finalizing the proposed applicability date but modifying the proposed language at 26 CFR 54.9815–2715A2(c)(1), 29 CFR 2590.715–2715A2(c)(1), and 45 CFR 147.211(c)(1) to convey that all provisions of these sections apply for plan years (in the individual market, for policy years) beginning on or after January 1, 2027, and until such date, plans and issuers must comply with 26 CFR 54.9815–2715A3 revised as of April 1, 2025, 29 CFR 2590.715–2715A3 revised as of July 1, 2025, and 45 CFR 147.211, revised as of October 1, 2025.

A few commenters commented on this proposal. A commenter supported the proposed applicability date as providing adequate implementation time, while a few other commenters recommended the Departments extend the applicability date, which commenters variously recommended delaying an additional 6 months or 12 months, to allow sufficient time to implement the operations, systems, vendor, and training changes necessary to comply with the new requirements. A few additional commenters stated that a fixed applicability date of plan or policy years beginning on or after January 1, 2027—depending on when the final rule is published in 2026—could result in insufficient time for group health plans and health insurance issuers to update their workflows to implement these provisions.

The Departments considered the proposed applicability date in light of the timing of the publication of these final rules. The Departments have determined that because the balance billing protection statement changes required under this section add to a preexisting disclosure requirement in accordance with current paragraph (b)(1)(vii)(A) [34] they require minimal additional time and effort. Furthermore, because group health plans and health insurance issuers already have customer service phone infrastructure in place, the Departments have determined the applicability date in these final rules allows sufficient time for implementation.

With regard to the requirement that plans and issuers make available via phone the cost-sharing estimates and other disclosures required under paragraph (b)(1) of this section, the Departments acknowledge that plans and issuers will need to make operational changes and train customer service representatives to comply with these requirements. However, as the Departments stated in the preamble to the proposed rules, plans and issuers have been anticipating that this method of disclosure would be required since 2021, when the Departments announced their intention to propose rules requiring that the same pricing information that is available through the Transparency in Coverage internet-based self-service tool or in paper form, as described in 26 CFR 54.9815–2715A2(b)(2), 29 CFR 2590.715–2715A2(b)(2), and 45 CFR 147.211(b)(2), must also be provided over the phone upon request, pursuant to Code section 9819, ERISA section 719, and PHS Act section 2799A–4, as added by section 114 of the No Surprises Act.[35] Therefore, the Departments expect many plans and issuers have already made progress toward meeting this requirement since then.

Additionally, as the Departments noted in the preamble to the proposed rules, group health plans and health insurance issuers are already required to include a telephone number through which participants, beneficiaries, and enrollees may seek consumer assistance information on physical or electronic plan or insurance identification cards under Code section 9816(e), ERISA section 716(e), and PHS Act section 2799A–1(e), as added by section 107 of the No Surprises Act.[36] Because new paragraph (b)(2)(iii) requires plans and issuers to leverage that existing telephone number to provide the required cost-sharing estimates and other disclosures, the Departments expect that much of the operations and systems, as well as vendors associated with the existing telephone number can

[33] 26 CFR 54.9815–2715A2(b)(1)(vii)(D), 29 CFR 2590.715–2715A2(b)(1)(vii)(D), and 45 CFR 147.211(b)(1)(vii)(D).

[34] U.S. Department of Labor, U.S. Department of Health & Human Services & U.S. Department of the Treasury, *FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 49* (August 20, 2021), available at *https://www.cms.gov/cciio/resources/fact-sheets-and-faqs/downloads/faqs-part-49.pdf* and *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-49.pdf.*

[35] *See* 90 FR 60432, 60446 (December 23, 2025); *see also* U.S. Department of Labor, U.S. Department of Health & Human Services & U.S. Department of the Treasury, *FAQs about Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 49* (August 20, 2021), available at *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-Part-49.pdf* and *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-49.pdf.*

[36] *See* 90 FR 60432, 60447 (December 23, 2025).

be leveraged for this purpose as well. For these reasons, the Departments are finalizing the applicability date as proposed to ensure consumers can timely access price comparison information over the phone.

Therefore, after consideration of these comments, the Departments have determined that the proposed applicability date for the amendments to paragraphs (b)(1)(i)(A), (b)(1)(i)(B), (b)(1)(vii)(A), (b)(2)(ii), (b)(3)(i), and (b)(3)(ii) and new paragraphs (b)(2)(iii), (b)(2)(iv), and (c)(7), is appropriate and reasonable.

C. Requirements for Public Disclosure of In-Network Rates and Historical Allowed Amount Data for Covered Items and Services From In- and Out-of-Network Providers

1. Provider Network-Level Reporting for the In-Network Rate Files

The In-network Rate File provision in the 2020 final rules at 26 CFR 54.9815–2715A3(b)(1)(i), 29 CFR 2590.715–2715A3(b)(1)(i), and 45 CFR 147.212(b)(1)(i) requires plans and issuers to make available on an internet website a machine-readable file that discloses in-network provider rates for covered items and services, with the exception of prescription drugs that are subject to a fee-for-service reimbursement arrangement. The Departments proposed to amend the introductory language of paragraph (b)(1)(i) to require plans and issuers to make available an In-network Rate File for each provider network maintained or contracted by the group health plan or health insurance issuer instead of for each coverage option offered by a group health plan or health insurance issuer. This proposed change was intended to reduce the size and total number of In-network Rate Files, allow file users to more efficiently aggregate and analyze the data, and align reporting more closely to how data is typically reported by hospitals pursuant to the Hospital Price Transparency rules [37] under 45 CFR part 180.

To make it easier for file users to determine in advance of downloading a provider network-level In-network Rate File whether it contains data of interest to them, the Departments proposed to redesignate paragraphs (b)(1)(i)(A) through (C) as paragraphs (b)(1)(i)(B) through (D), respectively, and add a new paragraph (b)(1)(i)(A) requiring each In-network Rate File to report the common provider network name for which negotiated rate information is included. To allow file users to cross-reference a particular plan or policy of interest to its in-network rates, the Departments proposed to amend redesignated paragraph (b)(1)(i)(B) to require plans and issuers to identify, for each provider network for which the group health plan or health insurance issuer must publish an In-network Rate File, each of the plan's or issuer's coverage options that use that network. The Departments also proposed to amend redesignated paragraph (b)(1)(i)(C) to specify that each In-network Rate File must include a billing code and a plain language description for each covered item or service included in the file, rather than under each coverage option offered by plans and issuers. Finally, the Departments proposed to amend redesignated paragraph (b)(1)(i)(D) to specify that all applicable rates must be included for each covered item or service included in the file, rather than for all items or services the plan or issuer covers, since not all applicable rates for items or services the plan or issuer covers are negotiated under a given provider network.

The Departments solicited comment on all aspects of these proposed requirements. After consideration of public comments, the Departments are finalizing these provisions largely as proposed, except that the Departments are adding in new paragraph (b)(1)(i)(B) a requirement that group health plans and health insurance issuers report a provider network identifier, which further redesignates proposed paragraphs (b)(1)(i)(B) through (D) as paragraphs (b)(1)(i)(C) through (E), respectively.

Many commenters supported the proposal to require one In-network Rate File per provider network (instead of per plan or policy) because commenters believe network-level organization would eliminate duplicative rates repeated across many health plans, substantially reduce file size and file counts, make data easier to download and process, better reflect how negotiated rates are operationally managed, better align payer disclosures with Hospital Price Transparency files, improve usability for employers and purchasers, and help clinicians understand network structures and track rate changes over time.

The Departments agree that organizing the In-network Rate File by provider network instead of individual plan or policy will result in the benefits commenters identified. As stated in the proposed rules, the size of the In-network Rate File can be highly dependent on how it is organized. Where multiple plans share the same negotiated rates under an umbrella provider network, organizing the In-network Rate Files by provider network rather than by each individual plan or policy in most cases decreases the size of the files, often significantly, while still maintaining data integrity. It likely also reduces the total number of In-network Rate Files because research indicates that there are far more plans and policies offered than there are distinct, separately managed provider networks.[38] Together, these anticipated reductions are expected to ease the processing burden on both file producers and file users and increase the usability for employers and purchasers. The Departments also agree with the commenters' assertion that network-level organization better reflects how negotiated rates are operationally managed, better aligns with hospital machine-readable files' data, and could help the public understand network structures and track rate changes over time.

In the proposed rules, the Departments sought comment on whether additional limitations on what constitutes a separate provider network should be required. Many commenters recommended the Departments adopt a

[37] Medicare and Medicaid Programs: CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates. Price Transparency Requirements for Hospitals To Make Standard Charges Public, 84 FR 65524 (November 27, 2019); Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; Radiation Oncology Model, 86 FR 63458 (November 16, 2021); Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems; Quality Reporting Programs; Payment for Intensive Outpatient Services in Hospital Outpatient Departments, Community Mental Health Centers, Rural Health Clinics, Federally Qualified Health Centers, and Opioid Treatment Programs; Hospital Price Transparency; Changes to Community Mental Health Centers Conditions of Participation, Changes to the Inpatient Prospective Payment System Medicare Code Editor; Rural Emergency Hospital Conditions of Participation Technical Correction, 88 FR 81540 (November 22, 2023); Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems; Quality Reporting Programs; Overall Hospital Quality Star Rating; Hospital Price Transparency; and Notice of Closure of a Teaching Hospital and Opportunity To Apply for Available Slots, 90 FR 53448 (November 25, 2025).

[38] *See* Jane M. Zhu, Yuehan Zhang, & Daniel Polsky, *Networks in ACA Marketplaces Are Narrower for Mental Health Care Than for Primary Care,* 36 Health Affairs 9 (September 5, 2017), available at *https://www.healthaffairs.org/doi/10.1377/hlthaff.2017.0325* (finding, based on 2016 *HealthCare.gov* data, 531unique provider networks were used by 281 different issuers, covering 5,022 qualified health plans in the Federally-facilitated Marketplaces). The proposed rules included citations with incorrect authors' names. Those citations have been corrected in these final rules.

clear, prescriptive definition of ''provider network'' (including what constitutes a distinct network) because they were concerned that inconsistent payer interpretations would undermine comparability, complicate enforcement, and limit the usability of network-level reporting. A few commenters provided examples of the variability in issuer network definitions and contracting practices to illustrate the potential impacts of inconsistent network definitions (for example, issuers may define networks at the product level, geographically, or by line of business). Other commenters expressed concern that, without guardrails and clear definitions, network-level reporting could become overly fragmented or otherwise inconsistent. These commenters suggested that over-segmentation could mean a proliferation of small network files (potentially increasing overall file volume), under-segmentation could mean the inclusion of rates that do not apply to many enrollees, and inconsistent naming could prevent reliable cross-payer comparison. A few commenters also recommended that the Departments require plans and issuers to clearly indicate whether a file represents a base network or a derived network, while another commenter recommended that the Departments require a standardized network hierarchy or precedence field and/or logic to be reported to resolve overlapping networks.

The Departments did not define ''provider network'' in the proposed rules but instead instructed plans and issuers to define what constitutes a separate provider network according to their current business practices.[39] This is because, while the Departments acknowledge the possibility of variability among provider network definitions and a potential reduction in comparability among files, these provisions are intended to facilitate analysis of the reported data based on the provider network structures as designed by plans and issuers, rather than require a one-size-fits-all approach.

However, the Departments also acknowledge the possibility of over- and under-segmentation where plans and issuers rely solely on their current business practices without further guidance. Thus, in response to commenters seeking more clarity on what constitutes a provider network, under these final rules, the Departments clarify that each network should represent a single collection of contracted providers and corresponding in-network rates within a defined structure and represent the providers and rates for any member who accesses services while in-network. If variations among either participating providers or in-network rates exist, those variations constitute a separate network (for example, a derived network, which is a separate provider network that is leased from another issuer) and should therefore be reflected in a separate In-network Rate File. Lastly, the Departments recognize that networks can be layered, necessitating that base and derived networks be identified appropriately, and that other network hierarchies can exist as well. The Departments will specify an approach for reporting these network variations through future technical implementation guidance.

Regarding the proposal to require plans and issuers to include the common provider network name as part of their In-network Rate Files, the Departments sought comment on whether there is another term or code, in addition to or instead of the common provider network name, that would help producers or file users identify specific provider networks. Several commenters supported the requirement to include the common provider network name but expressed concern that relying primarily on provider network names may create ambiguity because payers may use different names (for example, one internal and one external) for the same network or similar names for different networks. A few commenters agreed that the network naming conventions should align with the external, consumer-facing marketing name of the network rather than an internal or publicly unknown name. A commenter recommended that the Departments publish guidance on network naming conventions to reduce ambiguity and facilitate cross-payer analysis. Several commenters recommended that the Departments require a standardized network identifier (or require a supplemental network identifier in addition to the common provider network name), because an identifier would support accurate aggregation and comparison, prevent users from treating distinct networks as interchangeable, and improve the ability to link negotiated rates to plan design information and other datasets.

The Departments agree that the common provider network name should be an external name most familiar to participants, beneficiaries, enrollees, and the public, as currently described in technical implementation guidance.[40] As noted in the proposed rules, the purpose of this requirement is to help file users identify specific provider networks, and provider network names used solely within a plan or issuer's internal operations are unlikely to be meaningful or recognizable to file users.[41] The Departments acknowledge commenters' concerns that relying on provider network names alone would create ambiguity because plans and issuers may use different names for the same network or similar names for different networks. However, the Departments are not inclined to direct how plans and issuers must name their networks, and support allowing plans and issuers freedom to maintain existing provider network names and to create new ones within their own existing frameworks. Requiring changes to provider network naming could cause downstream confusion for group health plan sponsors and consumers.

The Departments agree that a second network identifier, in addition to the common provider network name, could help relieve ambiguity by allowing file users to identify distinct networks that use the same or similar names, thus supporting accurate aggregation of in-network rates across multiple plans or policies that use the same network, and linking to other datasets. To that end, the Departments are finalizing at new paragraph (b)(1)(i)(B) the requirement that plans and issuers disclose a provider network identifier, in addition to the common provider network name. The Departments expect plans and issuers to use the existing network identifier used for internal tracking, which the Departments expect would be minimally burdensome to disclose. Instructions on how a plan or issuer may report the network identifier if no network identifier already exists will be provided through future technical implementation guidance.

A few commenters recommended that CMS convene a working group to standardize a network-identification process for networks and associated plans, similar to how Vehicle Identification Numbers for cars are created and managed. Under this recommendation, commenters explained, CMS would create a standard for network identification and assign, register, and manage these identifiers. Creating, standardizing, and managing a network identifier process is beyond the scope of these final rules; however, the Departments acknowledge that there

[39] 90 FR 60432, 60448 (December 23, 2025).

[40] GitHub Users, *GitHub Discussion: In-Network File #897,* GitHub, available at *https://github.com/CMSgov/price-transparency-guide/blob/master/schemas/in-network-rates/README.md#provider-reference-object* (last updated January 8, 2026).

[41] 90 FR 60432, 60448 (December 23, 2025).

may be a benefit to having a standardized network identification process and may take it into further consideration.

Many commenters recommended a clear mapping of plans to provider networks, expressing concern that information could be lost in the transition from plan-level reporting to network-level reporting. Several of these commenters recommended requiring the Table of Contents File to identify the provider networks associated with a given plan. A few commenters suggested plans could be identified using the Employer Identification Number (EIN) and a few other commenters noted Health Insurance Oversight System (HIOS) identifiers (IDs) and group numbers could also identify correct plans and networks. Lastly, a few commenters suggested the Departments provide links to provider directories along with other required plan data.

The Departments agree that retaining plan-level data is essential to the usability of the In-network Rate File. The Table of Contents File is expected in the current technical implementation guidance (also referred to as Schema 2.0) if more than one plan or policy offered by an issuer or plan sponsor shares the same in-network rates. The Departments decline to require the Table of Contents File in regulation in order to maintain the Departments' flexibility to collaborate with industry on technical specifications for most efficiently reporting the required data under the In-network Rate file. For this new organization of the In-network Rate File by provider network as finalized in these rules, the Departments expect—and plan to clarify in future technical implementation guidance—that the In-network Rate File only includes data about contracted providers and their rates. All of the data for plans or policies that use that network (including HIOS, EINs, and group numbers, as appropriate) will be captured in the Table of Contents File, which serves as an external reference to the In-network Rate File. This approach allows seamless mapping of plans and policies to provider networks, while preventing inflated file sizes for the In-network Rate File. Lastly, while the Departments recognize the potential value in providing a link to provider directories because they can help consumers understand provider availability and access, the purpose of the In-network Rate File is to disclose contracted rates for providers by network, not to connect to consumer-facing provider directory information.

A commenter recommended that the In-network Rate Files explicitly exclude ''rental networks'' used solely to supplement a plan's primary network, stating that it would exponentially increase file size while providing information relevant to only a small fraction of utilization. The commenter requested the Departments clarify if plans may limit In-network Rate File disclosures to their primary contracted networks and if they are not required to include secondary rental network arrangements. Another commenter recommended the Departments specify which payer holds the contracts with providers for each network agreement represented by the In-network Rate Files, to help researchers understand each payer's relative market influence. Another commenter recommended the Departments clarify that network-level In-network Rate Files may be partitioned into multiple files or segments, suggesting that plans and issuers may face storage and bandwidth constraints when hosting files that represent large or national networks.

The Departments reiterate that an In-network Rate File must be published for each provider network maintained or contracted by the group health plan or health insurance issuer. Whether that network is rented or owned does not change the plan's or issuer's responsibility to publish rates for that provider network as the network is attached to the product(s) marketed by the plan or issuer and for which there is enrollment. This allows files to be developed independently across multiple provider networks—whether rented or owned—without expanding or increasing In-network Rate File size exponentially. The Departments also acknowledge the potential value to file users of disclosing when networks are owned versus rented but are not finalizing a requirement to include that data element at this time in order to maintain flexibility to engage with industry through GitHub on this issue. However, the Departments may consider adding an optional contextual ''rented vs. owned'' data element to identify network ownership in future technical implementation guidance. Further, both the 2020 final rules and these final rules, as well as Schema 2.0, allow plans and issuers to segment large files when necessary. The Departments recognize that this flexibility is particularly valuable for plans and issuers with large or national networks and intend to maintain it in future iterations of the schema.

Some commenters opposed the proposal to require an In-network Rate File for each provider network maintained or contracted by the group health plan or health insurance issuer. A commenter expressed concern that the proposal could require plans to create more machine-readable files as any change for a given plan, in either the in-network providers or their rates, would be seen as a new network and would require a new In-network Rate File. Another commenter stated that network-level files would reduce the precision of the data where the common provider network name is not granular enough to denote rate variation across employer-sponsored plans, narrow and tiered networks, point-solution carve-outs, and regional plan variants. Another commenter requested that the Departments permit voluntary reporting at the network level and allow plans and issuers to continue reporting In-network Rate Files at the plan level. Lastly, a commenter stated the network should be defined at the rate level as opposed to the provider level to better align with the hospital machine-readable files.

The Departments acknowledge that the proposal could cause plans to create more machine-readable files if they over-segment their provider networks; however, the Departments' clarification earlier in this section of this preamble that a provider network should reflect a single collection of contracted providers and corresponding in-network rates should guide appropriate segmentation. Similarly, this clarification should guide the approach to rate variations and—along with the required provider network identifier—should lessen the risk of reduced data precision due to relying on the common provider network name alone. In addition, organizing the In-network Rate File by provider network is a primary focus of these final rules, and all plans and issuers will be required to reorganize their In-network Rate Files in this manner to ensure consistency and comparability across the files, improve the usefulness of the data, and reduce file size. Lastly, the Hospital Price Transparency machine-readable files required under 45 CFR part 180 identify the standard charge rates a hospital has established with each payer. Aligning with the Hospital Price Transparency requirements would standardize price disclosures, allowing researchers and other file users to more accurately cross-reference and compare information. For these reasons, the Departments have determined this to be the preferred approach for reorganizing the In-network Rate File.

A few commenters made additional recommendations to the Departments regarding the In-network Rate File. A

commenter recommended that the Departments require plans and issuers to report data by provider type, stating that provider type data comparisons—such as assessing mental health and substance use care access and analyzing insurers' parity compliance—are necessary for understanding rates, but these comparisons are not possible without making provider types available. Another commenter expressed concern that many duplicate rates exist for the same service in the In-network Rate Files and recommended the Departments provide adequate differentiation of these rates. Several commenters also recommended contextual data elements to be added to the In-network Rate File that they believed would increase the precision of reported rates such as modifiers, multipliers, conditional clauses, outlier payment methodologies, outlier thresholds, carve-outs, bundled payment logic, capitation and global payment models, uniform service classifications, standard billing code types, and details on pricing and reimbursement methodologies especially for alternative reimbursement arrangements not supported by the schema. A few commenters asserted that inpatient outlier costs account for $100 billion in annual health care spending.

The Departments appreciate these commenters' recommendations and recognize that some of these contextual data elements could provide additional nuance to the rates, while others could address gaps in specificity. These suggested elements are implementation details best addressed in technical implementation guidance given they are highly fact specific. Current technical implementation guidance already addresses modifiers, multipliers, bundled arrangements, capitation and global payment models, uniform service classifications, standard billing code types, and details on pricing and reimbursement methodologies. Further technical guidance will be provided to instruct plans and issuers to provide individual rate details on items that could otherwise be obscured or inappropriately summarized within the In-network Rate Files, such as for certain multipliers and uniform service classifications. Conditional clauses are not currently captured within the structure of the machine-readable file schemas because they generally apply at the contract level rather than to a specific item or service. While the current technical implementation guidance does not address a standardized method for disclosure of outliers, wherein rates may change at high dollar thresholds, the Departments intend to provide additional guidance for Schema 3.0 to accommodate these arrangements, including stop-loss provisions, which are contractual terms designed to protect against excessively high billed charges. Disclosure of these provisions can provide greater transparency into how negotiated rates may be adjusted or applied in atypical or unusually high-cost scenarios.

The Departments also recognize the complexity of reporting carve-outs and are considering whether additional technical implementation guidance would improve consistency in reporting these arrangements. The Departments recognize that grouping provider types (for example, physician, nurse practitioner, etc.) together can make rates ambiguous. The Departments intend to address the means of referencing these provider types to their appropriate rates within the In-network Rate File through future technical implementation guidance in collaboration with industry to determine the most efficient approach. The Departments encourage interested parties to continue to engage the Departments on additional technical modifications to the In-network Rate File reporting on GitHub. Subsequent technical improvements will be addressed in future technical implementation guidance.

Lastly, as a clarification regarding plans without defined networks, as stated in the preamble to the 2020 rules, the Departments expect there will be no In-network Rate File for these types of arrangements because the plan or issuer does not have in-network providers as defined in these final rules.[42] Plans without defined networks will still be required to publish Allowed Amount Files.

2. HIOS Identifier and Product Type

In the proposed rules, the Departments proposed to amend the identifying coverage information that plans and issuers must disclose in the In-network Rate Files at redesignated 26 CFR 54.9815–2715A3(b)(1)(i)(B), 29 CFR 2590.715–2715A3(b)(1)(i)(B), and 45 CFR 147.212(b)(1)(i)(B), and in the Allowed Amount Files at 26 CFR 54.9815–2715A3(b)(1)(ii)(A), 29 CFR 2590.715–2715A3(b)(1)(ii)(A), and 45 CFR 147.212(b)(1)(ii)(A). Specifically, the Departments proposed to remove the requirement for plans and issuers to report the 14-digit HIOS ID or, if the 14-digit HIOS ID is not available, the 5-digit HIOS ID, and instead require them to report the HIOS ID associated with each coverage option for which data is being reported in a form and manner as specified in guidance issued by the Departments. The Departments did not propose to change the requirement that if no HIOS ID is available, plans and issuers must report the EIN. The Departments also proposed to add a requirement for plans and issuers to report the product type (for example, health maintenance organization (HMO) or preferred provider organization (PPO)) associated with the coverage option for which data is being reported. The Departments solicited comment on these proposed requirements. After consideration of comments, the Departments are finalizing these requirements largely as proposed, with the technical modification discussed in section III.C.1. of this preamble to redesignate proposed paragraph (b)(1)(i)(B) as paragraph (b)(1)(i)(C).The Departments are also adding a clarification that HMO and PPO are examples of product types and not an exhaustive list. Many commenters who submitted feedback on this proposal generally supported removing the 14-digit HIOS ID specificity from these final rules. A commenter interpreted the Departments' proposal to remove HIOS digit specificity as a proposal to remove the HIOS ID requirement altogether, stating that the 14-level HIOS ID is invaluable. Another commenter expressed concern that without the 14-digit HIOS ID, it would be hard to identify prices for individual health plans. The commenter recommended that plans and issuers include a crosswalk between networks and HIOS IDs in their Table of Contents Files, and when multiple rates exist within a network for the same service delivered by the same provider, the different HIOS IDs corresponding to each unique rate should be clearly identified. Yet another commenter requested that the Departments require plans and issuers to disclose the EIN of each company that purchases group health insurance coverage on the Small Business Health Options Program Marketplace, along with the HIOS Plan ID of coverage.

Under these final rules, plans and issuers are still required to report the HIOS ID, if they have a HIOS ID, to identify the plan or coverage. The Departments clarify that the addition of the common provider network name field, as discussed in section III.C.1. of this preamble, is a complement to the network-level reporting requirement for the In-network Rate Files and does not replace the HIOS ID as the primary identifier for group or individual health insurance coverage. The Departments

[42] 85 FR 72158, 72228 (November 12, 2020).

have determined that the 14-digit HIOS ID—the most granular identifier—is not always necessary to identify a coverage option. The Departments currently specify the number of HIOS digits in technical implementation guidance and plan to continue doing so at a level of granularity that best supports accurate plan identification while reducing duplicative data, which is a determination the Departments make in collaboration with the GitHub community. As explained in the proposed rules, the Departments have determined that this approach, rather than specifying the number of digits in regulation, better maintains the Departments' flexibility to determine appropriate technical reporting requirements and to make refinements in response to changes in technology or health care industry business practice.[43] The Departments anticipate limited risk that health plans will be unable to be identified, given that all plan data is currently captured in the Table of Contents File, which allows plans and issuers to combine common negotiated rates across multiple In-network Rate Files rather than publishing negotiated rates individually for each plan ID.

The Departments also acknowledge the value of capturing the EINs of small employers that purchase group health insurance coverage through the Small Business Health Options Program as the EIN would serve as the identifier when a HIOS ID may not be available but are not finalizing such a requirement at this time. The Departments are mindful that including additional requirements at this time could jeopardize plans' and issuers' ability to meet the implementation timelines being finalized in this rule and have determined it is appropriate to first assess the impact of the provisions being finalized before including additional data elements that could increase plan and issuer burden. The Departments will explore possible ways to implement this in the future.

With regard to the proposed requirement that plans and issuers include the product type of each plan or policy represented in an In-network Rate File, the Departments sought comment on whether possible inconsistency between State definitions of certain product types would present difficulties for plans and issuers in determining which product type to indicate or cause confusion among file users. The Departments also sought comment on whether self-insured plans generally identify benefit package options by product type, whether there is any existing nomenclature that self-insured plans could use to accurately identify the type of benefit arrangement being offered, and whether it is practical to extend this requirement to self-insured plans.

All commenters who provided feedback on the product type proposal supported it. A few commenters recommended that product type be included at the network level, not the plan or coverage option level, to minimize the likelihoods of duplicative data and increased file size. A few other commenters recommended that the Departments develop consistent definitions of different product types to ensure consistency in reporting. A commenter noted that terms like HMO or PPO can mean different things depending on context—in some cases, referring strictly to cost-sharing and referral mechanics at the plan level and, in others, reflecting a distinct network construct. The commenter recommended that the Departments clarify this distinction and provide a structured approach to ensure that product type is consistently represented as either a plan attribute, a network attribute, or both, where appropriate. Additionally, the commenter recommended that, with respect to self-funded employer plans, the Departments should encourage alignment with commonly accepted State-level product definitions to the extent feasible. The commenter shared that in the ERISA context, where self-insured plans are not formally required to be identified by product type, adopting a standardized nomenclature would improve consistency, reduce file user confusion, and enhance parity across fully-insured and self-funded arrangements.

The Departments acknowledge that group health plans and health insurance issuers may use product type inconsistently, as terms such as HMO or PPO can vary in meaning depending on context. Although HHS regulations at 45 CFR 144.103 (providing a definition for ''product'') and 45 CFR 147.106(e)(3)(ii) (providing exceptions to guaranteed renewability requirements for uniform modifications of coverage) reference ''product network types,'' such as HMO, PPO, exclusive provider organization (EPO), point of service (POS), or indemnity, the Departments consider product type for purposes of these final rules to be a coverage option designation rather than a network-level designation. While the Departments do not define product type in these final rules, the Departments clarify here that terms such as HMO and PPO are examples of product types and are meant to be illustrative and non-exhaustive, given that plans and issuers may use other terms consistent with their own business practices and as required by applicable State law. These terms serve as meaningful indicators of benefit design structure at the plan or policy level, even where the precise meaning of these terms may vary depending on context. The Departments also understand that the vast majority of self-insured ERISA plans, which are not subject to State law definitions, use common labels such as HMO and PPO to describe their benefit offerings, as these terms are widely recognized and readily understood by employees. To that end, the Departments intend to develop future technical implementation guidance that will allow plans and issuers to select from a list of common product types and determine an alternative for reporting if there is no common product type to accurately describe the benefit offering.

After considering the public comments received, the Departments are finalizing the amendment to redesignated 26 CFR 54.9815–2715A3(b)(1)(i)(C), 29 CFR 2590.715–2715A3(b)(1)(i)(C), and 45 CFR 147.212(b)(1)(i)(C), and 26 CFR 54.9815–2715A3(b)(1)(ii)(A), 29 CFR 2590.715–2715A3(b)(1)(ii)(A), and 45 CFR 147.212(b)(1)(ii)(A) with the minor technical and clarifying amendments described above.

3. Percentage-of-Billed-Charges Arrangements

The Departments proposed to amend redesignated 26 CFR 54.9815–2715A3(b)(1)(i)(D)(*1*), 29 CFR 2590.715–2715A3(b)(1)(i)(D)(*1*), and 45 CFR 147.212(b)(1)(i)(D)(*1*) to require that in-network rates must be reflected as dollar amounts except for contractual arrangements under which a plan or issuer agrees to pay an in-network provider a percentage of billed charges and is not able to assign a dollar amount to an item or service prior to a bill being generated. In such circumstances, plans and issuers would be required to report a percentage number, in lieu of a dollar amount, in the form and manner as specified in guidance issued by the Departments. The Departments solicited comment on this proposed requirement. After consideration of comments, the Departments are finalizing this requirement as proposed; however, other amendments to this section further redesignate this paragraph as paragraph (b)(1)(i)(E)(*1*).

In the proposed rules, the Departments explained that, although

[43] 90 FR 60432, 60449 (December 23, 2025).

the 2020 final rules [44] generally require rates to be reported as dollar amounts regardless of payment model, interested parties identified ongoing challenges with certain alternative reimbursement arrangements, most notably with ''percentage-of-billed-charges'' contracts, under which a dollar amount cannot be determined prospectively because payment is defined as a fixed percentage of charges that are not known until after a claim is generated. In FAQs Part 53, the Departments established an enforcement safe harbor permitting percentage-based reporting for such alternative payment arrangements when dollar amounts could not be derived with accuracy.[45] In FAQs Part 61, the Departments rescinded the statement of enforcement discretion provided in FAQs Part 53 and clarified that the ability to report dollar amounts is a fact-specific determination and that enforcement discretion would be exercised on a case-by-case basis, without a categorical safe harbor, while also directing plans and issuers to continue following existing technical implementation guidance.[46] In response to continued feedback and the need for greater clarity and consistency in reporting, the Departments proposed to amend the In-network Rate File requirements to permit plans and issuers to report a percentage of billed charges in limited circumstances in the form and manner specified in guidance, while continuing to require dollar-based reporting wherever a dollar amount can be determined prospectively.

Many commenters supported the proposal to require that in-network rates be reflected as dollar amounts except for contractual arrangements under which the plan or issuer agrees to pay an in-network provider a percentage of billed charges and is not able to assign a dollar amount to an item or service prior to a bill being generated. These commenters stated that the proposed exception would preserve contractual accuracy while providing a pragmatic solution that removes ambiguity and prevents the disclosure of misleading dollar figures. Additionally, commenters highlighted that this proposal aligns with current guidance that recognizes situations where a precise dollar amount cannot be determined in advance.

The Departments agree with commenters that requiring in-network rates to be reflected as dollar amounts except for certain specific arrangements can remove ambiguity, preserve contractual accuracy, and prevent the disclosure of misleading dollar figures. The goal of these transparency disclosures is to reveal how group health plans' and health insurance issuers' contractual arrangements are currently structured, rather than trying to standardize a one-size-fits-all approach.

Several commenters offered alternatives to reporting only a percentage under these arrangements, stating that the proposed exception would provide limited value and would be inconsistently implemented without additional context. A few commenters recommended requiring plans and issuers to pair any reported percentage with dollar-based context derived from historical experience, such as historical price averages, average and median paid amounts over a 12-month lookback period or percentile-based allowed amounts, and estimated dollar amounts as required in the Hospital Price Transparency rules,[47] to make the information usable and comparable. A commenter recommended that plans and issuers be required to provide the average billed amount for a particular provider group along with the percentage number. Another commenter recommended that the Departments allow reporting of percentages when historical claims data for a service does not meet the minimum volume threshold necessary to support a reliable dollar estimate, rather than publishing an estimated dollar amount that may not reflect an accurate payment experience and could confuse users and potentially erode data integrity.

The Departments acknowledge the limitations of reporting an in-network rate only as a percentage and appreciate the suggestions to add additional claims-based data elements to provide context and clarity for percentage-of-billed-charges reporting. The Departments also acknowledge the commenter's suggestion to allow plans and issuers to disclose percentage-based rates when historical claims data for a service does not meet a minimum volume threshold. However, the Departments have determined that calculating a dollar-based value derived from historical claims, such as averages, estimates, or medians, would add considerable complexity to the In-network Rate File. The In-network Rate File is intended to contain prospective data for a specific time period to accurately reflect what payer-provider contractual arrangements look like. If the Departments were to require plans and issuers to include retrospective claims data from other systems into the In-network Rate File, it would add considerable burden to create the file. In addition, the information could reduce the usability of the file, as it would result in the file including both prospective data and historical billed charges that may not reflect future billed charges. This could create confusion about which data in the In-network Rate File reflects current contractual arrangements, as historical claims data is meant to be reflected in the Allowed Amount File only. Additionally, in contrast with the Hospital Price Transparency reporting approach where there is a singular provider (the hospital), calculating averages or medians across a large volume of providers with different billed charges is unlikely to provide meaningful or actionable information for file users.

A few commenters did not support the proposal, asserting that allowing an exception to reporting a dollar amount would result in disclosures that are confusing and not actionable. These commenters indicated that percentages

[44] 85 FR 72158, 72226 (November 12, 2020).

[45] U.S. Department of Labor, U.S. Department of Health & Human Services & U.S. Department of the Treasury, *FAQs about Affordable Care Act Implementation Part 53* (April 19, 2022), available at *https://www.cms.gov/files/document/faqs-part-53.pdf* and *https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-53.*

[46] U.S. Department of Labor, U.S. Department of Health & Human Services & U.S. Department of the Treasury, *FAQs about Affordable Care Act Implementation Part 61* (September 27, 2023), available at *https://www.cms.gov/files/document/faqs-about-affordable-care-act-implementation-part-61.pdf* and *https://www.dol.gov/agencies/ebsa/about-ebsa/ouractivities/resource-center/faqs/aca-part-61;* Centers for Medicare & Medicaid Services, *Transparency in Coverage,* GitHub, *https://github.com/CMSgov/price-transparency-guide/blob/master/schemas/in-network-rates/README.md#additional-notes-1* (last updated January 8, 2026).

[47] Medicare and Medicaid Programs: CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates. Price Transparency Requirements for Hospitals To Make Standard Charges Public, 84 FR 65524 (November 27, 2019); Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; Radiation Oncology Model, 86 FR 63458 (November 16, 2021); Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems; Quality Reporting Programs; Payment for Intensive Outpatient Services in Hospital Outpatient Departments, Community Mental Health Centers, Rural Health Clinics, Federally Qualified Health Centers, and Opioid Treatment Programs; Hospital Price Transparency; Changes to Community Mental Health Centers Conditions of Participation, Changes to the Inpatient Prospective Payment System Medicare Code Editor; Rural Emergency Hospital Conditions of Participation Technical Correction, 88 FR 81540 (November 22, 2023); Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems; Quality Reporting Programs; Overall Hospital Quality Star Rating; Hospital Price Transparency; and Notice of Closure of a Teaching Hospital and Opportunity To Apply for Available Slots, 90 FR 53448 (November 25, 2025).

are difficult to interpret without the underlying billed charge, which is often unavailable, and therefore this type of disclosure would limit meaningful comparisons across plans and providers. A commenter expressed that posting negotiated rates as a percentage of billed charges directly undermines the intended purpose of the price transparency goals and that for a percentage-of-billed-charges rate to be meaningful, hospitals would have to disclose the price for that same service in their hospital pricing files. Another commenter expressed concern that allowing percentage-only reporting would create a transparency loophole and shift the burden to users to cross-reference other sources to estimate actual prices.

The Departments acknowledge these comments regarding the interpretability of percentage-of-billed-charges reporting without the availability of a billed charge amount. The Departments have determined that it is appropriate to codify the exception to reporting a dollar amount as specified in existing technical implementation guidance.[48] Since issuing this guidance, the Departments have continued to receive feedback from interested parties that arrangements where a dollar amount is unable to be determined in advance are not uncommon and should be reflected in the data.[49] Requiring plans and issuers to generate estimated dollar amounts when only a percentage of billed charges is available prospectively would introduce significant variability and limit the accuracy of the reported amount given differing underlying payment methodologies. In turn, this limited accuracy may impose more burden on users to interpret these amounts. The Departments understand that disclosing percentages without billed charges limits users' ability to view the base dollar amount a plan or issuer agrees to pay a provider, and thus limits price transparency in that manner. However, the Departments have determined that permitting this exception offers more transparency into plan and issuer activity than potentially imprecise estimates derived through various means. The Departments reiterate that plans and issuers must disclose rates as a dollar amount whenever a dollar amount can be calculated in advance, and the exception only applies under this narrow circumstance.

Finally, a few commenters recommended that the Departments codify the open text field guidance as described in FAQs Part 53 for alternative reimbursement arrangements.[50] While the Departments are not codifying the ''additional information'' field—also known as the open text field—in these final rules because it is an optional field for use only when applicable, the Departments clarify that the additional information field remains in the schema to allow plans and issuers to describe additional context to their contracting arrangements, including payment formulas or methodologies, if they cannot otherwise be captured in the existing standardized data elements of the schema.

4. Enrollment Totals

The Departments proposed to add new 26 CFR 54.9815–2715A3(b)(1)(i)(E), 29 CFR 2590.715–2715A3(b)(1)(i)(E), and 45 CFR 147.212(b)(1)(i)(E) to require group health plans and health insurance issuers to include in each In-network Rate File, current numerical enrollment totals, as of the date the file is posted, for each coverage option offered by a plan or issuer represented in the In-network Rate File. Such numerical enrollment totals would include the number of participants, beneficiaries, and enrollees (including all dependents) in the coverage option offered by a plan or issuer. In the proposed rules, the Departments explained that in response to feedback received since the publication of the 2020 final rules, additional data elements, such as plan enrollment numbers, that would allow users to weigh different plans and coverage options to understand their relative influence on the overall landscape of pricing in health insurance, would be in line with the goals stated in the 2020 final rules.[51] The Departments solicited comment on the feasibility of including the enrollment total as of the date the file is posted, whether an enrollment total on a different specified date would be more feasible for file producers and more useful to data users, and on the proposal in general.

After consideration of comments, the Departments are not finalizing the proposal to include numerical enrollment totals in the In-network Rate File.

Several commenters supported requiring group health plans and health insurance issuers to include the number of participants, beneficiaries, and enrollees (including dependents) for each coverage option represented in the In-network Rate File. These commenters stated that such enrollment data would improve the analytical usefulness of the files by providing more consistent contextual information about the reach of benefit arrangements, supporting analysis of market power and pricing trends, enabling comparison across plans and coverage options, and helping purchasers identify appropriate benchmark groups.

A few commenters recommended that the Departments consider including county-level enrollment counts to help researchers, regulators, and businesses to better understand relative market power and act upon enrollment data. A commenter urged the Departments to review methodologies on county-level enrollment as used in Medicare Advantage plans to see how they could be applied to the In-network Rate Files. Commenters also recommended clarifying enrollment attribution by limiting the total to individuals directly enrolled with the reporting plan or issuer to help avoid confusion arising from collaborative agreements across separate payer entities who share provider networks, and that multiple plans and issuers can provide a single member with network access.

Several commenters recommended reporting enrollment totals in the Table of Contents File or other plan level metadata rather than within each In-network Rate File, stating that a centralized approach would provide a more consistent reporting location, reduce duplication and reconciliation burden, and simplify implementation for plans and service providers. A commenter further recommended quarterly updates to the Table of Contents File and adding a standardized enrollment total field to the reporting plan object.

Several commenters did not support requiring plans and issuers to include the number of participants, beneficiaries, and enrollees (including dependents) for each plan or coverage option represented in the In-network Rate File. The commenters noted that enrollment and rate data reside in separate, incompatible systems, making

[48] Centers for Medicare & Medicaid Services, Transparency in Coverage Price Transparency Guide, In-network Rates Negotiated Price Object, GitHub, available at *https://github.com/CMSgov/price-transparency-guide/tree/master/schemas/in-network-rates#negotiated-price-object* (last visited August 21, 2026).

[49] 90 FR 60432, 60451 (December 23, 2025).

[50] U.S. Department of Labor, U.S. Department of Health & Human Services & U.S. Department of the Treasury, *FAQs about Affordable Care Act Implementation Part 53* (April 19, 2022), *https://www.cms.gov/files/document/faqs-part-53.pdf* and *https://www.dol.gov/agencies/ebsa/about-ebs.*

[51] 85 FR 72158, 72161 (November 12, 2020); *see also* Gary Claxton, Lynne Cotter, & Shameek Rakshit, *Challenges with Effective Price Transparency Analyses,* Peterson-KFF Health System Tracker (February 25, 2025), *https://www.healthsystemtracker.org/brief/challenges-with-effective-price-transparency-analyses/.*

compliance operationally impracticable and adding complexity in reconciling the data since member-level systems are not available for machine-readable file generation. Another commenter expressed concern that requiring exact enrollment totals may create operational burden and reporting instability. The commenter noted that enrollment figures are inherently fluid and difficult to measure precisely at a single point in time and therefore recommended allowing rounded estimates to balance transparency goals with administrative feasibility, data consistency, and comparability across plans and issuers.

Finally, a commenter recommended that the Departments convene a structured workgroup of interested parties on enrollment reporting to support implementation and help troubleshoot operational issues prior to issuing final guidance for reporting enrollment totals.

The Departments agree with commenters' assessment of the operational difficulties in reporting enrollment numbers at the plan level and are also concerned that the differences in data systems, reporting methodologies, and reconciliation processes could increase the likelihood of inconsistent or inaccurate reporting across plans and issuers, thereby reducing the reliability and comparability of the data for users. After further consideration, the Departments are concerned that the potential value for certain uses of the enrollment counts are outweighed by the significant operational burden associated with implementing this requirement and updating the enrollment numbers quarterly, and potential unintended consequences to plans, issuers, and other businesses that could result from the disclosure of enrollment trends.

A few commenters supported requiring plans and issuers to include in each In-network Rate File current numerical enrollment totals ''as of'' the file posting date for each coverage option offered by a plan or issuer represented in the file. The commenters believed the ''as of'' file posting date is the clearest and most administratively feasible reference point for both file producers and data users. A few commenters recommended allowing a set date for reporting enrollment totals and recommended the date be the first day of the month preceding the filing quarter. The commenters believed this would reduce operational burden while still providing useful context for users. Another commenter urged the Departments to require annual enrollment reporting if it is infeasible or overly burdensome for plans and issuers to include enrollment totals as of the file posting date. A commenter recommended that the Departments set the enrollment total ''as of'' report date to the posting date of the previous In-network Rate File because they believed retrospective reporting would balance minimal uncertainty with offering users a more accurate representation.

Conversely, a few commenters did not support requiring plans and issuers to include enrollment totals as of any specific date for group health plans. The commenters noted that the enrollment total comprises multiple numbers that are built on separate data sources and requires time to compile, making near real-time reporting difficult.

A few commenters also expressed that enrollment numbers may be outdated by days or weeks which could mislead users, that enrollment totals are not necessary for an individual member to make provider cost comparisons, and that the information provides limited practical value for consumers. A few other commenters mentioned data accuracy concerns, which they believed would also increase the potential for misinterpretation. A commenter did not believe enrollment totals would fulfill the Departments' goal to enable users to build analytically sound and accurate comparisons of plans and issuers' enrollment data, nor would it reduce file size. Another commenter noted that enrollment data is already available for individual and small groups under the Unified Rate Review Template public use files.

The Departments have considered alternative reporting approaches, including in response to comments explaining that enrollment information is maintained in separate systems from other machine-readable file data and would need to be appended to the In-network Rate File. After consideration of those alternatives, the Departments agree with commenters who expressed concern that point-in-time enrollment reporting could quickly become outdated or misleading due to frequent enrollment fluctuations and retroactive eligibility adjustments. The Departments also agree that requiring the reporting of enrollment totals could increase operational complexity and create challenges related to data accuracy, consistency, and comparability across reporting entities. In addition, the Departments agree with commenters' concerns regarding the limited practical utility of enrollment information for consumers, while acknowledging that consumers are not typically the primary users of the In-network Rate Files. The Departments further recognize that publicly available sources may already provide certain enrollment-related information for portions of the health insurance market. For example, under the Prescription Drug Data Collection (RxDC) requirement, plans and issuers are required to report the number of participants, beneficiaries, and enrollees, as applicable, covered on the last day of the reference year for each plan or coverage.[52] The Departments acknowledge this requires only annual reporting of the previous year's enrollment totals, whereas the Transparency in Coverage proposed requirement would require quarterly reporting of enrollment numbers which would increase the operational complexity and data validity challenges as previously mentioned.

A few commenters recommended clarification regarding where enrollment totals should be reported in the machine-readable files to ensure consistency across plans and issuers and how the different machine-readable file production scenarios would handle the enrollment totals. A commenter urged the Departments to clarify which enrollment totals apply when an employer plan generates In-network Rate Files at a plan-level compared to when a vendor produces a network-level In-network Rate File that includes the employer health plan's information. Specifically, the commenter questioned whether plan-level reporting should reflect overall plan enrollment or enrollment for a particular plan design option.

The Departments acknowledge these requests for clarification but because the proposal to require numerical enrollment totals in the In-network Rate File is not being finalized in these rules, such clarification is not necessary.

A few commenters expressed concerns regarding how reporting enrollment totals could compromise sensitive business information and the ability for plans and issuers to negotiate fair rates. A commenter noted that providers and third parties already are using data from published machine-readable files in rate negotiations and expressed concern that adding enrollment data would increase the likelihood of that practice, allowing providers to further identify areas for leverage in rate negotiations. The commenter stated that increased costs related to such practices would be passed on to consumers, ultimately undermining the cost-containment goal of price transparency. A commenter

[52] *See* 29 CFR 2590.725–4(a)(3) and 45 CFR 149.740(a)(3); *see also* 26 CFR 54.9825–6T(a)(3) (expired).

noted that without proper context, users of machine-readable files may incorrectly use enrollment figures to draw conclusions about provider networks or plan popularity, which could undermine, rather than enhance, meaningful transparency. A commenter expressed that the granularity of coverage-level enrollee reporting could raise privacy or competitive concerns for small employers. the commenter recommended a defined enrollment threshold to protect small populations without creating gaps in data for larger plans where privacy risk is negligible. A commenter recommended reporting enrollment at both the plan and network levels. Another commenter noted that network enrollment data information would better support employers with health benefit negotiations, which typically are done at the network level.

The Departments carefully considered commenters' concerns that reporting enrollment totals could have unintended consequences that expose business vulnerabilities such as limiting ability to negotiate effectively—especially for smaller entities—and lead to higher prices for consumers. The Departments note that the intention of the In-network Rate File is to reveal pricing by provider network. While enrollment counts might give context to prices, they are not directly price related. The Departments acknowledge comments recommending reporting at the network level instead of the coverage level, which could minimize the risk that parties would take advantage of enrollment information to negotiate higher rates. However, the Departments are persuaded that the operational, implementation, data reliability, and business vulnerability concerns raised by commenters outweigh the potential benefits of finalizing this proposal, regardless of how enrollment counts are reported. In particular, the Departments are concerned that requiring enrollment reporting could be unduly burdensome due to the separation of enrollment and rate data systems and may result in inconsistent or potentially misleading reporting. Accordingly, the Departments are not finalizing the proposed requirement to include enrollment totals in the In-network Rate Files.

5. Excluded Provider Information

The Departments proposed to add new 26 CFR 54.9815–2715A3(b)(1)(i)(F), 29 CFR 2590.715–2715A3(b)(1)(i)(F), and 45 CFR 147.212(b)(1)(i)(F) to the In-network Rate Files provision that would require group health plans and health insurance issuers to exclude from each In-network Rate File a provider and their negotiated rate (provider-rate combination) for an item or service, if the plan or issuer determines it is unlikely that such provider would be reimbursed for the item or service based on the scope of the provider's license or area of specialty. The Departments further proposed that plans and issuers must make such a determination using their internal provider taxonomy that is typically used during the claims adjudication process. The Departments determined that excluding provider-rate combinations that are not likely to result in a reimbursement is necessary to limit unnecessary information that inflates file size and limits the accessibility of the data in the In-network Rate File. The Departments also proposed to amend 26 CFR 54.9815–2715A3(b)(1)(i)(E)(*2*), 29 CFR 2590.715–2715A3(b)(1)(i)(E)(*2*), and 45 CFR 147.212(b)(1)(i)(E)(*2*) to direct plans and issuers not to include an in-network provider's National Provider Identifier (NPI), Tax Identification Number (TIN), and Place of Service Code if that in-network provider would be excluded as specified in paragraph (b)(1)(i)(F) of this section.

The proposed rules set forth at paragraph (b)(1)(i)(F) would require plans and issuers to use their internal provider taxonomy that is typically used during the claims adjudication process to determine which provider-rate combinations to exclude from the In-network Rate File. The internal provider taxonomy is part of the claims adjudication workflow, in which the plan or issuer assesses whether the billed item or service (represented by a billing code) aligns with the specialty of the rendering provider (represented by a provider taxonomy code). If the specialty does not meet the plan's or issuer's requirements for that item or service, the claim may be denied. For example, the Departments expect that a plan's or issuer's internal provider taxonomy would be unlikely to reimburse a claim submitted for a heart surgery submitted from a podiatrist because the billing code associated with a heart surgery would not match with a taxonomy code for a podiatrist.

The Departments understand that it is standard business practice for the internal provider taxonomy maintained by a plan or issuer to identify provider specialties using the standardized code set established by the National Uniform Claim Committee (NUCC) or their own model derived from it.[53] The NUCC maintains standard provider taxonomy codes, which are used to define a provider's area of specialty.[54] Provider taxonomy codes are ten characters in length structured into three distinct ''levels'' including provider grouping, classification, and area of specialization.[55] The Departments understand that when a provider submits a claim for reimbursement to a plan or issuer, the provider must include their NUCC code and the billing code for the item or service along with certain other information. Plans and issuers then compare the NUCC provider taxonomy code and billing code included from the claim against their internal provider taxonomy mappings to determine if the claim can proceed through the next step of the payment adjudication process.

The Departments sought comment on all aspects of this proposal and were particularly interested in feedback from interested parties on whether there are plans or issuers that do not map provider specialties to billing codes within their claims adjudication process or use different code sets, and whether there could be a way to standardize the provider specialty-mapping-to-billing-code process. The Departments also sought comment on whether there are alternative approaches to excluding any provider that has a rate for an item or service that interested parties consider not to be a meaningful rate. The Departments also requested feedback from interested parties on the relative burdens and benefits of alternative approaches to both producers and file users. The Departments were also interested in any concerns that parties may have with a proposal to require plans and issuers to make such exclusions at all.

After consideration of public comments, the Departments are finalizing the requirements set forth at 26 CFR 54.9815–2715A3(b)(1)(i)(F), 29 CFR 2590.715–2715A3(b)(1)(i)(F), and 45 CFR 147.212(b)(1)(i)(F) and 26 CFR 54.9815–2715A3(b)(1)(i)(E)(*2*), 29 CFR 2590.715–2715A3(b)(1)(i)(E)(*2*), and 45 CFR 147.212(b)(1)(i)(E)(*2*) as proposed, with one modification to require plans and issuers to exclude provider-rate combinations that are unlikely given the provider's specialty, according to either

[53] The NUCC establishes and maintains standard provider taxonomy codes, which are used to define a provider's area of specialty. Provider taxonomy codes are ten characters in length structured into three distinct ''levels'' including provider grouping, classification, and area of specialization. *See* National Uniform Claim Committee, *Health Care Provider Taxonomy,* available at *https://www.nucc.org/index.php/code-sets-mainmenu-41/provider-taxonomy-mainmenu-40* (last visited May 4, 2026).

[54] *See* National Uniform Claim Committee, Health Care Provider Taxonomy, available at *https://www.nucc.org/index.php/code-sets-mainmenu-41/provider-taxonomy-mainmenu-40* (last visited May 4, 2026).

[55] *See id.*

the plan's or issuer's internal provider taxonomy or other internal rules used during the claims adjudication process.

Many commenters supported the proposals that would remove unlikely provider-rate combinations to decrease file size and increase data reliability and usability by removing ''noise.'' These commenters indicated that plans and issuers already utilize internal controls to map provider specialty or taxonomy to billing codes for the purposes of preventing payments when an item or service in a claim is inconsistent with the submitting provider's credentials. A few commenters asserted that removing unlikely provider-rate combinations should help employers make better purchasing decisions. A few other commenters added that finalizing this proposal would lead to reduced costs for compliance and system maintenance, and that a logical removal of implausible combinations represents a standardization that enhances usability without sacrificing transparency.

The Departments agree that requiring plans and issuers to exclude unlikely provider-rate combinations will lead to significant reductions in file size, increase the usability and reliability of the In-network Rate File data for providers, patients, and policymakers, and help employers make better purchasing decisions.

A few commenters, while supportive of the proposal, expressed concerns about implementation and emphasized the importance of clear instructions to plans and issuers on how to conduct the required provider-rate exclusions to avoid over-exclusion. A commenter noted that the exclusions would be administratively burdensome for owners of provider networks to implement and requested that the Departments provide technical assistance to these owners. Another commenter pointed out the potential for the provider-rate exclusion to appear in a non-standardized manner, given the potential differences in plans' and issuers' claims adjudication processes. A commenter requested that the Departments require plans and issuers to document the provider-rate combinations that are removed to increase the public's understanding of these exclusions. A few commenters encouraged the Departments to work with interested parties to identify the best way to design the parameters around provider-rate exclusions. Another commenter requested that the Departments go further and require plans and issuers to exclude negotiated rates from the In-network Rate File where plans or issuers have a reasonable belief that claims are no longer being submitted under the contract, including but not limited to instances where the plan or issuer has officially designated the contract as ''dormant'' or some other related term. However, a commenter recommended that the Departments permit plans and issuers to include a provider in the rate file for a specific service even if the provider has not historically performed the service within the network reflected in the file, which may be the case when the provider is in a multi-specialty group with combinations of TIN/EINs and NPIs. A commenter was concerned that implementor-defined taxonomy filters could result in data gaps, contributing to existing data usability issues.

The Departments intend to address many of these concerns through future technical implementation guidance to afford the Departments flexibility to determine appropriate technical reporting requirements and to make refinements in response to changes in technology and health care industry business practices. This future technical implementation guidance—in the form of contextual data attributes within schemas—will provide clear instructions to plans and issuers, and the iterative development process through community feedback on GitHub will allow file producers and file users to help the Departments minimize over-exclusions and address non-standard arrangements. The Departments have determined that requiring plans and issuers to separately document the provider-rate combinations that are excluded from the In-network Rate File is unnecessary given that file users can verify the exclusions through examining the Taxonomy and Utilization Files, as discussed in section III.C.8. of this preamble. The Departments emphasize that the provider-rate exclusion must be based on the plan's or issuer's determination that it is unlikely a provider would be reimbursed for an item or service given that provider's specialty. This does not include an unlikely reimbursement based on other reasons, such as a dormancy period. A claims adjudication system relying on taxonomic specialties may still be able to reimburse for a claim submitted by a previously dormant provider if it meets the provider specialty-billing code mapping, regardless of a lack of recent claims.

Additionally, the Departments note for clarity, that these final rules require a plan or issuer to exclude unlikely provider-rate combinations using its internal logic used during the claims adjudication process to determine whether to deny reimbursement for an item or service given the provider's specialty—whether that internal logic is an internal provider taxonomy or other internal rules used for this purpose. The ''internal provide taxonomy'' referenced in this requirement is distinct from the ''Taxonomy File'' referenced in the new requirement discussed in section III.C.8.c. of this preamble. The Taxonomy File must contain a plan's or issuer's internal logic used during the claims adjudication process to determine whether to deny reimbursement for an item or service given the provider's specialty—again, using an internal provider taxonomy or other internal rules used for this purpose—but reflected as pairings of billing codes and NUCC codes. The Departments therefore expect that plans and issuers may need to convert their internal rules into data suitable to be submitted in the Taxonomy File.

A commenter expressed concern that the proposed exclusion process would be used by issuers as a justification to improperly deny claims for the provision of services that may fall within a provider's lawful scope of practice but are not captured by the NUCC code set. The commenter requested that the Departments engage advanced practice provider organizations in reviewing and transparently validating the process used to determine which services are excluded for their respective specialties.

The Departments clarify that a plan's or issuer's determination of whether a provider is unlikely to be reimbursed for an item or service based on the provider's specialty must be made consistent with applicable law. This clarification recognizes that other provisions of Federal or State law may limit the circumstances in which a plan or issuer may distinguish among providers based on specialty, licensure, certification, or similar characteristics. For example, section 2706(a) of the PHS Act generally prohibits discrimination with respect to participation under a plan or coverage against a health care provider acting within the scope of the provider's license or certification under applicable State law. However, validating the process used to determine which services are excluded for their respective specialties is beyond the scope of these rules, which do not require plans and issuers to make any changes their claim adjudication processes or any rules they use to determine whether to deny reimbursement given the provider's specialty.

A commenter noted that the rule would prevent provider-rate combinations from other taxonomies being used as part of the process to

exclude unlikely provider-rate combinations but does not prevent posting a conversion factor or rate for procedures within the same specialty that are not performed and that this could lead to payers negotiating significantly lower rates with specialists for specific services they do not perform.

The Departments agree that a provider's taxonomy defines what they may be reimbursed for, not what they actually furnish. The Utilization File addresses this gap by identifying providers who submitted claims and received reimbursement (or would have been reimbursed but for cost-sharing liability) for items and services during the reporting period. This allows users to distinguish negotiated rates for items and services actually furnished from those that are not, without requiring plans to make service-level determinations about individual practices. The Departments will monitor whether the Utilization File serves this purpose effectively. The Departments also acknowledge that details about negotiated arrangements, such as conversion factors and rates, can vary among providers within the same specialty and could lead to ambiguous negotiated rates. To address this, the Departments continue to include an open text field in the schema to enable plans and issuers to clarify or account for these unique scenarios and will continue to evaluate the possibility of standardizing such arrangement details as the Departments monitor industry's implementation of the schema.

A few commenters cautioned against utilizing overly rigid filtering requirements to determine whether a specific provider is unlikely to be reimbursed for an item or service. This is because a highly granular NPI level reporting would require splitting apart NPI array values and would significantly fragment the provider references attribute, particularly where a multi-specialty physician group shares a set of negotiated rates and is represented by a single provider reference object in the file.

The Departments agree that the requirement to exclude unlikely provider-rate combinations may increase the technical complexity for reporting. Nevertheless, the Departments have determined that achieving the stated transparency goals of these rules requires this increased accuracy. The Departments intend to provide guidance for satisfying the requirement to exclude unlikely provider-rate combinations when contracts are negotiated for multiple provider groups through future technical implementation guidance in collaboration with industry to determine the most efficient approach.

Many commenters opposed the proposal to require plans and issuers to exclude unlikely provider-rate combinations because of operational challenges and burden. Several of these commenters noted that many plans do not use a uniform specialty-to-billing-code rule for all providers that can easily be repurposed into machine-readable file filtering, which could lead to unintentionally excluding meaningful provider-rate combinations. Additionally, these commenters noted that some plans and issuers do not have taxonomy code-based claims systems (using the location of care, instead, for example) or that this logic is held by payment integrity vendors instead of the plan or issuer, and creating a logic to capture the many nuances in claims adjudication possibilities would lead to a complex and resource-intensive undertaking to both develop and maintain on an ongoing basis. A commenter explained that the applicability of NUCC taxonomy codes in claims adjudication may involve complex branching logic based on factors such as whether the rendering clinician is a physician or a non-physician practitioner, and whether the clinician is double board certified. Another commenter noted that claims adjudication relies on a combination of historical utilization patterns, adjudication rules, and post-service validation, and not a static, pre-service determination of which provider types may bill for a given code. A commenter identified State requirements which may require customization for a single issuer's inclusion/exclusion of certain provider-rate combinations. Another commenter recommended that plans be permitted to use third-party data vendors or clinical appropriateness engines—not just their adjudication system—to identify and suppress irrelevant provider-rate combinations.

The Departments recognize that there is no uniform claims adjudication system and that plans and issuers may have different approaches to ensuring that claims are not approved for items or services that are not furnished by a provider in an appropriate specialty. The Departments additionally understand that claims adjudication processes are not static and that a set of pre-service rules may not always align with the post-service result when applied to a claim. However, the Departments understand that all plans and issuers include as part of their claims adjudication process a method for determining if the plan or issuer should deny reimbursement for an item or service because it was not furnished by a provider in an appropriate specialty, even though not all of these methods are organized as taxonomies that match billing codes with specialty codes. For example, the Departments expect that every plan and issuer has a process to ensure that it does not approve a claim for heart surgery performed by a podiatrist when the claim is otherwise identical to one submitted by a cardiac surgeon.

To account for the fact that some plans and issuers use internal rules other than a provider taxonomy to determine if the plan or issuer should deny reimbursement for an item or service because it was not furnished by a provider in an appropriate specialty, the Departments are finalizing paragraph (b)(1)(i)(F) to specify that a plan or issuer must exclude from its In-network Rate File provider-rate combinations for items or services that are unlikely to be reimbursed based on the provider's specialty according either to the plan's or issuer's internal provider taxonomy or other internal rules used to determine if the plan or issuer should deny reimbursement for an item or service based on the provider's specialty during the claims adjudication process. The Departments are also finalizing redesignated paragraph (b)(2)(ii) to specify that the Taxonomy File must include a plan or issuer's internal provider taxonomy, or other internal rules, used to determine if the plan or issuer should deny reimbursement for an item or service given the provider's specialty.

For plans and issuers using internal rules other than a provider taxonomy for determining whether to deny reimbursement due to provider specialty, the Departments expect that each method can be mapped to pairings of items and services with provider specialties, such that the plan or issuer can comply with the requirement to provide a Taxonomy File, as described in redesignated paragraph (b)(2)(ii). This mapping process will allow custom, internal provider taxonomies or other internal rules used to deny reimbursement given the provider's specialty, which may vary widely across plans and issuers, to be disclosed in a standardized format. As such, the Departments are requiring plans and issuers to document in the Taxonomy File a mapping of the relationships between items and services and provider specialties utilized in the claims adjudication process to the appropriate billing code and NUCC code, respectively, so file users can understand their unique approach to

excluding unlikely provider-rate combinations.

The Departments recognize that plans and issuers will incur a burden associated with establishing a system and process to remove unlikely provider-rate combinations from the In-network Rate File. However, based on comments, the Departments have determined that the collective benefits to file producers and users from reduced file sizes and increased clarity and usability significantly outweigh the burdens incurred, as discussed in sections IV.B.5. and V.D. of this preamble, and reduced file size is a goal for which many interested parties, including plans and issuers, have advocated since the first machine-readable files were published.

The Departments illustrate below how the excluded provider-rate requirement would work vis-à-vis the Taxonomy File in the scenario raised by commenters wherein a plan's or issuer's adjudication process relies on a combination of historical utilization patterns, adjudication rules, and post-service validation and not a static, pre-service determination of which provider types may bill for a given code.

The Departments agree that adjudication systems differ and often leverage dynamic rules engines, clinical edit software, and post-service validation rather than static, provider specialty lookup tables for each specialty and billing code combination. However, the goal of the Taxonomy File requirement is not to require plans and issuers to change their claim adjudication systems, nor is it to establish a standard system for denying reimbursement based on billing code-specialty pairings. Rather, the Taxonomy File is designed to provide consumers of the machine-readable files with a standardized legend to interpret the rules logic applied within the In-network Rate File.

Plans and issuers maintain the foundational data necessary to create the baseline Taxonomy File through things like provider credentialing records (which includes NPI and NUCC codes), pre-service determination or claim edit configurations, and historical claim databases. Where a plan relies on post-service adjudication, dynamic logic, or location of care, for example, rather than explicit taxonomy specialty edit rules, the plan can leverage the same empirical utilization patterns (for example, a 12-month lookback of historical claims data) combined with provider credentialing taxonomy sets to generate the required provider specialty-billing code pairings for the Taxonomy File.

As an example, consider a plan or issuer that uses any combination of the following: mapping internal provider types to NUCC taxonomy codes; performing empirical analysis on historical claims data; and extracting explicit provider specialty deterministic claim edit rules or other claim edit rules that work to ensure that a provider is not reimbursed for furnishing an item or service that is inappropriate given the provider's specialty. To create a Taxonomy File from these internal rules, the plan or issuer would need to take the following steps. First, the plan or issuer would need to derive specialty to billing code combinations from any internal rules it uses to determine whether to deny a claim for an item or service because it was not furnished by a provider in an appropriate specialty. Then, the plan or issuer would need to create a Taxonomy File from the derived output by mapping the specialty to billing code combinations to pairings of NUCC codes and billing codes.

As another example, for a plan or issuer that uses a payment integrity vendor or a clinical appropriateness engine as part of its claims adjudication process to deny reimbursement for an item or service because it was not furnished by a provider in an appropriate specialty, the taxonomic rules used by the vendor or engine are part of the plan's or issuer's internal provider taxonomy or other internal rules. Accordingly, any provider-rate combinations for items or services that are unlikely to be reimbursed given that provider's specialty pursuant to the vendor's or the clinical appropriateness engine's taxonomic rules must be excluded from the In-network Rate File. Similarly, those items or services and provider specialty combinations must be mapped to the appropriate billing code and baseline NUCC code and disclosed in the Taxonomy File. Note that, as discussed above, if the payment integrity vendor's or clinical appropriateness engine's rules used as part of the claims adjudication process are not already organized to associate items and services with provider specialties, those associations would first need to be derived from the rules before they can be mapped to billing codes and NUCC codes. The Departments expect the plan or issuer to work with such vendors to support the disclosure requirements. This may require contractual agreements between the parties to produce the required data in accordance with the required cadence. If a plan or issuer does not use a vendor or clinical appropriateness engine as part of its claims adjudication process for those purposes, then those tools are not part of the plan's or issuer's internal provider taxonomy or other internal rules and must not be used to determine which provider-rate combinations to exclude from the In-network Rate File or which billing code-NUCC code pairings to include in the Taxonomy File.

In response to the commenter who noted that State requirements may require customization for an issuer's inclusion or exclusion of certain provider-rate combinations, the Departments assume that a plan's or issuer's internal provider taxonomy or other internal rules used to determine if the plan or issuer should deny reimbursement for an item or service based on the provider's specialty account for applicable State requirements that require or prohibit reimbursement for an item or service due to the specialty of the provider that furnished it. The Departments expect that those requirements must inform the plan's or issuer's provider-rate exclusions, and therefore they must be appropriately represented in the Taxonomy File.

If the Departments become aware that there are plans and issuers whose claims adjudication processes do not have a way to deny reimbursement for an item or service because it was not furnished by a provider in an appropriate specialty, or whose internal provider taxonomy or other internal rules used to determine if the plan or issuer should deny reimbursement for an item or service given the provider's specialty cannot be mapped to unlikely provider-rate combinations or billing code-NUCC code pairings, the Departments will reconsider these requirements in the future to determine how such plans and issuers can comply.

Many commenters also opposed the proposal to require plans and issuers to exclude unlikely provider-rate combinations because of the potential to leave file users confused and confronted with incomplete information. A commenter advised that a provider contract may include a global list of rates even though a provider only submits claims for some of the items and services on the list. The commenter described this as an example of a permissive taxonomic mapping where a plan or issuer contracts with a multi-specialty provider group for all service codes that would likely need to be included to accommodate the wide range of services potentially delivered. Another commenter demonstrated that these exclusions would hide rate negotiations and make it harder for the public to understand contracts between

payers and providers. A commenter noted that removing such combinations increases the likelihood that consumers may be incorrectly informed that a provider is out-of-network. Another commenter cited evidence from current machine-readable file data indicating that a taxonomy-only approach can be simultaneously over-inclusive and under-inclusive because specialty labels are imperfect proxies for actual service delivery patterns. Another commenter advised the Departments to conduct an analysis to better understand the implications of removing provider-rate combinations based on plans' and issuers' internal taxonomy mapping on data quality and variance. A commenter recommended that the Departments not finalize any exclusion requirements and leave it to individual file users to apply plans' and issuers' Taxonomy Files to the In-network Rate Files to map out unlikely provider-rate combinations.

The Departments recognize the possibility of permissive taxonomic mappings that may over-include provider specialties and claims adjudication systems and the potential for over- and under-exclusion of unlikely provider-rate combinations. However, the Departments note that, if a plan or issuer does maintain a permissive taxonomic mapping, it will be revealed in the Taxonomy File and potentially verified with the Utilization File. For example, under the current reporting requirements, a plan or issuer may include a negotiated rate in the In-network Rate File for a podiatrist to perform a heart surgery even though the plan's claims adjudication system would be unlikely to process a reimbursement for that provider-service combination. Under these final rules, that provider-rate combination would likely appear in the Taxonomy File but would likely be excluded from the In-network Rate File because the plan's or issuer's internal provider taxonomy or other rules used during the claims adjudication process would likely not match podiatrists with heart surgery for purposes of reimbursement.

This excluded provider-rate combination would also be unlikely to appear in the Utilization File because it is unlikely a podiatrist would have performed a heart surgery and been reimbursed for it. File users can use the Utilization File to verify whether a plan or issuer improperly excluded provider-rate combinations from the In-network File. Specifically, if a file user identifies in the Utilization File providers that were reimbursed (or would be reimbursed but for cost-sharing liability, a modification from the proposed rule discussed in section III.C.8.b. of this preamble) for items or services for which they submitted claims during the plan or policy year, and these provider-rate combinations were included in the Taxonomy File but excluded from the In-network Rate file, that would indicate that the plan or issuer improperly excluded the provider-rate combination from the In-network Rate File. Additionally, the Departments note that the Utilization File is one tool for determining whether a provider is correctly identified as in-or out-of-network, alongside existing provider directories and other resources, and therefore requiring the removal of unlikely provider-rate combinations should not result in consumers receiving incorrect provider network information.

The Departments acknowledge that requiring plans and issuers to remove unlikely provider-rate combinations from the In-network Rate File could diminish the public's understanding of contracts between plans and issuers and providers. However, as discussed in the 2020 final rules, the In-network Rate File is meant to capture ''rates that are used to determine cost-sharing liability, which is essential information upon which consumers would need to rely to make health care purchasing decisions,'' [56] and not necessarily every component of a contract. Removing unlikely provider-rate combinations is expected to help achieve that goal, as it will reduce file size which will make it easier for users of the file to obtain the rate information necessary to make informed health care purchasing decisions.

The Departments do not agree that it is necessary to conduct an analysis of the impact of requiring plans and issuers to exclude unlikely provider-rate combinations and are instead taking into account information submitted by several commenters who conducted this type of analysis and revealed, in their comments to the proposed rules, significant file size reductions. As discussed in section IV.B.5. of the Collection of Information Requirements of these final rules, the Departments expect plans (or TPAs on behalf of plans) and issuers to be able to rely primarily on data they already maintain including listing their in-network providers together with the specialties of those providers, as well as the internal provider taxonomy or other internal rules used to determine if the plan or issuer should deny reimbursement for an item or service given the provider's specialty, which are needed to map provider specialties to the appropriate billing codes, as well as similar logic implemented within their claims adjudication systems to pend or deny claims that fall outside a provider's scope of practice. The Departments disagree that individual file users should have to apply Taxonomy Files to In-network Rate Files as an alternative to requiring plans and issuers to exclude unlikely provider-rate combinations, as this would retain large file sizes and impose unnecessary barriers to file users, who may not have the technological resources to conduct manual exclusions.

A few commenters noted that many health plan and issuer cost estimator tools rely on In-network Rate Files to provide personalized cost information to consumers and requested that any provider-rate exclusions applied to the In-network Rate File (by any approach) also apply to issuers' cost calculator tools. A commenter requested that the Departments allow plans and issuers to respond to the excluded provider-service requests with a clear, consumer-friendly message indicating that an estimate is not available for that provider-service pairing.

The 2020 final rules, as well as these final rules, do not require plans and issuers to use the data in the machine-readable files to generate cost-sharing estimates for the internet-based self-service tool. The results the internet-based self-service tool should generate are highly dependent on changing inputs (network status, deductible progress, etc.). The internet-based self-service tool's outputs are required to be accurate at the time of the participant's, beneficiary's, or enrollee's request under 26 CFR 54.9815–2715A2(b)(1), 29 CFR 2590.715–2715A2(b)(1), and 45 CFR 147.211(b)(1), whereas the In-network Rate and Allowed Amount Files will not reflect changes until the next quarter. As such, an internet-based self-service tool that relies on the latest file may be inaccurate during the three-month period between postings. If a plan or issuer chooses to utilize their machine-readable files to generate results for the internet-based self-service tool, they are still obligated to ensure that the information required to be disclosed to participants, beneficiaries, and enrollees is accurate at the time the request is made. The Departments expect that each plan's or issuer's internet-based self-service tool will provide accurate responses, including not listing providers in search results for services those providers would not render, regardless of what information appears in the machine-readable files.

Many commenters urged the Departments to consider alternative

[56] 85 FR 72158, 72227 (November 12, 2020).

approaches to removing unlikely provider-rate combinations, including, (1) several versions of a CMS-standardized specialty-to-code framework, (2) a hybrid approach combining TIN-level claims-based inclusion with provider specialty backstops and a more general exclusion process based on prior claims volume that would appear in the Utilization File, (3) adding a fee schedule object to the In-network Rate File schema which would expose the contractual relationship that produces unlikely provider-rate combinations, and (4) a mechanism which encompasses the scope of different provider specialties and which account for the evolving nature of health care service delivery. A few commenters expressed concern that regulators, brokers, and other data users may reach differing conclusions regarding whether plans and issuers are excluding the correct provider-rate combinations without a standardized exclusion policy. A few commenters requested that the Departments consider a standardized approach after monitoring the approaches plans and issuers use to determine which provider-rate combinations to exclude. A few commenters (both for the Excluded Provider Information and the Utilization File proposals) suggested limiting or excluding provider-rate combinations to those supported by at least one fully adjudicated claim within a specified lookback period or some variation of a claims-utilization based exclusion approach. The Departments address these comments in Alternatives Considered in section V.E.2. of this preamble.

The Departments disagree that the alternative approaches to removing unlikely provider-rate combinations would be effective. In section III.C.8.c. of this preamble, the Departments discuss why a CMS-standardized approach is unworkable at this time while acknowledging they intend to analyze the landscape of Taxonomy Files to determine if greater standardization is feasible and desirable in the future. The Departments have determined that a top-down standardized approach would result in under- and over-exclusions, which many commenters warned against, by trying to impose a one-size-fits-all approach on the significant differences among plans' and issuers' taxonomic and claims adjudication systems. The Departments also discuss the limitations of a claims-based process, which would include a hybrid approach, in section V.E.2. of this preamble. The Departments disagree with adding a fee schedule object to the In-network Rate File as it would not result in the desired file size reductions that excluding unlikely provider-rate combinations should achieve. The Departments will provide examples of excluding unlikely provider-rate combinations in technical implementation guidance and will continue to work with interested parties in the schema development process to support plans and issuers and file users in understanding how to implement this requirement.

6. Out-of-Network Allowed Amount Machine-Readable File

The Departments proposed to make several amendments to the Allowed Amount File provision at 26 CFR 54.9815–2715A3(b)(1)(ii), 29 CFR 2590.715–2715A3(b)(1)(ii), and 45 CFR 147.212(b)(1)(ii) to increase the amount of historical out-of-network claims data disclosed in the files, including a proposal to lower the threshold for including claims from 20 to 11 different claims per item or service, a proposal to increase the reporting period from 90 days to 6 months, a proposal to increase the lookback period from 180 days to 9 months, and a proposal to require reporting at the health insurance market level, rather than the plan or policy level. The Departments also proposed to remove the phrase ''and provider'' from paragraph (b)(1)(ii)(C) to clarify that the claims threshold pertains to the number of claims for an item or service overall for the file, not the number of claims for an item or service from a particular provider. Lastly, the Departments proposed to make conforming amendments in paragraphs (b)(1)(ii)(A) through (C) to indicate that each Allowed Amount File for a given health insurance market must include information aggregated across the coverage options offered by the plan or issuer in that market, rather than all coverage options offered by the plan or issuer. The Departments solicited comments on these proposed amendments. Many commenters generally supported the proposed changes to the Allowed Amount File, noting that they would increase the amount and usefulness of out-of-network claims data. Commenters expressed that these changes would enhance transparency, improve the usability and organization of the machine-readable files, and provide more meaningful visibility into out-of-network reimbursement patterns at the market level. The Departments agree with these commenters. After consideration of public comments, the Departments are finalizing these amendments as proposed. A discussion of the specific proposed changes to the Allowed Amount File and comments received is below.

a. Reducing the Claims Threshold

Since the publication of the 2020 final rules, the Departments have received feedback and observed that many plans and issuers produce Allowed Amount Files with limited to no out-of-network claims data, which the Departments have determined is due in part to the 20-claims threshold. Given the limited data available, file users are unable to perform meaningful analyses using out-of-network data.[57] This is because there are too many ''gaps'' in out-of-network data in the file, which occur whenever there are fewer than 20 claims for a specific out-of-network item or service for a given plan.

Therefore, to increase the volume of allowed amount data available, the Departments proposed to amend paragraph (b)(1)(ii)(C) to lower the minimum claims threshold for a particular item or service under a single plan or coverage to 11 different claims for a particular item or service in a single health insurance market. As the Departments explained in the preamble to the proposed rules,[58] the proposed 11-claims threshold aligns with the CMS cell suppression policy, which sets minimum thresholds for the display of CMS data by researchers or other custodians of CMS data sets, such as Limited Data Set (LDS) files.[59] The policy stipulates that no cell (such as admittances, discharges, patients, services, etc.) containing a value of 1 to 10 can be reported directly.[60] This policy is a safeguard designed to prevent the identification of individual Medicare or Medicaid beneficiaries when CMS data is shared publicly[61] and helps ensure compliance with Federal privacy laws, such as the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule,[62] by reducing the risk of re-

[57] Matthew Robben, *Learnings from MRF Land,* Serif Health Blog (October 18, 2022), available at *https://www.serifhealth.com/blog/learnings-from-mrf-land*.

[58] 90 FR 60432, 60454–55 (December 23, 2025).

[59] Centers for Medicare & Medicaid Services, *Requesting Limited Data Set (LDS) Files,* available at *https://www.cms.gov/data-research/files-for-order/data-disclosures-and-data-use-agreements-duas/limited-data-set-lds* (last modified Mar. 16, 2026); Research Data Assistance Center (ResDAC), *CMS Cell Size Suppression Policy* (January 26, 2024), available at *https://resdac.org/articles/cms-cell-size-suppression-policy*.

[60] *Id.*

[61] *Id.*

[62] 45 CFR part 160 and subparts A and E of part 164.

identification of individuals from aggregated data.

Many commenters supported the proposed 11-claims threshold. Several commenters noted that these changes address current data sparsity and would make it easier for plans and issuers to meet reporting requirements, improving the analytical usefulness of out-of-network disclosures and providing more complete insight into pricing patterns that directly affect patient financial exposure. A few commenters supported the proposed clarification that the claims threshold applies to the particular medical item or service that is furnished, and not the particular provider furnishing the service.

The Departments agree with these points in favor of the lowered claims threshold. As noted in the proposed rules, lowering the claims threshold will increase the volume of allowed amount data available and offer a new insight into the health care expenditures for out-of-network rates. The Departments also agree with commenters who supported the removal of ''and provider'' from the parenthetical language in paragraph (b)(1)(ii)(C). As noted in the proposed rules, this technical amendment will more clearly specify that the claims threshold pertains to the number of claims for an item or service overall for the file, not the number of claims for an item or service from a particular provider.

Several commenters opposed lowering the minimum claims threshold out of concern that it would increase the risk of re-identification for less frequently utilized, highly specific services, particularly in thinly populated geographies or small, specialized markets. A few of these commenters recommended the Departments establish necessary guardrails that protect patient privacy within low-volume markets. A commenter specifically recommended excluding markets or small self-insured plans with fewer than 300 enrollees. A commenter warned that plans and issuers may face additional expenses for enhanced cybersecurity measures and compliance with data privacy regulations if the Departments finalize the lower claims threshold. The commenter stated that plans and issuers would be required to ensure that their de-identification logic is updated for the 11-claims threshold in a manner that complies with the HIPAA Privacy Rule standards. Another commenter warned that lowering the claims threshold would significantly expand the data required to be disclosed and doing so would require substantial new quality assurance, system, and processing changes that would impose a large administrative burden.

The Departments acknowledge the concerns regarding privacy risks with the lowered claims threshold in the Allowed Amount File; however, as noted in the proposed rules, the Departments have determined that the proposed 11-claims threshold, when combined with the proposal to require aggregating data by health insurance market type, provides sufficient protection against the disclosure of sensitive patient information. The Departments appreciate the recommendation to establish additional guardrails for the purposes of privacy protections, but note that, as specified in current paragraph (b)(1)(ii)(C), disclosure of such information is not required if doing so would violate applicable health information privacy laws. This is consistent with paragraph (c)(3), which specifies that, among other things, nothing in 26 CFR 54.9815–2715A3, 29 CFR 2590.715–2715A3, or 45 CFR 147.212 alters or otherwise affects a plan's or issuer's duty to comply with requirements under other applicable State or Federal laws, including those governing the privacy or security of information required to be disclosed under this section. The Departments expect that the same data protections measures, including any cybersecurity safeguards and privacy compliance processes currently implemented to support existing disclosure requirements, will apply to the revised 11-claims threshold. Lowering the threshold does not necessitate the use of fundamentally different cybersecurity controls or substantial modifications to existing de-identification methodologies, as plans and issuers are already required under paragraph (c)(3) to maintain processes designed to comply with applicable privacy and security requirements, including those related to the protection of protected health information (PHI) and personally identifiable information.

Additionally, the Departments expect that lowering the threshold will require only limited operational changes because plans and issuers currently maintain systems and automated processes that identify and suppress data based on claim-count thresholds. Revising the threshold from its current level to 11 claims will generally require an update to existing threshold logic rather than the implementation of new systems or disclosure frameworks. Accordingly, the Departments have determined that this change will not result in additional burdens related to quality assurance, systems development, processing modifications, or administrative work beyond what is necessary to update existing operational processes.

A few commenters supported the proposal to lower the claims threshold but recommended further reducing the threshold to one claim. These commenters expressed concern that the reduction to 11 claims does not go far enough and would exclude some of the most expensive items and services which are often of interest to policymakers and researchers. A commenter recommended that the Departments require plans and issuers to segregate items and services billed by providers from items and services billed by facilities in the Allowed Amount File, noting that out-of-network facilities are generally not paid in the same way as out-of-network providers. Another commenter warned that with a lower claims threshold, Allowed Amount Files may include small claims counts and isolated high cost or atypical claims, which could introduce the risk of outlier-driven distortions. The commenter recommended that the Departments ensure there are methodological safeguards to prevent these distortions, which the commenter suggested could mislead consumers or third-party analysts.

The Departments decline to adopt a lower claims threshold than 11. The disclosure of out-of-network claims data with 10 or fewer claims may risk the exposure and identification of sensitive information, including patients' PHI, particularly when combined with other publicly available data. The Departments have determined that a claims threshold of 11, in addition to aggregating by health insurance market type and increasing the lookback and reporting periods, strikes the appropriate balance between preventing the disclosure of PHI and other sensitive information and ensuring the Allowed Amount File has a sufficient volume of data.

For segregating items and services billed by providers, while the Departments acknowledge there may be differences in payments between out-of-network providers and out-of-network facilities, the Departments decline to adopt this recommendation and note that the current Allowed Amount schema captures the place of service and also whether an item or service is furnished either by a provider (''professional'') or at a facility (''institutional''). That information should allow file users to analyze and compare allowed amounts and billed charges for items and services furnished by out-of-network providers against

those for items and services furnished by out-of-network facilities.

For the concern that small claims counts may distort the data, while the Departments recognize that file users use this data to conduct market analyses and that there may be unanticipated effects from the reported claims, the objective of these final rules is to enhance transparency by presenting actual payment amounts as they occur, without applying additional analyses. The Departments have determined that researchers and other file users are best positioned to identify which analytical methods are most appropriate for their needs, including whether those methods should suppress outliers or other extreme values. Additionally, the Departments have determined that the benefit of protecting against the disclosure of sensitive patient information outweighs the risk of potential impacts on market analyses. However, the Departments will monitor the effects of the lowered claim threshold and may consider revisiting this in the future.

b. Increasing the Reporting Period

The Departments also proposed to amend paragraph (b)(1)(ii)(C) to specify that group health plans and health insurance issuers would be required to include in the Allowed Amount File allowed amounts and billed charges with respect to covered items or services furnished by out-of-network providers during the 6-month time period that begins 9 months prior to the publication date of the file. This amendment would increase the reporting period from 90 days to 6 months and increase the lookback period from 180 days to 9 months. By approximately doubling the reporting period from 90 days to 6 months and increasing the lookback period by about 50 percent from 180 days to 9 months, the Departments expect that more out-of-network claims for items and services will meet the required threshold for reporting requirements, meaning there would be more data to populate the Allowed Amount Files.

The Departments sought comment on all aspects of this proposal. The Departments were particularly interested in feedback on the impact of the proposed amendment to the required reporting cadence (proposed to be quarterly as discussed in section III.C.10. of the proposed rules) on the proposed changes to the lookback period. For example, since the proposed quarterly reporting period would require reporting 6 months' worth of data every 3 months, the Departments sought comment on whether a potential duplication of out-of-network allowed amounts across multiple files would present any difficulties for the analysis of the data, such as calculating averages or annual amounts.

The Departments received several comments in favor of this proposal. These commenters pointed out that expanding the lookback and reporting periods would likely substantially increase the number of claims that meet the reporting threshold, significantly improving the robustness of the Allowed Amount File and providing a more complete insight into pricing patterns that directly impact patient financial exposure. A commenter, however, noted that while longer reporting periods may increase dataset size, they do not automatically enhance decision relevance and may include outdated payment dynamics. Another commenter recommended a longer reporting period of 1 year and lookback period of 15 months. A few commenters also recommended that the Departments provide implementation guidance to ensure plans and issuers can produce the allowed amount data consistently and file users can interpret overlapping periods appropriately.

The Departments agree with commenters that expanding the lookback and reporting periods will increase the amount of data reported in the Allowed Amount Files and provide a better insight into out-of-network pricing in the market. The Departments note that the Allowed Amount File is designed to provide a retrospective reporting of actual billed charges as opposed to the In-network Rate File which is designed to provide prospective pricing information. As a result, data staleness presents less concern for the Allowed Amount File because it reflects historical transactions, whereas contract dynamics and negotiated rates may evolve over time. The Departments have therefore determined that an extended reporting period of 6 months is necessary to address the current data sparsity in the Allowed Amount File. By increasing the existing reporting period from 90 days to 6 months and the lookback period from 180 days to 9 months, the Departments are attempting to account for variations that may exist in the reimbursement of out-of-network providers and to make the data more useful without imposing significant additional burden on plans and issuers. The Departments will continue to monitor the amount of data being disclosed and its accuracy with the new reporting period and lookback period and other changes finalized to determine if additional adjustments may be needed in the future.

In addition, shortly after the publication of these final rules, the Departments intend to release Schema version 3.0, which will include revised technical specifications to support the amendments finalized in these rules.

c. Aggregating Data by Requiring Reporting by Market Type

The Departments proposed to amend the introductory language in paragraph (b)(1)(ii) to require plans and issuers to report allowed amounts and historical billed charges at the health insurance market level, rather than for each plan or policy the plan or issuer offers.[63] Under the proposal, plans and issuers would publish one Allowed Amount File for each market in which they offer coverage, with data aggregated across the coverage options in that market. The Departments proposed definitions of ''health insurance market'' at 26 CFR 54.9815–2715A1(a)(2)(xi), 29 CFR 2590.715–2715A1(a)(2)(x), and 45 CFR 147.210(a)(2)(xi), as described in section III.A. of this preamble. The Departments explained in the proposed rules that this proposal would produce more populated Allowed Amount Files and improve downstream analytics and comparability of data within a given health insurance market. Additionally, the Departments explained that organizing this data by market type would reduce the total number of Allowed Amount Files and provide additional privacy protection because the data would no longer be tied as directly to a single plan or policy.[64] At the same time, the Departments acknowledged that market-level aggregation of out-of-network allowed amount data could reduce users' ability to connect a specific allowed amount or billed charge to a particular plan or policy, although plans and issuers would still be required to identify which plans or policies were represented in each file.[65] The Departments sought comment on this proposal, including on what additional information might be limited or lost by aggregating allowed amount and billed charges data by health insurance market type, and the potential importance of that information to price transparency.

Many commenters supported the proposal to aggregate Allowed Amount File reporting by market type, stating that this approach would increase the completeness and usability of out-of-network data, while reducing

[63] 90 FR 60432, 60455 (December 23, 2025).

[64] *Id.*

[65] *Id.*

fragmentation, reporting burden, and privacy risks. Specifically, these commenters expressed that this type of aggregation would support data analysis and comparison within and across market segments. These commenters agreed that such aggregation would lower the number of files to be reported and managed. Many commenters agreed with the Departments that current, plan-level Allowed Amount Files often contain little data which hinders meaningful analysis. A few commenters supported market-type aggregation to reduce the risk that file users could identify information protected by the HIPAA Privacy Rule reported by plans with low claims volume. A commenter recommended only aggregating below an enrollment threshold to ensure appropriate safeguards for protecting privacy, rather than broad suppression of allowed amount data. A commenter noted that publishing out-of-network rates at the health insurance market level is critical to the employer's fiduciary management of their health plan and health plan administrators.

The Departments agree that shifting to aggregation by market type will lead to improvements in completeness, access, and usability of the allowed amount data, while reducing the burden on plans and issuers in developing the Allowed Amount Files. Furthermore, aggregating by market type results in fewer Allowed Amount Files, which makes the data more manageable, while enhancing analytical operation and output. The Departments also agree that aggregation of this data will help plans with low claims volume meet reporting thresholds and reduce the risk that information protected by the HIPAA Privacy Rule will be identified. The Departments have concluded that market-type aggregation, as adopted here, strikes the best balance in enhancing allowed amount data quality and usability, while appropriately protecting privacy.

A few commenters opposed the proposed requirement for plans and issuers to aggregate allowed amount data by market type. A few of these commenters expressed concern that separating out-of-network allowed amount data by market type may lessen the utility of having all of a health plan's or issuer's data in one file, and that without clear standardized definitions, may make it difficult to assess how aggregation would affect data usability and comparability. A commenter noted that there is considerable variation of out-of-network programs and reimbursement schedules that self-insured plan sponsors may use and therefore did not agree that aggregating self-insured plan sponsors into one file would improve price transparency outcomes.

The Departments understand that aggregation of out-of-network allowed amount data, while providing many benefits, will reduce some granular details in the data, and by extension, the levels of interpretation and inference that can be drawn from the data. However, the Departments agree with the many commenters who supported market-level aggregation in the Allowed Amount Files, based on the benefits of market-level aggregation substantially outweighing any analytical downsides of such aggregation. The Departments have determined that any loss of granularity in the data, such as mapping back to specific health plans or contracts or having all of a health plan's or issuer's data in one file, does not diminish the benefits of transparency in coverage. Nevertheless, the Departments will monitor the effects of this rule change and may consider revisiting this in the future.

A few commenters emphasized that by allowing reporting by market type, allowed amount data would become more consistent and easier to leverage. One of these commenters also requested that the Departments be clear that market type was not the same as product type to ensure that the change would result in a significant reduction of files. Other commenters requested that the Departments provide clear, standardized market type definitions to ensure usability and minimize compliance variability. A commenter suggested expanding the proposed market definitions in 26 CFR 54.9815–2715A1(a)(2)(xi), 29 CFR 2590.715–2715A1(a)(2)(x), and 45 CFR 147.210(a)(2)(xi) to include individual market, small group market, mid-market fully insured, mid-market self-insured, large group fully insured, and large group self-insured.

The Departments agree that a clear and standardized set of market type definitions is important for consistency in reporting by market type and to avoid potential confusion with product type or other standard terminology for the Allowed Amount File. As such, and as discussed in section III.A. of this preamble, the Departments proposed to define the term ''health insurance market'' to refer to the individual market, large group market, small group market, and all self-insured group health plans maintained by the plan sponsor (other than account-based plans, as defined in 26 CFR 54.9815–2711(d)(6)(i), 29 CFR 2590.715–2711(d)(6)(i), and 45 CFR 147.126(d)(6)(i), and plans that consist solely of excepted benefits), with each market type including its own standardized definition based largely on existing Federal regulations.[66] As discussed in section III.A. of this preamble, the Departments are finalizing the definition of ''health insurance market'' with modifications to cross-reference the relevant definitions of excepted benefits for clarity at 26 CFR 54.9815–2715A1(a)(2)(xi), 29 CFR 2590.715–2715A1(a)(2)(x), and 45 CFR 147.210(a)(2)(xi). The Departments agree that allowing reporting by market type will allow allowed amount data to become more consistent and easier to leverage. Additionally, the Departments observe that ''mid-market'' is a term not currently defined in Federal regulations, but is casually used in commercial health insurance parlance to denote employer group health plans that have approximately 51–250 employees.[67] Industry distinctions between the mid-market and large group market are based primarily on differences in purchaser behaviors, and not on differences in product or network composition across these two segments. The Departments further observe that mid-market groups would be considered ''large groups'' under existing Federal and State definitions. To ensure consistency of definitions—and lacking specific reason to determine that adding mid-market categories would meaningfully enhance data aggregation or downstream analytics at this time—the Departments are finalizing the market-type definitions as proposed.

A few commenters expressed concerns that aggregating out-of-network allowed amount data by market type would create new operational challenges, and confusion, particularly in States that require the ''merging'' of individual and small group markets. A

[66] 90 FR 60432, 60442 (December 23, 2025).

[67] Based on internal research, the Departments have found that variations on the term ''mid-market'' are used within the commercial insurance industry to refer to employer group health plans that are larger than small group plans, but that tend to be on the small side for large group plans. Different issuers and plans use varied definitions to pinpoint what would count as a mid-market group. *See, for example,* Sentara Health Plans, *Employer Plan Sales Resources and Descriptions,* available at *www.sentarahealthplans.com/en/brokers/employer-plans/sales-resources-and-plan-descriptions* (last visited June 1, 2026) (defining mid-market groups as having between 51 and 150 employees); BlueCross BlueShield of New Mexico, *Mid-Market Group Plans,* available at *https://www.bcbsnm.com/producer/mid-market-group-insurance* (last visited June 1, 2026) (defining mid-market groups as having between 51 and 150 employees); and Capital Blue Cross, *Medium Group Plans,* available at *www.capbluecross.com/wps/portal/cap/employer/shop-group-plans/medium-plans/ppo-choice-select* (last visited June 1, 2026) (defining ''Medium Groups'' as having between 51 and 99 employees).

commenter noted that aggregated market reporting can improve comparability and reduce administrative complexity as long as the consolidation does not obscure meaningful variation that file users rely upon for analytic purposes. A commenter recommended the Departments provide technical guidance or standardized templates, noting that doing so would ensure consistency and reduce confusion among plans and issuers.

The Departments recognize the concern regarding the potential for aggregation to obscure variations in data and will monitor the effects of this rule change through GitHub which provides an avenue to collect ongoing input from interested parties that can inform further schema iterations. Additionally, shortly after the publication of these final rules, the Departments intend to release Schema version 3.0, which will include revised technical specifications to support the amendments finalized in these rules. The Departments understand that a ''merged market'' generally means that a particular State combines the individual and small group segments for certain Federal and State regulatory purposes, most commonly for creating larger risk pools to stabilize rating.[68] However, even where a State has adopted a ''merged market,'' health insurance coverage generally would still fall within Federal definitions for either the individual market or the small group market for purposes of Federal law and the data from such coverage can be attributed to either the individual or small group market. The Departments have not identified a reason why data for purposes of the Allowed Amount File should be reported in a way that aligns with the way data for purposes of establishing a risk pool is reported.

A commenter suggested that adding data quality checks or validation requirements would enhance the usability and value of the out-of-network data.

The Departments acknowledge the importance of data quality checks and validation and are finalizing several changes that are expected to improve data quality and accuracy and allow additional time for data validation. For example, the Text File contact information requirement enables file users to more easily report issues and receive responses, as discussed in section III.C.8.d. of this preamble. The Departments are also finalizing a quarterly reporting cadence for In-network Rate and Allowed Amount Files, which several commenters noted will provide plans and issuers additional time for validation and quality assurance before posting, as discussed in more detail in section III.C.11. of this preamble. The Departments continue to solicit regular feedback from the community on data quality and validation issues and may consider including additional quality improvement measures in future guidance or rulemaking.

A few commenters requested that the Departments clarify how the independent dispute resolution (IDR) process decisions and awards should be represented in the files, cautioning that overly broad or unclear rules could undermine transparency and comparability.

The Departments appreciate the suggestion and will consider addressing this issue in future iterations of the technical implementation guidance. The Departments also note that IDR payment determinations are already subject to a different set of public use file disclosures under the No Surprises Act. Therefore, requiring plans and issuers to add this additional data to the Allowed Amount Files would be unnecessarily burdensome.[69]

A commenter suggested including information in the files on insurer revenue generated from out-of-network contracting, leased networks, or other negotiations. Another commenter recommended linking the out-of-network allowed amount data with additional network identifiers and plan information noting that product types are not always defined consistently across the industry.

The Departments appreciate the commenters' suggestions for additional information to be included in the Allowed Amount File and will monitor the effects of this rule change, including potentially adding data elements in the future, but have determined they are out of scope and decline to adopt these recommendations in these final rules.

A commenter suggested that geographic normalization of out-of-network allowed amount data is important to any downstream analytics comparing data across regions. Consequently, the commenter advocated for reporting reforms to ensure that geographic identifiers in the data are sufficient to allow for meaningful comparisons, while avoiding excessive granularity.

The Departments generally recognize the importance of geocoding in allowed amount data, to support a range of downstream analytics that may be important for price transparency. However, current Allowed Amount File requirements at paragraph (b)(1)(ii)(C)(*2*) specify that each unique allowed amount included in a file must be associated with the NPI, TIN, and Place of Service Code for a corresponding out-of-network provider. The Departments have determined that the latter requirement already imposes meaningful geocoding on individual observations within allowed amounts data, since the NPIs and TINs are associated with providers who have specific locations of practice in the real world. Therefore, the Departments are not finalizing any changes to the geocoding requirements within the Allowed Amount File at this time. Going forward, the Departments will continue to solicit regular feedback from file users on specifications for the Allowed Amount File, including with regard to the adequacy of geocoding for specific downstream use cases.

7. Attestation

The Departments are finalizing at new 26 CFR 54.9815–2715A3(b)(1)(iv), 29 CFR 2590.715–2715A3(b)(1)(iv), and 45 CFR 147.212(b)(1)(iv) a requirement that a group health plan or health insurance issuer must attest, for each machine-readable file required under paragraphs (b)(1)(i) through (iii) and (b)(2)(i) and (ii) of these sections, that, to the best of its knowledge and belief, the plan or issuer has included all applicable information in accordance with the requirements of 26 CFR 54.9815–2715A3, 29 CFR 2590.715–2715A3, and 45 CFR 147.212, as applicable, and the information encoded is true, accurate, and complete as of the date in the file. This attestation requirement would go into effect in accordance with the applicability dates specified in 26 CFR 54.9815–2715A3(c), 29 CFR 2590.715–2715A3(c), and 45 CFR 147.212(c).

Of the commenters who addressed compliance and enforcement of Transparency in Coverage requirements, many requested that the Departments require plans and issuers to attest to the accuracy and completeness of their machine-readable files. Most of these commenters pointed to the existing Hospital Price Transparency requirement at 45 CFR 180.50(a)(3) as a model, both as an important compliance

[68] Section 1312(c) of the Affordable Care Act generally requires a health insurance issuer to consider all enrollees in all health plans (except grandfathered health plans) offered by such issuer to be members of a single risk pool for each of its individual and small group markets. States have the option to merge the individual and small group market risk pools in their states under section 1312(c)(3) of the Affordable Care Act. *See also* 45 CFR 156.80.

[69] Code section 9816(c)(7), ERISA section 716(c)(7), and PHS Act section 2799A–1(c)(7); *see also* Independent Dispute Resolution Reports, available at *https://www.cms.gov/nosurprises/policies-and-resources/reports.*

and enforcement policy and also to further the goal of Executive Order 14221 to ensure that ''pricing information is standardized and easily comparable across hospitals and health plans.'' [70] These commenters noted that an attestation requirement creates a clear, objective compliance signal that reduces ambiguity for both payers and regulators. Several commenters emphasized that their ongoing analyses of machine-readable files from a wide variety of plans and issuers reveal consistent accuracy concerns, and requiring attestations would lead to more reliable files in the future. A commenter noted that after processing thousands of files they identified conflicting rates, missing providers, missing billing codes, and inconsistent network identifiers. Commenters referred to a January 2026 report from the State of Indiana [71] which identified issues in the machine-readable files including unnecessary duplication, multiple rate schedules for the same provider, multiple rates for the same services, missing or incorrect data, and invalid/non-standard codes. A few commenters added that plan and issuer attestations would better enable employers to rely on these disclosures when negotiating contracts and evaluating performance. Several commenters also proposed that the Departments require plans and issuers to attest to the accuracy of their machine-readable files, including through existing reporting channels like Form 5500 or similar established ERISA reporting. A few commenters suggested expanding use of the validator tool the Departments provide as part of their technical implementation guidance to assist with attestation.[72]

The Departments agree that an attestation requirement will improve the accuracy and reliability of the disclosures in the machine-readable files and promote better alignment between hospital and plan and issuer pricing disclosure requirements. It is also a logical extension of the proposals related to improving the accuracy of public pricing disclosures, and will help fulfill the objectives of Executive Order 14221. As several commenters noted, Executive Order 14221 tasks the Departments with ensuring price transparency reporting is ''complete, accurate, and meaningful,'' as well as ''standardized and easily comparable across hospitals and health plans.'' [73] Consequently, the proposed rules were designed to ''improve the standardization, accuracy, and accessibility of public pricing disclosures in line with the goals of the Executive Order 14221.'' Requiring plans and issuers to attest to the accuracy of their machine-readable files, to the best of their knowledge, is an extension of those proposed rules, and several commenters made it clear that they understood such a requirement would achieve this alignment. Furthermore, one of the goals of the proposed rules was to align the Hospital Price Transparency reporting requirements with Transparency in Coverage requirements for plans and issuers.[74] The Hospital Price Transparency reporting requirements contain an attestation requirement,[75] and, therefore, including a similar attestation requirement does not go beyond what is required in the Hospital Price Transparency reporting requirements. The Departments do not agree that Form 5500 or similar ERISA reporting requirements are appropriate, as they apply only to a subset of plans that are subject to these final rules. The Departments continue to update and make available the validator tool, but are not requiring it as part of the attestation, as it does not test the accuracy of the data in the schema but instead validates that the files are formatted correctly.

A primary goal of the Federal Government's initiatives on price transparency is to ensure that the public has access to accurate and actionable pricing information. Section 1311(e)(3)(A)(i) to (viii) of the Affordable Care Act outlines specific information and data that must be submitted to the Exchange, the Secretary of HHS, the relevant State insurance commissioner, and the public on an accurate and timely basis. The 2020 final rules extensively discussed the value of accurate pricing information for consumers. Additionally, in the 2020 final rules, the Departments noted an intention to ''monitor the accuracy of the information provided through third-party developers and secondary entities and take information obtained through this monitoring into account for future regulatory action or guidance, as appropriate.'' [76] Based on consistent feedback from interested parties and the Departments' internal analyses of machine-readable file data, the Departments have determined that additional regulatory action is needed to address the inaccuracies commenters detailed. The Departments note that this attestation requirement will not alter the underlying duty to disclose accurate and complete pricing information. Rather, it promotes accountability by requiring plans and issuers to certify compliance with those existing obligations. The Departments anticipate a small one-time burden to implement this requirement and low ongoing costs, as plans and issuers can automate much of the process of generating the attestation, as discussed in sections IV. and V. of this preamble.

Most commenters requesting that the Departments finalize an attestation requirement suggested that the attestation occur at a plan or issuer's executive level. This includes commenters who specifically requested executive-level attestations and commenters who recommended aligning with the Hospital Price Transparency attestation requirement, which specifies in 45 CFR 180.50(a)(3)(iv) that each hospital must encode the name of the hospital chief executive officer, president, or senior official designated to oversee the encoding of true, accurate, and complete data.

The Departments have determined that, as with the Hospital Price Transparency attestation provision, requiring plans and issuers to encode the identity of a chief executive officer, president, or senior official designated to oversee the encoding of true, accurate, and complete data is a reasonable and appropriate approach to increasing public confidence in the machine-readable file disclosures, and therefore the Departments adopt the same. The Departments expect, as discussed in the 2025 Hospital Price Transparency rules, that the designated attester would, as necessary, consult with staff with direct involvement in developing the machine-readable files, in order to accurately make the required attestation.[77] As with the Hospital Price Transparency attestation provision, the Departments' focus is on the truth, accuracy, and completeness of the pricing data included in the machine-

[70] Exec. Order No. 14221, 90 FR 11005 (February 28, 2025).

[71] Sachdev G, Lambert H. *Re: Response to Executive Order 25–21 Increasing Freedom and Opportunity for Hoosiers by Improving Price Transparency in Healthcare,* Indiana Department of Insurance (January 21, 2026), available at *https://www.in.gov/gov/files/E.O.-25-21-Memo,-Executive-Summary,-and-Study.pdf.*

[72] *See* Centers for Medicare & Medicaid Services, *Price Transparency Guide Validator,* GitHub, *https://github.com/CMSgov/price-transparency-guide-validator* (last accessed May 13, 2026).

[73] Exec. Order No. 14221, 90 FR 11005 (February 28, 2025).

[74] 90 FR 60432, 60434–35 (December 23, 2025).

[75] 45 CFR 180.50(a)(3)(iii).

[76] 85 FR 72158, 72220 (November 12, 2020).

[77] 90 FR 53448, 54005 (November 25, 2025).

readable files.[78] Accordingly, the attestation requirement applies to the In-network Rate File, the Allowed Amount File, the Prescription Drug File, the Utilization File, and the Taxonomy File, which are the files that contain pricing and plan and provider identifying data.

A few commenters noted a concern with requiring a group health plan sponsor or a ''renter'' of a provider network to attest to the accuracy of the machine-readable files, given that employers do not possess the data that is required to go into the files. These commenters recommend that where a TPA or other service provider owns, manages, or maintains the provider network and negotiated rates, the TPA or other service provider whose executives are responsible for producing the machine-readable file should be required to make the attestation.

Under these final rules, plans and issuers may contract with other parties, such as TPAs, to provide the necessary data to comply with the Transparency in Coverage requirements on the plan's or issuer's behalf, as specified in redesignated paragraph (b)(5) in these final rules. To address how those special rules would work in the context of an attestation, the Departments specify in paragraph (b)(1)(iv)(C) that plans and issuers may satisfy the attestation requirements of paragraphs (b)(1)(iv)(A) and (B) by entering into a written agreement under which another party (such as a third-party administrator) makes the attestation required in paragraph (b)(1)(iv)(A) on behalf of the plan or issuer and encodes the name of the other party's chief executive officer, president, or senior official designated to oversee the encoding of true, accurate, and complete data, only if the plan or issuer has entered into an agreement with the other party to provide the information in paragraph (b), as described in paragraph (b)(5). With respect to insured group health plans, pursuant to the special rules in paragraph (b)(5)(i), a plan sponsor may enter into a written agreement with the issuer offering the coverage that requires the issuer to provide all applicable information required under paragraph (b), including the attestation required under paragraph (b)(1)(iv)(A), on behalf of the plan. In this scenario, if the issuer fails to do so, or such information in not accurate and complete in accordance with the attestation requirements in paragraph (b)(1)(iv), then the issuer, but not the plan, would be considered to violate the transparency disclosure requirements of 26 CFR 54.9815–2715A3, 29 CFR 2590.715–2715A3, and 45 CFR 147.212, as applicable. Alternatively, pursuant to the special rules in paragraph (b)(5)(ii), a plan or issuer may enter into a written agreement with a third party (such as a third-party administrator) that requires the third party to provide all applicable information required under paragraph (b), including the attestation required under paragraph (b)(1)(iv)(A), on behalf of the plan. In that scenario, if the third party fails to include all applicable information or such information is not accurate and complete in accordance with the attestation requirements in paragraph (b)(1)(iv), then the plan or issuer violates the transparency disclosure requirements of 26 CFR 54.9815–2715A3, 29 CFR 2590.715–2715A3, and 45 CFR 147.212, as applicable.

A commenter requested that the Departments make it clear that, for any government-regulated plans, disclosure of price information in the machine-readable file is material for purposes of payment and that an inaccurate machine-readable file can be a violation of the False Claims Act.

The False Claims Act is outside the scope of these final rules.

8. Contextual Files: Change-Log, Utilization, Taxonomy, and Text

In the proposed rules, the Departments proposed to require group health plans and health insurance issuers to publicly disclose, through machine-readable files, additional contextual information that would help file users better understand the public disclosures required under paragraph (b)(1)(i). These files, which include a Change-log File, Utilization File, and Taxonomy File, would contain information about the data within the In-network Rate and Allowed Amount Files. The Departments also proposed to require a contextual machine-readable file to help users find the In-network Rate, Allowed Amount, and prescription drug machine-readable files required under paragraph (b)(1) and proposed paragraph (b)(2)of this section, which the Departments proposed to identify as a Text File.[79] In particular, the Departments proposed to amend 26 CFR 54.9815–2715A3, 29 CFR 2590.715–2715A3, and 45 CFR 147.212 to redesignate paragraphs (b)(2) through (4) as paragraphs (b)(3) through (5), respectively, and to add new paragraph (b)(2) to require contextual files. Specifically, the Departments proposed to add new paragraphs (b)(2)(i) through (iv) requiring: a Change-log File at paragraph (b)(2)(i), a Utilization File at paragraph (b)(2)(ii), a Taxonomy File at paragraph (b)(2)(iii), and a Text File at paragraph (b)(2)(iv).

The 2020 final rules at 26 CFR 54.9815–2715A3(b), 29 CFR 2590.715–2715A3(b), and 45 CFR 147.212(b) require plans and issuers to make available on a public internet website the disclosure of health care pricing information in machine-readable files, in accordance with specific manner and format requirements. In particular, the Departments require plans and issuers to disclose in-network provider rates, out-of-network allowed amounts and the associated billed charges, and negotiated rates and historic net prices for prescription drugs. In the 2020 final rules, the Departments recognized the necessity of public disclosure of health care pricing information due to the variation in health care prices across the health care industry and the complexity of health insurance and health plan coverage.[80] While the price disclosures required in the 2020 final rules offered researchers and the broader public broad insight into the previously opaque world of contracts and pricing for health care services, there were still ambiguities in the data that prevented the public from gaining a more comprehensive understanding of health care industry pricing practices. These proposed additional files would help make the data disclosures of the machine-readable files required under paragraph (b)(1) more meaningful and accessible, which would promote greater transparency in health care pricing information. Under the proposal, plans and issuers would be required to prepare a Change-log File, a Utilization File, and a Taxonomy File for each In-network Rate File prepared under the proposed rules, and a single Text File to facilitate locating the other machine-readable files required under

[78] *See* 45 CFR 180.50(a)(3)(iii) and (iv).

[79] The proposed rules proposed amendments to requirements related to the prescription drug machine-readable files, specifically: the requirement that plans and issuers must include a plain text file in a .txt format in the root folder of a plan's or issuer's website as described in section III.C.7.d. of the proposed rules and the requirements related to the method and format for disclosing information to the public as described in section III.C.9. of the proposed rules.

[80] The 2020 final rules stated that ''many consumers do not fully comprehend the basics of health coverage, much less the more complex facets of the health care system that can affect an individual's out-of-pocket cost for items and services, including: Its specialized billing codes and payment processes; the various specialized terms used in plan and coverage contracts and related documents (such as copayment and coinsurance); and the various billing and payment structures plans and issuers use to compensate providers and assign cost-sharing liability to individuals (for example, bundled payment arrangements).'' 85 FR 72158, 72210 (November 12, 2020).

the proposed rules. Under the proposed rules, each Change-log File would reflect changes in data from one In-network Rate File (prepared for a specific provider network) to the publishing of the next In-network Rate File; each Utilization File would reflect utilized covered items and services under the plans and policies represented in one In-network Rate File; and each Taxonomy File would represent the mapping of billing codes to internal provider taxonomy codes used as part of the claims adjudication process for the plans and policies represented in the In-network Rate File. Each Text File would direct users to the location of the machine-readable files required under paragraphs (b)(1) and (2) and provide contact information for an individual who can address inquiries and issues related to the required machine-readable files. To ensure this data would be imported and read by a computer system directly, without reliance on proprietary software, and to promote standardization, these contextual files would also need to be machine-readable, in the form and manner specified in guidance pursuant to proposed re-designated paragraph (b)(3)(i), unless otherwise specified in 26 CFR 54.9815–2715A3, 29 CFR 2590.715–2715A3, and 45 CFR 147.212.

a. Change-Log File

The Departments proposed to require, in new 26 CFR 54.9815–2715A3(b)(2)(i), 29 CFR 2590.715–2715A3(b)(2)(i), and 45 CFR 147.212(b)(2)(i), that plans and issuers must make available, in a machine-readable format, a Change-log File for each In-network Rate File, that identifies any changes made to the required information in the In-network Rate File since the immediately preceding published In-network Rate File. The proposed Change-log File would be required to be publicly posted in the form as specified in guidance issued by the Departments, consistent with redesignated and amended paragraph (b)(3) and discussed in section III.C.9. of the proposed rules. It would be required to be posted in accordance with the timing requirements proposed at redesignated paragraph (b)(4)(iii) and discussed in section III.C.10. of the proposed rules. Specifically, it would be required to be posted on the first day of the calendar-year quarter following the date on which the first In-network Rate File would be required to be posted under proposed paragraph (b)(4)(i).[81] The purpose of the proposed Change-log File would be to assist all file users in identifying changes to the required information in the In-network Rate File from one reporting period to the next. Pursuant to the proposed requirement to publish the In-network Rate File described at paragraph (b)(1)(i) quarterly, the updated Change-log File would also be required to be published quarterly, indicating whether or not there were changes compared to the previously published Change-log File. The Departments sought comment on whether to require a Change-log File and how to structure an effective Change-log File, including the preferred machine-readable format and which specific data elements should be required. The Departments also requested comment on whether the file should simply identify which information changed between reporting periods or additionally indicate how that information changed. Further, the Departments asked whether certain types of data changes should be excluded to maximize the usefulness of the reporting, and invited comment on the specific burdens plans and issuers would face for the different possibilities for a Change-log File.

After consideration of public comments, the Departments are not finalizing the requirement for plans and issuers to make available a Change-log File for each In-network Rate File.

Many commenters supported the proposal to require a Change-log File noting that it would improve the usability of the In-network Rate File and would make it easier to derive meaningful insights from spending, cost trends, and utilization. Commenters also pointed out that the Change-log File would reduce the administrative and financial burden for file users by creating a simple way to monitor updates in the relevant parts of massive datasets.

The Departments recognize the efficiencies a Change-log File could create for file users. The Departments also agree that the Change-log File may reduce the burden for file users. However, as discussed in more detail later in this section, it would create significant burden for plans and issuers to create and maintain the files. Furthermore, the Departments have determined that the other In-network Rate File requirements, as amended by these final rules, should reduce administrative burden to increase file accessibility thereby achieving some of the intended goals of the Change-log File.

A few commenters offered suggestions for how to implement the Change-log File requirement. A commenter recommended addressing the Change-log File requirements through technical implementation guidance rather than regulation to allow greater flexibility as the file evolves. Another commenter recommended the Departments provide clear and detailed requirements to ensure the Change-log File is useful, or alternatively, require plans and issuers to retain their files for 7 years so file users can compare versions themselves. Finally, a commenter recommended that the Departments develop a standardized template, informed by interested parties and users, to ensure consistency across plans and issuers and make Change-log outputs easier for users to navigate.

Many commenters recommended specific information or technical methodologies for the Change-log File or sought clarification on what information or formats would be required. A few commenters recommended that the Departments require plans and issuers to identify only the information that has changed, while others recommended that the Change-log File identify both the information that has changed and how it has changed. A few commenters recommended the Departments limit changes to provider participation and rate changes and to note them as ''Added/Changed/Removed,'' rather than a redline style comparison from one file to the next. A few commenters recommended that the Departments narrowly define what constitutes as a ''change'' and to exclude minor or non-substantive changes. Additionally, a few commenters recommended the required data to be captured at the provider-rate level rather than the plan level. Finally, a commenter recommended that the Change-log File should be limited to requiring plans and issuers to publicize which version of schema is being used for their In-network Rate File and to modify their Change-log File whenever the schema changes.

The Departments acknowledge the requests for additional technical details on creating a Change-log file. However, because the Departments are not finalizing the requirement to publish a Change-log File for the reasons discussed later in this section, such additional details are not necessary.

Many commenters did not support requiring plans and issuers to publish and update a Change-log File. These commenters largely noted that the burden of creating and maintaining these files outweighs the marginal value they would provide to file users. A few commenters further explained the operational complexities and burden that smaller and rural non-profit plans with limited resources would face if this requirement was finalized. A few commenters were concerned about how

[81] *See* Table 2 for an example.

any Change-log File would be audited for completeness and accuracy. A few commenters also pointed out that the information that would be shared in the Change-log File can already be found by comparing In-network Rate Files, with a commenter noting that other proposed provisions would reduce In-network Rate File size, which would make comparisons between files easier, preempting the need for an entirely new file to discern changes between subsequent In-network Rate Files.

The Departments understand commenters' concerns that creating and maintaining a Change-log File would be operationally complex and create burden for plans and issuers. The Departments agree that the information a Change-log File would capture can already be identified by comparing In-network Rate Files. Given that the provisions finalized in this rule reduce the size of the In-network Rate Files, the Departments agree with commenters that it will be easier for file users to track changes across In-network Rate Files over time. In particular, reducing the reporting frequency of the In-network Rate File, as described in section III.C.11. of this preamble, lowers storage, hosting, bandwidth, and maintenance costs while giving users more time to work with each updated In-network Rate File. Also, limiting the In-network Rate File to likely provider-rate combinations, as described in section III.C.5. of this preamble, substantially shrinks file size and eases processing demands. Additionally, organizing files at the provider network level, as described in section III.C.1. of this preamble, further reduces duplication and file volume, making the data much easier to download, store, and analyze while improving consistency and comparability across networks, specialties, and geographic areas. These provisions combined will significantly improve user experience, reduce time and processing effort, and make the files more accessible, rendering a Change-log File duplicative for tracking updates.

b. Utilization File

The Departments proposed to require at new paragraphs 26 CFR 54.9815–2715A3(b)(2)(ii), 29 CFR 2590.715–2715A3(b)(2)(ii), and 45 CFR 147.212(b)(2)(ii), that plans and issuers must make available in a machine-readable format an annual Utilization File for each In-network Rate File specified under paragraph (b)(1)(i), that includes, for the 12-month period that ends 6 months prior to the publication of each Utilization File: items and services covered under the plans or policies included in the files prepared as specified in proposed amended paragraph (b)(1)(i) for which a claim has been submitted and reimbursed, in whole or in part, and each in-network provider identified by the NPI, TIN, and Place of Service Code who was reimbursed, in whole or in part, for a claim for each covered item or service included, as specified in proposed paragraph (b)(2)(ii)(A) of this section. Plans and issuers would not be required to disclose the number of times that any given provider submitted a claim for any particular item or service, but rather only that a given provider submitted and was reimbursed, partially or in whole, for at least one claim for a covered item or service during the reporting period. The Utilization File would be required to be published in the form and manner specified in proposed redesignated paragraph (b)(3) and discussed in section III.C.9. of the proposed rule. Plans and issuers would be required to update and post the Utilization File in accordance with the timing requirements proposed at redesignated paragraph (b)(4)(iii) and discussed in section III.C.10. of the proposed rule. The Departments requested comments on this proposal. After consideration of public comments, the Departments are finalizing this requirement with two modifications: first, clarifying that claims that would be reimbursed but for cost-sharing liability must also be included when accounting for claims that were submitted and reimbursed; second, the lookback period to be for the most recent plan year (in the individual market, policy year) that ends at least 6 months prior to the date the Utilization File is made available as specified in paragraph (b)(4)(iii) instead of for the 12-month period that ends 6 months prior to the publication of each Utilization File. The Departments also amend this section to further redesignate this paragraph as paragraph (b)(2)(i).

Many commenters supported the proposal for a Utilization File, emphasizing that it would help file users differentiate between theoretical provider-service combinations and provider-service combinations that actually occur through paid claims. Several of these commenters added that the Utilization File would help with analyzing network adequacy (for example, self-insured plan sponsors who want to see which in-network providers are being utilized), accurate benchmarking of negotiated rates, and validating the information in the In-network Rate File. A few commenters agreed that use of NPI, TIN, and Place of Service Code in the Utilization File is appropriate for identifying providers and rates. A few commenters agreed that the Departments' proposal for a binary indicator of utilization, in which the Utilization File reflects only items and services and in-network providers for which at least one claim has been submitted and reimbursed, is sufficient to distinguish active provider-rate combinations.

The Departments agree with the commenters who identified that the value of the Utilization File is in elucidating which negotiated rates and services are being used in practice and making the overall Transparency in Coverage data disclosures more actionable. The Departments also agree that the privacy concerns from potentially identifying individual patients and the potential burden on plans and issuers to publish a larger volume of information are balanced through a binary indicator of utilization, which still protects against identifying individuals and requires less information to be published.

A few commenters encouraged the Departments to structure and describe the Utilization File in a manner that minimizes the risk of misinterpretation and clearly distinguishes historical claims activity from broader assessments of network adequacy or access to care. Another commenter encouraged the Departments to clearly articulate the intended purpose and limitations of the Utilization File so that employer plan sponsors and other interested parties understand how the data should, and should not, be used. A commenter requested that the Departments consider allowing issuers with multiple participating plans to satisfy the Utilization File requirement through a centrally produced file rather than requiring each individual plan to publish duplicative records for the same service.

The Departments appreciate commenters' feedback. The Departments will include feedback on the structure and limitations of the Utilization File through the future technical implementation guidance process on GitHub to help file producers. The purpose of the Utilization File is to identify which negotiated rates and services are being used, and to act as a check on the unlikely provider-rate combinations that plans and issuers are excluding. While the main purpose of the Utilization File is not to identify network adequacy, it can provide some information that would allow employer plan sponsors and other interested parties to better understand provider

service patterns and whether networks in specific geographic areas have larger pools of providers performing certain procedures. The Departments also reiterate that plans and issuers must publish a Utilization File for each In-network Rate File, organized at the provider-network level, as described in section III.C.1. of this preamble, which should help reduce duplication from plans that share provider networks.

A commenter recommended that the Departments require plans and issuers to include the median allowed amount per service in the Utilization File to help researchers rectify instances where a Hospital Price Transparency machine-readable file entry does not match a Transparency in Coverage machine-readable file entry. Another commenter added that the Departments should require further specificity for professional claims by requiring NPIs at the Type 1 level for the Rendering/Servicing provider and require disclosure of the service facility location information (Box 32 on the CMS–1500 claim form). A commenter requested clarification on what counts as a ''claim that has been submitted and reimbursed, in whole or in part,'' in situations where a provider performs a service and submits a claim which the plan or issuer does not pay because the consumer has not met their deductible.

The Departments do not agree with requiring plans and issuers to include the median allowed amount per service in the Utilization File because the Utilization File is meant to serve as a check on the excluded unlikely provider-rate combinations in the In-network Rate File, rather than to provide additional data disclosures. Also, the Departments clarify at 26 CFR 54.9815–2715A3(b)(2)(i)(A) and (B), 29 CFR 2590.715–2715A3(b)(2)(i)(A) and (B), and 45 CFR 147.212(b)(2)(i)(A) and (B) that plans and issuers should include claims from in-network providers for covered items and services that have been submitted but for which the plan or issuer does not pay because the participant, beneficiary, or enrollee has a cost-sharing liability, such as an unmet deductible, given that the plan or issuer would have reimbursed the provider and the claim would otherwise meet the standards for inclusion in the Utilization File but for the cost-sharing liability. The Departments will clarify the required NPI type in technical implementation guidance through sample schemas on GitHub.

A commenter recommended that the Departments require access to the Utilization File through Application Programming Interfaces (APIs).

The Departments recognize the benefits of API access to large volumes of information, but as discussed in section III.C.9. of this preamble, the Departments are not requiring the use of APIs at this time due to the substantial new development costs it would place on plans and issuers and the effectiveness of delivering the required information through the modified and redesignated file format requirements at 26 CFR 54.9815–2715A3(b)(3)(i), 29 CFR 2590.715–2715A3(b)(3)(i), and 45 CFR 147.212(b)(3)(i), which will increase file format standardization and improve accessibility.

A commenter noted that, if the internet-based self-service tool returned a result with a provider who has no reported volume for a specific code, a participant, beneficiary, or enrollee may be confused about whether the provider is active or available.

The 2020 final rules did not require, and the proposed rules did not propose, that plans and issuers use the data in the machine-readable files to generate cost-sharing estimates for the internet-based self-service tool. If a plan or issuer chooses to do so, they are still obligated to ensure that information required to be disclosed to participants, beneficiaries, and enrollees under 26 CFR 54.9815–2715A2(b)(1), 29 CFR 2590.715–2715A2(b)(1), and 45 CFR 147.211(b)(1) remains accurate at the time the request is made, with respect to a participant's, beneficiary's, or enrollee's cost-sharing liability for covered items and services, regardless of finalized changes to the In-network Rate File and Allowed Amount File in these final rules.

Many commenters opposed the proposal for a Utilization File, citing significant burden to create a new file that includes claims data from a separate system. Commenters also stated it would increase the overall size of data disclosures and duplicate existing claims reporting requirements. These commenters further indicated that the file would include no pricing or rate information and would be of limited use to consumers and regulators. Many commenters also cited privacy concerns from the possibility of identifying patients who are obtaining sensitive services, although a commenter who was supportive of the Utilization File overall recommended that the Departments nevertheless permit health plans to take reasonable steps to protect privacy for low-utilization items and services. A few commenters suggested that a more efficient approach to reduce the volume of unlikely provider-rate combinations from the In-network Rate File would be to specify that the In-network Rate File should only include negotiated rates where the provider submitted a claim during a specified lookback period, as discussed in section III.C.5. of this preamble.

The Departments acknowledge the burden associated with producing the Utilization File but have determined that it is largely a one-time cost, and the ongoing annual costs to update the file will not be a significant burden. The Departments recognize that the Utilization File will increase the overall volume of data disclosures but have determined that the increase will be offset by the reductions in the In-network Rate Files from removing unlikely provider-rate combinations, which the Utilization File is intended to verify. The Departments acknowledge that the Utilization File does not require new pricing disclosures and instead is intended to be a useful contextual addition to the In-network Rate File. The Departments disagree that the Utilization File will not be useful to consumers and regulators. Rather, the Departments have determined that the Utilization File is an essential component of the set of proposals, alongside the Excluded Provider Information provision and the Taxonomy File, that work in conjunction to remove duplicative and minimally useful information, while ensuring meaningful data disclosures. As explained in section III.C.5. of this preamble, if a file user identifies in the Utilization File providers that were reimbursed (or would be reimbursed but for cost-sharing liability) for items or services they submitted claims for during the plan or policy year, and these provider-rate combinations were included in the Taxonomy File but excluded in the In-network Rate File, that would indicate that the plan or issuer improperly excluded the provider-rate combination from the In-network Rate File. Removing unlikely provider-rate combinations from the In-network Rate File was a primary recommendation of interested parties, and the Utilization File enables verification of the accuracy of those excluded provider-rate combinations. Without being able to conduct this cross-check, the public would not know whether plans and issuers have properly excluded unlikely provider-rate combinations from the In-network Rate Files, resulting in questions regarding the reliability and usefulness of the overall disclosures. Additionally, the Departments determined that the Utilization File is less operationally complex and less expensive than the alternatives discussed in section V.E.2. of this preamble.

The Departments recognize the potential privacy concerns that commenters raise but have determined that a binary indicator of utilization is a strong guardrail against the possibility of identifying individual patients. The Departments disagree that requiring plans and issuers to exclude negotiated rates for a provider who has not submitted a claim during a specified lookback period is sufficient to address unlikely provider-rate combinations. Doing so would result in the exclusion of claims submitted by newer providers and providers who perform rare services, which could result in a loss of useful plan-level data. The Departments emphasize that unlikely provider-rate combinations are being excluded from the In-network Rate File because these combinations were likely not thoroughly negotiated and therefore may not provide accurate pricing information. This would not be true of claims that were not submitted during a specified lookback period for other reasons. Additionally, file users would have no means of verifying the accuracy of these exclusions.

The Departments also proposed at 26 CFR 54.9815–2715A3(b)(2)(ii), 29 CFR 2590.715–2715A3(b)(2)(ii), and 45 CFR 147.212(b)(2)(ii), to require the Utilization File to include data for the 12-month period that ends 6 months prior to the publication date of each Utilization File, to allow for enough time for plans and issuers to complete the claims processing lifecycle including pre-claim submission, pre-claim payment, and payment determination and collection.[82]

A commenter endorsed a lookback period that includes items and services rendered within a recent 12-month period. A commenter opposed the proposed lookback period, stating that the value of the data captured with the longer lookback would not outweigh the potential distortions in data quality, and does not support this longer lookback. Another commenter suggested a longer delay of 9 or 12 months would be acceptable. A commenter recommended the lookback period be aligned with the one required for reporting Percentile Allowed Amounts in the Hospital Price Transparency machine-readable files (12–15 months). Another commenter suggested that the lookback period should cover approximately 18 months to 6 months prior to the data release (although this comment also encouraged the inclusion of volume data).

[82] FinThrive, *Understanding the Claims Lifecycle: A Step-by-Step Guide* (November 26, 2024), *https://finthrive.com/blog/understanding-the-claims-lifecycle-a-step-by-step-guide.*

The Departments agree that a lookback period approximating 12 months should capture a sufficient amount of information while balancing burden concerns. The Departments have determined that, to promote consistency across plan and issuer Utilization Files, a lookback period aligned with the most recent plan or policy year, which is typically 12 months, that ends at least 6 months prior to the date the Utilization File is made available is an effective balance between allowing for enough time for plans and issuers to complete the claims processing lifecycle and avoiding potential distortion concerns from a longer lookback period that would include data that crosses plan years. Thus, after consideration of comments, the Departments are finalizing the requirement for the Utilization File to include data for the most recent plan year (in the individual market, policy year) that ends at least 6 months prior to the date the Utilization File is made available as specified in paragraph (b)(4)(iii).

The Departments received one comment recommending that aggregate data comparing claims submitted to claims paid—broken out by service type—would help determine whether contracted reimbursement levels translate into actual payment and access. The Departments appreciate the comment but note that it is out of scope.

c. Taxonomy File

In the proposed rules, the Departments proposed at new 26 CFR 54.9815–2715A3(b)(2)(iii), 29 CFR 2590.715–2715A3(b)(2)(iii), and 45 CFR 147.212(b)(2)(iii) to require plans and issuers to make available, in a machine-readable format, a Taxonomy File that includes the plan's or issuer's internal provider taxonomy, which maps items and services (represented by a billing code) to provider specialties (represented by specialty code which are derived from the NUCC) to determine if the plan or issuer should deny reimbursement for an item or service because it was not furnished by a provider in an appropriate specialty. The Departments designed this proposal to help file users understand how plans and issuers would determine which provider-rate combinations to exclude from the In-network Rate Files under proposed paragraph (b)(1)(i)(F). The Departments solicited comment on the Taxonomy File proposal, including whether there are other provider taxonomy code sets commonly used by plans and issuers other than the ones established by the NUCC or if there are other commonly used processes for plans and issuers to determine which providers should be reimbursed for which types of items and services, based on specialty, and which providers should not. The Departments also sought comment on how frequently plans and issuers update their internal taxonomy used during the claims adjudication process.

After consideration of comments, the Departments are finalizing the Taxonomy File with three modifications: first, adding that plans and issuers must base the Taxonomy File on their internal provider taxonomy or other internal rules used during the claims adjudication process to determine if the plan or issuer should deny reimbursement for an item or service based on the provider's specialty; second, specifying that the information provided in the Taxonomy File, regardless of whether it is based on an internal taxonomy or other internal rules, must be expressed as pairings of items and services (represented by billing codes) with provider specialties (represented by specialty codes which are derived from the Health Care Provider Taxonomy code set established by the National Uniform Claim Committee (NUCC)); and third, a technical modification renumbering the paragraph as 26 CFR 54.9815–2715A3(b)(2)(ii), 29 CFR 2590.715–2715A3(b)(2)(ii), and 45 CFR 147.212(b)(2)(ii) (from paragraph (b)(2)(iii), as proposed) to account for the Departments not finalizing the Change-log File requirements in proposed paragraph (b)(2)(i).

Many commenters supported the proposed Taxonomy File and the required disclosure of each plan's and issuer's provider-to-service mappings, citing the expected reductions in file size and improvements to the quality of the data in the In-network Rate File. These commenters also acknowledged that the Taxonomy File would be critical to understanding how plans and issuers conduct their exclusions of unlikely provider-rate combinations in the In-network Rate File. A commenter noted that the Taxonomy File would help ensure that providers are comparing the most appropriate contracted rates when multiple provider or taxonomy types may all render services using the same Current Procedural Terminology (CPT) or Healthcare Common Procedure Coding System (HCPCS) code sets.

The Departments agree that requiring the disclosure of the taxonomy mapping that drives the provider-rate exclusions in the In-network Rate File is essential for transparency. Without it, file users would be unable to evaluate whether the provider-rate exclusions from a

plan's or issuer's In-network Rate Files align with the internal provider taxonomy the plan or issuer uses during its claims adjudication process or whether data is being improperly omitted.

A few commenters, while supportive of the Taxonomy File overall, were concerned that the variety of plan and issuer taxonomies and associated claims adjudication systems could lead to further extraneous and limited-use data issues. A commenter emphasized that there are valid reasons for plans and issuers to maintain permissive billing code-provider-specialty mappings, such as multi-specialty group practices contracting for the wide range of services potentially delivered and accommodating for errors in providers' codes. Another commenter pointed out that not all claims adjudication platforms utilize sophisticated, granular taxonomy logic, and many systems are not nuanced enough to filter rates effectively. A commenter added that the Departments should be careful to avoid implying that taxonomy codes alone ''authorize'' or ''prohibit'' provision of specific services and clearly describe the semantics as administrative adjudication mapping logic (not clinical scope-of-practice rules).

The Departments acknowledge that the possibility of permissive mappings for multi-specialty group practices may lead to keeping a slightly higher volume of unlikely provider-rate combinations in the In-network Rate File than would be included if the Departments established a standardized taxonomy. However, as discussed in this section of this preamble, the Departments accept the possibility of larger file size as a result both because such permissive taxonomies will increase the insight into how plans and issuers are conducting their provider-rate exclusions and because other changes finalized in these rules will more substantially reduce file size.

Additionally, the Departments intend for the Taxonomy Files to reveal the various rules plans and issuers use to determine whether to deny reimbursement for an item or service based on the provider's specialty, both to effectively verify plans and issuers are excluding unlikely provider-rate combinations correctly and to offer researchers and other file users potentially valuable insights into the degree of standardization in these rules used by plans and issuers.[83] The Departments discuss the effects of permissive mapping systems and unique internal taxonomies more in section III.C.5. of this preamble. In addition, as discussed in section III.C.5. of this preamble, the Departments are modifying paragraph (b)(2)(ii) to account for the fact that some plans and issuers use internal rules other than a provider taxonomy that matches billing codes with specialty codes to determine whether to deny reimbursement for an item or service because it was not furnished by a provider in an appropriate specialty. Therefore, the Departments are finalizing paragraph (b)(2)(ii) to require that the Taxonomy File must include the plan's or issuer's internal provider taxonomy, or other internal rules, used to determine if the plan or issuer should deny reimbursement for an item or service based on the provider's specialty. The Departments are also finalizing paragraph (b)(2)(ii) to be more clear that, regardless of how the internal provider taxonomy or other rules used to determine whether to deny reimbursement given a provider's specialty are organized, that information must be expressed in the Taxonomy File as pairings of items and services (represented by billing codes) with provider specialties (represented by specialty codes which are derived from the Health Care Provider Taxonomy code set established by the National Uniform Claim Committee (NUCC)).

A commenter requested that the Departments require plans and issuers to include in the Taxonomy File additional data disclosures to enhance the public's understanding of negotiated rate information, including name, address, and specialties belonging to each individual in-network NPI.

The Transparency in Coverage requirements are designed to make public information that was previously unavailable. NPI-identifying information is publicly available in the National Plan and Provider Enumeration System (NPPES) data. As the Departments explained in the preamble to the 2020 final rules, the ''lack of availability of provider names in the machine-readable files is not a significant concern. The Departments anticipate that third-party internet-based developers and other secondary entities will be able to link the NPIs in the machine-readable files to publicly available provider information.'' [84] Additionally, requiring this information could significantly increase file size and would not be expected to provide commensurate benefit.

A few commenters supported the proposed requirement for plans and issuers to map their internal taxonomies to the NUCC code set as the standard baseline from which plans and issuers derive their particular taxonomic specialty mappings. A commenter requested that the Departments require specialty identifiers disclosed in required public files to correspond to valid NUCC taxonomy codes to ensure that any specialty identification used for public disclosure is consistently expressed using the NUCC taxonomy code set. Another commenter encouraged the Departments to work with NUCC to ensure that the most up-to-date published code set is used. Alternatively, a few commenters expressed concern with the NUCC code set as a viable baseline, noting that it is not an accurate reflection of provider scope of practice, many codes are out of date, and some taxonomy fields are often incorrect or incomplete in the NPPES NPI Registry. A commenter urged the Departments to consider mechanisms that are more encompassing of the scope of different provider specialties and that account for the evolving nature of health care service delivery.

Many commenters emphasized the necessity of a standardized set of provider specialty codes as a baseline for plans' and issuers' unique taxonomic systems. These commenters reported the widespread use of custom codes, which would make it hard for file users to compare exclusions and taxonomies across plans and issuers. In contrast, a few commenters questioned the validity and usefulness of the NUCC code set and related NPPES taxonomies as a baseline, pointing out that they may be out-of-date or inaccurate. A commenter requested clarification on whether payers must align to the NPI registry.

The Departments have determined that the NUCC code set is an effective baseline and industry standard from which many plans and issuers establish their internal taxonomies for the purpose of determining if the plan or issuer should deny reimbursement for an item or service based on the specialty of the provider that furnished it. As discussed in section III.C.5. of this preamble, a plan or issuer will be required to apply its internal provider taxonomy, or other internal rules, used in its adjudication process to determine whether to deny a claim based on provider specialty by mapping its item or service and provider specialty pairings to the appropriate billing and NUCC codes. The Departments clarify the expectation that any unique specialties a plan or issuer includes in their Taxonomy File must map to existing NUCC taxonomy codes. As discussed in section III.C.5. of this

[83] 90 FR 60432, 60459 (December 23, 2025).

[84] 85 FR 72158, 72225 (November 12, 2020).

preamble, if a plan or issuer uses internal rules other than a provider taxonomy to determine whether to deny a claim for an item or service because it was not furnished by a provider in an appropriate specialty, the plan or issuer would first need to derive specialty to billing code combinations from those internal rules before mapping them to the appropriate billing and NUCC codes. This traceability will help file users determine how a plan or issuer is conducting its unlikely provider-rate exclusions. The Departments recognize that the NUCC code set and NPPES data set, or particular aspects of them, may not be up to date or may contain missing information. However, the Departments' objective with the Taxonomy File is to make transparent, and to allow the public to verify, the system a plan or issuer uses in practice to determine whether to deny a claim based on provider specialty and in its In-network Rate File to remove unlikely provider-rate combinations. The Departments are requiring plans and issuers to utilize the NUCC code set because it is the most common and widely utilized set of definitions of provider specialty areas and therefore will likely be the easiest for plans and issuers to map their taxonomies or other internal rules to. The Departments acknowledge that plans and issuers may use portions of the NUCC code set that are outdated and may consider requiring plans and issuers to identify the version of the NUCC code set the plan or issuer is utilizing in future iterations of the files. As each plan's and issuer's taxonomy or other internal rules are revealed, the Departments and the public will be able to analyze and gain a deeper understanding of how standard (or unique) taxonomies are composed, and the Departments may consider that dynamic for future iterations of the Taxonomy File requirement. For now, the goal remains to gain transparency into the landscape of taxonomies as it currently exists.

The Departments also emphasize that the Utilization File can act as a further check on the Taxonomy File. If the Utilization File reveals that a plan or issuer reimburses a claim for which its provider-rate mapping does not appear in the Taxonomy File, that would indicate to file users that the Taxonomy File may not be complete, accurate, or up to date. The Departments clarify that a plan or issuer does not need to align their taxonomic mapping to the NPI registry.

A few commenters requested that the Departments require plans and issuers to disclose the methodology used to develop their internal provider taxonomy to provide greater clarity alongside the taxonomies themselves. Some commenters recommended allowing plans and issuers who do not use a provider taxonomy-to-service-code map during their claims adjudication process to post a provider taxonomy-to-service-code map based on a large normative claims data set.

The Departments appreciate the commenters' suggestion but emphasize that the goal of the Taxonomy File is to reveal plans' and issuers' billing code-provider specialty mappings or other internal rules to ensure that provider-rate combinations are excluded properly, not the underlying rationale behind plans' and issuers' claims adjudication processes. For plans and issuers that have not developed a formal billing-code-to-provider-specialty taxonomy, but instead rely on other internal rules to determine whether to deny claims for items or services given the provider's specialty, the methodology for creating a Taxonomy File is discussed in more detail in section III.C.5. of this preamble. The Departments will provide additional technical direction to plans and issuers on how to build their Taxonomy Files in collaboration with industry on GitHub.

A few commenters suggested that the Departments could increase confidence in the information in the Taxonomy File and, consequentially, the provider-rate exclusions in the In-network Rate File, by establishing audit procedures to verify that the billing code-provider specialty mappings are accurate representations of the plan's or issuer's claims adjudication process and allowing for the public to challenge inappropriate exclusions.

The Departments appreciate commenters' interest in ensuring that information included in the Taxonomy Files is accurate and reliable but have determined that existing compliance and enforcement procedures, as discussed in section II.D. of this preamble, are sufficient to ensure the integrity of the machine-readable files. An important layer of these procedures includes allowing the public to raise specific concerns of possible non-compliance with the Departments. The Departments encourage the public to continue to report compliance concerns on the CMS Price Transparency website.[85]

Several commenters proposed, as an alternative, that the Departments publish a single, standardized taxonomic list that all plans and issuers would use in support of the provider-rate exclusion process. One example shared by a commenter was a comprehensive but conservative national whitelist of taxonomy-to-service relationships. These commenters asserted that a standardized list would: (1) increase usability and comparability of the In-network Rate Files; and (2) create opportunities for third parties to aggregate and analyze information at scale. Another commenter noted that, because there could potentially be a high number of clinically appropriate edge cases within each plan's or issuer's internal taxonomy, the Taxonomy File would have to include each of those unique issuer-specific logics. Instead, that commenter proposed a set of narrowly defined guardrails and a limited exceptions pathway for uncommon but legitimate scenarios. Some commenters proposed as an alternative that the Departments adopt a standardized exclusion methodology, which would also affect the Excluded Provider Information proposal discussed in section III.C.5. of this preamble.

While the Departments acknowledge, and emphasize elsewhere in these final rules, the benefits and importance of standardized reporting criteria, the Departments have determined that requiring a standard taxonomy is premature at this stage and may limit the Departments' ability to achieve their higher-order goals. While the Departments acknowledge that standardization may eventually be beneficial, the Departments have determined that standardizing taxonomic disclosures effectively is not possible until the Departments better understand the differences in provider-specialty mapping (or other internal rules used during claims adjudication to determine whether to deny a claim given the provider's specialty) among plans and issuers. Based on the many comments indicating how plans and issuers build their taxonomies in non-standard ways, the Departments are concerned that requiring a one-size-fits-all approach could result in unacceptable data gaps, fail to sufficiently reduce file size, and reduce the ability of the public to fully understand the data in the machine-readable files. The Departments additionally noted in the proposed rules the opportunity for ''researchers and other file users [to gain] potentially valuable insights into the degree of standardization in mapping used by plans and issuers, and how this varies

[85] Centers for Medicare & Medicaid Services, *Health Plan Price Transparency: Contact Us, https://www.cms.gov/priorities/healthplan-price-transparency/overview/contact-us* (last updated February 11, 2026).

across different market types.'' [86] This variety and nuance of each plan's and issuer's internal taxonomies or other internal rules is a feature that the Departments want to reveal both for the purposes of greater transparency and for the ability to refine requirements in future iterations of the Taxonomy File requirement.

A commenter suggested that plans and issuers make access to the Taxonomy File available through the use of an API. The Departments recognize the benefits of API access to large volumes of information, but as discussed in section III.C.9. of this preamble, the Departments are not requiring the use of APIs at this time due to substantial new development costs on plans and issuers and the effectiveness of delivering the required information through the modified and redesignated file format requirements at 26 CFR 54.9815–2715A3(b)(3)(i), 29 CFR 2590.715–2715A3(b)(3)(i), and 45 CFR 147.212(b)(3)(i) which will increase file format standardization and improve accessibility.

Many commenters disagreed with the proposal for a Taxonomy File, predominantly due to the burden of developing and producing the file and the fact that differences across plans and issuers would make data less usable and comparable. A few commenters added that the information the Taxonomy File would reveal goes beyond the scope of the transparency requirements by requiring information unrelated to pricing and contracted rates. A commenter was confident that the proposed requirements on plans and issuers at 26 CFR 54.9815–2715A3(b)(1)(i)(F), 29 CFR 2590.715–2715A3(b)(1)(i)(F), and 45 CFR 147.212(b)(1)(i)(F) to exclude provider-rate combinations, along with existing enforcement mechanisms, is sufficient to achieve the Departments' goals without the need for publishing a Taxonomy File. Another commenter suggested that the Taxonomy File was not the best approach to address the issue of unlikely provider-rate combinations but was not opposed to the Taxonomy File as an option. Another commenter believed that the problem of unlikely provider-rate combinations could be addressed by owners of provider networks voluntarily removing such combinations from their machine-readable files.

The Departments disagree that the information disclosed in the Taxonomy File goes beyond the scope of the transparency requirements and maintain that this information falls directly within the categories of information that plans and issuers can be compelled to disclose under section 1311(e)(3)(A) of the Affordable Care Act and section 2715A of the PHS Act.[87] The Taxonomy File provides essential contextual information for file users, the public, and ultimately consumers to better and more fully understand the disclosures in (and the exclusions from) the In-network Rate File. The extensive feedback from comments referenced throughout this preamble confirms this. Without the added context of the Taxonomy File, there would be a lack of transparency around the new provider-rate exclusions. The public would have no way of knowing if the providers listed in the file are actually unlikely to be reimbursed for furnishing the items or services they are paired with, which may leave the public with limited confidence in the actionability and reliability of the In-network Rate File. In addition to promoting the transparency of the required in-network rate disclosures, the Taxonomy File also serves as a way for the Departments and the public to hold plans and issuers accountable for the accuracy of the provider-rate exclusions in their In-network Files.

The Departments recognize that requiring a new machine-readable file imposes new burdens on plans and issuers through a one-time cost to update the programmatic code to exclude unlikely provider-rate combinations and to create and publish a new Taxonomy File. The Departments discuss these estimates in section IV.B. of this preamble and note that any additional ongoing costs associated with maintaining Taxonomy Files are expected to be minimal because the files are expected to rely primarily on existing internal taxonomy mappings and code sets, or other internal rules used to determine if the plan or issuer should deny reimbursement for an item or service based on the provider's specialty, that plans and issuers already maintain and periodically update as part of their normal claims adjudication and operational processes. Additionally, as the Departments explained in the 2020 final rules, ''building the first machine-readable file will facilitate the automation of the process to build future files. In other words, the ability to produce subsequent files should be streamlined after completing initial development.'' [88] The Departments have determined that the transparency benefits to the public from being able to validate plans' and issuers' provider-rate exclusions and gain confidence in the reliability of the information in their In-network Rate Files through the documentation in the Taxonomy File are critical and outweigh the burden.

The Departments also recognize, as discussed previously in this section, that there will be a great deal of variety across Taxonomy Files, and, while this may make comparison between plans and issuers challenging, the primary goal of this file is for file users to understand how plans and issuers determine which provider-rate combinations to include in the In-network Rate Files and which to exclude. Additionally, the data in the file will be organized in a standardized way (for example, billing code-NUCC code pairings), which the Departments expect will help minimize variability across files.

A commenter was concerned that file users would interpret the inclusion of a particular code in the Taxonomy File to guarantee that it is appropriate to bill for and should be paid in all instances. Another commenter was concerned that bad actors would take advantage of the publication of billing code-provider specialty mappings to commit fraud.

The Taxonomy File is meant to illustrate what could happen in the billing process, while the Utilization File, which the Departments are finalizing in paragraphs 26 CFR 54.9815–2715A3(b)(2)(i), 29 CFR 2590.715–2715A3(b)(2)(i), and 45 CFR 147.212(b)(2)(i), is meant to illustrate what happened with regard to claim reimbursement over the designated lookback period, as described in section III.C.11. of this preamble. The Departments acknowledge that taxonomy codes are ''not used to define services rendered, but instead are used to define area of specialty.'' [89] A particular code appearing in the Taxonomy File is meant to represent

[86] 90 FR 60432, 60459 (December 23, 2025).

[87] Section 1311(e)(3)(A)(i) through (viii) of the Affordable Care Act outlines specific information and data that must be submitted to the public and certain other entities on an accurate and timely basis. In addition, section 1311(e)(3)(A)(ix) of the Affordable Care Act requires health plans to submit ''[o]ther information as determined appropriate by the Secretary.'' As the Departments explained in the 2020 final rules, ''the catchall provision is reasonably and best read as Congress' recognition that the Secretary of HHS (and, therefore, the Departments, by virtue of their joint authority under section 2715A of the PHS Act) would need broad flexibility to require the disclosure of information as appropriate to deliver the transparency necessary for consumers to understand their coverage options and for regulators to hold plans and issuers accountable. 85 FR 72158, 72167–68 (November 12, 2020).

[88] 85 FR 72158, 72243 (November 12, 2020).

[89] National Uniform Claim Committee, *Health Care Provider Taxonomy, https://www.nucc.org/index.php/code-sets-mainmenu-41/provider-taxonomy-mainmenu-40* (last visited May 12, 2026).

that it would likely be accepted as part of the billing code-provider specialty mapping or other internal rules used to determine whether to deny reimbursement based on provider specialty. That is, it indicates that a plan or issuer would likely not deny payment for an item or service on the basis of the provider's specialty, and it does not indicate that a provider's specialty alone is sufficient to guarantee payment. File users can consult the Utilization File to determine whether any claims have been reimbursed for that billing code-provider specialty mapping. It is not immediately clear how bad actors would take advantage of the Taxonomy File to commit fraud.

The Departments received one comment recommending that the Departments require plans and issuers to post: (1) all claims for each provider (as currently occurs for Medicaid FFS, Medicaid MCO plans, Medicare FFS, and Medicare Advantage plans); and (2) calculations of weighted average reimbursement data by provider type. The Departments note that this comment is out of scope.

d. Text File

In the proposed rules, the Departments proposed to add paragraphs 26 CFR 54.9815–2715A3(b)(2)(iv), 29 CFR 2590.715–2715A3(b)(2)(iv), and 45 CFR 147.212(b)(2)(iv), requiring plans and issuers to post a plain text file in .txt format (Text File) in the root folder (the top-level directory on an electronic file system) of a plan's or issuer's website that would include: (1) the source page URL for the internet website that hosts machine-readable files required under paragraphs (b)(1) and (2); (2) a direct link to the URL for the machine-readable files required under paragraphs (b)(1) and (2); and (3) point-of-contact information including an up-to-date name, title, and email address for an individual who can address inquiries and issues related to the machine-readable files required under paragraphs (b)(1) and (2).[90] Under the proposal, this contact information must be prominently displayed on the same website where the machine-readable files are made available and be kept updated per the requirements in paragraph (b)(4)(vi) of this section. The Departments intended this information to allow users to more easily locate the plan's or issuer's machine-readable files, increasing both automated and non-automated access to the machine-readable files. Additionally, and as discussed in section III.C.10. of the proposed rules, the Departments proposed to add paragraph (b)(4)(vi) to require plans and issuers to post a Text File beginning on the first day of the calendar-year quarter following the applicability date under paragraph (c)(1) and subsequently update the Text File as soon as practicable but not later than 7 calendar days following a change in any of the information required under paragraph (b)(2)(iv) of the proposed rule.

The Departments requested comment on all aspects of this proposal, and in particular on whether the Departments should issue guidance regarding whether any standards are required to ensure that the identified point of contact for plans and issuers is responsive to inquiries submitted by file users (such as a timeline to respond to inquiries or designated hours of availability for phone contact, and, if so, the recommended timeline and designated hours) or whether additional forms of contact (such as a physical address) are necessary.

After consideration of comments, the Departments are finalizing this proposal with modifications to allow plans and issuers to provide a monitored email address for either an individual or a group dedicated to receiving and responding to inquiries and issues related to the machine-readable files required under paragraphs (b)(1) and (2) of this section, in lieu of requiring the point-of-contact information to include a specific named individual with their title. As explained in section III.C.8.a. of this preamble, the Departments are redesignating this proposal from paragraph (b)(2)(iv) to paragraph (b)(2)(iii) because the Change-log File proposal at paragraph (b)(2)(i) is not being finalized. The Departments are finalizing the other parts of paragraph (b)(2)(iv), redesignated as paragraph (b)(2)(iii), as proposed.

Many commenters supported the proposal to require a Text File in the root directory of a plan or issuer's website. Commenters noted that this approach would improve file discoverability by enabling automated file retrieval, reducing the time users spend manually navigating inconsistent website structures, and aligning with existing Hospital Price Transparency requirements. A commenter also stated that locating the standardized Text File in the root folder would reduce search costs for third-party developers and the public, ultimately making the disclosures actionable and more usable in practice.

The Departments agree that a standardized Text File in the root folder that includes the proposed data elements would significantly improve the discoverability and usability of machine-readable files, ultimately making the files more transparent to the public. In response to ongoing interested party feedback that file placement varies across plans and issuers and can be difficult to locate on a plan's or issuer's website, the Departments have determined that requiring a Text File at a consistent, predictable location addresses this barrier by providing a direct link to the machine-readable files and eliminates the need for users to navigate varied website structures. Additionally, as the Departments noted in the preamble to the proposed rules, this requirement is consistent with the approach adopted under the 2023 Hospital Price Transparency final rule, which requires hospitals to post a Text File in the root folder of the hospital's public website that includes a direct link to the hospital's machine-readable file.[91]

Several commenters urged the Departments to require plans and issuers to submit their Transparency in Coverage file locations, or the information contained in the root-level Text File, to CMS or DOL for inclusion in a centralized, publicly accessible DOL or CMS-hosted repository. These commenters cited multiple benefits, including improved file discoverability, reduced redundant web crawling, streamlined compliance monitoring, enhanced regulatory oversight, and greater permanence and authority of file location data. A few commenters noted that a centralized repository would reduce the burden on self-funded plans that lack the infrastructure to implement root-directory hosting independently. A commenter stated that a centralized repository would enhance the accountability of entities producing the machine-readable files and support the Departments in conducting compliance assessments more efficiently. Another commenter noted that this approach would reduce burdens on employers and other data users at a negligible cost to the Federal government and with no additional burden on group health plans, service providers, and issuers. A few commenters noted that centralized indexing of transparency file locations has proven feasible at the State level

[90] The proposed rules proposed requirements in relation to the prescription drug machine-readable files at proposed paragraphs (b)(2)(iv) (relating to the proposed requirement to include a plain text file in a .txt format in the root folder of a plan's or issuer's website) and (b)(3) (relating to the method and format for disclosing information to the public) of 26 CFR 54.9815–2715A3, 29 CFR 2590.715–2715A3, and 45 CFR 147.212.

[91] 90 FR 60432, 60460 (December 23, 2025) (citing 88 FR 81540 (November 22, 2023)).

and could be adopted at the Federal level.

The Departments have determined that establishing and maintaining the infrastructure necessary to support a centralized repository would require additional resources and costs that the Departments are unable to presently absorb. The Departments are, however, improving discoverability by requiring plans and issuers to disclose in the Text File, the source page URL for the website hosting the machine-readable files required under paragraphs (b)(1) and (2) of this section and, a direct link to that URL. As discussed in the preamble to the proposed rules, this provides users with a predictable location of where the machine-readable files are hosted, rather than requiring them to search through inconsistent website constructs. With respect to self-funded group health plans, the Departments note that they may contract with their service providers to satisfy this requirement per paragraph (b)(5)(ii). The required inclusion of the source page URL and a direct link to that URL in the Text File will allow users to more easily locate the plans or issuer's machine-readable files, increasing both automated and non-automated access to these files. The Departments are also finalizing the footer requirement, which further improves findability of the website hosting the machine-readable files, as discussed later in this section. The Departments will continue to evaluate centralized approaches as resources allow. The Departments acknowledge the possibility that a centralized repository would facilitate compliance and enforcement. While the requirements finalized in this rule do not establish a centralized repository, the standardized Text File and website footer significantly reduce the discoverability barriers noted by commenters by providing a consistent means of locating machine-readable files on each plan's or issuer's website. The requirements afford regulators, third-party developers, and the public the ability to identify missing or inaccurate files and report potential non-compliance. As a result, the Departments have determined it is both reasonable and efficient to continue to use existing processes to ensure compliance with the Code, ERISA, and PHS Act requirements that apply to group health plans and health insurance issuers, as discussed in section II.C. of this preamble.

Several commenters, while supportive of requiring plans and issuers to disclose clear point-of-contact information for error reporting and issue resolution related to machine-readable files, recommended the Departments modify this provision to allow plans and issuers the flexibility to include a designated email address or mailbox for a team that is responsible for responding to inquiries or issues, rather than the name and title of an individual employee. Commenters noted that most plans already manage technical and compliance inquiries through monitored group inboxes or teams to efficiently triage requests, regardless of staffing changes or turnover. A few commenters cited security concerns with listing an individual's name in a publicly accessible file. Another commenter noted that allowing plans and issuers to designate a specific group or office to respond to inquiries allows for cross-training and other staffing approaches to maximize resources rather than relying on a single individual. A commenter acknowledged this provision's alignment with the hospital machine-readable file requirements, noting that the more hospital and payer machine-readable files standards converge, the more the industry would be held to alignment and accountability as the norm, rather than the exception. A commenter characterized the individual point-of-contact requirement as an arbitrary, one-size-fits-all approach that fails to account for smaller or more efficient insurers.

Another commenter agreed that an email address would be the most effective way to contact a payer office or team responsible for the machine-readable file inquiries, rather than a telephone number or physical address. A commenter, while agreeing with the value of including contact information for someone knowledgeable about the files, recommended that CMS establish required response timeframes (for example, 10 business days) and minimum qualifications for designated points of contact to ensure they have actual technical knowledge.

The Departments agree with commenters that the goal of the point-of-contact information in the Text File—enabling the public to report technical issues or receive assistance with accessing or using the files—can be accomplished by a named individual or a dedicated group or team. As commenters noted, requiring the name, title, and email address of a specific individual may mean responses are delayed if the individual assumes a new role or is temporarily unavailable. The Departments expect that permitting a group or team of individuals to triage requests may help promote continuity and responsiveness, particularly where plans or issuers already have teams in place to handle technical and compliance inquiries. Therefore, rather than requiring the point-of-contact information to include a specific named individual with their title and email address, the Departments are modifying the point-of-contact requirement that was proposed in paragraph (b)(2)(iv)(C), and redesignated as paragraph (b)(2)(iii)(C) in these final rules, to allow plans and issuers the flexibility to designate a monitored email address for an individual or group dedicated to receiving and responding to inquiries and issues related to the machine-readable files. This change promotes better alignment with the point-of-contact requirement under the Hospital Price Transparency framework, which permits the use of a dedicated email address for this purpose.[92] This modification is also responsive to comments from a significant number of commenters who raised privacy, security and operational concerns with the named-individual requirement.

The change from an individual ''who can address inquiries and issues'' related to the machine-readable files to instead require a monitored email address for an individual or group ''dedicated to receiving and responding to inquiries and issues'' related to the machine-readable files reflects commenter feedback about the importance of an actively responsive contact, and clarifies that the Departments expect the point of contact to actually respond to the inquiries received, rather than just be able to respond. The Departments agree with commenters that an email address is the most efficient way to contact a plan or issuer and receive prompt responses to technical inquiries related to the machine-readable files, and therefore, are not finalizing additional parameters, such as response timeframes. Establishing a standard response timeframe, such as a 10-business-day requirement, may not account for the scope, scale, and complexity of potential inquiries that may vary significantly. In addition, this may strain existing technical resources and lead to incomplete responses, which would run counter to the goal of maintaining accurate and reliable information. The Departments understand that plans and issuers are best positioned to determine the response standards appropriate to their existing workflows, and many plans

[92] *See* U.S. Department of Health & Human Services, Centers for Medicare & Medicaid Services (CMS), *Hospital Price Transparency TXT File Frequently Asked Questions (FAQs),* (August 29, 2024), available at *https://www.cms.gov/files/document/hospital-price-transparency-txt-file-frequently-asked-questions-faqs.pdf.*

may leverage existing monitored inboxes that already have response timeframes and other business processes in place. Under these final rules, and consistent with the flexibility described in paragraph (b)(3)(iv), nothing would prevent a group health plan or health insurance issuer that contracts with a service provider to provide the machine-readable files on their behalf from contracting with the service provider to include the service provider's contact information in the Text File and for the service provider to answer technical questions related to the files on behalf of the plan sponsor. However, if the service provider fails to include their point-of-contact information or to answer technical questions in compliance with redesignated paragraph (b)(2)(iii)(C), the plan or issuer would be considered to violate the transparency disclosure requirements of that paragraph. While the Departments have determined that it is unnecessary to establish specific minimum qualification requirements for the designated points of contact, the Departments stress that whoever receives and responds to inquiries and issues related to the machine-readable files must be familiar both with the requirements of 26 CFR 54.9815–2715A3, 29 CFR 2590.715–2715A3 and 45 CFR 147.212, as applicable, as well as how to access and use information in the machine-readable files.

A few commenters noted that the root-directory requirement is impractical for many self-funded employer plans, as most do not maintain public-facing websites and rely on service providers to host machine-readable files on their behalf. These commenters appreciated the Departments' acknowledgment that existing paragraph (b)(5)(ii) and proposed paragraph (b)(3)(iv) would allow such plans to contract with their service provider to meet machine-readable file requirements under this section but requested additional clarity on how the root-directory requirement applies to service provider-hosted files. Both commenters emphasized that clear accountability is necessary to avoid non-compliance. A commenter stated that when a service provider hosts files on behalf of a self-funded plan, regulatory accountability for data accuracy and completeness should remain with the plan sponsor, and that delegation of hosting should not equate to delegation of responsibility.

The Departments acknowledge that many self-funded group health plans do not maintain their own public websites. To address this, the Departments note that under the special rules at paragraph (b)(5)(ii), a group health plan or health insurance issuer may satisfy the requirements under paragraph (b) by entering into a written agreement under which another party, such as a service provider or health care claims clearinghouse, provides the information required by paragraph (b) in compliance with this section. Accordingly, a plan without its own public website can, through a written agreement, have the service provider post the Text File in the root folder on the service provider's public website on behalf of the plan. The Departments clarify that delegation of hosting responsibilities to a service provider through a written agreement does not alter the compliance obligations of the plan. The plan remains responsible for ensuring that the requirements of this section are met, regardless of which entity hosts the files.

A commenter recommended that the Table of Contents File become a mandatory component of the Transparency in Coverage framework, citing practical advantages related to file discovery and retrieval. The commenter noted that it is operationally efficient for the root file to point to a single Table of Contents File rather than to potentially hundreds or thousands of individual In-network Rate Files. The commenter stated that the Table of Contents File can serve as an index that organizes and references all underlying machine-readable files in a predictable and scalable manner, reducing clutter at the root level and providing a standardized entry point for both human users and automated systems.

The Departments emphasize that the root file does not need to point to every individual In-network Rate File and Allowed Amount File, only the location where those individual files can be found. As the Departments noted in section III.C.1. of this preamble, current technical implementation guidance specifies that a Table of Contents File is needed if more than one plan or policy offered by a plan or issuer shares the same in-network rates. The Departments plan to continue to refine this guidance in future iterations, as discussed in more detail in section III.C.1. of this preamble.

A commenter stated that much of the information provided in the proposed Text File is already publicly available through State requirements and member benefit accumulators, characterizing the proposal as largely duplicative. The commenter also stated that the internet-based self-service tool, which reflects a consumer's actual benefits, is the more useful option for consumers. The commenter encouraged the Departments to work with interested parties to determine the Text File format if the requirement is finalized.

The Text File serves as a findability tool designed to enable data users, including third-party developers, researchers, employers, and automated systems to locate the machine-readable files at a standardized, predictable location. By requiring plans and issuers to publish file locations in this consistent format, these final rules help ensure that the underlying data in the files are readily accessible to all members of the intended audience. The Text File does not serve the same function as consumer-facing cost tools or member benefit accumulators, which provide individualized cost estimates based on a consumer's specific plan benefits. Rather, the Text File will address the issues that file users experience in locating machine-readable files across plan's and issuer's websites. As the Departments explained in the 2020 final rules, these file users include researchers, legislators, and regulators, as well as application developers who could make the information usable and easily understood by all purchasers of health care items and services, such as individual consumers, employers, and government health care programs.[93] The Departments note that interested parties will have the opportunity to provide further feedback on the format of the Text File alongside other required machine-readable files requirements through GitHub, as part of the development of the future technical implementation guidance. For the reasons described above, the Departments do not agree that the Text File requirement is duplicative and are finalizing the requirement as proposed.

A commenter, while generally supportive of the Departments' efforts to improve findability, observed that Transparency in Coverage files are already more easily locatable than hospital files and tend to be generated and hosted by a small set of vendors or upstream carriers. The commenter noted that, given this dynamic, a standardized or shorter pathway to files may not provide as much benefit as was experienced from the Hospital Price Transparency framework.

While the Departments recognize that Transparency in Coverage machine-readable files are generated and hosted by a more concentrated set of entities than the Hospital Price Transparency files, the Departments continue to receive feedback from file users and other interested parties, including many of the commenters on the proposed

[93] 85 FR 72158, 72169 (November 12, 2020).

rules, that significant findability challenges persist across Transparency in Coverage data. Multiple commenters reported that plans and issuers continue to host files in inconsistent locations, use non-standard naming conventions, and fail to provide easily discoverable links. The Departments are confident that requiring a standardized Text File in a consistent root-level location will materially improve access for data users and that consistency across plans and issuers is important to the effectiveness of the transparency framework.

9. File Format

In the 2019 proposed rules, the Departments asked whether the required machine-readable files should be published in a single, specified, non-proprietary format, specifically JSON, noting that JSON is generally easily downloadable and may facilitate use of the data by developers and other file users.[94] In the 2020 final rules, however, the Departments declined to codify a single file type, explaining that rapid technological change supported preserving flexibility to identify technical specifications through implementation guidance rather than regulation. Accordingly, the 2020 final rules required that the files be made publicly available, free of charge, and without conditions, in a non-proprietary, open format, consistent with guidance issued by the Departments.

In the proposed rules, the Departments sought comment on whether the collective experience of file producers and file users since 2019 warranted greater standardization, including whether the machine-readable files should be published in a single non-proprietary, open-standards format, and whether that format should be JSON or CSV. The Departments explained that earlier technical guidance had contemplated multiple formats, including JSON, XML, and CSV, but that file developers had largely since converged on JSON, with internal analysis indicating that more than 90 percent of plans and issuers were already using that format. The Departments also sought comment on whether the required information in paragraphs (b)(1) and (2) should be required to be disclosed through an electronic data transfer technology, such as a publicly accessible API, as well as what standards should apply. The Departments also sought comment on whether the use of a standards-based API would benefit consumers, developers of consumer-facing applications, and other entities seeking to access this data.

In the preamble to the proposed rules, the Departments emphasized a strong inclination toward specifying a single, non-proprietary open-standards format in technical implementation guidance that would ''reduce flexibility for plans and issuers in selecting alternate file formats but would further standardize reporting of critical health care pricing information'' and added that ''specifying a single format presents an important part of fully realizing the goals of price transparency and Executive Orders 13877 and 14221.'' [95]

After considering the public comments received, the Departments have determined that restricting plans and issuers to a single publication format, to be specified in guidance issued by the Departments, is appropriate and beneficial to the ongoing production and use of the machine-readable files. The Departments have determined that this approach provides consistency by standardizing a single file format while preserving flexibility to adapt to future technological developments. Furthermore, the Departments intend to specify JSON as the required format for the In-network Rate File, Allowed Amount File, Utilization File, and Taxonomy File in guidance because, at this time, JSON best supports the current structure and exchange of Transparency in Coverage data and aligns with existing market implementation. The Text File, as described in section III.C.8.d. of this preamble, must be published in .txt format, which is also a single, non-proprietary, open standard. By contrast, the Departments have concluded based on comments received that it would be premature to adopt API requirements or standards in these final rules, and that further infrastructure development and community engagement is needed prior to the development of standards for any future API. Therefore, the Departments are redesignating 26 CFR 54.9815–2715A3(b)(2), 29 CFR 2590.715–2715A3(b)(2), and 45 CFR 147.212(b)(2) as 26 CFR 54.9815–2715A3(b)(3), 29 CFR 2590.715–2715A3(b)(3), and 45 CFR 147.212(b)(3) and amending redesignated 26 CFR 54.9815–2715A3(b)(3)(i), 29 CFR 2590.715–2715A3(b)(3)(i), and 45 CFR 147.212(b)(3)(i) to require that, unless otherwise specified in 26 CFR 54.9815–2715A3, 29 CFR 2590.715–2715A3, and 45 CFR 147.212, the machine-readable files described in paragraphs (b)(1) and (2), in addition to being made available in the form and manner specified by the Departments in guidance, must be made available in a single, non-proprietary, open-standard format, as specified in guidance.

A few commenters expressed general support for designating a particular file format for the machine-readable files without providing feedback on whether to do so in the Departments' proposed method of restricting plans and issuers to a single file format in regulatory text and then specifying the designated format in guidance. The Departments appreciate the commenters' support of the goal to make the disclosed data more uniform and usable and published in the file format that best serves the many audiences who use the machine-readable file data.

Many commenters discussed the pros and cons of the JSON file format, with most concluding that JSON would be the most logically required format, as it is the predominant format used by payers, aligns with the CMS schema validator, and provides a structure to represent relationships between plans, networks, providers, and rates. A few commenters noted it would be burdensome to require payers to use a different file format other than JSON, given its prevalence. A commenter recommended not allowing any formats other than JSON, while another commenter suggested JSON be required, with optionality for other file formats. A commenter wanted the Departments to align coding conventions and structural elements across plan and hospital transparency requirements. A commenter recommended the Departments designate Newline-Delimited JSON as the required format. A commenter concluded that JSON is an inefficient format for users with limited computing resources. Another commenter added that the files, as currently produced, are confusing and sometimes inaccessible.

The Departments have concluded that JSON offers significant advantages as a publication format for the machine-readable files. As discussed in the proposed rules, JSON is already the predominant format used in the market, with over 90 percent of plans and issuers having chosen JSON for their published machine-readable files (including an extremely small number using Newline-Delimited JSON).[96]

[94] 84 FR 65464, 65481 (November 27, 2019).

[95] 90 FR 60432, 60461 (December 23, 2025).

[96] 90 FR 60432, 60461 (December 23, 2025). Newline-Delimited JSON (NDJSON) is a variation of JSON in which each line contains a single JSON object, while JSON has a single root object containing the entirety of the dataset. NDJSON files would not comply with the current schema version in technical implementation guidance.

Because the overwhelming majority of plans and issuers already publish in JSON, and because downstream users have built significant ingestion and validation tooling around the existing JSON ecosystem, requiring a different format now would likely create significant transition costs for issuers, service providers, and file users. Commenters reinforced the Departments' determination that JSON, as a hierarchical format, is particularly well-suited to representing the complex and nested relationships reflected in Transparency in Coverage data, including relationships among plans, networks, providers, billing codes, and negotiated rates, without requiring extensive repetition of the same data values. The Departments agree with commenters that JSON's broad native support across programming languages and modern data tooling, and its usefulness across all phases of the Extraction, Transformation, Load (ETL) process, make it a highly effective publication format for these disclosures, and a practical format for downstream transformation by third-party developers, researchers, and regulators. On the technical side, the Departments recognize JSON as both self-describing and human-readable, which can help users understand the data structure by performing visual checks of JSON-formatted files. The Departments acknowledge that JSON may be a challenge for users with limited computing resources and may appear inaccessible as a result but note that there are free tools available to assist consumers in accessing and interacting with the files, and data in JSON format can be readily transformed into more accessible formats. For all these reasons, the Departments plan to designate JSON in guidance as the single, non-proprietary, open-source file format standard for the machine-readable files.

In discussing an alternative, a few commenters recommended that, if the Departments standardize on a single format, the Departments should adopt a relational CSV approach or tabular type (for example, denormalized, multiple linked tables), because commenters believed a relational CSV design could preserve hierarchical relationships while reducing file size and improving analytic usability. A few other commenters did not support the Departments standardizing machine-readable files to CSV or other ''flat'' tabular formats, because the commenters believed that CSV would require duplicative, denormalized structures to represent the Transparency in Coverage nested schema, thereby increasing file size and processing burden, and making the data less workable at scale. A commenter suggested the Departments undertake a full review of CSV before choosing it as a file format.

The Departments considered requiring or designating CSV, given that some researchers and file users may prefer to work with rectangular or table-based data structures. As discussed in the proposed rules, the Departments received feedback that some file users, especially researchers, migrate machine-readable file data from JSON to CSV to conduct analyses, and that CSV may be more familiar and visually accessible for some users.[97] However, the Departments disagree that CSV or other flat tabular formats are the most appropriate format for the machine-readable files. Given that the Transparency in Coverage data are large and structurally complex, and CSV does not natively represent nested relationships, the Departments remain concerned, as commenters indicated, that using CSV or any row-based flat file structure for publication of data of this scale would require extensive denormalization or other conventions to preserve those relationships. The Departments agree with the expectation that this would create substantial inefficiencies and repetition of shared values across very large numbers of rows, such that redundant data values would be repeated up to millions of times per file. The Departments agree with commenters who stated that requiring a transition from the current predominant JSON approach to a single alternative format (for example, CSV) would create significant technical complexity, implementation risk, and costs.

For these reasons, the Departments have determined that adopting CSV as the required file format would not lead to file size reductions or increased file usability. The Departments agree that data structure is an important consideration in determining how usable machine-readable file data will be for researchers, developers, and regulators. The Departments considered the commenters' view that linked-table or relational structures may simplify some downstream analytics and may make it easier for certain users to load data into common database or analytics tools. However, the Departments are not finalizing a requirement that the machine-readable files be published in a relational or rectangular structure. As discussed in the responses elsewhere in this section, the Departments have determined that the required publication format must be evaluated in light of the full range of uses and the underlying characteristics of the Transparency in Coverage data. As such, the Departments note this file format requirement using JSON helps the Transparency in Coverage machine-readable files more closely align with the Hospital Price Transparency requirements. Both rules use JSON as an allowable file format. Even though the Hospital Price Transparency requirements allow for JSON and CSV, this restriction to just a single file format brings the Transparency in Coverage rules more in alignment with the Hospital Price Transparency rule by narrowing the scope of permissible formats compared to when previously allowing any open-source format.

A few commenters discussed the pros and cons of the Parquet file format. A commenter believed it would make the most sense as a required format, another suggested the Departments review its merits and limitations before requiring it, and another recommended allowing Parquet as an optional or permitted format. A few commenters suggested that rectangular, linked tables, or relational data sets, would better serve the purpose of simplifying the machine-readable files. These commenters explained that Parquet files can be compressed, are compatible with analytics tools and programming languages, can represent nested data structures, and support efficient data reading and writing.

The Departments recognize that the Parquet file format has important advantages for certain downstream analytic uses and may be especially useful for some researchers and other users working with large datasets in mature analytics platforms. Parquet is a columnar, binary format that can reduce storage requirements, support efficient querying of large data sets, and improve reading and writing performance in some analytic environments. Parquet is generally better suited to later stages of the ETL process—particularly the loading and querying of already-transformed data in analytic environments—than to the initial public disclosure of raw Transparency in Coverage data for broad reuse across many use cases. Designating Parquet as the only acceptable file format would assume a common end-stage analytic use that is not shared by all file users. The Departments also remain concerned that requiring Parquet now would impose substantial transition costs, as discussed elsewhere in this section. In addition, JSON has other advantages over Parquet as a standard for the

[97] 90 FR 60432, 60461 (December 23, 2025).

machine-readable files, in that JSON is self-describing and human-readable, which helps users understand the data structure and perform visual checks, whereas Parquet is a binary format that is not human-readable, and working with it generally requires specialized software. The Departments therefore conclude that, while Parquet may be valuable for some downstream users after transformation, it is not the most appropriate required publication format for the machine-readable files at this time.

The Departments therefore agree that requiring a different single format, particularly CSV or Parquet, would be disruptive, and could undermine rather than improve standardization in the near term. Additionally, for all the reasons discussed in this section, the Departments have determined that a different single file format would not achieve the usability and standardization goals that JSON has achieved.

A commenter suggested that for smaller and less resourced plans, submitting rate contracts in lieu of a standardized file format would be preferred. Another recommended the Departments consider allowing plans and issuers to publish complete, unredacted provider contracts as an alternative to producing machine-readable JSON files.

The Departments acknowledge that some plans and issuers may face greater operational or technical difficulties than others in producing and maintaining machine-readable files, particularly where technical resources are limited. The benefit of the standardized machine-readable file format finalized here is that it improves the comparability, consistency, and practical usability of those disclosures across the market. Publishing underlying contracts instead of standardized machine-readable files would not provide the same uniform, machine-readable, and broadly reusable format for aggregation, validation, analysis, and consumer tool development that these final rules are intended to support.

A few commenters recommended that the Departments not specify a required file format and instead continue to allow format flexibility to plans and issuers. One of the commenters asserted that it is not necessary for the Departments to specify the file type, as there are widely available conversion tools that convert data represented in a standardized relational, rectangular structure to a different format of choice. A few commenters suggested that the Departments relay file format preferences in sub-regulatory formats instead of in rulemaking.

The Departments recognize the benefits of maintaining flexibility for plans and issuers to publish the machine-readable files in a variety of formats, and for users to engage with the files more easily in their preferred format. However, the Departments have determined that identifying a specific file format will improve data usability for the public. The Departments also disagree that the availability of conversion tools eliminates the need to specify a single publication format. While conversion tools may help some users transform the published data into their preferred analysis format, they do not eliminate the need for a consistent, standard publication format for purposes of validation, comparability, and broad market-wide usability. The Departments agree that maintaining the specific format requirement in guidance allows the Departments to respond more quickly to technological changes, implementation experience, and future improvements in data exchange methods, while establishing in regulation the clear expectation that the machine-readable files must be published in a single non-proprietary, open-source file format.

A few commenters recommended that plan-specific claims data be provided in standardized, X12 837-compatible electronic format.

The Departments have determined that this would introduce unnecessary complexity given that the X12 837-compatible electronic format is designed to convey patient-specific information at a transactional level, versus general negotiated rate information between payers and providers. As such, to switch to an X12 837-compatible electronic format would require extensive modifications or implementation guidance to achieve what the In-network Rate Files are designed to provide. Further, while the Allowed Amount Files are designed to provide some out-of-network claims information (that is, allowed amounts and billed charges) that are the output of claims processing, a similar amount of guidance to redact personally-identifiable information and other extraneous transactional information would ultimately transform such a format into something unrecognizable as a standard X12 837, eliminating any benefit to be gained by using such a standardized format, including re-using existing claims-processing software. Ultimately, the machine-readable files are reports of information that can be found in multiple payer systems and not just claims adjudication systems, and the Departments have determined that by reporting a standardized machine-readable file format that only includes the information necessary for the purpose of meeting the Transparency in Coverage disclosure requirements as specified under 26 CFR 54.9815–2715A3(b)(1), 29 CFR 2590.715–2715A3(b)(1), and 45 CFR 147.212(b)(1), payers have the flexibility to determine the best and most efficient way to produce the required information.

Many commenters supported the idea of requiring or enabling disclosure of rate information through a publicly accessible, standards-based API, because APIs would provide more usable, scalable, and programmatic access than downloading and processing very large machine-readable files. Several commenters specified that APIs should use the Fast Healthcare Interoperability Resources (FHIR) standard and specific FHIR-based implementation guides to support consistent implementation and cross-entity interoperability. A commenter suggested the Departments provide a central, standardized API for users to access machine-readable file data.

On the other hand, a few commenters expressed opposition to a requirement for API-based disclosure of Transparency in Coverage machine-readable file information at this time, because an API requirement would add cost, complexity, and security and operational risks, without clear incremental benefit over file posting. A few commenters stated that requiring API-based disclosure would introduce a fundamentally different operational model that would require plans and issuers to build and maintain new infrastructure and would introduce significant engineering complexity. A few commenters recommended the Departments delay considering a publicly accessible API requirement and instead revisit APIs in future notice-and-comment rulemaking, because commenters believed plans and issuers were already facing significant operational work to implement the proposed file restructuring and newly required files.

The Departments agree that requiring plans and issuers to make pricing data available through a standards-based API could ultimately spur competition and reduce the burden on application developers to innovate around providing more user-friendly and effective applications for consumers. However, the Departments also agree with commenters that the current ecosystem around the machine-readable files is insufficiently mature to specify what the core functions for future APIs

ought to be, and consequently, what the required architecture for APIs ought to look like. Moreover, the Departments have determined that any version of building out API requirements and standards would impose substantial new development costs on the issuer community, above and beyond the costs of the current machine-readable file requirements as specified under 26 CFR 54.9815–2715A3(b), 29 CFR 2590.715–2715A3(b), and 45 CFR 147.212(b), especially as plans and issuers are currently implementing other interoperability requirements. The Departments also have concerns regarding the longer-term burden required for the ongoing operation and maintenance of APIs. For example, large volumes of repeated data requests could strain a future API infrastructure drawing on machine-readable files and thereby create performance challenges. With regard to using FHIR as the appropriate standard for a Transparency in Coverage API, the Departments have determined that additional research and industry community input is required before a decision on a specific standard can be promulgated through rulemaking or technical guidance. Moreover, the Departments would want to engage a designated standards maintenance organization in helping to guide the Departments in any related API-standard setting before undertaking any future rulemaking or technical specifications regarding APIs. Therefore, the Departments are not finalizing a requirement that plans and issuers provide the rate information required under paragraphs (b)(1) and (2) through a publicly accessible API.

The Departments received a few out-of-scope comments. A commenter suggested that commercial contracts should remain free to negotiate prices within these classifications but should not be permitted to substitute proprietary grouping systems that defeat the comparability this rule is designed to create. Another commenter supported APIs as part of a broader request for interoperability, including for digital insurance cards and ''connectathons.'' The Departments do not respond to these comments because they are out of scope.

10. Required Method and Format for Disclosing Information to the Public

The Departments made several proposals related to the method and format of disclosing information to the public. As discussed in section III.C.8. of the proposed rules, the Departments proposed to redesignate paragraphs (b)(2) and (3) of 26 CFR 54.9815–2715A3, 29 CFR 2590.715–2715A3, and 45 CFR 147.212 as paragraphs (b)(3) and (4), respectively. The Departments proposed to add paragraph (iii) to redesignated paragraph (b)(3) to require that the source page URL for the internet website that hosts the machine-readable files required by paragraph (b)(1) and new paragraph (b)(2) must be included as a link in the footer on the home page of the group health plan's or health insurance issuer's website, as well as any page of the website that features a footer, that is labeled ''Price Transparency'' or ''Transparency in Coverage'' and links directly to the publicly available web page that hosts the link to the machine-readable files.[98] The Departments are finalizing new paragraph (b)(3)(iii) as proposed.

Many commenters supported the proposal to improve machine-readable file discoverability through a standardized website footer link. Commenters agreed that a standardized footer link would make it easier for users to locate the Transparency in Coverage machine-readable files, which support the Departments' broader goal of improving access and consistency across plans and issuers. A commenter characterized the footer link as a low-effort, consumer-facing improvement. A few commenters supported the alignment with the Hospital Price Transparency framework, noting that a standardized footer link would improve efficiency in locating health plan price files. A commenter noted that the footer link, in combination with the Text File, would prevent plans and issuers from being transparent in-name-only by burying information on their websites and instead require outward-facing transparency that meaningfully benefits consumers.

The Departments agree that a standardized footer link labeled, ''Price Transparency'' or ''Transparency in Coverage'' will provide a consistent, predictable navigation path for consumers and other users seeking access to plans and issuers' machine-readable files. Further, the Departments have determined that this requirement will promote consistency across pricing disclosure initiatives since this approach aligns with the Hospital Price Transparency framework at 45 CFR 180.50(d)(6)(ii), where standardizing the placement and labeling of these links were also intended to improve file accessibility. The Departments also agree with commenters that the footer link, together with the Text File requirement, will ensure that compliance with the machine-readable file requirements provides meaningful public access to the data.

A commenter recommended the Departments require the footer hyperlink to be labeled ''Transparency in Coverage'' rather than permitting ''Price Transparency'' as an alternative. The commenter noted that some plans currently use ''Price Transparency'' to describe member-facing shopping resources, including personalized cost estimator tools, and that consumers encountering a ''Price Transparency'' link may expect those tools rather than the file user-oriented machine-readable files. The commenter stated that a single, consistent label would reduce ambiguity across the market and improve navigation for both consumers and technical users.

The Departments are finalizing two label options, ''Price Transparency'' and ''Transparency in Coverage,'' to provide plans and issuers the flexibility to organize their price transparency information in a manner that is intuitive for their users. As an example, a plan may choose to consolidate its machine-readable files, consumer cost tools, and other pricing disclosures under a single ''Price Transparency'' heading or may choose to maintain a distinct ''Transparency in Coverage'' heading to differentiate the machine-readable files from other consumer-facing resources. In selecting one of the two permissible options, plans and issuers are encouraged to organize the linked content in a way that facilitates clear navigation for all of their respective users.

The Departments also proposed to add paragraph (iv) at redesignated 26 CFR 54.9815–2715A3(b)(3), 29 CFR 2590.715–2715A3(b)(3), and 45 CFR 147.212(b)(3), in line with guidance issued on April 19, 2022 in FAQs Part 55,[99] but extended to apply to issuers, such that any plan or issuer could satisfy the disclosure requirements of paragraph (b)(3)(iii) by entering into a written agreement under which another party posts the machine-readable files on its public website on behalf of the plan or issuer. The Departments determined that, for a plan or issuer that does not have a public website, it would be overly burdensome to require such

[98] The proposed rules proposed requirements related to prescription drug machine-readable files at proposed paragraph (b)(3) (relating to the method and format for disclosing information to the public) of 26 CFR 54.9815–2715A3, 29 CFR 2590.715–2715A3, and 45 CFR 147.212.

[99] *See* U.S. Department of Labor, U.S. Department of Health & Human Services & U.S. Department of the Treasury, *FAQs about Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 55* (August 19, 2022), *https://www.cms.gov/files/document/faqs-part-55.pdf* and *https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-55.*

plan or issuer to create and maintain a website to satisfy this requirement. The Departments proposed extending this flexibility to issuers, which were not covered under the guidance in FAQs Part 55, so that this compliance option would be available to all entities subject to the requirements of paragraph (b)(3)(iii). Additionally, the Departments proposed that if the files are hosted on a service provider's website, and the plan or issuer does maintain a public website and chooses not to also post the files separately on its own public website, the plan or issuer would be required to provide a link on its own public website to the location where the files are made publicly available. This requirement would apply to a public website maintained by the plan or issuer and would not apply to a public website maintained by an employer or plan sponsor. This proposed new paragraph would also move part of current 26 CFR 54.9815–2715A3(b)(4)(iii), 29 CFR 2590.715–2715A3(b)(4)(iii), and 45 CFR 147.212(b)(4)(iii) addressing plans or issuers who do not have a website to new paragraph (b)(3)(iv) for clarity and alignment with other proposed changes. The Departments received no comments on this proposal and are finalizing it as proposed.

The Departments also proposed to redesignate paragraph (b)(2) as paragraph (b)(3), and proposed to make three changes: First, the Departments proposed to divide the existing language in paragraph (b)(2) into two paragraphs at redesignated paragraphs (b)(3)(i) and (ii); second, the Departments proposed to indicate at redesignated paragraph (b)(3)(ii) that the machine-readable files in paragraphs (b)(1) and (2) (instead of paragraph (b) generally, as currently written) must be available in a form and manner as specified in guidance issued by the Departments; third, the Departments proposed to amend redesignated paragraph (b)(3)(ii) to ensure that the machine-readable files remain publicly accessible to automated scripts and web crawlers as well as human users. The Departments are finalizing the first two changes as proposed and are finalizing the third with modifications to use consistent singular phrasing—''any person, automated script, or web crawler''—for grammatical clarity.

The Departments did not receive any comments on the first proposal to divide and redesignate paragraph (b)(2) and therefore are finalizing as proposed. The Departments also did not receive any comments on the second proposal to specify in redesignated paragraph (b)(3)(i) that the machine-readable files in paragraphs (b)(1) and (2) (instead of paragraph (b) generally, as currently written) must be available in a form and manner as specified in guidance issued by the Departments and are finalizing as proposed with the modification to do so unless otherwise specified in 26 CFR 54.9815–2715A3, 29 CFR 2590.715–2715A3, and 45 CFR 147.212. With regard to the third proposal, the Departments also did not receive any comments but are clarifying, to match the language in paragraphs (b)(3)(i) and (iii), that the machine-readable files in redesignated paragraph (b)(3)(ii) refer to the ones in paragraphs (b)(1) and (2).

The Departments proposed to amend redesignated paragraph (b)(3)(ii) to specify that the machine-readable files must remain publicly available and accessible to any person, automated scripts, or web crawlers free of charge and without conditions such as establishment of a user account, password, submission of personally identifiable information or other credentials, or blocking server configurations or firewalls to access the file. The Departments explained that requiring the machine-readable files to be available to both human and automated users would more directly align with the purpose of the files being in a machine-readable format. The Departments also provided examples of conditions that they would consider a barrier to file access including requiring a user to enter an EIN, TIN, or a plan name to access a specific file; requiring a user to encounter a ''CAPTCHA,'' [100] or a 403 error; [101] or limits on the number of downloads allowed by a user or at a time. The Departments stated that once a human user or automated web crawler arrives at the website of the plan or issuer, they should be able to identify the specific location of the files. The Departments determined that making this information more easily accessible to automated searches and data aggregation would help third parties to develop tools that further assist the public in understanding this information and capturing it in a meaningful way for making informed health care decisions.

Several commenters supported the requirement to ensure machine-readable file availability and accessibility to both manual and automated users, citing ongoing barriers to automated access such as non-crawlable URLs and download throttling, and the importance of explicit access to both human users and automated scripts. A few commenters cited the use of CAPTCHAs as an ongoing obstacle to automated access. A commenter noted that some plans and issuers impede automated access to their machine-readable files by blocking requests from IP address ranges from major cloud providers. Another commenter requested that the Departments clarify that ''publicly available'' means accessible via straightforward HTTP requests.

A commenter opposed the requirement to ensure that machine-readable files are available and accessible to both manual and automated users due to security concerns. The commenter requested that the Departments revise the proposed ''without conditions'' requirement to permit plans and issuers to implement reasonable technical safeguards. The commenter added that such a change risks eliminating widely used and accepted basic security and resiliency controls that are necessary for operating any public-facing infrastructure at scale.

The Departments agree that preserving automated and manual access to machine-readable files is key to ensuring availability of the machine-readable files as public information. The Departments are aware that access to the machine-readable files comes predominantly from automated systems and reaffirm that barriers limit accessibility. The Departments have observed instances of plans and issuers preventing users from accessing their full set of machine-readable files by requiring users to enter an EIN or HIOS identifier to access a single file at a time, when the intention has always been for a user to have direct access to all of a plan's or issuer's machine-readable files without obstruction. The Departments recognize that plans and issuers have an interest in utilizing security and resiliency strategies to maintain server uptime and the availability of the files for public download. However, the Departments understand that features that impede access to the machine-readable files, such as CAPTCHAs and rate limiting, result in a barrier to automated ingestion of machine-readable files and prohibit public users from effectively accessing the data and engaging with the files. Therefore, the Departments are not revising the

[100] *See* IBM, *What is CAPTCHA?*, available at *https://www.ibm.com/think/topics/captcha* (last visited May 4, 2026) (''CAPTCHA stands for 'completely automated public Turing test to tell computers and humans apart.' It refers to various authentication methods that validate users as humans, not bots, by presenting a challenge that is simple for humans but difficult for machines.'').

[101] *See* Mozilla, *403 Forbidden,* available at *https://developer.mozilla.org/en-US/docs/Web/HTTP/Reference/Status/403* (last updated July 4, 2025) (''The HTTP 403 Forbidden client error response status code indicates that the server understood the request but refused to process it.'').

''without conditions'' requirement. However, the Departments note that, as part of their enforcement, they will take into consideration whether a plan was trying to protect itself from distributed denial of service attacks in evaluating whether a plan or issuer was obstructing manual and automated access to the machine-readable files.[102]

11. Timing

In the proposed rules, under 26 CFR 54.9815–2715A3(b)(4), 29 CFR 2590.715–2715A3(b)(4), and 45 CFR 147.212(b)(4) (which the Departments proposed to be redesignated from paragraph (b)(3) as discussed in preamble section III.C.7. of the proposed rule), the Departments proposed to add new paragraphs to specify timing requirements for publishing each machine-readable file. In particular, the Departments proposed to amend redesignated paragraph (b)(4)(i) to require plans and issuers to update and post the In-network Rate and Allowed Amount Files required under paragraphs (b)(1)(i) and (ii), respectively, quarterly rather than monthly, beginning on the first day of the calendar-year quarter following the applicability date under paragraph (c)(1). The Departments sought comment on the benefits, drawbacks, and potential impact of the proposed change in the reporting cadence for the In-network Rate Files and the potential impact of the proposed change in reporting cadence for the Allowed Amount File. After considering comments on the proposal, the Departments are finalizing the timing requirements for the In-network Rate and Allowed Amount Files as proposed. The Departments are not finalizing the proposed timing requirements for the Change-log File; therefore, proposed paragraph (b)(4)(iii) is not being finalized, and proposed paragraphs (b)(4)(iv) through (vi) are finalized at paragraphs (b)(4)(iii) through (v), respectively. The Departments are also finalizing the timing for the Utilization File with modification, requiring it to be updated and posted annually beginning July 1, 2028. The Departments are finalizing the timing of the Taxonomy File and the Text File as proposed.

The majority of commenters on this proposal were generally supportive. Supportive commenters stated that the quarterly change would (1) reduce regulatory, administrative, and compliance burden; (2) decrease data churn; (3) stabilize data architecture; (4) free up resources for higher quality data preparation; and (5) create a more sustainable process while preserving price transparency objectives and the usefulness of the data. A commenter agreed that the proposed shift to quarterly reporting is reasonable but emphasized the general principle that patients, employers, and researchers deserve timely access to the data.

Most commenters who supported quarterly reporting for the In-network Rate File also supported quarterly reporting for the Allowed Amount File. A commenter supported quarterly reporting specifically for the Allowed Amount File but opined that while the shift reduces the frequency of file generation, the addition of utilization data increases the scope of the files, and that the net operational burden would likely be comparable to or less than current requirements. Several commenters supported quarterly reporting as an improvement to data usability, noting that the monthly reporting cadence creates noise, duplicates data, and makes it difficult to identify pricing trends or conduct longitudinal analyses. These commenters shared that monthly updates overtake some users' ability to process large files with little added value since negotiated rates generally do not change month to month. Commenters shared that a quarterly cadence would provide more stable, consistent snapshots, allowing consumers of the data to process fewer, more substantive updates rather than repeatedly ingesting largely identical datasets while reducing file bloat.

The Departments agree with commenters that the change to a quarterly reporting cadence for the In-network Rate and Allowed Amount Files will reduce the administrative burden on plans, issuers, and service providers. As the Departments explained in the preamble to the proposed rules, shifting to a quarterly reporting cadence for these files will help lower data storage and hosting costs, decrease bandwidth needs, and reduce ongoing maintenance expenses.[103] The Departments acknowledge and share the principle that patients, employers, and researchers deserve timely access to the data and find that the quarterly cadence strikes the appropriate balance between reducing significant operational burden of monthly reporting on plans and issuers and maintaining sufficiently current data. The Departments also agree that the reduced cadence will provide file users with more time to analyze the data, as some file users have shared they have difficulty keeping up with the pace of downloading and ingesting the file data monthly.[104]

Several commenters noted that the quarterly cadence provides plans and issuers additional time for validation and quality assurance before posting, improving the overall accuracy, quality, and completeness of the data. Commenters explained that the current monthly cadence does not provide plans and issuers with sufficient time to review and correct their files before the next update cycle, increasing the likelihood of errors and incomplete submissions. These commenters stated that a quarterly cadence may lead to fewer incomplete or broken files, higher overall file quality, and a decreased likelihood of inadvertent reporting errors. On the other hand, a commenter stated that monthly reporting gives plans and issuers the opportunity to identify and correct errors within a shorter window, and that under a quarterly reporting schedule, errors could leave file users without accurate information for an extended period.

The Departments anticipate that allowing plans and issuers two additional months between disclosures will ultimately result in improvements to the overall accuracy, quality, and completeness of the files. The additional time between reporting cycles will give plans and issuers more opportunity to review their files and conduct quality assurance, which may reduce errors prior to posting. Additionally, as discussed in section III.C.8.d. of this preamble concerning the Text File, the Departments are finalizing the proposal to require plans and issuers to provide, in prominent locations, an email address for an individual or group dedicated to receiving and responding to inquiries and issues related to the machine-readable files. While the quarterly cadence reduces the number of opportunities for correcting errors since there are fewer reporting cycles, the Text File requirement improves the ability of file users to reach the appropriate parties to address those corrections in a timely manner.

A few commenters expressed conditional support for quarterly reporting for the In-network Rate File, contingent on the concurrent finalization of standardized Change-log Files, specifically stating that the effectiveness of the quarterly file updates fully depend on how they are structured and implemented and that the combination of quarterly reporting

[102] *See* Cybersecurity and Infrastructure Agency, *Understanding Denial-of-Service Attacks, https://www.cisa.gov/news-events/news/understanding-denial-service-attacks* (last updated Feb. 1, 2021).

[103] 90 FR 60432, 60464 (December 23, 2025).

[104] *Id.*

and a quarterly Change-log File would provide the right balance by allowing users to easily identify changes without having to download files monthly.

The Departments are not finalizing the Change-log File requirement for the reasons described in section III.C.8.a. of this preamble. Nevertheless, the Departments have determined that the quarterly reporting cadence is still optimal even without the Change-log File, due to the infrequency of data changes and the operational burden of monthly reporting, as discussed in the preamble to the proposed rules. The Departments find the changes being finalized in these rules collectively will significantly improve user experience, reduce processing time and effort, and make the files more accessible to the intended users of these files.

Commenters who opposed the proposed reduction in reporting frequency were primarily concerned that prices and provider networks can change more frequently than quarterly and that the proposal would introduce or worsen staleness in the data and reduce its reliability and usefulness. A commenter noted that the most meaningful rate updates tend to occur in February, July, August, and October, and that a quarterly cadence could delay visibility into those updates by up to 3 months, as contract negotiations follow a cadence that is better captured through monthly reporting. Another commenter expressed concern that newly contracted providers may appear in provider directories before their negotiated rates are reflected in the machine-readable files, warning that a quarterly cadence would lengthen these gaps. A few commenters expressed concern that a quarterly reporting schedule would result in outdated or inaccurate price estimates for consumers, with a commenter pointing to potential gaps in the internet-based self-service tool information required under 26 CFR 54.9815–2715A2(b)(1), 29 CFR 2590.715–2715A2(b)(1), and 45 CFR 147.211(b)(1).

As noted in the proposed rules, the Departments recognize that negotiated rates between issuers and health care organizations tend to change slowly over time and the quarterly reporting cadence would not meaningfully affect the accuracy of reported rates in the In-network Rate File for these entities.[105] Contracts generally last a year or more, with some multi-year contracts lasting 2 to 5 years.[106] Further, industry experience indicates that because only a small percentage of contracts change monthly, historical machine-readable file data continues to provide reasonable insights even when not updated on a monthly basis.[107] Although the Departments acknowledge the concern that meaningful rate updates may occur in February, July, August, and October, and that a quarterly cadence could delay visibility into those updates, the Departments find that any harm of a potential lag in data would be outweighed by the significant burden reduction and other reporting efficiencies achieved by moving from monthly to quarterly reporting. As such, the Departments have determined negotiated rates between health care organizations and issuers should not significantly change from month to month, so the proposed quarterly reporting cadence would not meaningfully affect the accuracy of reported rates in the In-network Rate File for these entities.[108] Further, while the Departments acknowledge the concern that newly contracted providers may appear in provider directories before their negotiated rates are reflected in the machine-readable files, the Departments encourage consumers to use the internet-based self-service tool for current and accurate provider participation and cost-sharing information, as this tool is maintained independently from the machine-readable files and is subject to separate requirements.

Neither the 2020 final rules, nor these final rules, require plans and issuers to use the data in the machine-readable files to generate cost-sharing estimates for the internet-based self-service tool and the Departments remind plans and issuers that the cost-sharing information required to be provided to participants, beneficiaries, and enrollees at their request through an internet-based self-service tool under 26 CFR 54.9815–2715A2(b)(1), 29 CFR 2590.715–2715A2(b)(1), and 45 CFR 147.211(b)(1) must be accurate at the time the request is made. A group health plan or health insurance issuer that provides inaccurate information, including because it relied on outdated machine-readable file data to populate its internet-based self-service tool, is out of compliance. Additionally, the Departments recognize the role third-party developers play in building consumer-facing tools and apps using machine-readable file data to ultimately make the data accessible and meaningful to consumers, and the Departments have concluded that the quarterly cadence does not undermine consumers' ability to shop for care using these apps.

A commenter opposed the quarterly reporting cadence, stating that for injectable drugs and other items with volatile pricing, prices change from month to month, sometimes significantly, and that reducing the reporting frequency would further widen the gap between the rates available in the files and the corresponding transaction prices.

The Departments did not propose to amend the reporting cadence for the prescription drug machine-readable file. To the extent injectable drugs and other items with volatile pricing are not subject to a fee-for-service arrangement (and are therefore required to be included in an In-network Rate File), the Departments have determined that the quarterly cadence is appropriate because the rates required in the In-network Rate File are established through contractual arrangements that do not change with the same frequency as prescription drugs subject to a fee-for-service arrangement.

Several commenters shared alternatives to the reporting cadence that were not monthly or quarterly. A few commenters recommended that the Departments consider requiring reporting every 6 months, stating that payers typically do not update rates more frequently than semi-annually and that semi-annual reporting would be more cost-efficient while still providing relevant and up-to-date data without substantially undermining accuracy or transparency. A few commenters recommended requiring the machine-readable files to be updated more frequently than quarterly in certain situations, such as by providing a parallel mechanism for more frequent updates where network changes occur or by requiring updates to negotiated rates within 30 days of a contract amendment, termination, or renewal. A commenter recommended maintaining the monthly reporting cadence until the burden impacts of schema changes can be assessed.

The Departments acknowledge the range of alternative reporting cadences suggested by commenters but find that the quarterly cadence strikes the most appropriate balance, as it is not excessively burdensome on plans and issuers while still maintaining sufficiently current data. The Departments find that while the quarterly cadence accomplishes a substantial burden reduction compared to monthly reporting, the incremental

[105] *Id.*

[106] *Id.*

[107] Matthew Robben, *MRF Processing Notes—October Edition,* Serif Health (October 20, 2023), available at *https://www.serifhealth.com/blog/mrf-processing-notes-october-edition.*

[108] 90 FR 60432, 60464 (December 23, 2025).

burden reduction from moving to a semi-annual reporting cadence would not justify the impact to the timeliness of the data, as the period between updates would double from three to 6 months and risk mid-year contract changes going unreported for a longer period.

Further, deferring reductions to reporting frequency until after recommended structural schema changes are implemented would require plans and issuers to perform rework, thereby increasing the burden associated with the reporting cadence. Accordingly, the Departments are not adopting these alternatives.

A few commenters recommended that the files should be required to be posted on a specific day during the reporting period. A commenter recommended requiring files to be posted on the first of the second month of each calendar quarter, rather than the first of the first month of each calendar quarter, because machine-readable files posted around January 1 of each year reflect negotiated rates from the previous year. Another commenter recommended requiring a first of the month posting to ensure consistency and to provide a more predictable timeframe for error correction.

While the Departments agree with the underlying rationale for requiring first-of-the-month posting to ensure consistency, the Departments are not adopting a monthly cadence and instead are applying this same timing principle to the quarterly cadence, requiring files to be posted on the first day of each calendar-year quarter (January 1, April 1, July 1, and October 1). The Departments note that the rates published in the In-network Rate File are prospective, reflecting negotiated rates established through annual contracts that are in effect at the start of the applicable period and therefore do not result in data lag. The Departments are also not adopting the recommendation to shift the posting deadline to the first day of the second month of each quarter. As discussed in section III.C.4. of this preamble, the Departments are not finalizing the requirement to include numerical enrollment totals in the In-network Rate File. Because enrollment totals will not be required in the In-network Rate File, the Departments have determined that the remaining data elements can be compiled and validated for reporting on the first day of the calendar-year quarter without any expected data lag.

The Departments proposed in paragraph (b)(4)(ii) that the prescription drug machine-readable file would be required to be updated monthly, which would retain the requirement under current paragraph (b)(1)(iii). A few commenters supported keeping the prescription drug machine-readable file reporting cadence as monthly given the greater frequency of drug price changes. A commenter recommended the Departments require plans and issuers to post their prescription drug files once per year, at the beginning of their plan year, stating that more frequent reporting does not benefit consumers evaluating plans and their networks.

As stated in the preamble of the 2020 final rules, drug prices can fluctuate as often as daily,[109] so the Departments agree with commenters that a monthly cadence for the prescription drug file is more appropriate than a quarterly cadence. While an annual cadence might be sufficient for broad consumer understanding of network benefits, the goals of the prescription drug file are to provide consumers with pricing data and to reveal—for the first time—the pricing complexity of the prescription drug distribution chain. The Departments are also considering comments received on the request for information regarding the Prescription Drug Machine-Readable File Requirement in the Transparency in Coverage final rules [110] and are separately taking them into consideration to evaluate how to implement the Transparency in Coverage prescription drug disclosure requirements.

The Departments proposed to require at proposed paragraph (b)(4)(iii) that plans and issuers update the Change-log File under proposed paragraph (b)(2)(i) on the same day that each In-network Rate File described in paragraph (b)(1)(i) is required to be updated, except for the first In-network Rate File for which there would be no changes to report. The group health plan or health insurance issuer would be required to post their first Change-log File beginning on the first day of the calendar-year quarter following the date on which the first In-network Rate File would be required to be posted under paragraph (b)(4)(i). The Departments proposed to require that if there are no changes to an In-network Rate File since it was updated last, a Change-log File would still be required to be posted at that time indicating there are no changes for that quarter.

While there were many commenters who supported the proposal for a Change-log File and its quarterly posting, many commenters opposed the Change-log File requirement noting the potential for large file sizes, operational challenges, and the administrative and financial burden of creating the files, as well as concerns about the limited value these files might ultimately provide to file users. For these and other reasons described in section III.C.8.a. of this preamble, the Departments are not finalizing the proposal to require plans and issuers to make available a Change-log File for each In-network Rate File and are therefore not finalizing the proposed timing requirements for the Change-log File in proposed paragraph (b)(4)(iii).

The Departments proposed to require at paragraph (b)(4)(iv) that the Utilization File described in proposed new paragraph (b)(2)(ii) be updated and posted every 12 months after the initial posting. As discussed further in section III.C.8.b. of this preamble, the Departments are finalizing the Utilization File requirement with a modification to the lookback period to be for the most recent plan year (in the individual market, policy year) that ends at least 6 months prior to the date the Utilization File is made available and with a modification to the initial posting to begin on July 1, 2028.

The Departments did not receive comments on the proposed timing of the Utilization File. However, the Departments are finalizing an annual July 1 reporting cadence for the Utilization File in renumbered paragraph (b)(4)(iii) to account for finalizing the Utilization File lookback period in relation to a plan or policy year. Because most plans and coverage begin their new plan or policy year on January 1, requiring the file to be posted annually on July 1 means that files for most plans and policies will be posted 6 months following the end of the applicable plan or policy year. This allows plans and issuers a 6-month window, as proposed, to complete the claims processing lifecycle, including pre-claim submission, pre-claim payment, payment determination and collection, and prepare the file for posting.[111] For plans and policies that do not run from January 1 to December 31, the window to prepare the file for posting will be longer than 6 months. For example, the Utilization File for a plan that begins on July 1, 2028, and ends on June 30, 2029, is required to be posted on July 1, 2030. This approach strikes a balance between allowing plans and issuers sufficient time to gather the required information and prepare it for posting, and ensuring that Utilization Files for all plans and issuers will be updated or posted on the same

[109] 85 FR 72158, 72244 (November 12, 2020).

[110] 90 FR 23303 (June 2, 2025).

[111] *See* 90 FR 60432, 60458 (December 23, 2025).

day, regardless of plan or policy year, so that file users know when to expect updates and can easily locate the most recent file.

The Departments proposed to require at paragraph (b)(4)(v) that plans and issuers update the Taxonomy File under paragraph (b)(2)(iii) and post such file beginning on the first day of the calendar-year quarter following the applicability date under paragraph (c)(1)(ii). If there are no changes to the taxonomy that impact the information required to be included in the In-network Rate File from one quarter to the next, the Taxonomy File would not be required to be updated. The Departments are finalizing the timing of the posting of the Taxonomy File in renumbered paragraph (b)(4)(iv) with a modification to specify that if there are no changes to the taxonomy that affect the information required in the machine-readable file required under paragraph (b)(1)(i) in a subsequent quarter, the Taxonomy File is still required to be posted, but not updated for that quarter.

A commenter recommended requiring the Taxonomy File to be updated whenever a plan's or issuer's internal taxonomy changes to guarantee the public has the most up-to-date information. While the Departments recognize the importance of accurate and timely taxonomy information, the Departments have determined that a plan's or issuer's internal taxonomy is unlikely to change to a significant degree between quarters and that the requirement to update the Taxonomy File with changes in the subsequent quarter sufficiently balances the burdens of updating and maintaining the file with the timeliness of accurate information. Additionally, the Taxonomy File is meant to provide additional context to the In-network Rate File, which is updated more frequently through a quarterly reporting cadence.

However, the Departments intended that the Taxonomy File would be required to be posted each quarter, even if there are no changes to the taxonomy that affect the information required in the In-network Rate File. To ensure that the regulation is clear on this point, the Departments are finalizing renumbered paragraph (b)(4)(iv) to specify that plans and issuers are required to post a Taxonomy File on a quarterly basis, even if there is no data to be updated from the prior quarter. This is a clarification, rather than a substantive modification. It will ensure that an accurate Taxonomy File can always be linked to the most recently published In-network Rate File, giving file users confidence that they can match information between the two files.

Finally, the Departments proposed in new paragraph (b)(4)(vi) to require that the Text File required under proposed paragraph (b)(2)(iv) of this section be initially posted on the first day of the calendar-year quarter following the applicability date under paragraph (c)(1) and updated and posted within 7 calendar days following a change in any of the information required under paragraph (b)(2)(iv). The Departments requested comment on whether 7 calendar days following a change provides sufficient time for plans and issuers to make the required update. The Departments are finalizing the timing to post the Text File at renumbered paragraph (b)(4)(v) as proposed.

A commenter sought clarification on whether the requirement would apply solely to changes in file location and contact information, or whether it would also require off-cycle or ad-hoc updates to file content outside the proposed quarterly cadence for In-network Rate Files, for example, when a rate changes or a new provider is contracted.

The Departments clarify that the 7-calendar-day update requirement under paragraph (b)(4)(v) will apply only to changes in the information required under paragraph (b)(2)(iii), specifically, the source page URL, the direct link to the machine-readable files, and the point-of-contact information. This requirement does not apply to updates to the content of other machine-readable files themselves.

After considering the public comments, the Departments are finalizing the amendment to redesignated paragraph (b)(4)(i) through (ii) as proposed. The Departments are not finalizing the requirement to provide a Change-log File and therefore are not finalizing the timing to provide a Change-log File as proposed in paragraph (b)(4)(iii). As a result, the Departments are finalizing paragraphs (b)(4)(iv) through (vi) at paragraphs (b)(4)(iii) through (v). The Departments are finalizing with modification the timing for the Utilization File at redesignated paragraph (b)(4)(iii) so that it must be updated and posted annually beginning on July 1, 2028. The Departments are finalizing with modification the timing of the Taxonomy File at redesignated paragraph (b)(4)(iv) and finalizing the Text File at redesignated paragraph (b)(4)(v) as proposed. See Table 2 for example initial and subsequent posting dates.

TABLE 2: Example Initial and Subsequent File Disclosure Timing Requirements

	Example Final Rule Publication Date	Example Applicability Date	Example Initial Disclosure Date	Example Subsequent Disclosures Dates
In-network Rate File (quarterly)	October 5, 2026	March 5, 2027	April 1, 2027	July 1, 2027; October 1, 2027; January 1, 2028; April 1, 2028, etc.
Allowed Amount File (quarterly)	October 5, 2026	March 5, 2027	April 1, 2027	July 1, 2027; October 1, 2027; January 1, 2028; April 1, 2028, etc.
Taxonomy File (quarterly)	October 5, 2026	September 5, 2027	October 1, 2027	January 1, 2028; April 1, 2028; July 1, 2028; October 1, 2028, etc.
Text File (ongoing)	October 5, 2026	September 5, 2027	October 1, 2027	Within 7 days of any updates
Utilization File (annually)	October 5, 2026	September 5, 2027	July 1, 2028	July 1, 2029; July 1, 2030, etc.

12. Special Rules To Prevent Unnecessary Duplication

The Departments proposed in 26 CFR 54.9815–2715A3, 29 CFR 2590.715–2715A3, and 45 CFR 147.212 to redesignate paragraphs (b)(4)(i) and (ii) as paragraphs (b)(5)(i) and (ii), respectively—each without any substantive changes to the existing policy established in the 2020 final rules. The Departments also proposed to add new paragraph (b)(5)(iii) to propose, under certain conditions, to allow self-insured group health plans to permit another party (pursuant to a contract) to make available in a single In-network Rate File, the information required under paragraph (b)(1)(i) for multiple plans, insurance policies, and contracts, including those offered by different plan sponsors with which the other party contracts and across health insurance markets that share the same provider network. In new paragraph (b)(5)(iii)(A), the Departments proposed the first condition, which is that each In-network Rate File made available for a provider network must include the required information under paragraph (b)(1)(i) for all covered items and services under each plan, insurance policy, or contract that uses the same provider network for which the In-network Rate File is made available. In new paragraph (b)(5)(iii)(B), the Departments proposed the second condition, which is that each proposed Change-log, Utilization, and Taxonomy File must include data from the same plans, insurance policies, or contracts that are represented in the corresponding In-network Rate File.

The Departments also proposed to redesignate certain language from current paragraph (b)(4)(iii) as paragraph (b)(5)(iv) and amend it to allow, under certain conditions, self-insured group health plans to permit another party (under a written agreement) to make available in a single Allowed Amount File the information required under paragraph (b)(1)(ii) for more than one self-insured group health plan, including those offered by different plan sponsors with which the other party contracts. For consistency in the application of the 11-claims threshold specified in paragraph (b)(1)(ii)(C), the Departments proposed in new paragraph (b)(5)(iv) that in order for a self-insured group health plan to take advantage of the special rule in that paragraph, the proposed 11-claim threshold must be applied to the aggregated data set.

Finally, the Departments proposed to redesignate other language from current paragraph (b)(4)(iii) as paragraph (b)(3)(iv), which would provide that the plan or issuer may enter into a written agreement with another party (such as a service provider) to post the machine-readable files on its public website on behalf of the plan or issuer, including if the plan or issuer does not have a website. However, if the files are posted on a service provider's website, and the plan or issuer maintains a public website but chooses not to host the files separately on its own public website, it must provide a link on its own public website to the location where the files are made publicly available. Because the Departments determined that this provision more logically belongs in redesignated paragraph (b)(3), the Departments proposed to move it to new paragraph (b)(3)(iv) with proposed amendments that are explained in section III.C.10. of this preamble.

After consideration of comments, the Departments are finalizing these amendments as proposed, with the following modifications: (1) The Departments are removing the reference to the Change-log File in paragraph (b)(5)(iii)(B), which is not being finalized, as discussed in section III.C.8.a. of this preamble; and (2) the Departments are finalizing certain non-substantive language edits to paragraphs (b)(5)(i) through (iii) to ensure clarity and consistency throughout the regulatory text.

Several commenters expressed support for the proposal in proposed paragraph (b)(5)(iii) to allow a self-insured group health plan to enter into an agreement with a service provider to make available an In-network Rate File

for each provider network used by more than one plan, insurance policy, or contract (including those offered by different plan sponsors with which the service provider has an agreement) and across different health insurance markets, subject to certain conditions, asserting that doing so will reduce total file count, eliminate duplication, and improve analysis. One of these commenters noted that it is appropriate that the contextual files include data for the same aggregated set of plans.

The Departments agree with commenters and reiterate the statement in the proposed rules that allowing self-insured group health plans to permit another party with which it contracts to combine In-network Rate File data by provider network and across different health insurance markets, subject to certain conditions, will reduce duplicate rate information and simplify analysis for file users.[112] The Departments continue to expect that organizing data by provider network will reduce file size and the overall number of files and make more meaningful information available to file users. The Departments also agree that for the Utilization and Taxonomy Files to be meaningful, they must include information from the same plans, insurance policies, or contracts represented in the corresponding In-network Rate File, including, as applicable, those offered by different plan sponsors and across different health insurance markets. As discussed in section III.C.8.a. of this preamble, the Departments are not finalizing the Change-log File requirement in proposed paragraph (b)(2)(i). Therefore, the Departments are finalizing paragraph (b)(5)(iii)(B) only with respect to the Utilization and Taxonomy Files, which the Departments are finalizing as discussed in sections III.C.8.b. and III.C.8.c. of this preamble, respectively.

A commenter recommended that the Departments ensure the proposals to allow self-funded plan data aggregation in the In-network Rate File do not create gaps in data coverage or accountability, while another commenter recommended there be traceability to the plans included in the aggregated file by including EINs or plan identifiers.

As discussed in section III.C.2., redesignated paragraph (b)(1)(i)(C) will require that an In-network Rate File includes an EIN if there is no HIOS ID available (as is the case for self-insured plans). The Departments acknowledge the commenter's concern about data gaps and confirm that all plan-level data, including the plan sponsor's EINs, will be populated in the Table of Contents File so that a user can identify the plans included in a combined file. As discussed in section III.C.1. of this preamble, Schema 2.0 currently expects plans and issuers to use a Table of Contents File if more than one plan or policy offered by a health insurance issuer or health plan shares the same in-network rates.

A commenter recommended that self-insured plan sponsors not be held liable for non-compliance when the plan sponsor is not the owner of the provider network, stating that the owner of the provider network produces a machine-readable file for a plan sponsor that is either ''renting'' the carrier's provider network or contracting with a third-party to access a provider network.

The Departments note that current paragraph (b)(4)(ii) (redesignated in these final rules as paragraph (b)(5)(ii)) specifies that if a plan or issuer contracts with another party (such as a service provider or health care claims clearinghouse) to disclose required machine-readable file information under paragraph (b) and the party with which it contracts fails to provide the information, the plan or issuer is considered to have violated the requirements of paragraph (b). The Departments did not propose and are not finalizing substantive changes to this requirement. As the Departments discussed in the 2020 final rules, plans and issuers are not required to enter into such agreements to comply with the public disclosure requirements of those final rules.[113] If a plan or issuer chooses to do so, it is ultimately the responsibility of the plan or issuer to ensure that the service provider provides the information required by those final rules.[114] This ensures the Departments retain a mechanism to enforce those final rules against the entities subject to their authority. Further, the Departments emphasize that this liability structure is standard for plans and issuers entering into written agreements to handle such responsibilities.[115]

A commenter requested the Departments confirm or consider revising the special rule for self-insured plans that use a vendor for in-network arrangements but also have supplemental carve-outs or other arrangements outside the standard network to be included in the aggregate reporting for the In-network Rate File.

The Departments encourage all self-insured group health plans that use the same provider networks to take advantage of the special rule in paragraph (b)(5)(iii) to streamline reporting. As discussed in section III.C.1. of this preamble, if variations among either participating providers or in-network rates exist, those variations constitute a separate provider network. The current technical implementation guidance allows a plan's information to be associated with multiple, layered provider networks that constitute the plan's complete coverage. This includes reflecting a base network with additional carve-out provider networks in their Table of Contents File.

Most commenters supported the proposal in redesignated paragraph (b)(5)(iv) to allow self-insured group health plans to permit another party with which it contracts, such as a service provider, to include the allowed amount and billed charge information required under paragraph (b)(1)(ii) in a single Allowed Amount File for more than one self-insured group health plan, including those offered by different plan sponsors with which the other party contracts, provided certain conditions are met. Commenters stated that the proposal would result in important simplification and cost-savings where multiple employer plan sponsors are all served by, and contracted with, the same vendor.

The Departments agree that the special rule in paragraph (b)(5)(iv) will allow streamlined reporting for self-insured group health plans while maintaining the market division grouping necessary to make the data more actionable for research and analysis as discussed in the proposed rules.[116]

A commenter supported the proposal that a self-insured group health plan may not take advantage of the special

[112] 90 FR 60432, 60466 (December 23, 2025).

[113] 85 FR 72158, 72245 (November 12, 2020).

[114] *Id.*

[115] *See* 45 CFR 149.720(d)(2) (''*Other contractual arrangements.* A group health plan or health insurance issuer offering group or individual health insurance coverage may satisfy the requirements under paragraph (a) of this section by entering into a written agreement under which one or more other parties (such as health insurance issuers, pharmacy benefit managers, third-party administrators, or other third parties) report some or all of the information required under paragraph (a) of this section in compliance with this section. Notwithstanding the preceding sentence, if a group health plan or health insurance issuer chooses to enter into such an agreement and the party with which it contracts fails to provide the information in accordance with paragraph (a) of this section, the plan or issuer violates the reporting requirements of paragraph (a) of this section.''); *see also* 89 FR 77586, 77613 (September 23, 2024) (''Plans and issuers remain responsible for compliance with MHPAEA, and for ERISA-covered group health plans, fiduciaries, including TPAs or other service providers who are acting as fiduciaries, must work with plan sponsors and issuers to ensure that the plans and coverage they help establish and administer comply with the law.'').

[116] 90 FR 60432, 60467 (December 23, 2025).

rule under paragraph (b)(5)(iv) unless the proposed 11-claim threshold applies across all plans included in the Allowed Amount File. The commenter stated that allowing service providers to aggregate Allowed Amount Files across multiple self-insured group health plans offered by different sponsors, with the 11-claim threshold applied to the aggregated dataset rather than to each individual plan, would maximize out-of-network data volume, improve privacy protections, and reduce file proliferation.

The Departments agree with the commenter's anticipation of increased data volume and reiterate the expectation that this approach will better mitigate privacy concerns and minimize complexity in complying with Federal or State privacy laws as discussed in the proposed rules.[117]

A commenter stated that the Departments should clarify how the claims threshold is measured if the self-insured plan has multiple service providers. The commenter recommended that the threshold be based only on the information that is within the service provider's control, such that no service provider should be required to aggregate data from another service provider to meet this threshold.

The Departments agree with the commenter that a determination as to whether allowed amount and billed charge data should be omitted based on the 11-claims threshold, as specified in paragraph (b)(5)(iv), should be based only on the information that is within a service provider's control, as requiring plans to ensure information is exchanged between service providers would be difficult and unnecessarily burdensome.

13. Applicability

The Departments proposed to require under paragraph (c)(1) that the proposed amendments to the provisions of paragraph (b) of 26 CFR 54.9815–2715A3, 29 CFR 2590.715–2715A3, and 45 CFR 147.212 would apply 12 months following the date of publication of the final regulations in the **Federal Register**. The Departments proposed this applicability date to ensure that all plans and issuers would begin following the updated set of technical requirements at the same time, rather than according to plan or policy year. The Departments sought comment on this proposed applicability date.

After consideration of comments, the Departments are modifying the proposed applicability date under paragraph (c)(1) such that that the provisions of this section will apply beginning 5 months following the date of publication of the final regulations in the **Federal Register**, which is March 6, 2027, except for the contextual files under paragraph (b)(2) and their timing requirements under paragraphs (b)(4)(iii) through (v), and the website footer requirements under paragraph (b)(3)(iii), which will apply beginning 11 months following the date of publication of the final regulations in the **Federal Register**, which is September 6, 2027. Until those applicability dates, plans and issuers are required to comply with 26 CFR 54.9815–2715A3, revised as of April 1, 2025, 29 CFR 2590.715–2715A3, revised as of July 1, 2025, and 45 CFR 147.212, revised as of October 1, 2025. These final rules give plans and issuers 5 months following publication of the final rule to implement the changes related to the In-network Rate File, Allowed Amount File, and attestations, and 11 months following publication of the final rule to implement the contextual files and the website footer.

The Departments sought comment on the proposed applicability date, including whether 12 months following publication of final regulations would provide enough time for plans and issuers to comply with the amended provisions of paragraph (b) and whether there are particular challenges in complying with such applicability date compared to an applicability date based on plan or policy year.

A few commenters supported a 12-month transition as reasonable for interpreting requirements, updating mappings/designs, testing, and deploying, while also noting that implementation depends on technical guidance being available early enough to use that time effectively. However, many users of the data recommended making the applicability date earlier because they believed the Transparency in Coverage infrastructure has been operational since 2022 and the proposal largely refines existing requirements rather than requiring a ''from-scratch'' build. A few commenters reasoned that many proposed changes are mainly output restructuring or metadata additions (instead of new data generation), and that quarterly (vs. monthly) posting could offset operational burden. A few commenters recommended a shorter compliance runway (4 to 5 months) and stated it would create continuity with the recent 2026 OPPS Final Rule [118] for hospital machine-readable file update timelines and is feasible because payers and vendors have matured development pipelines after prior schema changes. They asserted that plans and issuers should likewise be held to a similar timeline, which would mean the applicability date for changes included in these final rules should be 5 months after the final rules' publication date at most.

The Departments agree that the final requirements are mainly refinements and restructuring of existing requirements and that the quarterly cadence should offset operational burden. Unlike the 2026 OPPS Final Rule,[119] which sets forth all the development requirements in regulation, the Transparency in Coverage development process has two stages—the rule sets forth the requirements stating what information must be disclosed, while the GitHub platform sets forth the schemas, which are the technical specifications for how the required information should be disclosed with collaboration and input from the developer community. Thus, implementation of these technical specifications requires time following rule publication for technical implementation guidance development on GitHub and then additional time for plans and issuers to build the files once the schemas are finalized.

In response to the many requests from commenters to accelerate the applicability timeline, the Departments have determined that certain provisions should be applicable 5 months after the publication date of these final rules in the **Federal Register**. These include the changes to In-network Rate File at paragraph (b)(1)(i) and the Allowed Amount File at paragraph (b)(1)(ii) along with their special rules under paragraph (b)(5), and their timing under paragraph (b)(4)(i); as well as the attestations under paragraph (b)(1)(iv) and the required method and format provisions under paragraphs (b)(3)(i), (ii), and (iv).

The Departments have determined that the implementation timeline for the In-network Rate and Allowed Amount Files can be accelerated given that plans and issuers are already producing these files and the proposed amendments primarily refine and restructure existing requirements, making 5 months sufficient to accomplish both GitHub collaboration and the building of the files. In addition, the Departments have determined an accelerated applicability date is appropriate for the method and format provisions described in section III.C.10. of this preamble, which involve only basic website modifications.

[117] *Id.* at 60455.

[118] 90 FR 53448 (November 25, 2025).

[119] *Id.*

Several plans and issuers opposed the 12-month applicability date following finalization of the rule and recommended an applicability date at least 18 months (and in one case 24 months) after release of final technical standards, rather than these final rules. These commenters reasoned the proposal introduces substantial operational workstreams (for example, changes in enrollment, the addition of new contextual files, structural modification to the existing machine-readable files, and time required for vendor or service provider coordination, including the design, development, testing, quality assurance, validation, and deployment of hosting and tooling updates), and that overlapping Federal requirements (interoperability, advanced explanations of benefits, new disclosure rules) compete for constrained technical resources. A few commenters added that these workforce constraints and vendor dependency chains limit how much timelines can be compressed without harming accuracy and reliability. A few commenters stated that plans and issuers cannot begin planning and development until all technical requirements, including Schema 3.0 data attributes, examples, and FAQs, are final. These commenters stated that late updates or changes to definitions, requirements, or technical guidance for Schema 1.0 and 2.0 required rework and created delays.

The Departments disagree that plans and issuers require 18 to 24 months following finalization of the schema requirements to implement these new provisions. Such an implementation runway would be significantly longer than that of the initial machine-readable file infrastructure following the 2020 final rules, which required a much larger effort to build. The Departments acknowledge that the proposed provisions impose new operational burden and that plans and issuers are subject to overlapping Federal requirements that may strain their personnel and infrastructure capacities. However, the Departments have determined that the applicability dates for these provisions are reasonable given that the new requirements are mainly refining and restructuring data, combined with the fact that the Departments are not finalizing the Change-log File or the enrollment totals provisions as described in sections III.C.8.a. and III.C.4., respectively, which commenters indicated would be operationally challenging.

The Departments are committed to making the data available to the public as soon as possible and have determined that the amendments to the machine-readable files can and should be fully implemented by the end of 2027. Since a 12-month applicability date would push implementation into 2028, the Departments are finalizing an 11-month applicability date to the new contextual files under paragraph (b)(2) and their timing under paragraph (b)(4)(iii) through (v), as well as the website footer under paragraph (b)(4)(iii). Eleven months provides plans and issuers adequate time to augment their workforce, if necessary, and aligns with the accelerated applicability recommended by many commenters for all files. The Departments disagree that plans and issuers cannot begin planning and development until all technical requirements, including Schema 3.0 data attributes, examples, and FAQs, are final. The intention of the Transparency in Coverage technical implementation process is to allow development to take place transparently—in real time with the GitHub community—as was the case following the publication of the 2020 final rules. Industry feedback on where and how data should be disclosed within the machine-readable files will inform the final specification, but file developers will have the initial draft schemas at the beginning of each phase's development window to start building towards. Development teams can begin planning data extraction from internal systems based on the known core elements, allowing implementation work to proceed in parallel with the technical implementation process. File developers do not need to wait until the very end of the process to start their builds; rather, development can and should begin before Schema 3.0 is formally finalized.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), the Departments are required to provide notice in the **Federal Register** and solicit comment before an information collection request (ICR) is submitted to the Office of Management and Budget (OMB) for review and approval. These final rules contain ICRs that are subject to review by OMB. A description of these provisions is given in sections IV.A. and B. of this preamble, with estimates of the annual and one-time burdens summarized in Tables 35 and 36, respectively.

In the proposed rules, the Departments solicited public comment on the ICRs, including the following areas, as required by section 3506(c)(2)(A) of the PRA.

- The need for the information collection and its usefulness in carrying out the proper functions of an agency, including whether the information shall have practical utility.
- The accuracy of the Departments' estimate of the information collection burden, including the validity of the methodology and assumptions used.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

The Departments received several comments addressing these issues from plans and issuers, consumer and patient advocacy organizations, data analytics and informatics companies, and professional trade associations. A few commenters noted that burden estimates should better reflect real-world implementation costs and highlighted potential operational impacts associated with specific provisions, including changes to reporting thresholds and data requirements, as well as the need to account for continuous maintenance activities. A few other commenters also indicated that recurring burdens are undercounted, emphasizing that many requirements involve continuous maintenance and that some annual costs (such as those associated with Taxonomy Files) are not fully captured. A few commenters provided recommendations related to wage assumptions, consumer support burden estimates, and the overall methodology used to estimate burden. These comments, along with the Departments' responses, are discussed in sections IV.A. and IV.B. of this preamble.

Several commenters expressed concern that increased transparency requirements may create significant administrative and financial burdens that could be passed on to consumers in the form of higher premiums or costs if not paired with meaningful usability improvements. A few commenters noted that implementation burden could be substantial, potentially exceeding prior Transparency in Coverage updates, and recommended prioritizing high-value requirements and streamlining timelines and guidance.

The Departments acknowledge these concerns, including that estimated one-time implementation costs in the proposed rules may be substantial and that ongoing compliance may require additional effort and resources. After consideration of the comments regarding significant burden, the Departments have decided not to finalize certain requirements, including the requirement to add a Change-log File related to the In-network Rate File disclosures and the requirement to

include the current enrollment totals for each coverage option associated with the applicable In-network Rate File. As a result, these final rules reduce compliance burdens on plans and issuers while continuing to advance the Departments' underlying policy goals.

In addition, in response to public comments and as discussed in sections III.C.9. and III.C.7. of this preamble, respectively, the Departments are finalizing a requirement for plans and issuers to publish machine-readable files in a single non-proprietary, open-standards format, as well as a requirement to attest, to the best of their knowledge and belief, to the accuracy and completeness of the information contained in their machine-readable files. These requirements are intended to improve the consistency and reliability of machine-readable file disclosures while advancing the Departments' transparency objectives.

A commenter recommended applying stronger PRA-based burden governance, including evaluating the marginal utility of each requirement and conducting post-implementation reassessments. The Departments acknowledge this perspective but have determined that a requirement-by-requirement marginal utility analysis would be complex and impractical given data limitations and the interrelated nature of the provisions. The Departments acknowledge the value of post-implementation evaluation and will continue to consider interested parties' feedback and implementation experience in future policymaking efforts. In accordance with Executive Order 12866 [120] and Executive Order 14192,[121] the Departments have evaluated the overall costs, cost savings and benefits of these final rules and determined that they are expected to result in net cost savings over time, reflecting that aggregate cost savings outweigh the aggregate costs.

A commenter urged the Departments to consider the rule's impact on physicians, particularly solo and small physician practices, and explore future actions to address policies that may increase costs and limit access to care. The Departments acknowledge this concern but note that these final rules apply to plans and issuers rather than providers. The potential impact on applicable small entities is addressed in section V.F. of this preamble.

Taking these considerations into account, the Departments have evaluated these final rules in the broader context of their anticipated effects, including overall costs and benefits. The Departments have determined that these final rules will improve transparency and promote more efficient markets, support informed decision-making, and help mitigate potential cost pass-through to consumers over time. Furthermore, as discussed in section V.I. of this preamble, the Departments expect the requirements in these final rules to yield net cost savings over the long term. Therefore, the Departments have determined that these final rules, and the refinements made in response to comments, appropriately balance the goal of minimizing administrative burden with maximizing the impact and value of transparency requirements.

Wage Estimates

To estimate wages, the Departments used data from the Contract Awarded Labor Category (CALC) database tool [122] to calculate average labor costs associated with the burden and equivalent costs of the ICRs. The CALC tool was developed to assist acquisition professionals with market research and price analysis of labor categories under multiple U.S. General Services Administration and Veterans Administration (VA) contracts. While the Departments recognize that various methods exist for estimating fringe benefits and overhead costs, the CALC database was selected because, unlike Bureau of Labor Statistics (BLS) data, which is valuable for identifying broad labor market trends, the CALC tool is specifically designed to support market research for government procurement. It provides cost estimates for specific labor categories based on actual contract rates. More importantly, CALC data reflects fully burdened hourly rates, including both base pay and benefits, whereas BLS data reflects only base wages. The Departments determined that CALC's occupation-specific data better aligns with the skill sets and job functions necessary for implementing the requirements in these final rules and therefore provides a more suitable basis for estimating labor costs.

A few commenters recommended that the Departments' burden estimates reflect prevailing wage rates for relevant personnel. The Departments appreciate these comments and have revised the wage rate assumptions used in the burden estimates to better reflect prevailing market rates. The Departments have updated the wage assumptions used in the burden estimates by adopting median wages instead of the mean wages used in the proposed rules, as median wages are less influenced by outliers and better reflect typical compensation, resulting in more representative and reliable estimates of labor costs. Table 3 presents the fully burdened median hourly wage and occupations used in the Departments' estimates.

[120] Exec. Order 12866, 58 FR 51735 (September 30, 1993).

[121] Exec. Order 14192, 90 FR 9065 (January 31, 2025).

[122] U.S. General Services Administration, *Pricing Intelligence Suite, CALC information and wage rates,* available at *https://buy.gsa.gov/pricing/* (last visited August 13, 2026).

TABLE 3: Hourly Median Wages Used in Burden Estimates

CALC Occupation Title	Median Hourly Wage ($/hour)
Project Manager/Team Lead	$149.23
Scrum Master	$141.16
Technical Architect	$193.30
Senior Application Developer	$182.76
Business Analyst	$112.01
DevOps Engineer III	$160.20
Customer Service Representative	$46.50
Training Specialist	$98.03
Supervisor	$91.00
Attorney III	$178.25
Operations Manager	$121.54
Chief Executive	$290.93

A. ICRs Regarding Requirements for Disclosures to Participants, Beneficiaries, and Enrollees Under 26 CFR 54.9815–2715A2, 29 CFR 2590.715–2715A2, and 45 CFR 147.211

In the proposed rules, the Departments proposed several amendments to the 2020 final rules to improve price transparency and strengthen consumer protections for participants, beneficiaries, and enrollees. Specifically, the Departments proposed revising the statement required under paragraph (b)(1)(vii)(A) to clarify that the cost-sharing information does not account for potential additional amounts in situations where applicable State and Federal law allow out-of-network providers to balance bill participants, beneficiaries, and enrollees. These revisions reflect the Federal balance billing protections introduced by the No Surprises Act, which were not in effect when the original provision was finalized.

The Departments are finalizing these revisions, as proposed. These changes will help ensure that participants, beneficiaries, and enrollees understand that cost-sharing estimates disclosed through their plan's or issuer's self-service tool may not account for additional amounts that could ultimately be owed to out-of-network providers.

In addition, the Departments proposed adding a new paragraph (b)(2)(iii) requiring plans and issuers to make cost-sharing information available by phone, consistent with requirements under the No Surprises Act. The Departments also proposed to require a telephone number for consumer assistance, as already required under Code section 9816(e), ERISA section 716(e), and PHS Act section 2799A–1(e), as added by section 107 of the No Surprises Act, to be indicated on any physical or electronic plan or insurance identification card issued to a participant, beneficiary, or enrollee.

The Departments are also finalizing these requirements as proposed. To reduce unnecessary administrative burden and prevent consumer confusion, providing the information as specified in paragraph (b)(1) and in the methods and formats as specified in paragraph (b)(2), as amended by these final rules, satisfies the price comparison tool requirements under section 114 of the No Surprises Act. These requirements apply to non-grandfathered group health plans and health insurance issuers offering non-grandfathered coverage in the group and individual markets.

As discussed in section V.C.3. of this preamble, the Departments assume that self-insured group health plans will depend on TPAs, including issuers providing administrative services only and non-issuer TPAs, to implement the requirements of these final rules. This assumption is based on the Departments' understanding that most self-insured group health plans already rely on TPAs to perform core administrative functions, such as enrollment and claims processing.[123] For those self-insured plans that choose to develop their own internet-based self-service tools, the Departments assume that they will incur costs and burdens similar to those estimated for issuers and TPAs. Accordingly, the Departments use issuers and TPAs as the unit of analysis for estimating the cost of these changes.

The Departments also assume that issuers and TPAs have already developed internet-based self-service tools, originally required for plan or policy years beginning on or after January 1, 2023, and will only need to modify these existing systems to comply with the final provisions. The Departments acknowledge that some interactive voice response programming work may be necessary, but the Departments expect the associated cost to be minimal.

As also noted in section V.C.3. of this preamble, the Departments estimate that approximately 1,303 issuers[124] and 205 TPAs[125] (a total of 1,508 entities) are expected to implement these final requirements. The Departments

[123] Louise Norris, *What is Self-Insured Health Insurance? Most Very Large Employers Self-Insure,* Verywell Health (November 6, 2025), available at *https://www.verywellhealth.com/what-is-self-insured-health-insurance-and-how-is-it-regulated-4688567.*

[124] The Departments' estimate of the number of health insurance companies and the number of issuers (issuer/State combinations) is based on medical loss ratio (MLR) reports submitted by issuers for the 2024 reporting year. Centers for Medicare & Medicaid Services, *Medical Loss Ratio Data and System Resources* (last updated Mar. 3, 2026), available at *https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.* Although the Departments' estimates in the proposed rules were based 2023 MLR data, the Departments have updated these estimates based on the latest available MLR data to improve their accuracy.

[125] Estimated number of non-issuer TPAs, based on data derived from the 2016 Benefit Year Reinsurance Program contributions.

acknowledge that actual costs may vary depending on factors such as the volume of providers and items or services for which cost-sharing information must be disclosed, and whether plans (or TPAs on behalf of plans) and issuers already have tools that fully or partially meet the final requirements or can be readily adapted. However, the Departments note that, in 2021, they announced their intention to propose rulemaking requiring that the same pricing information provided through the Transparency in Coverage internet-based self-service tool or in paper form be provided via phone.[126] Because the statutory requirements to offer price comparison guidance by telephone have been in place for plan years (in the individual market, policy years) beginning on or after January 1, 2022,[127] the Departments expected that many plans and issuers had already made progress toward meeting this requirement since then.

The Departments also assume that plans (or TPAs on behalf of plans) have already built self-service tools and will only be required to revise the existing statement disclosing that out-of-network providers may engage in balance billing, subject to applicable State and Federal laws. Although these updates build on existing infrastructure, they are expected to require a one-time cost for minor technical modifications including editing statement text, testing for quality assurance, and implementing the update. The Departments estimate that, on average, each issuer or TPA will require 10 minutes (approximately 0.17 hours)[128] of a Senior Application Developer's time (at $182.76 per hour) to update the statement. As shown in Table 4, across all 1,508 issuers and TPAs, the total one-time burden is estimated at 251 hours, with an associated cost of approximately $45,934.

TABLE 4: One-Time Estimated Cost and Hour Burden for All Issuers and TPAs to Update Cost-Sharing Statement Reflecting Federal Balance Billing Protections

Number of Respondents	Number of Responses	Burden Hours per Respondent	Total Burden Hours	Total Cost
1,508	1,508	0.17	251	$45,934

1. High Impact for Providing Cost-Sharing Information via Phone

Under a scenario with increased call volume and duration (that is, high impact), the Departments anticipate that requiring cost-sharing information to also be accessible by phone could increase call volume and call duration to the plan's or issuer's customer support line. This anticipated increase may result from participants, beneficiaries, and enrollees who prefer verbal assistance or who have limited digital access or digital literacy.

In the proposed rules, the Departments estimated that, under high- and low-impact scenarios, a customer service representative would require 10 and 9 minutes per interaction, respectively, to provide the requested information and complete post-call documentation. However, a commenter expressed concern that these consumer-support burden assumptions are underestimated, noting that call center interactions are likely to be longer and more complex than estimated and that consumers typically compare fewer providers in practice.

The Departments acknowledge the commenter's concern that the consumer-support burden assumptions may be underestimated. However, the Departments have determined that the cost-sharing information requested over the phone is generally readily available through existing price comparison tools, and customer service representatives should be able to access and communicate that information without significant additional time.

Accordingly, the Departments have determined that the estimated average call duration of approximately 9 to 10 minutes, including post-call documentation, as presented in the proposed rules, is reasonable. The Departments recognize that call times may vary depending on the complexity of the inquiry; however, they have determined that, in many cases, consumers will seek relatively straightforward information, such as the cost of services from a specific provider and their expected out-of-pocket responsibility.

In addition, available data on customer service interactions related to health care services suggest that average call times are often shorter, typically ranging from approximately 4 to 8 minutes.[129] Although commenters stated that cost-sharing inquiries may involve greater complexity than typical health plan customer service calls, the Departments have determined that the higher estimated average call duration reasonably accounts for inquiries involving cost-sharing estimates that may be more complex than routine customer service calls. Taken together, these considerations support the reasonableness of the Departments' estimated average call duration.

Taking these factors and available evidence into account, the Departments continue to maintain that, under a high-impact scenario, for each issuer or TPA,

[126] U.S. Department of Labor, U.S. Department of Health & Human Services & U.S. Department of the Treasury, *FAQs about Affordable Care Act Implementation Part 49* (August 20, 2021), *https://www.cms.gov/cciio/resources/fact-sheets-and-faqs/downloads/faqs-part-49.pdf* and *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-49.pdf.*

[127] Code section 9819, ERISA section 719, and PHS Act section 2799A–4.

[128] Unless otherwise specified, all burden-hour estimates in section IV. of this preamble were developed using an IGCE framework. The IGCE framework provides a structured approach for estimating the resources necessary to implement and maintain regulatory requirements by identifying the anticipated activities, appropriate labor categories, level of effort, and operational and technical resources associated with each requirement. The Departments used this framework to develop reasonable assumptions regarding the personnel and hours necessary for plans and issuers to complete each information collection activity, taking into account the nature and complexity of the required tasks. Additional information regarding IGCE tools and resources is available through the U.S. General Services Administration. *See* U.S. General Services Administration, *IGCE (Independent Government Cost Estimate), https://buy.gsa.gov/pricing/* (last visited August 13, 2026).

[129] Available industry data indicate that average handle times for health care-related customer service calls generally range from approximately 4 to 8 minutes, with reported averages of about 4.4 minutes (Dialog Health, *https://www.dialoghealth.com/post/healthcare-call-center-statistics*), 6.6 minutes (SpinSci, *https://spinsci.ai/resources/what-is-average-handle-time-aht-in-healthcare*), and 6 to 8 minutes (Zendesk, *https://www.zendesk.com/in/blog/customer-service/satisfaction/average-handle-time/*).

it will require 10 minutes [130] for a customer service representative (at $46.50 per hour) to speak with each consumer and provide the requested information and complete post-call documentation. Under the high impact scenario estimate, the Departments estimate there will be 7.8 million calls annually,[131] each issuer or TPA will receive approximately 5,172 calls per year, resulting in an estimated annual burden of 862 hours,[132] with an estimated associated cost of approximately $40,086. As shown in Table 5, the Departments estimate that for all 1,508 issuers and TPAs, the estimated total ongoing annual burden will be approximately 1,300,000 hours, with an estimated associated cost of $60,450,000 annually.[133]

TABLE 5: Estimated High Impact Annual Cost and Hour Burden to Provide Cost-Sharing Information via Phone

Number of Respondents	Number of Responses	Burden Hours per Respondent	Total Burden Hours	Total Cost
1,508	7,800,000	862	1,300,000	$60,450,000

2. Lower Impact Estimate for Providing Cost-Sharing Information via Phone

Under a scenario with less call volume and duration (that is, a lower-impact scenario), the Departments assume that a smaller subset of participants, beneficiaries, and enrollees will opt to request pricing information by phone. In this scenario, the Departments estimate that for each issuer or TPA it will take 9 minutes for a customer service representative (at $46.50 per hour) to speak with consumers and provide the requested information and complete post-call documentation. Assuming 3.9 million calls annually,[134] each issuer or TPA will receive approximately 2,586 calls per year, resulting in an estimated annual burden of 388 hours [135] with an estimated associated cost of approximately $18,039 per issuer or TPA. As shown in Table 6, across all 1,508 issuers and TPAs, the estimated total ongoing burden is approximately 585,000 hours, with a total annual cost of approximately $27,202,500.

[130] According to a 2012 report by the Healthcare Financial Management Association, the average handle time for call centers generally ranges from 7 to 8 minutes. For purposes of this analysis, the Departments assume an additional 2 minutes will be needed for call documentation, resulting in an average handle time of 9 to 10 minutes. Accordingly, the Departments use 9 minutes as the lower bound and 10 minutes as the upper bound to estimate the potential impact of increased call times under the proposed disclosure requirements. Healthcare Financial Management Association, *Ask the Expert: Setting Industry Standards for Call Center Activities* (October 25, 2012), available at *https://www.hfma.org/revenue-cycle/kpis/7256/*.

[131] According to data from the Congressional Research Service, the total insured population in private/commercial insurance, including employer-sponsored and individual market coverage, is projected to be approximately 156 million in 2023 (of the estimated 304 million insured individuals in 2023, approximately 148 million are covered by public programs, including Medicare, Medicaid, VA Care, and TRICARE. The remaining 156 million are covered under private/commercial insurance, including both employer-sponsored and individual market plans). The Departments estimate 5 percent of total calls will be shopping-related calls per year under the high-call time scenario. This estimate is informed by a KFF study (*https://www.kff.org/affordable-care-act/kff-survey-of-consumer-experiences-with-health-insurance/*) in which 57 percent of adults contacted their insurance in 2023, with under 31 percent asking about out-of-pocket expenses—a subset of which could reasonably be considered shopping related calls. Considering that consumers contact plans via phone, online, in-person, or in writing, it was estimated that 25 percent of these contacts were by phone. Of these phone contacts, 10–20 percent of the 31 percent asking about out-of-pocket expenses were assumed to be shopping calls, resulting in an estimated range of 2.5 percent to 5 percent of total calls being shopping-related. Using the upper bound of 5 percent for the high-call time scenario, this results in approximately 7.8 million shopping-related calls per year. Congressional Research Service, *U.S. Health Care Coverage and Spending* (February 19, 2025), available at *https://www.congress.gov/crs-product/IF10830*.

[132] This calculation distributes the total workload across all 1,508 issuers and TPAs. At the industry level, there are 7,800,000 high-call time calls per year, with an average handle time of 10 minutes per call, resulting in 78,000,000 total minutes (1,300,000 hours). To compute the per-entity workload, the total calls are divided by the number of issuers and TPAs: 7,800,000/1,508 ≈ 5,172 calls per entity per year. Multiplying the per-entity calls by the 10-minute average handle time gives 51,724 minutes annually per entity, which converts to approximately 862 hours (51,724/60).

[133] Throughout sections IV. and V. of this preamble, differences between subtotals, totals, and percentage calculations may occur due to rounding. As a result, figures presented in tables and accompanying text may not sum precisely.

[134] According to data from the Congressional Research Service, the total insured population in private/commercial insurance, including employer-sponsored and individual market coverage, is projected to be approximately 156 million in 2023 (of the estimated 304 million insured individuals in 2023, approximately 148 million are covered by public programs, including Medicare, Medicaid, VA Care, and TRICARE. The remaining 156 million are covered under private/commercial insurance, including both employer-sponsored and individual market plans). The Departments estimate that 2.5 percent of total calls will be shopping-related calls per year under the low-call time scenario. This estimate is informed by a KFF study (*https://www.kff.org/affordable-care-act/kff-survey-of-consumer-experiences-with-health-insurance/*) in which 57 percent of adults contacted their insurance in 2023, with under 31 percent asking about out-of-pocket expenses—a subset of which could reasonably be considered shopping related calls. Considering that consumers contact plans via phone, online, in-person, or in writing, it was estimated that 25 percent of these contacts were by phone. Of these phone contacts, 10–20 percent of the 31 percent asking about out-of-pocket expenses were assumed to be shopping calls, resulting in an estimated range of 2.5 percent to 5 percent of total calls being shopping-related. Using the lower bound of 2.5 percent for the low-call time scenario, this results in approximately 3.9 million shopping-related calls per year. Congressional Research Service, *U.S. Health Care Coverage and Spending* (Feb. 19, 2025), available at *https://www.congress.gov/crs-product/IF10830*.

[135] This calculation distributes the total workload across all 1,508 issuers and TPAs. At the industry level, there are 3,900,000 low-volume calls per year, with an average handle time of 9 minutes per call, resulting in 35,100,000 total minutes (585,000 hours). To compute the per-entity workload, the total calls are divided by the number of issuers and TPAs: 3,900,000/1,508 ≈ 2,586 calls per entity per year. Multiplying the per-entity calls by the 9-minute average handle time gives 23,276 minutes annually per entity, which converts to approximately 388 hours (23,276/60).

TABLE 6: Estimated Lower Impact Annual Cost and Hour Burden to Provide Cost-Sharing Information via Phone

Number of Respondents	Number of Responses	Burden Hours per Respondent	Total Burden Hours	Total Cost
1,508	3,900,000	388	585,000	$27,202,500

Plans (or TPAs on behalf of plans) and issuers will also incur a one-time burden and cost to train customer service representatives and their supervisors on this phone requirement. The Departments assume this requirement will not necessitate hiring additional full-time staff. Instead, the Departments expect issuers and TPAs to rely on existing customer service representatives and supervisors for this task.

For each issuer or TPA, the Departments estimate that one training specialist will spend 8 hours (at $98.03 per hour) to train 20 customer service representatives (totaling 160 hours at $46.50 per hour) and two supervisors (totaling 16 hours at $91 per hour) on how to respond to participants, beneficiaries, and enrollees seeking pricing information by phone. This results in a one-time burden of 184 hours per issuer or TPA, with an estimated associated cost of $9,680. As shown in Table 7, for all 1,508 issuers and TPAs, the total estimated one-time training hour burden is 277,472 hours, with a corresponding cost of approximately $14,597,802.

TABLE 7: One-Time Estimated Cost and Hour Burden for All Issuers and TPAs to Train Customer Service Representatives and Supervisors to Provide Cost-Sharing Information via Phone

Number of Respondents	Number of Responses	Burden Hours per Respondent	Total Burden Hours	Total Cost
1,508	1,508	184	277,472	$14,597,802

The Departments anticipate that, in the future, ongoing training costs associated with these phone requirements will be included into existing onboarding programs for new employees and included in the regular annual training provided to current staff. The Departments did not receive any comments regarding the ongoing training costs associated with these requirements.

B. ICRs Regarding Requirements for Public Disclosure Under 26 CFR 54.9815–2715A3, 29 CFR 2590.715–2715A3, and 45 CFR 147.212

In the proposed rules, the Departments proposed updates to the 2020 final rules intended to improve the accessibility, clarity, and usefulness of the public disclosures through machine-readable files. The proposed changes included requirements related to the content, format, organization, and publication frequency of the machine-readable files, as well as additional contextual and technical requirements intended to improve file usability and reduce operational complexity for file users.

The Departments received numerous comments on these proposals. As discussed in greater detail in section III.C. of this preamble, the Departments are finalizing many of the provisions as proposed or with modifications after considering public comments, while declining to finalize certain other proposed requirements.

For In-network Rate Files, these final rules require such files to be organized by provider network while also requiring reporting of a common provider network name and provider network identifier. These final rules also allow rates to be expressed as a percentage of billed charges when a dollar amount cannot be derived in advance as well as exclude providers unlikely to be reimbursed based on their scope of practice. The Departments are not finalizing the proposed requirement to report enrollment data due to operational, implementation, and data reliability concerns raised by commenters.

In addition, these final rules require plans and issuers to post several contextual machine-readable files: a Utilization File, a Taxonomy File, and a Text File, each with corresponding timing requirements. The Departments are finalizing these requirements with modifications to certain provisions, including modifying the Utilization File reporting period to align with the prior plan or policy year to avoid combining utilization data across reporting periods and modifying the Text File requirement to allow plans and issuers to include a monitored email address for inquiries related to the machine-readable files. However, the Departments are not finalizing the proposed Change-log File requirement due to concerns regarding the operational burden and implementation complexity associated with maintaining and publishing detailed records of file updates and revisions.

For the Allowed Amount Files, these final rules require data reporting at the market level instead of the individual plan level, lowering the claims threshold from 20 to 11, extending the reporting period from 90 days to 6 months, and increasing the lookback period from 180 days to 9 months to enhance the robustness of historical data.

Finally, these final rules also modify the technical requirements applicable to the machine-readable files by requiring files to be made available in a single, non-proprietary, open-standards format to improve accessibility and standardization across files. In addition, the Departments are finalizing a modified applicability timeline. While the proposed rules generally proposed that all requirements would become applicable 12 months after publication

of the final rules, these final rules instead adopt a phased applicability approach under which all requirements become applicable 5 months after publication of these final rules, except for the requirements regarding the Taxonomy File, Utilization File, Text File, and ''findability'' link requirement, which become applicable 11 months after publication.

Collectively, these changes are intended to strengthen transparency and improve the usefulness of publicly available pricing information and reduce unnecessary operational burden by streamlining certain reporting requirements and modifying or not finalizing requirements that commenters indicated could be overly complex or resource-intensive to implement.

As discussed in section V.C.3. of this preamble, the Departments assume that self-insured group health plans will depend on TPAs, including issuers providing administrative services only and non-issuer TPAs, to implement these updates, noting that some self-insured plans may choose to comply individually, likely incurring a similar hour burden.

The Departments recognize that some requirements may be integrated into existing operational processes, potentially reducing implementation burdens, though the Departments acknowledge that the extent of integration varies significantly across different requirements. Marginal modifications may include adjusting reporting thresholds from 20 to 11 claims, extending lookback and reporting periods, and adding website footer links, while higher-burden implementations likely include network-level file reorganization, creation of new contextual files (such as Taxonomy and Utilization Files), and implementation of provider-rate combination exclusion logic. Although some activities may align with routine system updates and maintenance cycles, the Departments provide detailed burden estimates for requirements involving substantial system modifications or new operational processes in sections IV.B.1. through 15. of this preamble.

1. ICRs Regarding Requirements To Organize Files by Provider Network, Allow Service Providers or Other Parties To Organize by Provider Network Across Multiple Self-Insured Group Health Plans, and Include a Common Provider Network Name and Provider Network Identifier (26 CFR 54.9815–2715A3(b)(1)(i) and (b)(5)(iii), 29 CFR 2590.715–2715A3(b)(1)(i) and (b)(5)(iii), and 45 CFR 147.212(b)(1)(i) and (b)(5)(iii))

The Departments proposed to amend 26 CFR 54.9815–2715A3(b)(1)(i), 29 CFR 2590.715–2715A3(b)(1)(i), and 45 CFR 147.212(b)(1)(i) to require plans and issuers to make an In-network Rate File available for each provider network they maintain or contract with and that is associated with the plan or policy being reported. The Departments also proposed to add new 26 CFR 54.9815–2715A3(b)(5)(iii), 29 CFR 2590.715–2715A3(b)(5)(iii), and 45 CFR 147.212(b)(5)(iii) to permit In-network Rate Files to be made available by provider network for multiple plans administered by service providers or other parties, including those offered by different plan sponsors and across different health insurance markets.

In response to public comments, the Departments are finalizing this requirement with a modification to add a new paragraph (b)(1)(i)(B) requiring plans and issuers to disclose a provider network identifier in addition to the common provider network name. As discussed in more detail in section III.C.1. of this preamble, the Departments agree with commenters who stated that requiring plans and issuers to report only a common provider network name might not be sufficient for file users to reliably identify, distinguish, and cross-reference provider networks across files and coverage options. This requirement as finalized will reduce ambiguity and enable file users to distinguish between provider networks with the same or similar names. The Departments expect that any associated burden will be minimal because plans and issuers already use provider network identifiers for internal tracking purposes.

As noted in the proposed rules, the Departments still maintain that the size of the In-network Rate File can be highly dependent on how it is organized. Where multiple plans share the same negotiated rates under an umbrella provider network, organizing the In-network Rate Files by provider network rather than by each individual plan or policy would, in most cases, decrease the size of the files, often significantly, while still maintaining data integrity.[136] Several commenters also agreed that this approach could reduce the total number of In-network Rate Files because there are far more plans and policies offered than there are distinct, separately managed provider networks.[137] The Departments have determined that, taken together, these reductions can ease processing burden on both file producers and file users and increase usability for employers and purchasers.

As discussed in section III.C.1. of this preamble, the Departments understand that many plans and issuers already leverage a Table of Contents File to organize their files, an approach that allows them to combine common negotiated rates across multiple In-network Rate Files, rather than publishing negotiated rates individually for each plan identifier. However, the Departments assume that few have fully implemented use of the Table of Contents File, and many have not adopted it at all.

For burden estimation, the Departments assume that no plans or issuers have adapted their In-network Rate File processes to align with this provision. While this may overstate the implementation burden for some, it provides a reasonable upper bound, ensuring the estimates cover the substantial and complex changes that most plans or issuers may need to make to comply with this requirement.

To implement this provision, plans (or TPAs on behalf of plans) and issuers will need to modify their In-network Rate File processes to produce files aggregated at the provider network level rather than the plan level, and to generate a crosswalk Table of Contents File that associates each coverage option with the corresponding provider network the plan or issuer maintains or contracts with. The implementation will involve a meaningful, one-time recoding effort to revise existing In-network Rate File processes. However, because the underlying data used to build the In-network Rate Files will not change, these revisions are expected to be incremental and build on the current process.

This finalized provision also requires, under new paragraphs (b)(1)(i)(A) and (b)(1)(i)(B), that each In-network Rate

[136] 90 FR 60432, 60448 (December 23, 2025).

[137] *See* Jane M. Zhu, Yuehan Zhang, & Daniel Polsky, *Networks in ACA Marketplaces Are Narrower for Mental Health Care Than for Primary Care,* 36 Health Affairs 9 (September 5, 2017), *https://www.healthaffairs.org/doi/10.1377/hlthaff.2017.0325* (finding, based on 2016 *HealthCare.gov* data, 531 unique provider networks were used by 281 different issuers, covering 5,022 qualified health plans in the Federally-facilitated Marketplaces).

File be associated with its common provider network name and the corresponding unique provider network identifier. In practice, this means plans (or TPAs on behalf of plans) and issuers will need to add new data elements and identify the source of the common provider network names within their systems of record so these can be included into the automated process for generating the required information for the Table of Contents and In-network Rate Files. However, the Departments assume that plans (or TPAs on behalf of plans) and issuers already have identified and captured these common provider network names and provider network identifiers as part of the related requirement to organize the In-network Rate Files by provider network. As a result, the Departments expect that any burden associated with disclosing these new data elements is accounted for in the burden estimate for organizing these files by provider network, with no additional burden anticipated.

The Departments estimate that issuers and TPAs will incur a one-time cost and burden to modify a plan's or issuer's current process for generating In-network Rate Files to disclose a discrete provider network name and the corresponding unique provider network identifier, and crosswalk those networks to applicable plans or policies. As shown in Table 8, the Departments estimate that, on average, each issuer or TPA will require 16 hours from a Project Manager or Team Lead (at $149.23 per hour), 80 hours from a Technical Architect (at $193.30 per hour), 80 hours from a Senior Application Developer (at $182.76 per hour), and 16 hours from a Business Analyst (at $112.01 per hour) to modify the plan's or issuer's current process, resulting in a one-time burden for each issuer or TPA of 192 hours with an estimated associated cost of $34,265. For all 1,508 issuers and TPAs, as shown in Table 9, the Departments estimate a total one-time burden of 289,536 hours, with an estimated associated cost of $51,671,077.

TABLE 8: One-Time Estimated Cost and Hour Burden per Health Insurance Issuer or TPA to Organize Files by Provider Network, Allow Service Providers or Other Parties to Organize by Provider Network across Multiple Self-Insured Group Health Plans, and Include a Common Provider Network Name and Provider Network Identifier

Occupation	Burden Hours per Respondent	Labor Cost per Hour	Total Cost per Respondent
Project Manager/Team Lead	16	$149.23	$2,388
Technical Architect	80	$193.30	$15,464
Senior Application Developer	80	$182.76	$14,621
Business Analyst	16	$112.01	$1,792
Total per Respondent	192		$34,265

TABLE 9: One-Time Estimated Cost and Hour Burden for All Health Insurance Issuers and TPAs to Organize Files by Provider Network, Allow Service Providers or Other Parties to Organize by Provider Network Across Multiple Self-Insured Group Health Plans, and Include a Common Provider Network Name and Provider Network Identifier

Number of Respondents	Number of Responses	Burden Hours per Respondent	Total Burden Hours	Total Cost
1,508	1,508	192	289,536	$51,671,077

The Departments expect any additional ongoing burden with this requirement to be minimal, as it will involve only limited coding updates to account for and validate changes in the relationships reflected in the source files.

The Departments requested comment on the estimated cost and burden hours presented in this ICR, including any additional costs or challenges that may not have been identified. The Departments did not receive any comments on these estimates.

2. ICRs Regarding Requirements To Include Product Type in Both In-Network Rate and Allowed Amount Files (26 CFR 54.9815–2715A3(b)(1)(i)(C) and (b)(1)(ii)(A), 29 CFR 2590.715–2715A3(b)(1)(i)(C), and (b)(1)(ii)(A), and 45 CFR 147.212(b)(1)(i)(C) and (b)(1)(ii)(A))

The Departments proposed to amend redesignated paragraphs 26 CFR 54.9815–2715A3(b)(1)(i)(C) and (b)(1)(ii)(A), 29 CFR 2590.715–2715A3(b)(1)(i)(C), and (b)(1)(ii)(A), and 45 CFR 147.212(b)(1)(i)(C) and (b)(1)(ii)(A) to require plans and issuers to report the product type (for example, HMO or PPO) associated with each coverage option in both the In-network Rate File and the Allowed Amount File. Currently, there is no requirement for plans and issuers to include a product type in their machine-readable files. The only identifier currently required is the HIOS ID or the EIN when a HIOS ID is not available.

The Departments are finalizing this requirement as proposed. The Departments have determined that product type data is readily available to

most plans and issuers and that this requirement will only involve a one-time system update to include the product type variable in the machine-readable files. The estimate accounts for time and effort to access the data sources from which to populate the product type variable within the machine-readable files.

The Departments estimate a one-time cost and burden for plans (or TPAs on behalf of plans) and issuers to implement the required system automation updates. Each issuer or TPA, on average, will require 8 hours from a Project Manager or Team Lead (at $149.23 per hour), 8 hours from a Senior Application Developer (at $182.76 per hour), 8 hours from a Technical Architect (at $193.30 per hour), and 8 hours from a Business Analyst (at $112.01 per hour) to make the system updates and implement the requirements finalized in these rules. As shown in Table 10, this results in a total estimated one-time burden of 32 hours, with an associated estimated cost of $5,098 per issuer or TPA. As shown in Table 11, for all 1,508 issuers and TPAs, the Departments estimate a total one-time burden of 48,256 hours with an associated total cost of approximately $7,688,387.

TABLE 10: One-Time Estimated Cost and Hour Burden per Health Insurance Issuer or TPA to Include Product Type in Both In-Network Rate and Allowed Amount Files

Occupation	Burden Hours per Respondent	Labor Cost per Hour	Total Cost per Respondent
Project Manager/Team Lead	8	$149.23	$1,194
Senior Application Developer	8	$182.76	$1,462
Technical Architect	8	$193.30	$1,546
Business Analyst	8	$112.01	$896
Total per Respondent	32		$5,098

TABLE 11: One-Time Estimated Cost and Hour Burden for All Health Insurance Issuers and TPAs to Include Product Type in Both In-Network Rate and Allowed Amount Files

Number of Respondents	Number of Responses	Burden Hours per Respondent	Total Burden Hours	Total Cost
1,508	1,508	32	48,256	$7,688,387

The Departments expect any additional ongoing burden with this requirement to be minimal.

The Departments requested comment on the estimated cost and burden hours presented in this ICR, including any additional costs or challenges that may not have been identified. The Departments did not receive any comments on these estimates.

3. ICRs Regarding Requirements To Report Dollar Amounts Except for Only ''Percentage-of-Billed-Charges'' Payments (26 CFR 54.9815–2715A3(b)(1)(i)(E)(1), 29 CFR 2590.715–2715A3(b)(1)(i)(E)(1), and 45 CFR 147.212(b)(1)(i)(E)(1))

The Departments proposed to amend redesignated 26 CFR 54.9815–2715A3(b)(1)(i)(E)(*1*), 29 CFR 2590.715–2715A3(b)(1)(i)(E)(*1*), and 45 CFR 147.212(b)(1)(i)(E)(*1*) to clarify that plans and issuers are required to report in-network rates as a dollar amount, except when the contractual arrangement specifies payment as a percentage of billed charges and it is not possible to determine a dollar amount before the bill is generated. In those cases, the plan or issuer would instead be required to report the applicable percentage.

The Departments are finalizing this requirement as proposed. This requirement is intended to improve data quality by ensuring plans and issuers consistently use a percentage when the contract bases payment on a percentage of billed charges and plans and issuers cannot calculate a dollar amount in advance.

Since this requirement codifies an exception that permits reporting a percentage instead of a dollar amount when reflecting percentage-of-billed charges arrangements, the Departments expect that many plans and issuers may already be compliant with this requirement. However, because the Departments cannot determine the extent to which plans and issuers have already included any necessary modifications to their In-network Rate Files, the Departments estimate a one-time burden and cost associated with complying with this requirement.

For a low-end estimate, the Departments assume that 20 percent of plans (or TPAs on behalf of the plan) and issuers will need to make this one-time modification to their In-network Rate Files, while for a high-end estimate, it is assumed that all plans (or TPAs on behalf of the plan) and issuers will need to make this adjustment to their In-network Rate Files.

The Departments estimate, on average, each affected issuer or TPA will require 8 hours from a Project Manager or Team Lead (at $149.23 per hour), 8 hours from a Technical Architect (at $193.30 per hour), 8 hours of work from a Senior Application Developer (at $182.76 per hour), and 8 hours from a Business Analyst (at $112.01 per hour) to review their In-network Rate File generation code to determine if there are any instances where a non-dollar amount appears in the file and then make the necessary coding adjustments and validate the changes, resulting in an estimated one-time burden of 32 hours,

with an estimated associated cost of $5,098 per issuer or TPA, as shown in Table 12.

The Departments estimate that, under the low-end scenario, affected issuers and TPAs will incur a total one-time burden of 9,651 hours with an associated total cost of approximately $1,537,677. Under the high-end scenario, for all issuers and TPAs, the total one-time burden will be 48,256 hours with an associated total cost of approximately $7,688,387, as shown in Table 13.

TABLE 12: One-Time Estimated Cost and Hour Burden per Health Insurance Issuer or TPA to Adjust In-Network Rate Files to Report Dollar Amounts Except for "Percentage-of-Billed Charges" Payments

Occupation	Burden Hours per Respondent	Labor Cost per Hour	Total Cost per Respondent
Project Manager/Team Lead	8	$149.23	$1,194
Technical Architect	8	$193.30	$1,546
Senior Application Developer	8	$182.76	$1,462
Business Analyst	8	$112.01	$896
Total per Respondent	32		$5,098

TABLE 13: One-Time Estimated Cost and Hour Burden for Health Insurance Issuers and TPAs to Adjust In-Network Rate Files to Report Dollar Amounts Except for "Percentage-of-Billed-Charges" Payments Under High- and Low-End Scenarios

Estimate	Number of Respondents	Number of Responses	Burden Hours per Respondent	Total Burden Hours	Total Cost
Low-end estimate – 20 percent of issuers and TPAs need to update their In-network Rate Files	302	302	32	9,651	$1,537,677
High-end estimate – 100 percent of issuers and TPAs need to update their In-network Rate Files	1,508	1,508	32	48,256	$7,688,387

The Departments expect any additional ongoing costs related to the requirement that plans and issuers report in-network rates as a dollar amount, except when the contractual arrangement specifies payment as a percentage of billed charges and it is not possible to determine a dollar amount before the bill is generated, to be minimal.

The Departments requested comment on the estimated costs and burden hours presented in this ICR, including any additional costs or challenges that may not have been identified. The Departments did not receive any comments on these estimates.

4. ICRs Regarding Requirements To Report Required Enrollment Data

The Departments proposed to add a new provision at 26 CFR 54.9815–2715A3(b)(1)(i)(E), 29 CFR 2590.715–2715A3(b)(1)(i)(E), and 45 CFR 147.212(b)(1)(i)(E) that would require plans and issuers to include the current enrollment totals (number of individuals) for each coverage option associated with the applicable In-network Rate File, as of the date the file is posted.

Due to operational, implementation, data reliability, and business vulnerability concerns raised by commenters, as discussed in section III.C.4. of this preamble, the Departments are not finalizing the proposed requirement to report enrollment data. Accordingly, the corresponding burden estimates from the proposed rules are not included in the final burden estimates of these final rules.

5. ICRs Regarding Requirements To Exclude Certain Providers From In-Network Rate Files and To Publish a Taxonomy File (26 CFR 54.9815–2715A3(b)(1)(i)(F), 29 CFR 2590.715–2715A3(b)(1)(i)(F) and 45 CFR 147.212(b)(1)(i)(F), and 26 CFR 54.9815–2715A3(b)(2)(ii), 29 CFR 2590.715–2715A3(b)(2)(ii), and 45 CFR 147.212(b)(2)(ii))

In the proposed rules, the Departments proposed to amend the paragraph on required information under 26 CFR 54.9815–2715A3(b)(1)(i), 29 CFR 2590.715–2715A3(b)(1)(i), and 45 CFR 147.212(b)(1)(i) to increase access to and improve the usability of the data reported in the In-network Rate File, by adding new paragraph (b)(1)(i)(F). This new paragraph would require plans and issuers to exclude from their In-network Rate Files a provider's negotiated rate (provider-rate

combination) for an item or service if the plan or issuer determines it is unlikely that such provider would be reimbursed for such item or service given that provider's area of specialty according to the plan's or issuer's internal provider taxonomy used during the claims adjudication process. The Departments are finalizing this requirement with a modification of requiring plans and issuers to exclude provider-rate combinations that are unlikely given the provider's specialty according to the plan's or issuer's internal provider taxonomy or other internal rules used during the claims adjudication process.

In addition, the Departments proposed to add at 26 CFR 54.9815–2715A3(b)(2)(iii), 29 CFR 2590.715–2715A3(b)(2)(iii), and 45 CFR 147.212(b)(2)(iii) to require plans and issuers to publish a contextual machine-readable file, referred to as a Taxonomy File, that includes the plan or issuer's internal provider taxonomy, which maps items and services (represented by a billing code) to provider specialties (represented by specialty code) to determine if the plan or issuer should deny reimbursement for an item or service because it was not furnished by a provider in an appropriate specialty. This new file is intended to increase transparency by showing how decisions to exclude certain provider-rate combinations from the In-network Rate File were determined. The Departments are finalizing the Taxonomy File requirement as proposed with three modifications: first, adding that plans and issuers must base the Taxonomy File on their internal provider taxonomy or other internal rules used during the claims adjudication process to determine if the plan or issuer should deny reimbursement for an item or service based on the provider's specialty; second, specifying that the information provided in the Taxonomy File, regardless of whether it is based on an internal taxonomy or other internal rules, must be expressed as pairings of items and services (represented by billing codes) with provider specialties (represented by specialty codes which are derived from the Health Care Provider Taxonomy code set established by the National Uniform Claim Committee (NUCC)); and third, a technical modification renumbering the paragraph as 26 CFR 54.9815–2715A3(b)(2)(ii), 29 CFR 2590.715–2715A3(b)(2)(ii), and 45 CFR 147.212(b)(2)(ii).

Taken together, these provisions require plans and issuers to perform two specific tasks: (1) update their current programmatic code to exclude certain provider-rate combinations from the existing In-network Rate Files, and (2) create and publish a new Taxonomy File.

The Departments have determined that: (1) plans (or TPAs on behalf of plans) and issuers already maintain a complete listing of their in-network providers along with the specialties of those providers; (2) plans and issuers possess an internal provider taxonomy, or other internal rules, needed to map provider specialties to the appropriate billing codes; and (3) plans and issuers have implemented similar logic within their claims adjudication systems to pend or deny claims that fall outside a provider's scope of practice, for example, if a claim for brain surgery is submitted by a provider whose specialty does not align with that procedure.

Given this, the additional burden and cost required to automate the exclusion of certain provider-rate combinations is expected to include: (1) extracting and adapting the claims adjudication logic built off the plans' and issuers' internal provider taxonomy, or other internal rules, that determine whether a provider is authorized to bill for a particular service given the provider's specialty, for use in generating the In-network Rate File; (2) implementing an automated process to extract the in-network provider list along with their specialties from the plan's or issuer's system of record; and (3) modifying the programmatic logic of the In-network Rate File generation software to exclude provider-rate combinations for those that are not eligible to submit claims for specific services.

Additionally, posting a Taxonomy File will require plans (or TPAs on behalf of plans) and issuers to list each taxonomy code they use and specify the associated service codes (for example, CPT codes). These mappings are typically stored in a reference table used by issuer claims adjudication systems. Plans (or TPAs on behalf of plans) and issuers that use other internal rules during their claims adjudication process to determine whether to deny reimbursement for an item or services given the provider's specialty will need to map those rules to a taxonomy that matches specialty codes with billing codes. The Taxonomy File must be produced separately, in addition to each In-network Rate File.

To update the programmatic code to exclude certain provider-rate combinations from the existing In-network Rate File and to create and publish a new Taxonomy File, the Departments estimate a one-time cost and burden for plans (or TPAs on behalf of plans) and issuers. On average, each issuer or TPA will require 48 hours from a Project Manager or Team Lead (at $149.23 per hour), 48 hours from a Technical Architect (at $193.30 per hour), 48 hours from a Senior Application Developer (at $182.76 per hour), and 48 hours from a Business Analyst (at $112.01 per hour). As shown in Table 14, this results in a total estimated one-time burden of 192 hours per issuer or TPA, with an associated cost of approximately $30,590. For all 1,508 issuers and TPAs, as shown in Table 15, the Departments estimate a total one-time burden of 289,536 hours and a total cost of approximately $46,130,323.

TABLE 14: One-Time Estimated Cost and Hour Burden per Health Insurance Issuer or TPA to Exclude Certain Providers from In-Network Rate Files and to Publish Taxonomy Files

Occupation	Burden Hours per Respondent	Labor Cost per Hour	Total Cost per Respondent
Project Manager/Team Lead	48	$149.23	$7,163
Technical Architect	48	$193.30	$9,278
Senior Application Developer	48	$182.76	$8,772
Business Analyst	48	$112.01	$5,376
Total per Respondent	192		$30,590

TABLE 15: One-Time Estimated Cost and Hour Burden for All Health Insurance Issuers and TPAs to Exclude Certain Providers from In-Network Rate Files and to Publish Taxonomy Files

Number of Respondents	Number of Responses	Burden Hours per Respondent	Total Burden Hours	Total Cost
1,508	1,508	192	289,536	$46,130,323

The Departments expect ongoing maintenance costs for the In-network Rate Files to include support for minor changes to the programming logic used to generate these files to be minimal.

The Departments requested comment on the estimated cost and burden hours presented in this ICR, including any additional costs or challenges that may not have been identified. A commenter noted that the ongoing costs associated with Taxonomy Files are not accounted for. The Departments acknowledge this comment but expect that any additional ongoing costs associated with maintaining Taxonomy Files will be minimal because the files are expected to rely primarily on existing data, mappings, code sets, and other internal rules that plans (or TPAs on behalf of plans) and issuers maintain and periodically update as part of their normal claims adjudication and operational processes. These existing resources may include listings of in-network providers and their specialties and internal provider taxonomies or other internal rules used to map provider specialties to appropriate billing codes, as well as similar programming logic used within claims adjudication systems to identify claims for items and services that may fall outside a provider's scope of practice.

6. ICRs Regarding Requirements To Lower Claims Reporting Threshold in the Allowed Amount File From 20 to 11 Claims (26 CFR 54.9815–2715A3(b)(1)(ii)(C), 29 CFR 2590.715–2715A3(b)(1)(ii)(C), and 45 CFR 147.212(b)(1)(ii)(C))

The Departments proposed to amend 26 CFR 54.9815–2715A3(b)(1)(ii)(C), 29 CFR 2590.715–2715A3(b)(1)(ii)(C), and 45 CFR 147.212(b)(1)(ii)(C) to require plans and issuers to include data in the Allowed Amount File for items and services provided under a single plan or coverage when there are 11 or more unique claims for that item or service in a single health insurance market, lowering the current threshold from 20 to 11 to expand the data available.

The Departments are finalizing this requirement as proposed. The Departments assume this requirement will not create additional burden for plans and issuers. Existing systems are currently designed to report out-of-network allowed amounts when there are more than 20 claims for a covered item or service within a relevant 90-day period. Lowering the threshold to 11 claims is expected to require only marginal system variable adjustments, with any associated costs absorbed into the routine system maintenance activities that plans (or TPAs on behalf of plans) and issuers already perform in the normal course of business. The change constitutes a standard simple administrative update, rather than a system redesign, and therefore does not necessitate additional infrastructure, a dedicated project budget, or significant developer time. The adjustment can be implemented by existing IT personnel as part of their routine operational duties, with no disruption and minimal costs.

A commenter expressed concern that lowering the claims threshold would significantly increase operational burden by expanding data volume, file size, and processing complexity, and would require additional validation, monitoring, and system adjustments. The Departments acknowledge this concern but have determined that, although the change may increase the data volume and file size for some plans and issuers, it is not expected to materially affect processing complexity given that the underlying processes for validation, monitoring, and file generation remain unchanged. Thus, the Departments have determined that this modification will only affect the threshold for inclusion, rather than the structure or logic of the files, and therefore expect any associated burden to be minimal.

7. ICRs Regarding Expansion of Reporting and Lookback Periods for Allowed Amount Files From 90 Days to 6 Months and 180 Days to 9 Months (26 CFR 54.9815–2715A3(b)(1)(ii)(C), 29 CFR 2590.715–2715A3(b)(1)(ii)(C), and 45 CFR 147.212(b)(1)(ii)(C))

The Departments proposed to amend 26 CFR 54.9815–2715A3(b)(1)(ii)(C), 29 CFR 2590.715–2715A,3(b)(1)(ii)(C), and 45 CFR 147.212(b)(1)(ii)(C) to expand the data included in the Allowed Amount Files by requiring plans and issuers to report on items and services furnished by out-of-network providers over a 6-month reporting period starting 9 months before the file's publication date, replacing the current 90-day reporting period that begins 180 days prior to the file's publication date.

The Departments are finalizing this requirement as proposed. The Departments assume that extending the reporting period from 90 days to 6 months and the lookback period from 180 days to 9 months will not create additional burden for plans and issuers, as they currently have automated systems in production to report out-of-network allowed amounts. Implementing this change is expected to require only minimal system modifications to accommodate the updated reporting and lookback periods, with any associated costs absorbed into the routine system maintenance activities that plans (or TPAs on behalf of plans) and issuers already perform in the normal course of business.

As such, this change constitutes a standard simple administrative update, rather than a system redesign, and therefore does not necessitate additional infrastructure, a dedicated project budget, or significant developer time.

The Departments requested comment on the discussion of potential costs and burden associated with this proposed requirement, including any additional costs or challenges that may not have been identified. The Departments did not receive any comments on this aspect of the proposal.

8. ICRs Regarding Requirements To Aggregate Allowed Amount Files by Market Type and Allow Service Providers or Other Parties To Aggregate by Market Type Across Multiple Self-Insured Group Health Plans (26 CFR 54.9815–2715A3(b)(1)(ii), 29 CFR 2590.715–2715A3(b)(1)(ii), and 45 CFR 147.212(b)(1)(ii)) and Permit Such Aggregation at the TPA Level (26 CFR 54.9815–2715A3(b)(5)(iv), 29 CFR 2590.715–2715A3(b)(5)(iv), and 45 CFR 147.212(b)(5)(iv))

The Departments proposed to amend 26 CFR 54.9815–2715A3(b)(1)(ii), 29 CFR 2590.715–2715A3(b)(1)(ii), and 45 CFR 147.212(b)(1)(ii) to require plans and issuers to aggregate out-of-network data reporting by health insurance market, specifically by grouping plan-level data into one of four categories: (1) small group market, (2) individual market (other than short-term, limited-duration insurance or individual health insurance coverage that consists solely of excepted benefits, as defined in 45 CFR 148.220), (3) large group market, and (4) all self-insured group health plans maintained by the plan sponsor (other than account-based plans, as defined in 26 CFR 54.9815–2711(d)(6)(i), 29 CFR 2590.715–2711(d)(6)(i), and 45 CFR 147.126(d)(6)(i), and plans that consist solely of excepted benefits, as defined in 26 CFR 54.9831–1(c), 29 CFR 2590.732(c), and 45 CFR 146.145(b)). Under current technical reporting requirements, plans and issuers may, but are not required to, aggregate data across multiple plans or policies to meet public disclosure requirements for the Allowed Amount Files. The Departments also proposed to amend redesignated 26 CFR 54.9815–2715A3(b)(5)(iv), 29 CFR 2590.715–2715A3(b)(5)(iv), and 45 CFR 147.212(b)(5)(iv) to permit Allowed Amount Files to be aggregated by market type at the service provider level, rather than the plan level, for more than one self-insured group health plan, including those offered by different plan sponsors.

The Departments are finalizing these requirements as proposed. The Departments have determined that this requirement will not require plans (or TPAs on behalf of plans) and issuers to make substantial changes to how they currently generate Allowed Amount Files. Instead, it requires modifying the output so that, rather than producing a separate Allowed Amount File for each plan or policy, plans and issuers will aggregate data into a single file for each applicable market category. The four market categories, small group, large group, individual, and plans in self-insured group markets, are already well established under existing market-wide regulations, and plans and issuers can use existing data elements in their systems to classify each plan appropriately.[138]

The Departments estimate that plans (or TPAs on behalf of plans) and issuers will incur a one-time cost and burden to modify and update their existing Allowed Amount File processes to produce output files aggregated by market segment. On average, each issuer or TPA will require 16 hours from a Project Manager or Team Lead (at $149.23 per hour), 16 hours from a Technical Architect (at $193.30 per hour), 16 hours of work from a Senior Application Developer (at $182.76 per hour), and 16 hours from a Business Analyst (at $112.01 per hour) to complete this work. As shown in Table 16, this results in a total estimated one-time burden of 64 hours per issuer or TPA, with an associated cost of approximately $10,197. For all 1,508 issuers and TPAs, as shown in Table 17, the Departments estimate a total one-time burden of 96,512 hours and a total cost of approximately $15,376,774.

[138] 26 CFR 54.9801–2, 29 CFR 2590.701–2, and 45 CFR 144.103, as applicable.

TABLE 16: One-Time Estimated Cost and Hour Burden per Health Insurance Issuer or TPA to Aggregate Allowed Amount Files by Market Type and Allow Service Providers or Other Parties to Aggregate by Market Type Across Multiple Self-Insured Group Health Plans and Permit Such Aggregation at the TPA Level

Occupation	Burden Hours per Respondent	Labor Cost per Hour	Total Cost per Respondent
Project Manager/Team Lead	16	$149.23	$2,388
Technical Architect	16	$193.30	$3,093
Senior Application Developer	16	$182.76	$2,924
Business Analyst	16	$112.01	$1,792
Total per Respondent	64		$10,197

TABLE 17: One-Time Estimated Cost and Hour Burden for All Health Insurance Issuers and TPAs to Aggregate Allowed Amount Files by Market Type and Allow Service Providers or Other Parties to Aggregate by Market Type Across Multiple Self-Insured Group Health Plans and Permit Such Aggregation at the TPA Level

Number of Respondents	Number of Responses	Burden Hours per Respondent	Total Burden Hours	Total Cost
1,508	1,508	64	96,512	$15,376,774

The Departments expect any additional ongoing costs related to aggregating Allowed Amount Files by market type, including allowing service providers or other parties to aggregate data across multiple self-insured group health plans to be minimal.

The Departments requested comment on the estimated costs and burden hours presented in this ICR, including any additional costs or challenges that may not have been identified. The Departments did not receive any comments on these estimates.

9. ICRs Regarding Requirements To Add a Change-Log File Related to the In-Network Rate File Disclosures

The Departments proposed to add a new provision under 26 CFR 54.9815–2715A3(b)(2)(i), 29 CFR 2590.715–2715A3(b)(2)(i), and 45 CFR 147.212(b)(2)(i) that would require plans and issuers to publish a Change-log File on a quarterly basis, on the same day the In-network Rate File is published, identifying all changes made since the previous version.

After consideration of the comments received, as discussed in section III.C.8.a. of this preamble, and further evaluation of the operational complexity and burden associated with this requirement, including the significant burden identified by commenters, the Departments are not finalizing the proposed requirement for plans and issuers to publish a Change-log File. Accordingly, the corresponding burden estimates from the proposed rules are not included in the final burden estimates of these final rules.

10. ICRs Regarding Requirements To Implement the Disclosures Required for the Utilization File (26 CFR 54.9815–2715A3(b)(2)(i), 29 CFR 2590.715–2715A3(b)(2)(i), and 45 CFR 147.212(b)(2)(i)).

The Departments proposed to add a new provision at 26 CFR 54.9815–2715A3(b)(2)(ii), 29 CFR 2590.715–2715A3(b)(2)(ii), and 45 CFR 147.212(b)(2)(ii) requiring a Utilization File which would require plans and issuers to list all items and services for which a claim has been submitted and reimbursed, in whole or in part by in-network providers and identify each provider who submitted claims for each item or service. The Departments also proposed that the Utilization File to include information from the 12-month period that ends 6 months prior to the publication of the Utilization File and be updated every 12 months.

In response to public comments, as discussed in section III.C.8.b. of this preamble, the Departments are finalizing this requirement with the modification of the Utilization File as new paragraph 26 CFR 54.9815–2715A3(b)(2)(i), 29 CFR 2590.715–2715A3(b)(2)(i), and 45 CFR 147.212(b)(2)(i) and by modifying the lookback period to include data from the previous plan or policy year, rather than the 12-month period ending 6 months prior to publication, to prevent files from including utilization data across plan or policy years. The Departments have determined that this modification does not materially affect the underlying assumptions used to estimate burden for this ICR and that any associated burden will be minimal.

The Departments assume that data for the new Utilization File is readily accessible to all plans and issuers through their existing claims databases. Posting a Utilization File requires plans and issuers to programmatically generate a list of each unique combination of provider NPI, TIN, and Place of Service Code from their claims database for in-network providers reimbursed for any covered item or service during a specified period. In addition to the one-time burden and cost associated with the initial coding effort to create the Utilization File, plans and issuers will incur annual ongoing operational burden and cost to produce the annual Utilization File, validate the data, store the Utilization File, and post

it to the designated public access location.

Because the process for generating the Utilization File is similar to the logic used for creating the Allowed Amount File, and existing programmatic logic could serve as a starting point for the creation of the Utilization File, the Departments assume the burden and cost will be lower than those originally estimated in the 2020 final rules for the development and implementation of the Allowed Amount File.

A few commenters noted that the burden associated with the Utilization File is overstated. They explained that the requirement represents an incremental extension of existing claims-based workflows and is significantly less complex than the original Allowed Amount File. They further emphasized that the Utilization File does not necessitate a new system and is updated annually rather than monthly.

The Departments thank the commenters for their insight and agree with their assessment that the burden associated with the Utilization File was overstated. A commenter recommended revising the estimated hours and costs downward. After reviewing the initial estimate based on commenters' input, the Departments acknowledge that certain previously estimated burden hours, particularly for roles such as for a Senior Application Developer and Technical Architect, were higher than necessary to implement the Utilization File. Accordingly, the Departments have revised the Utilization File burden estimate to better align with the estimates for the other newly required contextual files and updates to existing machine-readable files. As a result, the Departments have reduced the estimated one-time burden hours and costs downward to more accurately reflect the expected implementation burden.

Under the revised estimate, each issuer or TPA, on average, will require 80 hours from a Scrum Master (at $141.16 per hour), 160 hours from a Technical Architect (at $193.30 per hour), a total of 320 hours of work from two Senior Application Developers (at $182.76 per hour), 80 hours from a Business Analyst (at $112.01 per hour), and 40 hours from a DevOps Engineer III (at $160.20 per hour) to develop and complete the Utilization File. As shown in Table 18, this results in a total estimated burden of 680 hours per issuer or TPA, with an associated cost of approximately $116,073. For all 1,508 issuers and TPAs, as shown in Table 19, the Departments estimate a total one-time burden of 1,025,440 hours and a total cost of approximately $175,037,782.

TABLE 18: One-Time Estimated Cost and Hour Burden per Health Insurance Issuer or TPA to Implement the Required Utilization File Disclosures

Occupation	Burden Hours per Respondent	Labor Cost per Hour	Total Cost per Respondent
Scrum Master	80	$141.16	$11,293
Technical Architect	160	$193.30	$30,928
Senior Application Developer	320	$182.76	$58,483
Business Analyst	80	$112.01	$8,961
DevOps Engineer III	40	$160.20	$6,408
Total per Respondent	680		$116,073

TABLE 19: One-Time Estimated Cost and Hour Burden for All Health Insurance Issuers and TPAs to Implement the Required Utilization File Disclosures

Number of Respondents	Number of Responses	Burden Hours per Respondent	Total Burden Hours	Total Cost
1,508	1,508	680	1,025,440	$175,037,782

In addition to the one-time burden and cost estimated in Tables 18 and 19, plans (or TPAs on behalf of plans) and issuers will incur ongoing annual burden and cost to update the Utilization File. The Departments estimate that, on average, each issuer or TPA will annually require 6 hours from a Scrum Master (at $141.16 per hour), 16 hours of work from a Senior Application Developer (at $182.76 per hour), and 16 hours from DevOps Engineer III (at $160.20 per hour) to make the required updates. As shown in Table 20, this results in a total estimated annual burden of 38 hours per issuer or TPA, with an associated cost of approximately $6,334. For all 1,508 issuers and TPAs, as shown in Table 21, the Departments estimate a total ongoing annual burden of 57,304 hours and a total cost of approximately $9,552,155. The 3-year average costs and burden for this requirement are presented in Table 22.

TABLE 20: Estimated Annual Cost and Hour Burden per Health Insurance Issuer or TPA to Update the Utilization File

Occupation	Burden Hours per Respondent	Labor Cost per Hour	Total Cost per Respondent
Scrum Master	6	$141.16	$847
Senior Application Developer	16	$182.76	$2,924
DevOps Engineer III	16	$160.20	$2,563
Total per Respondent	38		$6,334

TABLE 21: Estimated Annual Cost and Hour Burden for All Health Insurance Issuers and TPAs to Update the Utilization File

Number of Respondents	Number of Responses	Burden Hours per Respondent	Total Burden Hours	Total Cost
1,508	1,508	38	57,304	$9,552,155

TABLE 22: Estimated 3-Year Average Annual Hour Burden and Costs for All Issuers and TPAs to Develop, Implement, and Annually Update the Utilization File

Year	Number of Respondents	Number of Responses	Burden Hours per Respondent	Total Burden Hours	Total Cost
2027	1,508	1,508	718	1,082,744	$184,589,937
2028	1,508	1,508	38	57,304	$9,552,155
2029	1,508	1,508	38	57,304	$9,552,155
3-year average	1,508	1,508	265	399,117	$67,898,082

The Departments did not receive any comments on the estimated ongoing hours and costs for this provision.

11. ICRs Regarding Requirements To Add a Text File and Identify Point-of-Contact Information for Inquiries To Improve Discoverability and Accessibility of Machine-Readable Files, and Respond to Machine-Readable File Inquiries (26 CFR 54.9815–2715A3(b)(2)(iii), 29 CFR 2590.715–2715A3(b)(2)(iii), and 45 CFR 147.212(b)(2)(iii))

The Departments proposed to add new 26 CFR 54.9815–2715A3(b)(2)(iii), 29 CFR 2590.715–2715A3(b)(2)(iii), and 45 CFR 147.212(b)(2)(iii), which would establish a new requirement for plans and issuers to improve the accessibility of their machine-readable files. Under this proposal, plans (or TPAs on behalf of plans) and issuers would be required to generate a Text File that includes the URL of the page hosting the machine-readable files, a direct link to the machine-readable files themselves, and contact information, for the individual at the plan, issuer, or TPA that is responsible for the machine-readable files. This Text File would be required to be placed in the root folder of the public website domain selected to host the machine-readable files, without regard to the website's page structure. This proposed new requirement would align with similar provisions under the Hospital Price Transparency rules [139] at 45 CFR 180.50(d)(6) and is intended to enhance the discoverability, usability, and consistency of pricing information for participants, beneficiaries, and enrollees, third-party developers, researchers, and regulators.

As discussed in section III.C.8.d. of this preamble, the Departments are

[139] Medicare and Medicaid Programs: CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates. Price Transparency Requirements for Hospitals To Make Standard Charges Public, 84 FR 65524 (November 27, 2019); Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; Radiation Oncology Model, 86 FR 63458 (November 16, 2021); Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems; Quality Reporting Programs; Payment for Intensive Outpatient Services in Hospital Outpatient Departments, Community Mental Health Centers, Rural Health Clinics, Federally Qualified Health Centers, and Opioid Treatment Programs; Hospital Price Transparency; Changes to Community Mental Health Centers Conditions of Participation, Changes to the Inpatient Prospective Payment System Medicare Code Editor; Rural Emergency Hospital Conditions of Participation Technical Correction, 88 FR 81540 (November 22, 2023); Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems; Quality Reporting Programs; Overall Hospital Quality Star Rating; Hospital Price Transparency; and Notice of Closure of a Teaching Hospital and Opportunity To Apply for Available Slots, 90 FR 53448 (November 25, 2025).

finalizing this requirement with modifications to clarify that plans and issuers must provide a monitored email address for an individual or group responsible for receiving and responding to inquiries and issues related to the machine-readable files, in lieu of requiring the point-of-contact information to include a specific named individual with their title. The Departments have determined that this modification does not materially affect the burden estimate as plans and issuers may use an existing email address or establish a new dedicated inbox.

The Departments anticipate plans (or a TPA on behalf of plans) and issuers will incur a one-time development burden to update their systems to support the automated generation and publication of the required Text File. In addition to setting up the ability to produce the Text File, plans (or TPAs on behalf of plans) and issuers must identify point-of-contact information for the individual or group who will be available to address inquiries and issues related to the required machine-readable files and include this point-of-contact information in the Text Files. The plan or issuer will need to set up a mechanism to receive and respond to inquiries and issues, such an email box or online feedback form, on behalf of the identified point of contact.

The Departments estimate a one-time burden and cost for plans (or TPAs on behalf of plans) and issuers to develop, test, and implement the automation necessary to generate and post the required Text File in the root folder of their public website as well as set up a mechanism to receive and respond to inquiries and issues. On average, each issuer or TPA will require 8 hours of work from a Senior Application Developer (at $182.76), 8 hours from a Business Analyst (at $112.01 per hour), and 8 hours from a Project Manager or Team Lead (at $149.23 per hour). As shown in Table 23, this results in a total estimated one-time burden of 24 hours per entity, with an associated cost of approximately $3,552. Across all 1,508 issuers and TPAs, the Departments estimate a total one-time burden of 36,192 hours and a combined cost of approximately $5,356,416, as presented in Table 24.

TABLE 23: One-Time Estimated Cost and Hour Burden per Health Insurance Issuer or TPA to Add a Text File and Identify Point-of-Contact Information for Inquiries to Improve Discoverability and Accessibility of Machine-Readable Files

Occupation	Burden Hours per Respondent	Labor Cost per Hour	Total Cost per Respondent
Senior Application Developer	8	$182.76	$1,462
Business Analyst	8	$112.01	$896
Project Manager/Team Lead	8	$149.23	$1,194
Total per Respondent	24		$3,552

TABLE 24: One-Time Estimated Cost and Hour Burden for All Health Insurance Issuers and TPAs to Add a Text File and Identify Point-of-Contact Information for Inquiries to Improve Discoverability and Accessibility of Machine-Readable Files

Number of Respondents	Number of Responses	Burden Hours per Respondent	Total Burden Hours	Total Cost
1,508	1,508	24	36,192	$5,356,416

In addition to the one-time costs estimated in Tables 23 and 24, plans (or TPAs on behalf of plans) and issuers will incur ongoing annual burden and cost to respond to inquiries and issues on the machine-readable files. The Departments assume that each issuer and TPA will establish a team to triage, review, and respond to the inquiries. The Departments estimate that, on average each year, each issuer or TPA will receive approximately 30 inquiries. Addressing each inquiry is estimated to require 10 minutes of work per inquiry from an Attorney III (totaling 5 hours for 30 inquiries at $178.25 per hour), 20 minutes per inquiry from a Senior Application Developer (totaling 10 hours for 30 inquiries at $182.76), and 30 minutes per inquiry from a Project Manager/Team Lead (totaling 15 hours for 30 inquiries at $149.23 per hour). As shown in Table 25, this results in a total estimated annual burden of 30 hours per issuer or TPA, with an associated cost of approximately $4,957 for each issuer or TPA. As shown in Table 26, the Departments estimate a total ongoing annual burden of 45,240 hours and a total cost of approximately $7,475,608 for all 1,508 issuers and TPAs. The 3-year average burden hours and costs for this requirement are presented in Table 27.

TABLE 25: Estimated Annual Cost and Hour Burden per Health Insurance Issuer or TPA to Respond to Machine-Readable File Inquiries

Occupation	Burden Hours per Respondent	Labor Cost per Hour	Total Cost per Respondent
Attorney III	5	$178.25	$891
Senior Application Developer	10	$182.76	$1,828
Project Manager/Team Lead	15	$149.23	$2,238
Total per Respondent	30		$4,957

TABLE 26: Estimated Annual Cost and Hour Burden for All Health Insurance Issuers or TPAs to Respond to Machine-Readable File Inquiries

Number of Respondents	Number of Responses	Burden Hours per Respondent	Total Burden Hours	Total Cost
1,508	1,508	30	45,240	$7,475,608

TABLE 27: Estimated 3-Year Average Annual Hour Burden and Costs for All Issuers and TPAs to Add a Text File and to Respond to Machine-Readable File Inquiries

Year	Number of Respondents	Number of Responses	Burden Hours per Respondent	Total Burden Hours	Total Cost
2027	1,508	1,508	54	81,432	$12,832,024
2028	1,508	1,508	30	45,240	$7,475,608
2029	1,508	1,508	30	45,240	$7,475,608
3-year average	1,508	1,508	38	57,304	$9,261,080

The Departments requested comment on the estimated cost and burden hours presented in this ICR, including any additional costs or challenges that may not have been identified. The Departments did not receive any comments on these estimates.

12. ICRs Regarding Requirements To Publish Machine-Readable Files in a Single Non-Proprietary, Open-Standards Format (26 CFR 54.9815–2715A1(b)(3)(i), 29 CFR 2590.715–2715A1(b)(3)(i), and 45 CFR 147.212(b)(3)(i))

The Departments are finalizing an amendment to 26 CFR 54.9815–2715A1(b)(3)(i), 29 CFR 2590.715–2715A1(b)(3)(i), and 45 CFR 147.212(b)(3)(i) to require, unless otherwise specified in 26 CFR 54.9815–2715A3, 29 CFR 2590.715–2715A3, and 45 CFR 147.212, plans and issuers to make machine-readable files available in a single non-proprietary, open-standards format, in a form and manner specified in technical implementation guidance. This requirement, which was discussed in the preamble of the proposed rules, along with a request for comment, builds on the 2020 final rules, which require machine-readable files to be publicly available in a non-proprietary, open format but did not mandate a single standardized format.

As discussed in section III.C.9. of this preamble, after considering public comments, the Departments have determined that greater standardization will improve usability, reduce data processing complexity, and enhance comparability across machine-readable files. The Departments explained that earlier technical guidance had contemplated multiple formats, including JSON, XML, and CSV, but that file developers had largely converged on JSON. Since implementation of the 2020 final rules, the Departments have observed that most plans and issuers are already using JSON, with internal analysis indicating that more than 90 percent currently use that format. The Departments have determined that requiring a single format will promote consistency, facilitate more efficient data use by developers and researchers, and reduce variation in file structure. Although some plans and issuers may incur transition costs to align with the specified format, the Departments expect the overall total costs to be limited given current industry practices and anticipate that standardization will reduce ongoing operational complexity over time.

As further discussed in section III.C.9. of this preamble, the Departments have determined that specifying the format in guidance, rather than regulation, provides flexibility to adapt to future technological developments while maintaining a consistent standard for publication. While the Departments will specify the required file format through guidance, the Departments currently intend to specify JSON as the required

format for the In-network Rate File, Allowed Amount File, Utilization File, and Taxonomy File, because it best supports the structure and exchange of Transparency in Coverage data. The Text File, as described in section III.C.8.d. of this preamble, must be published in .txt format, which is also a single, non-proprietary, open standard format.

Consistent with the Departments' findings, industry reports also indicate that JSON adoption exceeds 95 percent.[140] Accordingly, the Departments estimate one-time burden and costs only for the approximately 5–10 percent of plans and issuers expected to update their current machine-readable files to the JSON format. Based on this expectation, the Departments estimate the following one-time burden for this requirement.

On average, each issuer or plan (or TPA on behalf of a plan) will require 20 hours from a Project Manager/Team Lead ($149.23 per hour), 20 hours from a Scrum Master (at $141.16 per hour), 60 hours from a Technical Architect (at $193.30 per hour), 60 hours of work from a Senior Application Developer (at $182.76 per hour), 5 hours from a Business Analyst (at $112.01 per hour), and 5 hours from a DevOps Engineer III (at $160.20 per hour). As shown in Table 28, this results in a one-time estimated burden of 170 hours for each issuer or TPA, with an associated cost of approximately $29,732.

For the 151 affected issuers and TPAs[141] as shown in Table 29, the Departments estimate a total one-time burden of 25,636 hours and a total cost of approximately $4,483,653.

TABLE 28: One-Time Estimated Cost and Hour Burden per Affected Health Insurance Issuer or TPA to Publish Machine-Readable Files in a Single Non-Proprietary, Open-Standards Format

Occupation	Burden Hours per Respondent	Labor Cost per Hour	Total Cost per Respondent
Project Manager/Team Lead	20	$149.23	$2,985
Scrum Master	20	$141.16	$2,823
Technical Architect	60	$193.30	$11,598
Senior Application Developer	60	$182.76	$10,966
Business Analyst	5	$112.01	$560
DevOps Engineer III	5	$160.20	$801
Total per Respondent	170		$29,732

TABLE 29: One-Time Estimated Cost and Hour Burden for Affected Health Insurance Issuers and TPAs to Publish Machine-Readable Files in a Single Non-Proprietary, Open-Standards Format

Number of Respondents	Number of Responses	Burden Hours per Respondent	Total Burden hours	Total Cost
151	151	170	25,636	$4,483,653

The Departments do not anticipate any ongoing costs associated with this requirement because, once implemented, plans and issuers are expected to maintain compliance using existing processes and systems without incurring additional recurring burden.

13. ICRs Regarding Requirements To Add a Price Transparency Footer Link on Website Directing Users to the Location of the Machine-Readable Files (26 CFR 54.9815–2715A3(b)(3)(iii), 29 CFR 2590.715–2715A3(b)(3)(iii), and 45 CFR 147.212(b)(3)(iii))

The Departments proposed to add a new requirement at 26 CFR 54.9815–2715A3(b)(3)(iii), 29 CFR 2590.715–2715A3(b)(3)(iii), and 45 CFR 147.212(b)(3)(iii) to improve user access to machine-readable files published under paragraphs (b)(1) and (2). Specifically, plans and issuers would be required to include a link to the internet domain where the machine-readable files are hosted on the footer of their website. This link would be required to appear on the home page and on any other page that includes a footer and must be labeled as ''Price Transparency'' or ''Transparency in Coverage.''

The Departments are finalizing this requirement as proposed. The Departments anticipate that the burden associated with this requirement will be minimal, as it will involve only basic website modifications.

[140] Carol Skenes, *New year, renewed efforts,* Turquoise Health (January 5, 2026), available at https://turquoise.health/resources/blog/new-year-renewed-efforts-for-understanding-the-cost-of-care.

[141] The estimate of 151 affected issuers and TPAs is calculated as 10 percent of 1,508 issuers and TPAs (1,508 × 0.10 ≈ 151).

The Departments requested comment on the discussion of potential costs and burden associated with this ICR in the proposed rules, including any additional costs or challenges that may not have been identified. The Departments did not receive any comments on this discussion.

14. ICRs Regarding Requirements To Attest to Machine-Readable Files (26 CFR 54.9815–2715A3(b)(1)(iv), 29 CFR 2590.715–2715A3(b)(1)(iv), and 45 CFR 147.212(b)(1)(iv))

As discussed in section III.C.7. of this preamble, the Departments are finalizing a requirement for group health plans and health insurance issuers to attest, to the best of their knowledge and belief, the accuracy and completeness of the information contained in their machine-readable files. The attestation requirement is intended to enhance confidence in the disclosures and further align the Transparency in Coverage requirements with the Hospital Price Transparency framework.

Specifically, the Departments are finalizing provisions at 26 CFR 54.9815–2715A3(b)(1)(iv), 29 CFR 2590.715–2715A3(b)(1)(iv), and 45 CFR 147.212(b)(1)(iv), which establish a new requirement for group health plans and health insurance issuers to include an attestation and related identifying information within each machine-readable file required under paragraphs (b)(1)(i) through (iii) and (b)(2)(i) and (ii) of these sections. Under these provisions, plans and issuers must attest that, to the best of their knowledge and belief, the machine-readable file includes all applicable information required under 26 CFR 54.9815–2715A3, 29 CFR 2590.715–2715A3, and 45 CFR 147.212, and that the information encoded in the file is true, accurate, and complete as of the date of the file. Plans and issuers must also encode the name of the chief executive officer, president, or other senior official designated to oversee the encoding of true, accurate, and complete data.

As discussed in section III.C.7. of this preamble and pursuant to the special rules to prevent unnecessary duplication in paragraph (b)(5), plans and issuers may satisfy the attestation requirements of paragraphs (b)(1)(iv)(A) and (B) through a written agreement with another party, such as a TPA, that prepares and publishes the machine-readable files on their behalf. Under such an arrangement, the TPA may make the attestation required under paragraph (b)(1)(iv)(A) and encode the name of its chief executive officer, president, or other designated senior official responsible for overseeing the truthfulness, accuracy, and completeness of the information contained in the machine-readable files.

The Departments anticipate that plans (or TPAs on behalf of plans) and issuers will incur a one-time burden to modify their existing machine-readable file generation processes to include the required attestation statement and the name of the designated senior official. Plans and issuers will also need to establish internal procedures for reviewing the machine-readable files and confirming that the required information has been included prior to publication.

To account for these activities, the Departments estimate a one-time burden and cost for plans (or TPAs on behalf of plans) and issuers to develop internal processes and procedures and the operational changes necessary to comply with the attestation requirement. Specifically, the Departments estimate that each issuer or TPA will require, on average, 16 hours of work from a Business Analyst (at $112.01 per hour), 8 hours from an Operations Manager (at $121.54 per hour), and 2 hours from a Chief Executive (at $290.93 per hour) to develop and update the necessary processes and procedures, review the updates, and review and attest to the accuracy and completeness of the information included in the machine-readable files. As shown in Table 30, this results in a total estimated one-time burden of 26 hours per entity, with an associated cost of approximately $3,346. Across all 1,508 affected issuers and TPAs, the Departments estimate a total one-time burden of 39,208 hours and a combined cost of approximately $5,046,281, as presented in Table 31.

TABLE 30: One-Time Estimated Cost and Hour Burden per Health Insurance Issuer or TPA to Implement and Comply With the Machine-Readable File Attestation Requirement

Occupation	Burden hours per respondent	Labor cost per hour	Total cost per respondent
Business Analyst	16	$112.01	$1,792
Operations Manager	8	$121.54	$972
Chief Executive	2	$290.93	$582
Total per Respondent	26		$3,346

TABLE 31: One-Time Estimated Cost and Hour Burden for All Health Insurance Issuers and TPAs to Implement and Comply With the Machine-Readable File Attestation Requirement

Number of Respondents	Number of responses	Burden hours per respondent	Total burden hours	Total cost
1,508	1,508	26	39,208	$5,046,281

In addition to the one-time implementation burden, the Departments estimate an ongoing annual burden associated with maintaining compliance with the attestation requirement. Specifically, each issuer or TPA is expected to require, on average, 8 hours of work from a Business Analyst ($112.01 per

hour), 4 hours from an Operations Manager ($121.54 per hour), and 2 hours from a Chief Executive ($290.93 per hour) to review machine-readable files, make updates to internal procedures, periodically review the attestation information to ensure it remains accurate and current, validate information, and complete the annual attestation. As shown in Table 32, this results in an estimated ongoing annual burden of 14 hours per entity, with an associated cost of approximately $1,964 per issuer or TPA. Across all 1,508 affected issuers and TPAs, the Departments estimate a total ongoing annual burden of 21,112 hours and a combined annual cost of approximately $2,961,863 million, as presented in Table 33. The 3-year average costs and burden for this requirement are presented in Table 34.

TABLE 32: Estimated Annual Cost and Hour Burden per Health Insurance Issuer or TPA to Attest the Accuracy and Completeness of Machine-Readable Files

Occupation	Burden hours per respondent	Labor cost per hour	Total cost per respondent
Business Analyst	8	$ 112.01	$896
Operations Manager	4	$ 121.54	$486
Chief Executive	2	$ 290.93	$582
Total per Respondent	14		$1,964

TABLE 33: Estimated Annual Cost and Hour Burden for All Health Insurance Issuers and TPAs to Attest the Accuracy and Completeness of Machine-Readable Files

Number of Respondents	Number of responses	Burden hours per respondent	Total burden hours	Total cost
1,508	1,508	14	21,112	$2,961,863

TABLE 34: Estimated 3-Year Average Annual Cost and Hour Burden for All Health Insurance Issuers or TPAs to Attest the Accuracy and Completeness of Machine-Readable Files

Year	Number of Respondents	Number of Responses	Burden Hours per Respondent	Total Burden Hours	Total Cost
2027	1,508	1,508	40	60,320	$8,008,144
2028	1,508	1,508	14	21,112	$2,961,863
2029	1,508	1,508	14	21,112	$2,961,863
3-year average	1,508	1,508	23	34,181	$4,643,956

15. ICRs Regarding Requirements for Phased Implementation of New and Amended Machine-Readable File Requirements (26 CFR 54.9815–2715A3(c)(1)(ii)–(iii), 29 CFR 2590.715–2715A3(c)(1)(ii)–(iii), and 45 CFR 147.212(c)(1)(ii)–(iii))

In the proposed rules, the Departments proposed that the amendments to the Transparency in Coverage machine-readable file requirements would apply beginning 12 months after publication of these final rules in the **Federal Register** and sought comment on whether this timeframe would provide sufficient implementation time.

As discussed in section III.C.13. of this preamble, and after considering public comments, the Departments are finalizing a phased implementation approach. Under this approach, certain requirements become applicable 5 months after publication of these final rules in the **Federal Register** (Phase 1), while other requirements become applicable 11 months after publication (Phase 2). The Departments have determined that this phased approach appropriately balances commenter requests for accelerated implementation of requirements with the time necessary to implement newly established contextual files and related technical changes.

Phase 1 includes requirements related to excluded providers, provider network-level reporting, reporting of common provider network name and network identifier, reporting of percentage of billed charges, aggregation of Allowed Amount File data by market type with a lower claims threshold and longer reporting period, inclusion of product type and HIOS identifiers, quarterly reporting, and adoption of a single file format. Phase 2 includes the Taxonomy File and Utilization File for the In-network Rate File, as well as the

Text File and the ''findability'' link requirement applicable to both files.

The two phases have different applicability dates, which may create an overlap period during which plans and issuers must simultaneously implement Phase 1 requirements while continuing to prepare for Phase 2 requirements. Maintaining these concurrent implementation workstreams is expected to increase coordination across planning, systems development, file creation and testing, operational coordination, and other implementation activities. Accordingly, the overlap period may require plans and issuers to allocate additional staff and technical resources across multiple implementation timelines, which could increase administrative and operational costs during the transition period.

The Departments do not have detailed information regarding the staffing structures, operational processes, or resource allocation practices of affected plans and issuers and therefore cannot precisely estimate the incremental burden associated with these concurrent implementation efforts. For purposes of this analysis, the Departments assume a conservative 20 percent increase in labor hours and associated labor costs relative to total first-year implementation burden for activities occurring during the overlap period. This assumption is intended to account for the additional coordination, project management, testing, and operational effort required to support overlapping implementation timelines.

Accordingly, the Departments estimate that plans and issuers will incur approximately 435,259 hours, with associated costs of approximately $66,624,563, during the first year of implementation.[142] The Departments do not anticipate that the phased approach will impact ongoing costs. Ongoing costs are primarily driven by recurring reporting, data maintenance, and file updates, which are not expected to be duplicated as a result of overlapping implementation timelines. Rather, the phased approach affects the timing and sequencing of one-time implementation activities without increasing the overall magnitude of ongoing burden.

C. Submission of PRA Related Comments

The burden associated with the Transparency in Coverage disclosure requirements for HHS is currently approved under OMB control number 0938–1429 (CMS–10715, Transparency in Coverage).[143] HHS plans to revise this information collection request to account for the additional burden resulting from these finalized requirements. For the Departments of Labor and the Treasury, the related burden was submitted to OMB as Request for Common Form (RCF) submissions. Upon approval of the RCF submissions, both DOL and the Treasury will update and submit their respective information collection requests to reflect these finalized requirements. The Departments have submitted a copy of these final rules to OMB for its review of the associated information collection and recordkeeping requirements. These requirements are not effective until they have been approved by the OMB.

To obtain copies of the supporting statement and any related forms for the approved collections for control number 0938–1429, please visit CMS' website at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.* To obtain copies of the supporting statement for control number 0938–1429, please go to *https://www.RegInfo.gov* or email the request to *ebsa.opr@dol.gov* and reference control number 0938–1429.

The Departments invited public comment on these information collection requirements in the proposed rules and have considered all comments received. Responses to these comments are addressed under each applicable ICR in section IV. of this preamble.

D. Summary of Ongoing and One-Time Burden Estimates for the Final Requirements

As shown in Tables 35 through 37, using high-end estimates, the Departments estimate that these finalized requirements will result in an ongoing burden of approximately 1.4 million hours annually, at a cost of approximately $80.4 million per year for all plans (or TPAs on behalf of plans) and issuers. In addition, these finalized requirements are expected to impose one-time implementation costs, totaling approximately 2.6 million hours and approximately $400 million across all plans (TPAs on behalf of plans) and issuers. Together, this represents a first-year burden of roughly 4 million hours and $480.4 million in associated costs.[144] In subsequent years, the burden is estimated at approximately 1.4 million hours and $80.4 million per year.

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[142] The estimated 435,259 hours and associated costs of $66,624,563 reflect a 20 percent adjustment to the high-end total first-year implementation burden estimates for the requirements in these final rules described in section IV.B.1 through 14., which total 2,176,295 total labor hours and $333,122,817 in associated costs.

[143] Office of Management and Budget, *Transparency in Pricing Information (CMS–10715), OMB control number 0938–1429* (October 14, 2021), available at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202410-0938-006*.

[144] First-year estimates combine one-time implementation and ongoing annual burdens: 4 million hours ≈ 2.6 million + 1.4 million and $480.4 million ≈ $400 million + $80.4 million.

TABLE 35: Estimated Annual Burden Hours and Costs Associated With the Finalized Requirements for All Issuers and TPAs

Information Collection Requirements (ICRs)	OMB Control Number	Number of Respondents	Number of Responses	Burden per Response (Hours)	Total Annual Burden (Hours)	Total Cost ($)
ICRs Regarding Requirements for Disclosures to Participants, Beneficiaries, and Enrollees to Provide Pricing Information via Phone (26 CFR 54.9815-2715A2, 29 CFR 2590.715-2715A2, and 45 CFR 147.211)*	0938-1429	1,508	7,800,000	0.17	1,300,000	$60,450,000
ICRs Regarding Requirements to Implement the Required Utilization File Disclosures (26 CFR 54.9815-2715A3(b)(2)(i), 29 CFR 2590.715-2715A3(b)(2)(i), and 45 CFR 147.212(b)(2)(i))	0938-1429	1,508	1,508	38	57,304	$9,552,155
ICRs Regarding Requirements to Respond to Machine-Readable File Inquiries (26 CFR 54.9815-2715A3(b)(2)(iii), 29 CFR 2590.715-2715A3(b)(2)(iii), and 45 CFR 147.212(b)(2)(iii))	0938-1429	1,508	1,508	30	45,240	$7,475,608
ICRs Regarding Requirements to Attest to Machine-Readable Files (26 CFR 54.9815-2715A3(b)(1)(iv), 29 CFR 2590.715-2715A3(b)(1)(iv), and 45 CFR 147.212(b)(1)(iv))	0938-1429	1,508	1,508	14	21,112	$2,961,863
Total			**7,804,524**		**1,423,656**	**$80,439,626**

* High-end estimated are represented in the table and used to determine the overall annual average annual cost.

TABLE 36: Estimated One-Time Burden Hours and Costs Associated With the Finalized Requirements for All Issuers and TPAs

Information Collection Requirements (ICRs)	OMB Control Number	Number of Respondents	Number of Responses	Burden per Response (Hours)	Total Annual Burden (Hours)	Total Cost ($)
ICRs Regarding Requirements to Update Cost-Sharing Statement Reflecting Federal Balance Billing Protections (26 CFR 54.9815-2715A2, 29 CFR 2590.715-2715A2, and 45 CFR 147.211)	0938-1429	1,508	1,508	0.17	251	$45,934
To Train Customer Service Representatives to Provide Cost-Sharing Information for ICRs Regarding Requirements for Disclosures to Participants, Beneficiaries, and Enrollees to Provide Pricing Information via Phone (26 CFR 54.9815-2715A2, 29 CFR 2590.715-2715A2, and 45 CFR 147.211)	0938-1429	1,508	1,508	184	277,472	$14,597,802
ICRs Regarding Requirements to Organize Files by Provider Network, Allow Service Providers or Other Parties to Organize by Provider Network Across Multiple Self-Insured Group Health Plans, and Include a Common Provider Network Name and Provider Network Identifier (26 CFR 54.9815-2715A3(b)(1)(i) and (b)(5)(iii), 29 CFR 2590.715-2715A3(b)(1)(i) and (b)(5)(iii), and 45 CFR 147.212(b)(1)(i) and (b)(5)(iii))	0938-1429	1,508	1,508	192	289,536	$51,671,077
ICRs Regarding Requirements to Include Product Type in Both In-network Rate and Allowed Amount Files (26 CFR 54.9815-2715A3(b)(1)(i)(C) and (b)(1)(ii)(A), 29 CFR 2590.715-2715A3(b)(1)(i)(C), and (b)(1)(ii)(A), and 45 CFR 147.212(b)(1)(i)(C) and (b)(1)(ii)(A))	0938-1429	1,508	1,508	32	48,256	$7,688,387
ICRs Regarding Requirements to Report Dollar Amounts Except for Only "Percent-of-Billed Charges" Payments (26 CFR 54.9815-2715A3(b)(1)(i)(E)(*1*), 29 CFR 2590.715-2715A3(b)(1)(i)(E)(*1*), and 45 CFR 147.212(b)(1)(i)(E)(*1*))*	0938-1429	1,508	1,508	32	48,256	$7,688,387
ICRs Regarding Requirements to Exclude Certain Providers From In-network Rate Files and to Publish Taxonomy Files (26 CFR 54.9815-2715A3(b)(1)(i)(F), 29 CFR 2590.715-2715A3(b)(1)(i)(F) and 45 CFR 147.212(b)(1)(i)(F), and	0938-1429	1,508	1,508	192	289,536	$46,130,323

Information Collection Requirements (ICRs)	OMB Control Number	Number of Respondents	Number of Responses	Burden per Response (Hours)	Total Annual Burden (Hours)	Total Cost ($)
26 CFR 54.9815-2715A3(b)(2)(iii), 29 CFR 2590.715-2715A3(b)(2)(iii), and 45 CFR 147.212(b)(2)(iii))						
ICRs Regarding Requirements to Aggregate Out-of-Network Allowed Amount Files by Market Type and Allow Service Providers or Other Parties to Aggregate by Market Type Across Multiple Self-Insured Group Health Plans (26 CFR 54.9815-2715A3(b)(1)(ii), 29 CFR 2590.715-2715A3(b)(1)(ii), and 45 CFR 147.212(b)(1)(ii)) and Permit Such Aggregation at the TPA Level (26 CFR 54.9815-2715A3(b)(5)(iv), 29 CFR 2590.715-2715A3(b)(5)(iv), and 45 CFR 147.212(b)(5)(iv))	0938-1429	1,508	1,508	64	96,512	$15,376,774
ICRs Regarding Requirements to Implement the Required Utilization File (26 CFR 54.9815-2715A3(b)(2)(i), 29 CFR 2590.715-2715A3(b)(2)(i), and 45 CFR 147.212(b)(2)(i))	0938-1429	1,508	1,508	680	1,025,440	$175,037,782
ICRs Regarding Requirements to Add a Text File and Identify Point-of-Contact Information for Inquiries to Improve Discoverability and Accessibility of Machine-Readable Files (26 CFR 54.9815-2715A3(b)(2)(iii), 29 CFR 2590.715-2715A3(b)(2)(iii), and 45 CFR 147.212(b)(2)(iii))	0938-1429	1,508	1,508	24	36,192	$5,356,416
ICRs Regarding Requirements to Publish Machine-Readable Files in a Single Non-Proprietary, Open-Standards Format (26 CFR 54.9815-2715A1(b)(3)(i), 29 CFR 2590.715-2715A1(b)(3)(i), and 45 CFR 147.212(b)(3)(i))	0938-1429	151	151	170	25,636	$4,483,653
ICRs Regarding Requirements to Attest to Machine-Readable Files (26 CFR 54.9815-2715A3(b)(1)(iv), 29 CFR 2590.715-2715A3(b)(1)(iv), and 45 CFR 147.212(b)(1)(iv))	0938-1429	1,508	1,508	26	39,208	$5,046,281
ICRs Regarding Requirements for Phased Implementation of New and Amended Machine-Readable File Requirements (26 CFR 54.9815-2715A3(c)(1)(ii)-(iii), 29 CFR 2590.715-2715A3(c)(1)(ii)-(iii), and 45 CFR 147.212(c)(1)(ii)-(iii))	0938-1429	1,508	1,508	289	435,259	$66,624,563
Total			**16,739**		**2,611,554**	**$399,747,381**

* High-end estimated values are represented in the table and used to determine the overall average one-time costs.

TABLE 37: Summary of Estimated First-Year and Subsequent Annual Burden Hours and Costs Associated With the Finalized Requirements for All Issuers and TPAs

Burden Category	Burden Hours	Cost*
First-year one-time burden	2,611,554	$399,747,381
First-year annual burden	1,423,656	$80,439,626
Total first-year burden	4,035,210	$480,187,007
Annual burden in subsequent years	1,423,656	$80,439,626

* High-end estimated values are presented in the table and used to calculate all burden-hour and cost estimates.

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E. Allocation of Total Burden Hours to the Departments of Health and Human Services, Labor, and the Treasury

Based on their respective jurisdiction over plans and issuers, HHS is estimated to account for 50 percent of the total burden, while the Departments of Labor and the Treasury will each account for 25 percent. Tables 38 and 39 present each Department's share of the total one-time and on-going estimated burden hours needed to implement the final requirements.

TABLE 38: Estimated One-Time Burden Hours of HHS, Labor, and the Treasury to Implement Requirements for Disclosures to Participants, Beneficiaries, and Enrollees and Public Disclosure of In-Network Rates and Allowed Amount Data for Covered Items and Services from In- and Out-of-Network Providers

Agency	Year	Burden Share Percentage	Number of Respondents	Number of Responses*	Burden Hours per Response	Total Burden Hours
HHS	2027	50%	754	8,369	156	1,305,777
Labor	2027	25%	377	4,185	156	652,889
Treasury	2027	25%	377	4,185	156	652,889

* High-end estimated values are represented in the table and used to calculate the overall estimated figures.

TABLE 39: Estimated Annual Burden Hours of HHS, Labor, and the Treasury to Implement Requirements for Disclosures to Participants, Beneficiaries, and Enrollees and Public Disclosure of In-Network Rates and Allowed Amount Data for Covered Items and Services from In- and Out-of-Network Providers

Agency	Year	Burden Share Percentage	Number of Respondents	Number of Responses*	Burden Hours per Response	Total Burden Hours
HHS	2027	50%	754	3,902,262	0.2	711,828
Labor	2027	25%	377	1,951,131	0.2	355,914
Treasury	2027	25%	377	1,951,131	0.2	355,914

* High-end estimated values are represented in the table and used to calculate the overall estimated figures.

V. Regulatory Impact Analysis

A. Executive Orders 12866, 13563, and 14192

The Departments have examined the impacts of these final rules as required by Executive Order 12866, ''Regulatory Planning and Review;'' [145] Executive Order 13132, ''Federalism;'' [146] Executive Order 13563, ''Improving Regulation and Regulatory Review''; [147] Executive Order 14192, ''Unleashing Prosperity Through Deregulation''; [148] the Regulatory Flexibility Act (RFA); [149] section 1102(b) of the Social Security Act; section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995, Pub. L. 104–4); and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select those regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; and distributive impacts).

Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more 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, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, or the President's priorities, or the principles set forth in this Executive order. A ''significant regulatory action'' is subject to review by OMB. An RIA must be prepared for a regulatory action that is significant under Executive Order 12866. Based on the Departments' estimates, OMB's Office of Information and Regulatory Affairs (OIRA) has determined these rules are significant under section 3(f)(1) of Executive Order 12866, and an RIA has been prepared. In addition, under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act), OIRA has determined that this rule is a major rule as defined under 5 U.S.C. 804(2). The Departments have provided an assessment of the potential costs, benefits, and transfers associated with this rule. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by OMB. Additionally, tax regulatory actions issued by the U.S. Department of the Treasury are subject to the requirements of section 6 of Executive Order 12866 pursuant to the Memorandum of Agreement (MOA) (July 4, 2025) between the Treasury Department and OMB regarding review of tax regulations. As such, the Treasury portions of this rule were also reviewed by OMB and are also included into this RIA.

B. Need for Regulatory Action

These final rules amend and strengthen the existing regulations under sections 1311(e)(3) of the Affordable Care Act and 2715A of the PHS Act and are included in section 715 of ERISA and section 9815 to the Code to enhance price transparency reporting requirements for non-grandfathered group health plans and health insurance issuers offering non-grandfathered group and individual health insurance coverage. Consistent with the goals of Executive Order 14221, these final rules aim to provide patients with clear, accurate, and actionable pricing information.[150]

More broadly, these final rules seek to improve the quality, accuracy, and usability of publicly available pricing disclosures and cost-sharing information for participants, beneficiaries, and enrollees. They also address new Federal protections under the No Surprises Act and reduce duplicative reporting requirements.

The machine-readable file requirements further support these purposes by making underlying pricing data available in a standardized, accessible format that can be used by researchers, third-party developers, regulators, and other interested parties to develop consumer-facing tools, analyze market trends, and promote accountability. While machine-readable files are not typically used directly by individual participants, beneficiaries, or enrollees, they are an important mechanism for making pricing information more meaningful, comparable, and actionable across the health care market. These improvements will ultimately help participants, beneficiaries, and enrollees better understand their potential costs, support more informed decision-making, and promote greater competition among health care providers and insurers.

C. Affected Entities

This section of this preamble summarizes the number of plans, issuers, and participants, beneficiaries and enrollees that will be affected by these final rules. Table 40 summarizes the estimated number of affected entities and participants, beneficiaries, and enrollees subject to these final rules.

[145] Exec. Order No. 12866, 58 FR 51735 (September 30, 1993).

[146] Exec. Order No. 13132, 64 FR 43255 (August 4, 1999).

[147] Exec. Order No. 13563, 76 FR 3821 (January 18, 2011).

[148] Exec. Order No. 14192, 90 FR 9065 (January 31, 2025).

[149] Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164 (Sep. 19, 1980).

[150] Exec. Order No. 14221, 90 FR 11005 (February 28, 2025).

TABLE 40: Estimated Affected Entities and Populations Subject to these Final Rules

Affected Entity or Population	Estimated Number
Plans, Issuers, and TPAs	
• ERISA-covered group health plans	2,765,373
• Non-Federal governmental group health plans	90,900
• Health insurance issuers	1,303
• Third-party administrators (TPAs)	205
Participants, Beneficiaries, and Enrollees	
• Participants in ERISA-covered group health plans	135.5 million
○ Self-insured	77.7 million
○ Fully insured	51.2 million
• Participants in non-Federal governmental group health plans	43.8 million
○ Self-insured	22.0 million
○ Fully insured	21.6 million
• Marketplace individual market enrollees	22.8 million
• Off-Marketplace individual market enrollees	1.6 million

1. Group Health Plans

These final rules will affect ERISA-covered group health plans and non-Federal governmental group health plans, and certain church plans subject to the applicable provisions of the Internal Revenue Code. However, because the Departments do not have sufficient data to estimate the number of church plans, they are not included in the quantitative estimates presented in this section.

The Departments estimate there are approximately 2,765,373 ERISA-covered group health plans.[151] The Departments also estimate that these final rules are expected to affect 90,900 non-Federal governmental group health plans.[152] Of these plans, approximately 35.7 percent[153] (or 32,400) are self-insured,[154] and 64.3 percent (or 58,400) are fully funded.[155]

2. Participants, Beneficiaries, and Enrollees

The Departments estimate that there are 135.5 million participants in ERISA-covered group health plans, of which 77.7 million are in self-insured plans and 51.2 million are in fully funded plans.[156] There are also approximately 43.8 million participants in non-Federal governmental group health plans, of which 22.0 million are in self-insured plans and 21.6 million are in fully funded plans.[157] In addition, approximately 22.8 million individuals selected individual health insurance coverage through the Marketplaces during the 2026 Marketplace Open Enrollment Period.[158] An additional 1.6 million individuals are estimated to be enrolled in off-Marketplace individual market coverage.[159]

[151] Based on the 2024 Medical Expenditure Panel Survey Insurance Component (MEPS–IC) and the 2022 County Business Patterns from the Census Bureau, EBSA estimates there are 2,765,373 ERISA-covered group health plans.

[152] Based on data from the 2022 Census of Governments, there are 90,887 State and local entities. The Departments assume there is one plan per entity on average. Therefore, the Departments estimate that there are 90,887 non-Federal governmental plans. U.S. Census Bureau, *2022 Census of Governments, Organization Tables, https://www.census.gov/data/CEs/2022/econ/gus/2022-governments.html* (last visited Dec. 8, 2025).

[153] Agency for Healthcare Research and Quality, *Medical Expenditure Panel Survey—Insurance Component, Table III.A.2.a.* (2023), *https://www.meps.ahrq.gov/data_stats/summ_tables/insr/national/series_3/2023/ic23_iiia_g.pdf.*

[154] This estimate is calculated as follows: 90,887 non-Federal group health plans x 35.7 percent = 32,447 self-insured, non-Federal governmental group health plans.

[155] This estimate is calculated as follows: 90,887 non-Federal group health plans x 64.3 percent = 58,440 fully insured, non-Federal governmental group health plans.

[156] U.S. Department of Labor, Employee Benefits Security Administration, *Health Insurance Coverage Bulletin* (August 30, 2024), *https://www.dol.gov/sites/dolgov/files/EBSA/researchers/data/health-and-welfare/health-insurance-coverage-bulletin-2024.pdf.*

[157] *Id.*

[158] Centers for Medicare & Medicaid Services, *Marketplace 2026 Open Enrollment Period Report: National Snapshot* (January 12, 2026), *https://www.cms.gov/newsroom/fact-sheets/marketplace-2026-open-enrollment-period-report-national-snapshot-0.*

[159] KFF, *How Individual Market Enrollment Changed with the Enhanced Premium Tax Credits* (June 12, 2025), *https://www.kff.org/affordable-care-act/how-individual-market-enrollment-changed-with-the-enhanced-premium-tax-credits/.*

3. Issuers and TPAs

Finally, the Departments estimate that these final rules will affect 205 TPAs [160] and 1,303 issuers.[161] The Departments assume that fully-insured group health plans will rely on health insurance issuers, and self-insured group health plans will depend on TPAs, including issuers providing administrative services only and non-issuer TPAs, to implement the final updates to cost-sharing disclosures to participants, beneficiaries, and enrollees, as well as to implement the amended public disclosure requirements. This assumption is based on the Departments' understanding that most self-insured group health plans already rely on TPAs to perform core administrative functions, such as enrollment and claims processing.[162] The Departments use the term TPA in this section of this preamble to refer to any other party with which a self-insured group health plan has an agreement to provide services to meet the requirements in these final rules.

D. Detailed Economic Analysis

1. Impact Estimates of the Transparency in Coverage Provisions and Accounting Table

Consistent with Executive Order 12866 and OMB Circular A–4,[163] Table 41 depicts an accounting statement summarizing the Departments' assessment of the benefits, costs, cost savings and transfers associated with these final regulatory actions. The Departments are unable to quantify all of the benefits and costs associated with these final rules due to data limitations and uncertainty about how plans, issuers, and other interested parties may respond to these final requirements. The Departments do not anticipate that these final rules will result in new or additional administrative costs to the Departments. The accounting table separately reports gross annualized monetized costs and annualized monetized cost savings, which are combined to calculate the net annualized monetized costs/cost savings.[164]

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[160] An ''issuer/State combination'' refers to a health insurance issuer and the State in which it offers coverage, such that the same issuer operating in multiple States is treated as separate issuer/State combinations. Centers for Medicare & Medicaid Services, *2024 Medical Loss Ratio Data, https://www.cms.gov/marketplace/resources/data/medical-loss-ratio-data-systems-resources* (last updated Mar. 13, 2026).

[161] The Departments' estimate of the number of health insurance companies and the number of issuers (issuer/State combinations) is based on medical loss ratio reports submitted by issuers for the 2024 reporting year. Centers for Medicare & Medicaid Services, *Medical Loss Ratio Data and System Resources* (last updated Mar. 3, 2026), *https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.*

[162] Louise Norris, *What is Self-Insured Health Insurance? Most Very Large Employers Self-Insure,* Verywell Health (November 6, 2025), *https://www.verywellhealth.com/what-is-self-insured-health-insurance-and-how-is-it-regulated-4688567.*

[163] Office of Management and Budget, *Circular A–4: Regulatory Analysis* (2003), *https://trumpwhitehouse.archives.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.*

[164] Unless otherwise specified, all costs estimates in section V. of this preamble were developed using an IGCE framework. The IGCE framework provides a structured approach for estimating the resources necessary to implement and maintain regulatory requirements by identifying the anticipated activities, appropriate labor categories, level of effort, and operational and technical resources associated with each requirement. The Departments used this framework to develop reasonable assumptions regarding the personnel and hours necessary for plans and issuers to complete each information collection activity, taking into account the nature and complexity of the required tasks. Additional information regarding IGCE tools and resources is available through the U.S. General Services Administration. *See* U.S. General Services Administration, IGCE (Independent Government Cost Estimate), *https://buy.gsa.gov/pricing/* (last visited August 13, 2026).

TABLE 41: Accounting Table

Costs[165]	Low Estimate	High Estimate	Year Dollar	Discount Rate	Period Covered
Gross Annualized Monetized Costs ($/year)	$130,632,546	$165,183,964	2026	3 percent	2027-2031
Annualized Monetized Cost Savings ($/year)	-$254,934,840	-$254,934,840	2026	3 percent	2027-2031
Net Annualized Monetized Costs/Cost Savings ($/year)	-$124,302,294	-$89,750,876	2026	3 percent	2027-2031
Gross Annualized Monetized Costs ($/year)	$136,906,673	$171,556,136	2026	7 percent	2027-2031
Annualized Monetized Cost Savings ($/year)	-$254,934,840	-$254,934,840	2026	7 percent	2027-2031
Net Annualized Monetized Costs/Cost Savings ($/year)	-$118,028,167	-$83,378,704	2026	7 percent	2027-2031
Quantified Costs					
Gross Costs					
• Ongoing annual costs to plans and issuers for making pricing information available via phone are estimated at $27,202,500 on the low end and $60,450,000 on the high end under 26 CFR 54.9815-2715A2, 29 CFR 2590.715-2715A2, and 45 CFR 147.211.					
• One-time costs to update cost-sharing disclosure reflecting Federal balance billing protections are estimated at $45,934 under 26 CFR 54.9815-2715A2, 29 CFR 2590.715-2715A2, and 45 CFR 147.211.					
• One-time costs to plans and issuers to train customer service representatives and supervisors to provide cost-sharing information via phone are estimated at $14,597,802 under 26 CFR 54.9815-2715A2, 29 CFR 2590.715-2715A2, and 45 CFR 147.211.					
• One-time costs to plans and issuers to organize In-network Rate Files by provider network, allow service providers or other parties to organize by provider network across multiple self-insured group health plans, and include a common provider network name and provider network identifier and provider network identifier are estimated at $51,671,077 under 26 54.9815-2715A3, 29 CFR 2590.715-2715A3, and 45 CFR 147.212.					
• One-time costs to plans and issuers to include product type in both the In-network Rate and Allowed Amount Files are estimated at $7,688,387 under 26 54.9815-2715A3, 29 CFR 2590.715-2715A3, and 45 CFR 147.212.					

[165] For purposes of the accounting table and Executive Order 14192, negative values reflect reductions in costs with respect to monetized cost savings.

Costs[165]	Low Estimate	High Estimate	Year Dollar	Discount Rate	Period Covered
• One-time costs to plans and issuers to report dollar amounts except for only "percent-of-billed charges" payments are estimated at $1,537,677 on the low end and $7,688,387 on the high end under 26 54.9815-2715A3, 29 CFR 2590.715-2715A3, and 45 CFR 147.212.					
• One-time costs to plans and issuers to exclude certain providers from In-network Rate Files and to Publish Taxonomy Files are estimated at $46,130,323 under 26 54.9815-2715A3, 29 CFR 2590.715-2715A3, and 45 CFR 147.212.					
• One-time costs to plans and issuers to aggregate Out-of-Network Allowed Amount Files by market type and allow service providers and other parties to aggregate by market type across multiple self-insured group health plans are estimated at $15,376,774 under 26 54.9815-2715A3, 29 CFR 2590.715-2715A3, and 45 CFR 147.212.					
• One-time costs to plans and issuers to develop processes to implement the Utilization File are estimated at $175,037,782 under 26 54.9815-2715A3, 29 CFR 2590.715-2715A3, and 45 CFR 147.212.					
• Ongoing annual costs to plans and issuers to implement the disclosures required for the Utilization File are estimated at $9,552,155 under 26 54.9815-2715A3, 29 CFR 2590.715-2715A3, and 45 CFR 147.212.					
• One-time costs to plans and issuers to add a Text File and identify point-of-contact for inquiries to improve discoverability and accessibility of machine-readable files are estimated at $5,356,416 under 26 54.9815-2715A3, 29 CFR 2590.715-2715A3, and 45 CFR 147.212.					
• Ongoing annual costs to plans and issuers to respond to machine-readable file inquiries estimated at $7,475,608 under 26 54.9815-2715A3, 29 CFR 2590.715-2715A3, and 45 CFR 147.212.					
• One-time costs to plans and issuers to publish machine-readable files in a single non-proprietary, open-standards format are estimated at $4,483,653 under 26 54.9815-2715A3, 29 CFR 2590.715-2715A3, and 45 CFR 147.212.					
• One-time costs to plans and issuers to attest to the accuracy and completeness of machine-readable files are estimated at $5,046,281 under 26 CFR 54.9815-2715A3(b)(1)(iv), 29 CFR 2590.715-2715A3(b)(1)(iv), and 45 CFR 147.212(b)(1)(iv).					
• Ongoing annual costs to plans and issuers to attest the accuracy and completeness of machine-readable files are estimated at $2,961,863 under 26 CFR 54.9815-2715A3(b)(1)(iv), 29 CFR 2590.715-2715A3(b)(1)(iv), and 45 CFR 147.212(b)(1)(iv).					
• One-time additional costs to affected plans and issuers associated with the phased implementation of new and amended machine-readable file requirements are estimated at $66,624,563 under 26 54.9815-2715A3, 29 CFR 2590.715-2715A3, and 45 CFR 147.212.					
Cost Savings Reported as Negative Costs					
• Approximately -$9,147,120 per year in cost savings from reduced data cleaning and integration, and quarterly reporting reduction costs for third-party developers and other file users under 26 54.9815-2715A3, 29 CFR 2590.715-2715A3, and 45 CFR 147.212.					
• Approximately - $73,317,600 per year in cost savings from storage reductions and quarterly reporting for plans, issuers, third-party developers, and other file users under 26 54.9815-2715A3, 29 CFR 2590.715-2715A3, and 45 CFR 147.212.					
• Approximately -$171,126,000 per year in cost savings from egress and quarterly reporting reduction costs for plans and issuers under 26 54.9815-2715A3, 29 CFR 2590.715-2715A3, and 45 CFR 147.212.					
• Approximately -$1,344,120 per year in cost savings from reduced time for third-party developers and other file users locating files by requiring a Text File and footer links to help file users more easily find the data under 26 54.9815-2715A3, 29 CFR 2590.715-2715A3, and 45 CFR 147.212.					
Non-Quantified Costs					
• Potential increases in health care costs or reduced provider discounts in certain markets if greater price transparency contributes to price convergence or affects provider contracting behavior.					
• Potential privacy, cybersecurity, oversight and enforcement costs, including costs related to protecting PHI and PII and State regulator monitoring of compliance with new Federal requirements.					
Non-Quantified Benefits					
• Increased transparency and usability of price, cost-sharing, and balance billing information, which may help participants, beneficiaries, and enrollees make more informed health care decisions.					
• Improved access to price comparison information, particularly for individuals who may have difficulty using the online tool, which may support cost-conscious decision-making and timely medical bill payments.					
• Improved data usability for file users, researchers, policymakers, regulators, plans, and issuers to analyze health care costs, price trends, provider networks, and negotiated rates.					

Costs[165]	Low Estimate	High Estimate	Year Dollar	Discount Rate	Period Covered
• Potential reductions in overall health care costs and price disparities as greater price transparency promotes more competitive pricing and price convergence among providers.					
Non-Quantified Transfers					
• Potential transfers among providers if increased price transparency causes market share to shift from higher-cost providers to lower-cost providers.					
• Potential transfers among providers, plans, issuers, participants, beneficiaries, and enrollees if increased price transparency results in lower costs and affects provider selection, out-of-pocket costs, health care spending, or premiums.					
• Potential transfers between plans and issuers to the Federal government through reduced PTC spending if greater price transparency results in lower individual market premiums.					

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Since the implementation of the 2020 final rules, many group health plans and health insurance issuers have experienced higher-than-anticipated costs associated with generating, storing, and updating very large and complex machine-readable files. The Departments acknowledge these burdens, as well as the underestimation of such burdens in the 2020 final rules and have taken steps in these final rules to mitigate these burdens by requiring more efficient disclosure formats, clarifying data reporting structures and reducing duplicative data. In the proposed rules, the Departments sought comment on which burden estimates may have been underestimated and what data sources could be relied upon to better assess implementation impacts; however, the Departments did not receive comments specifically addressing those issues.

2. Requirements for Disclosures to Participants, Beneficiaries, and Enrollees Under 26 CFR 54.9815–2715A2, 29 CFR 2590.715–2715A2, and 45 CFR 147.211

a. Non-Quantified Benefits

The following paragraphs describe the non-quantified benefits of the amendments, finalized in these rules, to the requirement that plans and issuers disclose certain cost-sharing information to participants, beneficiaries, and enrollees through an internet-based self-service tool, including making pricing information available by phone, and amending the statement related to balance billing consistent with balance billing protections under the No Surprises Act.

(1) Informed Consumer

These final rules will enhance consumer access to critical cost-sharing information by expanding the available delivery methods and clarifying their scope. Requiring group health plans and issuers to provide cost-sharing estimates by phone using a telephone number found on any physical or electronic plan or insurance identification card issued to participants, beneficiaries, and enrollees ensures broader accessibility for all participants, beneficiaries, and enrollees, including those who prefer or rely on verbal communication due to visual impairments, limited literacy, or other challenges. By expanding access to this information, more participants, beneficiaries, and enrollees may be empowered to make cost-conscious decisions about their health care. This conclusion is consistent with a recent study indicating that transparent and accessible health care cost information empowers patients and providers to make more informed decisions and promotes consumer-driven health.[166] Although the study evaluated price transparency tools generally rather than telephone disclosures specifically, its findings underscore the importance of ensuring that pricing information is readily accessible to consumers.

In addition, the amendments adopted in these final rules to the currently required statement on balance billing will provide individuals with clearer information about the potential for out-of-network providers to charge additional amounts not reflected in the cost-sharing information provided to the individual, including the fact that there are protections against balance bills under Federal law. The amendments will also ensure that plans and issuers include this statement unless the plans or policies are offered in States that categorically prohibit balance billing.

(2) Timely Payment of Medical Bills

The amendments adopted in these final rules are designed to make cost-sharing information more accessible to participants, beneficiaries, and enrollees, and easier for participants, beneficiaries, and enrollees to understand and anticipate their health care costs. More transparency around potential health care costs by providing a new method for delivery via the phone and clearer information about potential balance billing and out-of-pocket costs is expected to increase participants', beneficiaries', and enrollees' overall awareness of their potential health care costs.

The Departments have determined that this increased transparency and awareness will help participants, beneficiaries, and enrollees better anticipate expenses and lead to more consistent and timely payment of medical bills. A TransUnion survey reported that 79 percent of individuals would be more likely to pay their medical bills promptly if they had out-of-pocket costs estimates before obtaining care.[167] Additionally, recent reports from hospital systems show that when patients receive clear, upfront cost estimates, they are more likely to make payments at the time of service. For example, the Surgery Center of Oklahoma achieved a 22-fold increase in point-of-service collections, from about $900,000 in 2007 to $20.5 million in 2017, after implementing an automated cost-estimation tool that provided transparent pricing before care.[168] Similarly, a Florida-based

[166] Niki Nourmohammadi & Gelareh Sadigh, *Patients, Practice, and Price Transparency: The Impact of Disclosing Healthcare Costs on Consumer Decision-Making,* 107 Clinical Imaging 110064 (2024), *https://doi.org/10.1016/j.clinimag.2023.110064.*

[167] Beth Kutscher, *Consumers demand price transparency, but at what cost?,* Modern Healthcare (June 23, 2015), *https://www.modernhealthcare.com/article/20150623/NEWS/150629957/consumers-demand-price-transparency-but-at-what-cost.*

[168] Christopher Cheney, *Cost estimation drives huge increase in POS collections,* HealthLeaders (February 1, 2018), *https://www.healthleadersmedia.com/finance/cost-estimation-drives-huge-increase-pos-collections.*

hospital system that adopted real-time price estimates experienced a nearly 30 percent increase in point-of-service collections over 2 years.[169] This suggests that making cost-sharing information disclosures more accessible and understandable can support patients' financial planning, promote more timely payment of medical bills, and provide financial benefits for hospitals and other health care providers.

(3) Increased Competition Among Providers

The amendments finalized in these rules aim to empower consumers to make cost-conscious choices among health care providers by improving the accessibility and clarity of cost-sharing information for participants, beneficiaries, and enrollees. By requiring plans and issuers to provide cost-sharing estimates over the phone, in addition to online and in paper form, these final rules will ensure broader access to pricing information. In addition, a clearer statement about potential balance billing by out-of-network providers will further enhance transparency and give individuals a more complete picture of the potential financial obligations associated with different providers.

Evidence suggests that price transparency can lead to reduced health care costs and increased market pressure on higher-cost providers. Studies have shown that when consumers receive pricing information, particularly in combination with incentives such as lower cost-sharing, cash rewards, or premium reductions, they are more likely to choose lower-cost options. For example, a price transparency initiative that allowed consumers to compare magnetic resonance imaging (MRI) prices across facilities resulted in nearly a 19 percent average cost reduction per scan (approximately $220 in savings per scan) and decreased use of higher-cost hospital settings.[170] The study also found that price variations between hospital and non-hospital facilities for MRI scans decreased by 30 percent. This reduction was mainly driven by consumers switching to lower-cost options and competitive price adjustments by higher-cost facilities. Another study found that disclosure of negotiated prices stimulated provider competition and led to lower prices for shoppable services.[171] These findings support the Departments' determination that greater transparency can drive competition, encourage cost-conscious decision-making, reduce price disparities across the health care system, and potentially contribute to lowering overall health care costs.

Recent evidence on price convergence suggests that, to the extent convergence occurs, reductions in higher negotiated rates may exceed increases in lower negotiated rates. One analysis of negotiated rates for 37 common health care services at 234 unique hospitals across the 10 largest U.S. metropolitan areas found that higher-priced negotiated rates declined by 6.3 percent annually, while lower-priced negotiated rates increased by 3.4 percent annually, resulting in lower overall negotiated prices.[172]

As discussed in greater detail in section V.D.4.e. of this preamble, the empirical literature suggests that price transparency may reduce overall health care costs, although the effects may vary depending on market conditions, provider responses, consumer behavior, and how price transparency requirements are implemented. Additionally, upward price adjustments among lower-priced providers and changes in provider contracting behavior may still occur in certain markets. The Departments also recognize that although increased transparency may provide participants, beneficiaries, and enrollees with more information to compare prices across providers, individuals may not always change providers based on cost information alone. Other factors such as existing provider relationships, continuity of care, or provider availability may affect how consumers select their providers.

(4) Reduced Deadweight Loss [173] Through Improved Access to Cost-Sharing Information by Phone

The Departments anticipate that requiring plans and issuers to provide cost-sharing information by phone helps reduce information asymmetry in health care markets, particularly for individuals who are less likely to use online tools, have limited internet access or feel less comfortable accessing or interpreting information over the internet. For example, according to the Pew Research Center, while 75 percent of those 65 and older use the internet generally, less than 61 percent own a smartphone,[174] and 22 percent of these adults report never going online at all.[175] By improving access to real-time, personalized cost-sharing data for these populations, this requirement is expected to enable more consumers to compare prices and select lower-cost providers. This shift in behavior is expected to reduce overpayment for services and better align spending with consumers' willingness to pay, thereby decreasing the deadweight loss that results from information asymmetry.

Although quantifying these efficiency gains presents methodological challenges, economic literature supports the notion that improved price transparency can lead to behavioral changes and welfare improvements.[176] The Departments recognize the potential for meaningful economic benefits and requested comment on these benefits; however, no comments were received.

b. Costs

Section IV.A. of this preamble outlines the quantified costs associated with updating cost-sharing disclosures to reflect Federal balance billing protections, as described in 26 CFR 54.9815–2715A2(b)(1)(vii)(A), 29 CFR 2590.715–2715A2(b)(1)(vii)(A), and 45 CFR 147.211(b)(1)(vii)(A). The Departments assume that plans and issuers have already developed self-service tools and will only need to revise the statement to state that out-of-network providers may engage in balance billing, subject to applicable State and Federal laws. Although these

[169] Sze-jung Wu, Gosia Sylwestrzak, Christiane Shah, & Andrea DeVries, *Price transparency for MRIs increased use of less costly providers and triggered provider competition,* 33 Health Affairs 1391, 1398 (2014), *https://www.healthaffairs.org/doi/10.1377/hlthaff.2014.0168.*

[170] *Id.*

[171] Angela Zhang, Khic-Houy Prang, Nancy Devlin, Anthony Scott, et al., *The impact of price transparency on consumers and providers: A scoping review,* 124 Health Policy 819, 825 (2020).

[172] Turquoise Health, *Is Price Transparency Helping?* (October 25, 2024), *https://s3.us-west-1.amazonaws.com/assets.turquoise.health/case_studies/Is+Price+Transparency+Helping+-+White+Paper+by+Turquoise+Health.pdf.*

[173] Deadweight loss refers to the economic inefficiency that arises when the consumption of a service deviates from the socially optimal level due to inaccurate pricing or insufficient information. In health care, lack of price transparency can lead patients to make suboptimal choices, either overpaying or postponing care, thereby decreasing overall economic welfare for both consumers and providers.

[174] Michelle Faverio, *Share of Those 65 and Older who are Tech Users has Grown in the Past Decade* (January 13, 2022), Pew Research Center, *https://www.pewresearch.org/short-reads/2022/01/13/share-of-those-65-and-older-who-are-tech-users-has-grown-in-the-past-decade.* The share of those 65 and older who are tech users have improved at a rapid clip over the past decade and will continue to improve as more utilize online tools and resources.

[175] Andrew Perrin & Sara Atske, *7 percent of Americans Don't Use the internet. Who are They?,* Pew Research Center (April 2, 2021), *https://www.pewresearch.org/short-reads/2021/04/02/7-of-americans-dont-use-the-internet-who-are-they.*

[176] Yiquan Gu & Tobias Wenzel, *Transparency, price-dependent demand and product variety,* 110 Economics Letters 216, 219 (Mar. 2011).

updates build on existing infrastructure, the Departments estimate that all plans (or TPAs on behalf of plans) and issuers will incur a one-time cost for minor technical modifications, with a total burden of 251 hours and an associated cost of approximately $45,934.

Section IV.A. of this preamble also outlines the quantified costs associated with providing the cost-sharing information, as described in 26 CFR 54.9815–2715A2(b)(1), 29 CFR 2590.715–2715A2(b)(1), and 45 CFR 147.211(b)(1), over the phone, as finalized in paragraph 26 CFR 54.9815–2715A2(b)(2)(iii), 29 CFR 2590.715–2715A2(b)(2)(iii), and 45 CFR 147.211(b)(2)(iii). As discussed in more detail in section IV.A. of this preamble, the Departments have provided both lower impact and higher impact cost estimates to account for varying call times. The Departments estimate that all plans (or TPAs on behalf plans) and issuers will incur a total, low-range, annual ongoing time burden of 585,000 hours with an associated estimated cost of $27,202,500, and a total, high-range, burden of 1,300,000 hours with and associated estimated cost of $60,450,000, to provide pricing information by phone.

The Departments have determined that plans and issuers will leverage their existing customer service call center infrastructure to provide cost-sharing information over the phone to reduce or eliminate any one-time burden and cost. While the Departments have determined many plans (or TPAs on behalf of plans) and issuers already provide some level of real-time phone-based cost-sharing information, they recognize that some plans and issuers may need to alter existing or develop new infrastructure and could incur additional one-time burden and cost to meet these requirements.

The Departments also anticipate that providing phone-based access will increase call duration and require plans (or TPAs on behalf of plans) and issuers to train customer service representatives and supervisors, resulting in a one-time burden of 277,472 hours and an estimated total cost of approximately $14,597,802.

The Departments assume that most self-insured group health plans will rely on TPAs to fulfill these requirements and that TPAs typically serve multiple clients, allowing for economies of scale, which could result in a lower burden and cost. Additionally, the Departments acknowledge that plans and issuers might choose to upgrade their communication systems voluntarily, such as adding mobile call features or real-time texting, which could involve upfront implementation costs but may also result in operational efficiencies or cost savings over time. However, the Departments are not able to estimate the extent to which plans and issuers may pursue such voluntary upgrades or the associated costs or savings.

The Departments recognize that expanding access to personalized pricing data, particularly via phone, may increase the risk of potential exposure of PHI and PII. As with internet-based disclosures, additional investments in security infrastructure, staff training on data protection, and consumer privacy tools may be necessary to mitigate the risk of unauthorized access or breaches. According to HIPAA Journal's 2025 Healthcare Data Breach Report, hundreds of millions of individuals were affected by health care data breaches involving 500 or more records reported to the Department of Health and Human Services Office for Civil Rights.[177] The report noted that, in 2024, a new record was set, with over 289 million individuals having their protected health information exposed or impermissibly disclosed. The report also stated that more than 700 large health care data breaches continue to be reported annually, with breaches plateauing in the range of 700 to 750 incidents per year, approximately two large health care data breaches per day. In 2025 alone, at least 61.5 million individuals had their protected health information exposed or impermissibly disclosed through reported breaches. As a result, complying with these provisions may necessitate additional safeguards to protect PHI and PII during phone-based interactions.

The Departments requested comment on these burden and cost estimates, including assumptions on disclosures to reflect Federal balance billing protections, call duration, customer service staffing, and the extent to which plans (or TPAs on behalf of plans) and issuers are already equipped to provide real-time cost-sharing information by phone. The Departments received numerous comments which are discussed in more detail in section IV.A. of this preamble.

While not quantified in this analysis, the Departments acknowledge that State regulators may incur administrative costs to review, monitor, or enforce compliance with these additional requirements. The Departments requested comment on any potential State-level impacts and any other burdens and costs that could be incurred by entities that would be affected by the provision of these final rules. No comments were received on these issues.

3. Requirements for Public Disclosure Under 26 54.9815–2715A3, 29 CFR 2590.715–2715A3, and 45 CFR 147.212

The following paragraphs describe the non-quantified benefits, as well as the quantified costs and cost savings of the final requirements to the disclosure of information related to in-network rates and historical out-of-network allowed amounts through machine-readable files.

a. Non-Quantified Benefits

(1) Stronger Market Leverage for Plans and Issuers

By requiring more streamlined, meaningful, and clear disclosure of in-network rates and detailed out-of-network data, the provisions in these final rules will better enable plans and issuers to compare their in-network rates and out-of-network coverage with those of competitors. The addition of contextual files, including the Taxonomy File and Utilization File, is expected to enhance the practical value of this data, helping plans and issuers see not just raw prices but also provider specialties, actual in-network utilization, and historical changes in rate information.

This will support plans and issuers in identifying gaps, trends, and outliers within their own networks and relative to the market. This enhanced transparency is expected to strengthen their ability to negotiate lower reimbursement rates with providers based on knowing what those providers have negotiated with other payers that are similarly situated within the market for the same items or services with other plans and issuers that are similarly situated within the market. However, as noted in section V.D.2.a.(3). of this preamble, the Departments also recognize the potential for this information to drive rates up if providers learn they are being paid less than other providers and use that information to seek higher negotiated rates.

By enhancing the transparency of out-of-network allowed amounts and historical billed charges, these provisions may facilitate broader adoption of private health insurance market reference-based pricing strategies. Specifically, the final requirements related to the Allowed Amount File are expected to provide the

[177] Steve Adler, *2025 Healthcare Data Breach Report,* The HIPAA Journal (February 13, 2026), *https://www.hipaajournal.com/2025-healthcare-data-breach-report/.*

public with clearer information on what out-of-network providers charge. This additional transparency can help plans, issuers, and other file users better identify lower-cost providers and benchmark reasonable prices, ultimately supporting strategies where participants, beneficiaries, or enrollees pay the difference when selecting higher-cost providers in circumstances where they have a meaningful choice among providers.

Plans and issuers may use such reference-based pricing structures to guide participants, beneficiaries, and enrollees toward lower-cost providers. While the Departments recognize that reference-based pricing may not apply uniformly (for example, some plans offer exemptions based on clinical need or geographic limitations), it has generally led to cost reductions. For instance, combining price transparency with reference-based pricing has led to significant shifts in consumer choice of facility, resulting in a 27 percent reduction in the average price paid per laboratory test and a 13 percent reduction in the average price paid per imaging test.[178]

The Departments also expect that these final rules may facilitate more efficient improvements to plan design by making pricing information more accessible, standardized, and usable. With clearer information on negotiated rates, out-of-network allowed amounts, billed charges, provider specialties, utilization, and historical changes in rate information, plans and issuers may be better positioned to assess relative prices across providers, services, and markets and to refine network design, benefit design, and cost-sharing structures accordingly. In the absence of these disclosure requirements, higher-priced plans, issuers, and providers may have little incentive to disclose pricing information in a consistent and usable format, which can limit transparency and hinder the ability of other market participants to identify inefficiencies, evaluate alternative options.

(2) Enhanced Regulatory Oversight, Market Monitoring, and Fiscal Effects

The Departments expect State and Federal regulators to gain efficiencies and insights from the data reporting pursuant to the amended disclosure requirements in these final rules. The final provisions will give regulators access to more streamlined, usable, and actionable in-network rates and out-of-network data, which may support more informed oversight of premium rate filings by enabling more effective monitoring of market trends and price variations. The final provisions may also help States monitor rates to identify collusive behaviors, as well as help establish benchmarks for negotiations with providers as part of State oversight activities related to coverage programs, ultimately strengthening regulatory oversight and promoting more competitive markets.

Recent analysis of proposed Federal price transparency legislation also illustrates that price transparency may have the potential to increase Federal revenue. One analysis estimated that the Patients Deserve Price Tags Act[179] could generate approximately $122 billion in additional Federal revenue over the 2026 through 2035 period, with estimates ranging from approximately $25 billion to $270 billion.[180] The analysis assumes that reductions in employer-sponsored insurance spending would reduce premiums and, over time, increase taxable wages, resulting in additional Federal income and payroll tax revenue. The estimated price effect was based on quantified effects from seven studies examining price transparency, reference pricing, and payment cap interventions in U.S. health care, with the range reflecting variation in the estimated effects across those studies. Although this analysis evaluates a broader set of price transparency policies and therefore cannot be used to estimate the fiscal effects of these final rules, it illustrates a potential mechanism through which the enhanced transparency requirements finalized in these rules could have broader economic and fiscal effects. To the extent these final rules increase competition and reduce health care spending and employer-sponsored insurance premiums, some of those reductions could ultimately be reflected in higher taxable wages and associated Federal tax revenues. The Departments have not quantified these potential effects.

(3) Increased Understanding and Empowered Consumers

These final rules aim to empower participants, beneficiaries, and enrollees by increasing transparency around what plans and issuers reimburse providers for covered items and services. By providing access to clearer, more streamlined, and more specific in-network rates, historical out-of-network allowed amounts, and billed charges, file users and ultimately health care consumers may be better equipped to understand how their choices of coverage and providers affect their costs. This transparency is expected to support more informed consumer decision-making when comparing plans or selecting providers.

Adding supporting contextual information to accompany the data is expected to enhance overall usability for third-party developers and other file users. As stated in the preamble to the 2020 final rules, the Departments expected third-party developers and other innovators to use the machine-readable file data to create ''easy-to-use internet-based tools and mobile applications that will present information to laypersons in easy-to-understand, plain language that is sufficiently concise and well-organized,'' [181] which will allow ''consumers to consider price as a factor when making meaningful comparisons between different coverage options and providers.'' [182]

The Departments are encouraged by the consumer-facing tools that have been built since implementation of the 2020 final rules and look forward to additional growth in this space following implementation of the enhancements in these final rules.

b. Costs

This section of the preamble provides both quantitative and qualitative analysis of the costs and cost savings associated with the Departments' final revisions to the requirements that plans and issuers make information regarding in-network negotiated rates and out-of-network allowed amounts available through machine-readable files on a public website.

(1) Quantified Costs

Section IV.B. of this preamble outlines the quantified costs associated with requirements for public disclosure of in-network rates and allowed amount data for covered items and services from in- and out-of-network providers, as described under 26 CFR 54.9815–2715A3, 29 CFR 2590.715–2715A3, and 45 CFR 147.212.

For In-network Rate Files, these final rules require plans and issuers to create a separate file for each provider

[178] Christopher Whaley, Timothy Brown, & James Robinson, *Consumer responses to price transparency alone versus price transparency combined with reference pricing,* 5 American Journal of Health Economics 227, 249 (2019).

[179] *Patients Deserve Price Tags Act,* S. 2355, 119th Congress (2025), *https://www.congress.gov/bill/119th-congress/senate-bill/2355.*

[180] Daniel Arnold & Christopher Whaley, *Patients Deserve Price Tags: Independent Cost Savings Estimate,* Center for Advancing Health Policy Through Research, Brown University School of Public Health (May 29, 2026), *https://repository.library.brown.edu/studio/item/bdr:7dgwbwgp/.*

[181] 85 FR 72158, 72169 (November 12, 2020).

[182] *Id.* at 72210.

network, allow rates to be expressed as a percentage of billed charges when certain conditions are met, disclose the common provider network name, the provider network identifier, the product type of each plan or policy whose rates are included in the file and publish Taxonomy Files, and exclude providers unlikely to be reimbursed based on their scope of practice as well as allowing service providers to organize In-network Rate Files across multiple self-insured group health plans. The Departments estimate that all plans (or TPAs on behalf of plans) and issuers will incur a combined total one-time burden of 636,979 hours on the low end and 675,584 hours on the high end, with associated costs of approximately $107,027,465 and $113,178,175, respectively.[183] While these provisions involve a one-time cost to modify existing processes, the Departments expect that, once these updates are implemented, the ongoing burden related to these changes will be minimal, beyond current costs for monitoring and maintaining these processes.

For Allowed Amount Files, these final rules require data reporting at the market level instead of the individual plan or policy level, lowering the claims threshold from 20 to 11, extending the reporting period from 90 days to 6 months, and increasing the lookback period from 180 days to 9 months to enhance the robustness of historical data. The Departments estimate that all plans (or TPAs on behalf of plans) and issuers will incur a one-time burden of 96,512 hours, with associated costs of approximately $15,376,774. Lowering the claims threshold to 11 is expected to require only minor system adjustments, and the Departments anticipate minimal ongoing costs for maintaining and monitoring compliance. Similarly, extending the lookback and reporting periods are not expected to impose a significant additional burden, as the Departments expect only minimal system modifications to be needed, with associated costs absorbed into the routine system maintenance activities that plans (or TPAs on behalf of plans) and issuers already perform in the normal course of business. Ongoing costs for aggregating out-of-network Allowed Amount Files by market type are also expected to be minimal.

In addition, these final rules require plans and issuers to post several contextual machine-readable files: a Utilization File and a Text File, each with specific update and posting requirements. The Departments estimate a one-time burden of 1,061,632 hours for all plans (or TPAs on behalf of plans) and issuers, with associated costs of approximately $180,394,198 to implement the Utilization File requirements and add a Text File. The Departments further estimate an ongoing annual burden of 57,304 hours (costing approximately $9,552,155) to update the Utilization File and 45,240 hours (costing approximately $7,475,608) to respond to machine-readable file inquiries to improve discoverability and accessibility of the machine-readable files.

Once the initial implementation of the machine-readable file requirements is complete, the Departments expect ongoing updates to require minimal effort. While the Departments estimate ongoing costs associated with maintaining the Utilization File, as discussed in section IV.B.10. of this preamble, the Departments do not expect the Text File, the excluded-provider requirements, publication of the Taxonomy File, or the requirement to include a link to the internet domain hosting the machine-readable files on the website footer is expected to result in minimal ongoing costs beyond routine maintenance activities associated with existing machine-readable file reporting processes.

The Departments requested comment and data on how to better quantify these costs and have considered the comments received, which are addressed in section IV.B. of this preamble.

In addition, these final rules require plans and issuers to make machine-readable files available in a single non-proprietary, open-standards format, as specified in guidance issued by the Departments. The Departments estimate a one-time burden of 25,636 hours for plans (or TPAs on behalf of plans) and issuers, with associated costs of approximately $4,483,653 to implement this requirement, and do not anticipate ongoing costs, as this reflects a one-time update for a limited number of plans and issuers.

Finally, these final rules require plans and issuers to attest, to the best of their knowledge and belief, to the accuracy and completeness of the information contained in their machine-readable files. As discussed in section IV.B.14. of this preamble, the Departments estimate that plans (or TPAs on behalf of plans) and issuers will incur a one-time burden of 39,208 hours, with associated costs of approximately $5,046,281, to implement this requirement. The Departments further estimate an ongoing annual burden of 21,112 hours, with associated costs of approximately $2,961,863, to prepare, update, and maintain the required attestations each year.

In addition, because the Departments are adopting a phased implementation approach in these final rules, under which certain requirements become applicable 5 months after publication in the **Federal Register** (Phase 1), while others become applicable 11 months after publication (Phase 2), plans and issuers are expected to require additional resources during the overlap period. These activities include planning and design systems development, file creation and testing, operational coordination, and other implementation activities. As discussed in section IV.B.15. of this preamble, the Departments estimate an additional one-time burden of 435,259 hours for plans (or TPAs on behalf of plans) and issuers, with associated costs of approximately $66,624,563 to implement this requirement, and do not anticipate any recurring costs because the phased approach affects only the timing and sequencing of one-time implementation activities.

(2) Cost savings

(a) Reduced Data Cleaning and Integration Costs for Third-Party Developers and Other File Users

The Departments have determined that by reducing the complexity and inconsistency of data that currently require extensive data processing and reconciliation, these final rules will make machine-readable data both easier to locate and easier to process for third-party developers and other file users, such as academics, researchers, data engineers, and plans and issuers. These final rules will do this by requiring plans and issuers to publish contextual files including a Taxonomy File and a Utilization File; report at the provider network level rather than the plan or policy level; exclude providers that have in-network rates for items or services for which they are unlikely to

[183] The low-end estimate is calculated as: 289,536 hours ($51,671,077) [organizing files by provider network] + 48,256 hours ($7,688,387) [including product type in the In-network Rate and Allowed Amount Files] + 9,651 hours ($1,537,678) [reporting dollar amounts except for only ''percent-of-billed charges'' payments] + 289,536 hours ($46,130,323) [excluding certain providers from the In-network Rate Files and publishing Taxonomy Files] = 636,979 hours and $107,027,465. The high-end estimate is calculated as: 289,536 hours ($51,671,077) [organizing files by provider network] + 48,256 hours ($7,688,387) [including product type in the In-network Rate and Allowed Amount Files] + 48,256 hours ($7,688,387) [reporting dollar amounts except for only ''percent-of-billed charges'' payments] + 289,536 hours ($46,130,323) [excluding certain providers from the In-network Rate Files and publishing Taxonomy Files] = 675,584 hours and $113,178,175.

be reimbursed; add common provider network names and provider network identifiers, and product types; and standardize file locations with a Text File and footer links. The Departments anticipate that much of the burden currently involved in cleaning and processing the machine-readable files will be eliminated, since the files will contain more accurate data in smaller sizes. This is expected to reduce the time and resources that third-party developers and other file users spend removing duplicative and irrelevant data, which in turn will decrease the computational resources required for data cleaning and integration, further reducing overall costs.

In particular, the Departments estimate that the finalized provisions to require network-level reporting and specifying product types will meaningfully reduce data cleaning and integration costs for approximately 300 third-party developers and other file users,[184] including research shops and consultancies. Specifically, network-level reporting as finalized is expected to save about 40 hours per quarterly reporting cycle, or 160 hours annually. The inclusion of product types is expected to save an estimated 20 hours per quarterly cycle, or 80 hours annually. Together, these provisions are expected to save about 240 hours of analyst time per year for each third-party developer or other file user. Using a median hourly wage of $112.01 for a Business Analyst,[185] the Departments estimate total annual labor savings across all 300 third-party developers and other file users to be approximately $8.1 million.[186]

In addition, by requiring plans and issuers to exclude provider-rate combinations for items and services for which a provider is unlikely to be reimbursed, the Departments estimate a substantial reduction in the data volume that will be disclosed, compared to current volumes, leading to lower computational costs when processing the files. Assuming industry-wide disclosures currently total roughly 1,000,000 gigabytes (GB), equivalent to 1 petabyte (PB) [187] in size per month, the exclusion of these provider-rate combinations is expected to reduce file sizes by about 70 percent [188] to an estimated size of 300,000 GBs. While most cost savings will be associated with algorithms that process the data, which will reflect much higher actual computation savings, an absolute baseline can still be established.

Assuming an average compute cost of $0.015 per GB RAM-hour for general purpose usage,[189] the baseline monthly compute cost for 1 PB is estimated at roughly $334 [190] with an annual cost savings of $4,008. With a 70 percent reduction in file size, monthly compute costs are expected to decrease to approximately $100, yielding a monthly cost savings of $234, corresponding to an estimated annual savings of approximately $2,808 per third-party developer or other file user. Across 300 third-party developers and other file users, this equates to total annual cost savings of approximately $842,400.

These final rules shift the reporting frequency from monthly to quarterly for In-network Rate and Allowed Amount Files, reducing the total computational needs accordingly. This change reduces total annual downloads from 3,600 (300 third-party developers and users × 12 months) to 1,200 (300 third-party developers and users × 4 months), or an average of 100 downloads per month to be processed. Under quarterly reporting, the estimated annual industry-wide computational costs for the optimized files are estimated to be $120,000.[191] Relative to the monthly baseline, this cadence change combined with the file-size reduction yields an estimated $1,082,400 in total annual computational cost savings. Of this amount, approximately $842,400 is attributable to file-size optimization, while an additional $240,000 [192] results from the reduction in reporting frequency.

The Departments have determined that together these final provisions are expected to result in total annual savings of roughly $9.2 million ($8.1 million in labor savings plus $1.1 million in industry-wide storage cost savings from the shift to quarterly reporting) for third-party developers and other users of price transparency data, while supporting the intended goal of making price data more usable and actionable.

The Departments also expect that other finalized provisions, including the addition of common provider network names, provider network identifiers, the Taxonomy File, and the Utilization File, will further improve the usability and accessibility of the machine-readable files. However, the Departments did not separately quantify the savings associated with these provisions.

The Departments requested comment on the estimated potential cost and time savings from streamlining and standardizing the machine-readable files, and on whether these provisions would effectively result in reduced data processing burdens and costs for users. The Departments did not receive any comments on these estimates.

(b) Reduced Storage Costs for Plans, Issuers, Third-Party Developers, and Other Files Users

The Departments anticipate that the finalized provisions will result in storage cost savings for plans, issuers, third-party developers, and other file users by significantly decreasing the total volume of data needed to generate, store, and make the files available for download. These provisions will minimize data duplication and reduce both the number and size of the machine-readable files by changing the reporting cadence for both the In-network Rate File and the Allowed Amount File from monthly to quarterly, requiring reporting of negotiated rates at the provider network level rather than the plan or policy level, and excluding provider-rate combinations in the In-network Rate File for certain items and services.

The Departments have determined that these changes will lower ongoing storage, backup, and processing costs for the In-network Rate File, making it

[184] This estimate is based on discussions with a sample of third-party developers and other file users. From these discussions, the Departments estimated a total of approximately 300 third-party developers and other file users consuming the public disclosures associated with these rules.

[185] U.S. General Services Administration, *Pricing Intelligence Suite, CALC information and wage rates, https://buy.gsa.gov/pricing/* (last visited August13, 2026).

[186] The total estimated annual labor savings is calculated by multiplying the 240 hours saved per third-party developer or other file user by the 300 affected users and the average hourly wage of $112.01 (240 × 300 × $112.01 = $8.1 million).

[187] Christopher Whaley, Nandita Radhakrishnan, Michael Richards, Kosali Simon, et al., *Understanding Health Care Price Variation: Evidence from Transparency-in-Coverage Data,* 3 Health Affairs Scholar 2 (2025), *https://doi.org/10.1093/haschl/qxaf011.*

[188] This estimate is based on internal analysis of existing data and feedback from interested parties. External sources, such as Serif Health, report rates exceeding 80 percent. Salman Mukhi, *Zombie Hunting: Filtering Approaches for Price Transparency Data* (Sep. 20, 2024), *https://www.serifhealth.com/blog/zombie-hunting-filtering-approaches-for-price-transparency-data.*

[189] Amazon Web Services, *Amazon EC2 On-Demand Pricing, https://aws.amazon.com/ec2/pricing/on-demand* (last accessed May 5, 2026).

[190] This is calculated using AWS t4g.xlarge throughput of 720 GB/hour and 16 GB of RAM. Total hours = Total data/Throughput = 1,000,000GB/720GB per hour ≈ 1,388.89 hours; GB-RAM-hours = RAM × Hours = 16GB × 1,388.89 hours ≈ 22,222 GB-RAM-hours; Total cost = GB-RAM-hours × Price per GB-RAM-hour = 22,222 × $0.015 ≈ $333.33.

[191] Total computational costs for new files (300,000 GB) processed quarterly are calculated as $100 x 1,200 downloads per year = $120,000.

[192] This is calculated by subtracting the total annual compute cost under quarterly reporting ($120,000) from the total annual compute cost under monthly reporting ($360,000): $360,000 − $120,000 = $240,000.

easier and more cost-effective for third-party developers and other file users to download, build, and manage consumer-facing price comparison tools based on the machine-readable data.

As noted in section V.D.3.b.(2).(a). of this preamble, researchers have estimated that the combined monthly file sizes across industry for the In-network Rate Files are over 1 PB. The Departments estimate that the finalized provisions will reduce file sizes by approximately 70 percent, lowering the monthly data volume from about 1,000,000 GB to approximately 300,000 GB.

Using Amazon Web Services (AWS) S3 pricing as a benchmark, $0.023 per GB for the first 50 TB, $0.022 per GB for the next 450 TB, and $0.021 per GB beyond that,[193] storing 1 PB worth of data will result in an estimated baseline monthly storage cost savings of roughly $22,583 with an annual cost savings of approximately $270,996. With a 70 percent reduction in file size, monthly storage costs are expected to decrease to approximately $6,651 ($79,812 annually), yielding a monthly cost savings of $15,932 and an estimated annual cost savings of approximately $191,184. These cost savings are expected to apply for all plans and issuers.

Assuming 300 third-party developers and other file users download the files each month, total annual storage costs under current file size assumptions are estimated to be approximately $81,298,800.[194] With the 70 percent file-size reduction, the annual cost for all 300 third-party developers and other file users is expected to decrease to $23,943,600.[195] This results in an annual storage cost savings of roughly $57,355,200 [196] for the 300 third-party developers and other file users as result of file-size optimizations.

In addition, because these final rules also shift the reporting frequency from monthly to quarterly, total storage needs and corresponding savings are expected to be reduced accordingly. Under quarterly reporting, annual industry-wide storage cost for the reduced file size for the In-network Rate Files is estimated at $7,981,200.[197] Relative to the monthly baseline, this cadence change combined with the file-size reduction is expected to yield about $73,317,600 in total annual storage cost savings.[198] Of this amount, approximately $57,355,200 in storage cost savings can be attributed to file-size optimization, while an additional $15,962,400 is attributable to the reduction in reporting frequency.

The Departments requested comment on the assumptions made and the estimated storage cost savings for plans and issuers, third-party developers, and other users from reducing data volume. The Departments did not receive any comments on these estimates.

(c) Reduced Network Egress Costs for Plans and Issuers

In addition to the estimated savings from reduced storage requirements, the Departments anticipate that the final provisions would also lead to a reduction in bandwidth network costs for plans and issuers associated with making their machine-readable files available for download.

Using the estimates developed and discussed in section V.D.3.b.(2).(b). of this preamble, for the In-network Rate File, and applying AWS egress costs, which are fees for data transferred from AWS to the public internet, as a benchmark—the first 100 GB are free, followed by $0.09 per GB for the first 50 TB, $0.085 per GB for the next 40 TB, $0.07 per GB for the next 100 TB, and $0.05 per GB for any amount exceeding 150 TB [199]—the Departments estimate a monthly tiered egress cost of transferring 1 PB data to be approximately $53,800 with an estimated annual cost of roughly $645,600. With a 70 percent reduction in file size to 300,000 GB, monthly data transfer egress costs are expected to decrease to about $18,795, with estimated annual costs of approximately $225,600. This is expected to yield a monthly cost savings of $35,005 and annual cost savings of approximately $420,060 for all plans and issuers. These cost estimates assume a single data transfer, or download, each month.

The Departments expect that the files will be downloaded by many third-party developers and other file users. Assuming 300 third-party developers and other file users download the files each month, total annual egress costs under current file size assumptions are estimated to be nearly $194 million.[200] With the optimized file size estimates, the costs are expected to be reduced by about $68 million annually,[201] yielding total industry-wide cost savings of $126 million annually.[202]

Similar to reduced storage costs for plans and issuers discussed in section V.D.3.b.(2).(b). of this preamble, these final rules shift the reporting frequency from monthly to quarterly, which is expected to reduce total egress needs and corresponding costs. This change reduces total annual downloads from 3,600 (300 third-party developers and other file users × 12 months) to 1,200 (300 third-party developers and other file users × 4 months), or an average of 100 downloads per month. Under quarterly reporting, annual industry-wide egress costs for the optimized files are estimated to be about $22.6 million.[203] Relative to the monthly baseline, this cadence change combined with the file-size reduction is expected to yield about $171 million in total annual cost savings.[204] Of this amount, approximately $126 million egress cost savings is attributable to file-size optimization, while the additional $45

[193] Amazon Web Services, *Amazon S3 pricing, https://aws.amazon.com/s3/pricing/* (last accessed May 5, 2026).

[194] This is calculated by multiplying the current yearly cost to download multiplied by the number of third-party developers and other file users: $270,996 × 300 = $81,298,800.

[195] This figure is calculated by multiplying the annual cost per user after the file-size reduction ($79,812) by the number of third-party developers and other file users (300): $79,812 × 300 = $23,943,600.

[196] Annual storage savings of $57,355,200 is calculated by subtracting the total annual cost after file-size reduction ($23,943,600) from the total annual cost under current file-size assumptions ($81,298,800): $81,298,800 − $23,943,600 = $57,355,200.

[197] This is calculated by multiplying the reduced monthly storage cost ($6,651) by 4 quarterly reports and 300 third-party developers and other files: $6,651 × 4 × 300 = $7,981,200.

[198] This is calculated by subtracting the total storage costs for the new, quarterly file downloads ($7,981,200) from the total storage costs for the current monthly downloads ($81,298,800): $81,298,800 − $7,981,200 = $73,317,600.

[199] Amazon Web Services, *Amazon EC2 On-Demand Pricing, https://aws.amazon.com/ec2/pricing/on-demand/* (last accessed May 5, 2026).

[200] At current file sizes, data transfer cost estimates are approximately $53,800 per month for 1 PB data. The Departments assume that 300 third-party developers and other file users each download one file per month (12 annually), resulting in 3,600 total downloads per year. Based on a cost of $53,800 per download, the estimated annual cost is approximately $193,680,000 ($53,800 × 3,600).

[201] This is calculated as follows: Estimated size data transfer cost estimates for optimized files are $18,795 per month for transferring 300,000 GB. The Departments assume that 300 third-party developers and other file users each download one file per month (3,600 downloads each year). At this rate, the total annual cost is estimated at $67,662,000 ($18,795 × 3,600).

[202] Estimated annual size data transfer cost savings are calculated by subtracting the total annual cost for the optimized 300TB files ($67,662,000) from the total annual cost for the original 1PB files ($193,680,000): $193,680,000 − $67,662,000 = $126,018,000.

[203] Total network costs for transferring new files (300,000 GB) on a quarterly basis are calculated by multiplying the monthly cost per file transfer ($18,795) by the total annual downloads (1,200): $18,795 × 1,200 downloads per year = $22,554,000.

[204] Total network cost savings are calculated by subtracting the total annual network costs for the new files downloaded quarterly ($22,554,000) from the total annual costs for the current monthly downloads ($193,680,000): $193,680,000 − $22,554,000 = $171,126,000.

million results from the reduction in reporting frequency.

The Departments requested comment on the assumptions made and anticipated egress cost savings for plans and issuers from reducing data volume and reporting cadence. The Departments did not receive any comments on these estimates.

(d) Reduced Time Locating the Files for Third-Party Developers and Other File Users

The Departments' decision to require plans and issuers to include a standardized Text File and to place a link to the web page that hosts the files in a footer on the plan's or issuer's home page are expected to make it easier for third-party developers and other file users, who currently face challenges navigating plan or issuer websites to find their machine-readable files, to more efficiently locate and access the data needed for their applications and analyses.

The time savings from locating files primarily stems from the requirement that plans and issuers include a standardized Text File that includes, among other things, the source page URL for the internet website that hosts the machine-readable files and a direct link to the URL for the machine-readable files, as well as the requirement that plans and issuers include a footer link in certain prominent locations that links directly to the internet website that hosts the machine-readable files. Additionally, the change from monthly to quarterly reporting is expected to reduce the number of times a file user will need to locate the In-network Rate and Allowed Amount Files to find updated information.

Together, the Departments estimate that these changes are expected to save about 10 hours of labor [205] quarterly (or 40 hours annually) for each third-party developer or file user, reflecting the reduced need to manually track down and verify file locations. Using an average hourly wage of $112.01 for a Business Analyst,[206] the Departments estimate that the total annual labor cost savings for all third-party developers and other file users will amount to approximately $1.3 million.[207]

The Departments requested comment on the assumptions and estimated burden and cost savings from making the machine-readable files easier to locate through standardized links. The Departments did not receive any comments on these estimates.

The Departments have determined that the provisions of these final rules will help reduce administrative complexity and advance the objective of making price transparency data more accessible, efficient, and actionable for participants, beneficiaries, and enrollees.

As shown in Table 42, the final provisions are expected to generate total annual cost savings of approximately $255 million for plans, issuers, third-party developers, and other users.

TABLE 42: Summary of Annual Quantified Cost Savings From the Finalized Provisions

Cost Savings	Annual Amount ($)
Reduced Data Cleaning and Integration Costs for Third-Party Developers, and Other File Users, Including Changing Timing Requirements for Machine-Readable Files Reporting from Monthly to Quarterly	-$9,147,120
Reduced Storage Costs for Plans, Issuers, Third-Party Developers, and Other Files Users, Including Changing Timing Requirements for Machine-Readable Files Reporting from Monthly to Quarterly	-$73,317,600
Reduced Network Egress Costs for Plans and Issuers, Including Changing Timing Requirements for Machine-Readable Files Reporting from Monthly to Quarterly	-$171,126,000
Reduced Time Locating the Files for Third-Party Developers and Other File Users	-$1,344,120
Total Annual Costs Savings	**-$254,934,840**

(3) Non-Quantified Costs for Public Disclosure of In-Network Provider Rates

These final provisions are expected to introduce meaningful improvements to the quality, clarity, and usability of In-network Rate Files, such as requiring files to be organized by provider network rather than by plan or policy, allowing for percentage-of-billed charges reporting when the dollar amount is not known in advance, adding contextual files like Taxonomy and Utilization Files, and excluding certain provider-rate combinations if it is unlikely that a provider would be reimbursed for an item or service given that provider's area of specialty. While these improvements are intended to help file users, tool developers, and regulators better navigate and interpret rate data, they may also create non-quantified operational and market-level costs for plans and issuers.

[205] The estimated 10 hours saved annually per organization is based on the assumption that, for each update, organizations review the prior month's links to locate files, and only a subset of those files requires additional effort to determine their posting location.

[206] U.S. General Services Administration, *Pricing Intelligence Suite, CALC information and wage rates, https://buy.gsa.gov/pricing/* (last visited August 13, 2026).

[207] The total annual labor savings estimate is derived as follows: each of the approximately 300 third-party developers and other file users is estimated to save 10 hours of labor per quarterly reporting cycle as a result of the proposed standardized Text File and footer link, which facilitate easier file location. With four reporting cycles per year, this equates to 40 hours saved annually per third-party developer or other file user. Applying an average hourly wage for a Business Analyst of $112.01 results in an estimated annual savings of approximately $4,480 per third-party developer or other file user (40 hours × $112.01). When aggregated across the estimated 300 third-party developers and other file users, the total annual labor savings amount to approximately $1,344,120.

Specifically, plans and issuers may face additional administrative and compliance costs from producing and maintaining more standardized machine-readable files. This may involve internal quality reviews, greater coordination across business units, as well as potential redesign of existing automated processes to create network-specific files and include new required data fields.

There is also a risk that improving the transparency of negotiated rates may cause some providers to raise their prices if they discover they are paid less than their peers. This response could contribute to price convergence rather than sustained downward pressure on costs, an effect observed in some transparency studies, where high prices fall slightly but lower prices rise, ultimately reducing overall savings. For instance, one study found that although price transparency has helped narrow price variation in health care, it has not consistently lowered overall prices. According to the study, the highest prices fell by 6.3 percent, while the lowest prices rose by 3.4 percent, and mid-range prices decreased only slightly by 1.1 percent.[208] While the study does not address the effect on average prices, these findings suggest that transparency can pressure high-cost providers to reduce prices but may also lead lower-cost providers to increase prices. A 2020 study also suggests that price transparency could facilitate tacit collusion, resulting in higher prices in markets that are not perfectly competitive, such as health care. In these markets, there are fewer sellers and higher barriers to entry for new competitors.[209]

Another potential cost stemming from increased transparency due to improvements in In-network Rate Files is the impact on a plan's or issuer's ability or incentive to develop and maintain a robust provider network. A provider network consists of health care providers that have entered into agreements with plans or issuers to deliver care at a negotiated rate, which the provider accepts as full payment. Plans and issuers often prefer their participants, beneficiaries, and enrollees to use in-network providers, as these providers meet the health plan's quality standards and agree to lower rates in exchange for the patient volume they will receive by being part of the network.[210] Some plans and issuers use narrow networks, which include a more limited group of providers. While these networks offer fewer in-network options to participants, beneficiaries and enrollees, they often result in lower monthly premiums and reduced out-of-pocket costs.[211] The Departments recognize that publicly disclosing negotiated rates may reduce the incentive for providers to enter into such contractual agreements, particularly in narrow networks, if they know those rates will be made public or if they are being offered lower than market rates. This could, in turn, limit network options available to plans and issuers.

Smaller issuers may be disproportionately affected by the improved transparency of negotiated rates, as they may be unable to match the higher rates that larger issuers can offer. In turn, smaller issuers may be forced to contract only with lower-cost providers, potentially leading to narrower networks and affecting participant, beneficiary, and enrollee access to care. Such network constraints may also make it more difficult for these issuers to fully comply with network adequacy standards described at 45 CFR 156.230 or applicable State standards. Ultimately, while the purpose of improving price transparency is to empower participants, beneficiaries, and enrollees and enhance market efficiency, the Departments acknowledge that these final provisions could, in some cases, reduce the ability or incentive of plans and issuers, especially smaller ones, to build and maintain robust networks that satisfy quality and access requirements.

(4) Non-Quantified Costs for Public Disclosure of Out-of-Network Allowed Amounts

The Departments recognize the potential costs arising from the expansion of data in the Allowed Amount Files. These may include the increased complexity and administrative burden of managing and reporting a larger volume of data over extended reporting and lookback periods, as well as at the broader health insurance market level rather than at the plan or policy level. Additionally, to account for the expanded handling of detailed claims data, plans and issuers may face additional expenses for enhanced cybersecurity measures and compliance with data privacy regulations. These potential costs are difficult to quantify given current data limitations, but the Departments acknowledge that they represent important considerations associated with implementing these final provisions.

The Departments requested comment and data on the potential magnitude of these non-quantified costs, including legal, operational, and network impacts, and how they may affect plan and issuer implementation, including information that may assist the Departments in estimating any additional burden and cost. However, the Departments did not receive comments that primarily addressed or provided information that would assist the Departments in quantifying these specific non-quantified costs.

4. Summary of Transfers

The requirements of these final rules, as discussed in section III. of this preamble, require plans and issuers to enhance the accuracy and usability of pricing information through improved machine-readable files, expand cost-sharing disclosure methods (including phone access), and streamline reporting requirements. As a result of these final requirements, the Departments expect various transfers to occur between plans and issuers; providers; participants, beneficiaries, and enrollees; and the Federal government. While the precise magnitude of these transfers is difficult to quantify due to varying market conditions and consumer behaviors, the directional effects and distributional impacts can be analyzed conceptually.

a. Transfer From Higher-Cost to Lower-Cost Providers

If participants, beneficiaries, and enrollees gain easier access to pricing information through enhanced machine-readable files and phone-based cost-sharing estimates, some consumers may switch from higher-cost to lower-cost providers for comparable services. This transfer occurs as consumer cost preferences result in shifts from providers who charge what consumers feel are above-market rates, to those offering what the consumer feels to be more competitive pricing. The magnitude of this transfer is expected to depend on several factors such as the degree of price variation between providers, consumer price sensitivity,

[208] Forrest Xiao, *The Healthcare Cost Conundrum: Prices are Stabilizing. Why are Expenses Still Rising?,* Turquoise Health (October 31, 2024), *https://blog.turquoise.health/the-healthcare-cost-conundrum/.*

[209] Robert Graboyes & Jessica McBirney, *Price Transparency in Healthcare: Apply With Caution,* Mercatus Center, George Mason University (August 19, 2020), *https://www.mercatus.org/system/files/graboyes-price-transparency-mercatus-research-v1.pdf.*

[210] Elizabeth Davis, *Health insurance provider network overview,* Verywell Health (updated January 13, 2026), *https://www.verywellhealth.com/health-insurance-provider-network-1738750.*

[211] Tracy Anderman, *What to know about narrow network health insurance plans,* Consumer Reports (Nov. 23, 2018), *https://www.consumerreports.org/health-insurance/what-to-know-about-narrow-network-health-insurance-plans.*

and relationships between consumers and providers.

Some evidence shows that in competitive markets, price ranges may narrow as lower-cost providers raise their prices to align with higher-cost competitors, potentially increasing costs.[212] Disclosing negotiated rates can enable providers to match each other's prices, which may further limit cost reductions or even lead to higher overall prices despite the increased transparency.[213] However, in some instances, increased transparency may lead higher-cost providers to face new pressure to lower costs, potentially decreasing costs.[214]

The Departments acknowledge that this transfer may be partially offset by potential price convergence effects, where lower-cost providers may increase their prices toward market averages once pricing becomes more transparent. However, the net effect is expected to favor more efficient providers and create competitive pressure for cost reduction across the market.

b. Transfer From Providers to Consumers Through Reduced Out-of-Pocket Spending

If consumers use enhanced pricing information to select lower-cost providers, their out-of-pocket expenses for health care services are expected to decrease, representing a transfer from the provider to the consumer. This transfer is facilitated by these final requirements to make cost-sharing information available by phone, which may particularly benefit populations who face barriers to using online tools, including older adults, individuals with disabilities, and those with limited internet access.

By expanding access to personalized pricing information, these consumers may make more cost-conscious health care decisions, resulting in lower deductibles, copayments, and coinsurance amounts. The magnitude of this transfer could vary significantly based on individual utilization patterns, plan design, and the availability of lower-cost alternatives within their provider networks. This shift is consistent with empirical findings that greater price transparency can help consumers make more cost-effective choices and encourage market competition.[215]

c. Transfer From Plans and Issuers to Participants, Beneficiaries, and Enrollees Through Potential Premium Reductions

If enhanced price transparency leads to systematic shifts toward lower-cost providers and overall reductions in health care spending, plans and issuers may experience lower claims costs, which could eventually translate to reduced premiums for participants, beneficiaries, and enrollees. That is, as plans and issuers experience lower medical costs due to participant, beneficiary, and enrollee price shopping, competitive pressure may lead to premium reductions to attract and retain enrollees. However, the magnitude of this transfer is expected to depend on several factors, including the degree of competition across different market segments and geographic areas (for example, urban vs. rural markets) and the rate at which consumer utilization patterns change.

d. Transfer From Plans and Issuers to Federal Government Through Reduced Premium Tax Credit (PTC)

If enhanced price transparency leads to lower premiums in the individual insurance market, PTC amounts would decline, resulting in reduced Federal PTC spending. Because the premium contributions for PTC-eligible consumers are generally determined as a percentage of household income, these consumers' out-of-pocket premium contributions would remain unchanged despite a reduction in PTC amounts. The magnitude of this transfer is expected to depend on the extent to which price transparency leads to competitive pressure and overall premium reductions, as well as the number of PTC-eligible consumers affected. For subsidized consumers, the net effect may be largely neutral, since their required premium contributions are based on income rather than plan cost; however, if they choose a lower-cost plan as premiums decrease, they could experience a net benefit. On the other hand, unsubsidized consumers would generally experience a positive impact from any premium reductions.

e. Transfer From Federal Government to Plans and Issuers Through Increased PTCs

Although the balance of the available evidence suggests that enhanced price transparency is more likely to reduce health care costs, the Departments also recognize that prices and premiums could increase in certain markets or as a result of implementation costs. To the extent that these effects increase premiums in the individual market, Federal PTC spending could increase, resulting in a potential transfer from the Federal government to plans and issuers through increased PTC payments. Such transfer could occur, for example, if the costs of implementing enhanced machine-readable file requirements, phone-based cost-sharing tools, and other transparency measures result in increased premiums. The magnitude and direction of any such transfer would depend on the extent to which these effects increase individual market premiums and corresponding PTC amounts.

The Departments also recognize potential Federal fiscal effects in the employer-sponsored insurance market. To the extent that these final rules result in higher premiums for employer-sponsored coverage, employers may increase spending on health benefits. If higher employer health benefit costs result in lower taxable wages, Federal income and payroll tax revenues could decrease. Conversely, to the extent that these final rules contribute to lower employer-sponsored premiums and higher taxable wages, Federal tax revenues could increase. The Departments consider these potential effects to be additional Federal fiscal effects rather than transfers to plans and issuers. The Departments acknowledge uncertainty in both the magnitude and timing of these potential transfers and Federal fiscal effects. However, the available empirical evidence generally suggests that greater price transparency is more likely to place downward pressure on health care prices and spending rather than resulting in increases. One study estimated that insurer price transparency could reduce medical expenditures for the privately insured population by approximately 6.9 percent, with estimated annual savings ranging from $17.6 billion to $80.7 billion.[216] Recent evidence on

[212] Forrest Xiao, *The Healthcare Cost Conundrum: Prices are Stabilizing. Why are Expenses Still Rising?,* Turquoise Health (October 31, 2024), *https://blog.turquoise.health/the-healthcare-cost-conundrum/.*

[213] David N. Bernstein & Jonathan R. Crowe, *Price Transparency in United States' Health Care: A Narrative Policy Review of the Current State and Way Forward,* 61 INQUIRY: The Journal of Health Care Organization, Provision, and Financing (2024).

[214] Yujie Feng, *Price Transparency in Healthcare: Bargaining Incentives and Patient Responses,* 102 Journal of Health Economics (2025).

[215] Zach Y. Brown, *Equilibrium Effects of Health Care Price Information,* 101 Review of Economics and Statistics 4 (2019); Christopher Whaley, Timothy Brown, & James Robinson, *Consumer Responses to Price Transparency Alone Versus Price Transparency Combined with Reference Pricing,* 5 American Journal of Health Economics 227 (2019).

[216] Stephen T. Parente, *Estimating the impact of new health price transparency policies,* 60 Inquiry: The Journal of Health Care Organization, Provision,

Continued

price convergence also suggests that reductions in higher negotiated rates may exceed increases in lower negotiated rates. As discussed in section V.D.3.a.(3). of this preamble, one analysis of negotiated rates for 37 common health care services at 234 unique hospitals across the 10 largest U.S. metropolitan areas found that higher-priced rates declined by 6.3 percent annually, while lower-priced rates increased by 3.4 percent annually, resulting in lower overall prices.[217]

At the same time, other empirical studies have found that price transparency may result in upward price adjustments in certain markets. One randomized controlled trial evaluating a statewide outpatient price transparency tool found a 0.75 percent increase in billed charges, concentrated among lower-priced providers.[218] Another study examining state-mandated hospital price disclosure in Massachusetts and North Carolina found increases in outpatient imaging prices following disclosure of insurer-specific negotiated prices, with larger increases in markets with greater provider concentration.[219] These findings suggest that the effects of price transparency may vary depending on market conditions, provider responses, consumer behavior, and how price transparency requirements are implemented.

Given the limited empirical evidence specifically related to the transparency enhancements included in these final rules, the Departments have not quantified the magnitude of this potential transfer or the potential Federal tax revenue effects described above. Federal PTC expenditures could increase if the final requirements result in higher individual market premiums or decrease if the requirements contribute to lower premiums. Federal tax revenues could decrease if the final requirements result in higher employer-sponsored insurance premiums and associated reductions in taxable wages, or increase if the requirements contribute to lower employer-sponsored insurance premiums and associated increases in taxable wages.

The Departments requested comment on these potential transfers, including possible effects related to provider price convergence and market dynamics. Several commenters generally supported enhanced price transparency and stated that greater access to pricing information could help reduce health care costs. However, commenters did not specifically address potential transfers or provide information that would enable the Departments to quantify the potential transfers discussed in this section.

5. Uncertainty Analysis

The Departments recognize that the assumptions underlying the estimated costs and cost savings described in sections IV.A., IV.B., and V.D.3.b. of this preamble involve a degree of uncertainty. Differences in plan and issuer size, internal systems, and workflows may affect the resources required to implement these final requirements. The quality, structure, and reporting practices of existing files could also shape the extent of savings realized by third-party developers and other users. In addition, labor costs, technical implementation needs, and the pace of adopting new practices are likely to vary across the industry. External factors, such as market behavior, regulatory changes, or shifts in the number of file users, may further influence the overall impacts.

The Departments requested comment on uncertainties and welcomed data or information that could improve the accuracy of the estimates or help identify ways to address potential variability. Although several commenters raised concerns regarding implementation burden and operational complexity more generally, the Departments did not receive comments or data specifically addressing the sources of uncertainty identified, or otherwise materially reducing the uncertainty associated with these estimates.

6. Regulatory Review Cost Estimation

To comply with these final rules, affected entities must first review and understand the regulatory requirements. While plans and issuers are ultimately responsible for meeting these final requirements, the Departments expect, as assumed elsewhere, that the burden of compliance will fall primarily on issuers and TPAs, with only the largest self-insured plans likely to assume this responsibility directly. While the Departments do not have specific data on how many large, self-insured plans will opt to comply independently, such plans are expected to incur similar costs and burdens as issuers and TPAs in developing compliant tools and reviewing these final rules. Therefore, for purposes of estimating regulatory review costs, the Departments assume that a total of 1,508 issuers and plans (or TPAs on behalf of plans) will take on these responsibilities.

Additionally, the Departments expect States to review these final rules to prepare for oversight and enforcement duties. If these final rules impose administrative costs on private entities, such as the time required to review and interpret these final rules, the Departments estimate the costs associated with regulatory review. Given the difficulty in precisely determining how many entities will undertake such a review, the Departments assume that all plans (or TPAs on behalf of plans) and issuers, and States will need to review these final rules to comply.

The Departments acknowledge that this assumption may overstate or understate actual costs, as not all entities may conduct an in-depth review, and some may rely on external counsel or consultants. Nonetheless, the Departments have determined that using the total number of plans, issuers, and States provides a reasonable basis for estimating the regulatory review burden.

Using data from the Bureau of Labor Statistics' Occupational Employment and Wage Statistics,[220] the Departments assume that plans (or TPAs on behalf of plans) and issuers will rely on a Computer and Information Systems Manager (Code 11–3021) and a Lawyer (Code 23–1011) to review and interpret these final rules. For States, a Compliance Officer (Code 13–1041) is assumed to perform this task. Assuming an average reading speed of 200 words per minute and using BLS median wage data (including a 100 percent increase to account for the cost of fringe benefits and other indirect costs), the Departments estimate that each issuer or TPA will require approximately 4.4 hours of review by a Computer and Information Systems Manager (at $164.62 per hour) and 8.9 hours by a Lawyer (at $145.34 per hour). Based on these assumptions, the combined labor cost for all 1,508 issuers and plans (or TPAs on behalf of plans) is approximately $3,047,412.[221]

and Financing, (2023), *https://journals.sagepub.com/doi/pdf/10.1177/00469580231155988*.

[217] Turquoise Health, *Is Price Transparency Helping?* (2024), *https://turquoise.health/resources/reports/is-price-transparency-helping-white-paper*.

[218] Kayleigh Barnes, Sherry A. Glied, Benjamin R. Handel & Grace Kim, *The Impact of Price Transparency in Outpatient Provider Markets,* National Bureau of Economic Research, Working Paper No. 32580 (2024), *https://doi.org/10.3386/w32580*.

[219] Tong Guo, Xinyao Kong & Yanwen Wang, *Mandating Transparency: Evidence from Hospital Price Disclosure* (Mar. 25, 2026) (unpublished manuscript), SSRN, *https://doi.org/10.2139/ssrn.6869224*.

[220] U.S. Bureau of Labor Statistics, *Occupational Employment and Wage Statistics (OEWS) Tables* (May 2024), *https://www.bls.gov/oes/current/oes_stru.htm*.

[221] The estimated review time is based on an approximately 385-page final rule containing approximately 106,523 words. Assuming an average

For States, it is estimated that a Compliance Officer will need approximately 8.9 hours (at $75.40 per hour) to review these final rules, resulting in a total cost of $34,135 across all 50 States and the District of Columbia. Accordingly, the total combined estimated cost of regulatory review for all plans, issuers, and State departments of insurance is approximately $3,081,547.[222]

E. Alternatives Considered

1. Disclosure of Claims Volume

The Departments considered adding a new content element under the In-network Rate File requirements at 26 CFR 54.9815–2715A3(b)(1), 29 CFR 2590.715–2715A3(b)(1), and 45 CFR 147.212(b)(1) requiring disclosure of claims volume for each negotiated rate for each provider for each item and service as an additional or alternative method of providing contextual plan and coverage usage information. The Departments also considered requiring plans and issuers in the Utilization File at 26 CFR 54.9815–2715A3(b)(2)(i), 29 CFR 2590.715–2715A3(b)(2)(i), and 45 CFR 147.212(b)(2)(i) to disclose the number of times that any given provider submitted a claim for any particular item or service. The Departments requested comment on this alternative.

Many commenters recommended that the Departments amend the proposed Utilization File to include claims volumes instead of a binary indicator of whether a claim for an item or service was reimbursed. These commenters identified the potential benefits for researchers, purchasers, and other file users in approaching contract negotiations and conducting more complex analyses, such as weighting prices by utilization to examine spending, focusing analyses on high-volume services, and distinguishing outlier prices. A few commenters encouraged the Departments to consult with interested parties on the best method for introducing claims volume into the Utilization File. A commenter suggested that group plans, their vendor partners, and issuers, already process and link historical claims data for the Allowed Amount File. Several commenters also noted that claims volume would help verify the exclusion of unlikely provider-rate combinations in the In-network Rate File.

Many commenters offered methods for the Departments to implement a requirement that claims volume be disclosed, including raw counts, aggregated counts, or volume bands. A few commenters recognized the privacy concerns related to associating providers with a small number of claims and suggested either that provider groups with between zero and ten cases should be categorized as ''10 or fewer'' or be suppressed entirely. Alternatively, they recommended that the Departments establish an enrollment threshold below which utilization data would be reported at the market-type level rather than the plan or network level. As another alternative, a commenter recommended the Departments require plans and issuers to publish a percentage of providers with zero utilization during a lookback period, rather than discrete counts. Another commenter stated that combining claims volume with the owner of the provider network's own internal taxonomy would negate the need for the Taxonomy File. A commenter wanted the additional data attributes of average charged amount, average remittance amount, denial count, and denial rate. Another commenter suggested including how many times the provider group has been reimbursed for a procedure during the lookback period.

Several commenters had a variety of recommendations for how to implement claims volume. These include clearly defining provider groups as a combination of TINs with their associated NPIs that collectively contract rates with the insurer; including claims volume at the provider group level instead of the provider level; including location-specific information; requiring plans and issuers to use a single provider reference route and a single identifier type (ideally NPI); reporting data by market type; requiring NPIs at the Type 1 level for the rendering/servicing provider and requiring disclosure of the service facility location for professional claims; structuring the utilization indicator (as claims volume) at the same structural level at which a negotiated rate object is connected to a provider reference group; implementing a provider support collection within the negotiated rate object, keyed or indexed by provider reference, where each entry contains support metrics such as historical claim count and lookback period; and expanding the provider reference object to convert each NPI into a structured NPI object that includes attributes such as specialty, credentials, and practice locations, which could then be referenced by the negotiated price object to indicate when prices vary based on specialty.

Many commenters opposed the use of claims volumes in the Utilization File. A commenter stated that it would make the Utilization File redundant because the claims-based standard would screen out provider-service pairings that have not resulted in reimbursement. A few commenters cited privacy concerns, with one noting that, for smaller group health plans, making public claims volume by provider and place of service for every item and service would have the potential to reveal sensitive, protected health information. A commenter noted that it would be very administratively burdensome.

The Departments acknowledge the potential benefits to different types of file users of including claims volume in the Utilization File or the In-network Rate File but are not finalizing such a requirement due to privacy concerns, the added burden to plans and issuers, and the potential to significantly increase the size of the Utilization Files. The Departments appreciate the recommendations for mitigating privacy concerns, but have determined that, even with such approaches, patients could remain exposed to a significant level of risk. In addition, the Departments are not convinced that claims volume information would provide greater value to file users in verifying the unlikely provider-rate exclusions in the In-network Rate File than a binary indicator, which is the approach the Departments are finalizing, as discussed in section III.C.5. of this preamble. Claims volume would be a large quantity of data for both plans and issuers to add to the files

reading speed of 200 words per minute for double-spaced text, the Departments estimate that it would take approximately 533 minutes, or 8.9 hours, to review the entire final rule. The Departments assume that a Lawyer will review the entire final rule (8.9 hours), while a Computer and Information Systems Manager will review approximately half of the final rule (4.4 hours), reflecting the portions most relevant to technical and implementation requirements. Thus, each issuer or TPA is estimated to incur approximately 13.3 hours of review. Applying hourly wage rates of $145.34 for a Lawyer and $164.62 for a Computer and Information Systems Manager results in an estimated labor cost of approximately $2,021 per issuer or TPA, or approximately $3,047,412 across all 1,508 issuers and TPAs. The final page and word counts may vary as the final rule is prepared for publication; however, the Departments do not expect such variations to materially affect the estimated regulatory review burden or cost.

[222] The Departments assume that a Compliance Officer will review the entire final rule (8.9 hours), using the review-time methodology described above, as State departments of insurance may need to understand the scope of the final requirements, assess their implications for regulated issuers, and determine how the requirements may affect State regulatory oversight and compliance activities. Applying an hourly wage rate of $75.40 for a Compliance Officer results in an estimated labor cost of approximately $669 per State, or approximately $34,135 across all 50 States and the District of Columbia. Combined with the approximately $3,047,412 in estimated review costs for issuers and plans (or TPAs on behalf of plans), the total estimated cost of reviewing the final rule is approximately $3,081,547.

(and continue to host on their servers) and for users to sift through, and for the purposes of understanding whether a provider is appropriately removed from the In-network Rate File, a claim volume of 100 provides the same usage indication as a claim volume of one. Therefore, the Departments are not finalizing requirements to disclose claims volume in either the In-network Rate File or the Utilization File.

2. Excluded Information

The Departments considered two alternative approaches to the final requirement that plans and issuers exclude from each In-network Rate File provider-rate combinations for an item or service for which a provider is unlikely to be reimbursed based on the provider's area of specialty, as determined using the plan's or issuer's internal provider taxonomy or other internal rules used to determine if the plan or issuer should deny reimbursement for an item or service based on the provider's specialty during the claims adjudication process.

The first approach involved requiring plans and issuers to run each combination of provider and item or service as a mock claim and only including in the In-network Rate File those mock claims that passed validation edits for appropriateness of that provider to perform the service. This differs from the process described in section III.C.5. of this preamble because a mock claims process would have required plans and issuers to process each potential provider-rate combination through their claims adjudication systems, rather than relying on their internal mapping of billing codes to exclude providers. The Departments explained that the former method would establish a clear standard and provide meaningful information, resulting in smaller In-network Rate Files that are far more accessible and manageable, but would have involved a significant initial and ongoing administrative and financial burden. The Departments requested but did not receive comments on this proposed alternative and are not adopting this alternative due to the significant administrative and operational burden and the inability of file users to verify the mock claim exclusions.

Second, the Departments explored the idea of requiring plans and issuers to create In-network Rate Files using negotiated rates based solely on historical claims data by identifying providers who have submitted claims for specific items or services. This method would have the benefit of a clear and reliable metric, claims history, which can be verified and documented, to exclude provider-rate combinations. It would also be direct and straightforward for plans and issuers to implement. The Departments requested comment on this proposed alternative.

A few commenters proposed limiting provider-service pairings to those supported by at least one fully adjudicated claim within a specified lookback period. A few commenters noted that a historical claims-based exclusion approach could wrongfully exclude newly contracted providers or claims for items and services related to rare and complex treatments that are not used frequently.

The Departments are not finalizing this alternative after determining that, because the In-network Rate File includes prospective information, excluding providers based on historical data could confuse file users and potentially exclude newer providers that have no claims history as well as providers who furnish items and services infrequently for rare conditions. The Departments have also determined that a historical claims-based approach would be operationally complex and less effective than the finalized approach of utilizing taxonomy data to identify and exclude unlikely provider-rate combinations. For additional discussion regarding claims volume considerations related to the finalized the Utilization File requirements, see section V.E.1. of this preamble.

3. Data Retention

As noted in the proposed rules, the Departments considered requiring plans and issuers to retain and publicly post Transparency in Coverage machine-readable files for a specified period, including up to 7 years, to facilitate longitudinal analysis of pricing trends and contractual data. The Departments recognized that historical data could provide value for researchers, policymakers, and other users by supporting historical benchmarking and analysis of negotiated rate trends over time.

However, the Departments have determined that requiring long-term public retention of machine-readable files would impose significant operational and financial burden on plans and issuers.[223] In particular, plans and issuers would need to maintain substantial additional data storage capacity, network bandwidth, indexing systems, and ongoing maintenance processes to support public access to large volumes of historical data. The Departments are also concerned that maintaining extensive archives of historical files could increase administrative complexity and create challenges related to data organization, discoverability, and long-term data integrity.

The Departments sought comment on the relative burdens and benefits of requiring files to be publicly posted for a specific period, including 7 years; whether public retention of prior files would continue to provide value if combined with the other proposed changes; and what retention period would provide sufficient value for file users without imposing an undue burden on plans and issuers. The Departments did not propose and are not finalizing any data retention requirements at this time.

A few commenters recommended that the Departments require plans and issuers to retain or archive Transparency in Coverage machine-readable files for a specified period. These commenters suggested that, beyond other proposals to reduce the number and size of machine-readable files, requiring plans and issuers to retain or archive these files would promote accountability for negotiated rate trajectories and ensure that historical data is available for longitudinal analysis and enforcement. A few commenters recommended a 7-year retention period, while another commenter recommended a 3-year retention period. Conversely, a commenter opposed long-term public retention of the machine-readable files, pointing to the increased storage, hosting, and data management costs associated with long-term retention, particularly given the size and volume of machine-readable files and the addition of the new proposed file types. The commenter recommended that the Departments limit required retention periods to the minimum duration necessary to support file usability and regulatory objectives, while avoiding unnecessary cost and infrastructure burden.

After careful consideration, including additional analysis of the costs associated with long-term data retention, the Departments have concluded that the benefits would not justify the operational and storage burdens associated with maintaining large volumes of historical data for public access over the long term.

In the proposed rules, the Departments estimated that the size of the In-network Rate Files, the main driver of annual storage costs, would decrease by approximately 70 percent, lowering the industry-wide monthly data volume from 1 petabyte to

[223] 90 FR 60432, 60502 (December 23, 2025).

approximately 300,000 GB,[224] based on the proposed changes to the In-network Rate File reporting cadence, structure, and content. The Departments are finalizing the proposed shift to a quarterly reporting cadence redesignated at 26 CFR 54.9815–2715A3(b)(4)(i), 29 CFR 2590.715–2715A3(b)(4)(i), and 45 CFR 147.212(b)(4)(i), reporting negotiated rates at the network level rather than plan and policy level at 26 CFR 54.9815–2715A3(b)(1)(i), 29 CFR 2590.715–2715A3(b)(1)(i), and 45 CFR 147.212(b)(1)(i), and excluding unlikely provider-rate combinations at 26 CFR 54.9815–2715A3(b)(1)(i)(F), 29 CFR 2590.715–2715A3(b)(1)(i)(F), and 45 CFR 147.212(b)(1)(i)(F).

Using AWS storage pricing ($0.023 per GB for the first 50 terabytes (TB), $0.022 per GB for the next 450 TB, and $0.021 per GB beyond that) as a benchmark, the monthly data storage cost for the initial 300,000 GB In-network Rate File across all plans and issuers is approximately $6,651. While a single quarter of data could cost approximately $6,651 per month to maintain, retaining a full year of quarterly disclosures (approximately 1,200,000 GB) would shift the majority of the storage into the lower-priced $0.021 per GB storage tier, resulting in an estimated annual storage cost of approximately $309,000.[225]

Although annual storage costs may appear modest under a one-year retention scenario, the burden increases substantially as data accumulates over multiple years. If the Departments were to require continuous retention of all In-network Rate files for a 7-year period, storage costs would compound significantly as the cumulative data volume steadily would continue to grow over time. By adding 300,000 GB of new data every quarter for 28 quarters, the industry-wide data footprint would grow to approximately 8.4 million GB (8.4 petabytes).[226] Under this scenario, monthly storage costs alone would reach approximately $176,950 by the end of the 7-year period,[227] resulting in estimated cumulative 7-year storage expenditures of approximately $7.71 million across all affected plans and issuers.[228]

The Departments also acknowledge there are Federal data retention requirements such as regulations related to the Federal independent dispute resolution process that generally require that covered data is retained for a minimum of 6 years from the date of the data's creation.[229] As such, if the Departments were to propose and finalize a similar data retention requirement regarding Transparency in Coverage, the cost associated with storing and maintaining quarterly data for the cumulative 6-year period could be significant. Therefore, due to this expected burden and additional feedback from commenters about this expected burden, the Departments did not propose and are not finalizing any data retention requirements at this time.

4. Deemed Compliance With Code Section 9819, ERISA Section 719, and PHS Act Section 2799A–4

The Departments indicated in FAQs Part 49 issued on August 20, 2021,[230] that the price comparison methods required by the No Surprises Act (codified in Code section 9819, ERISA section 719, and PHS Act section 2799A–4) are largely duplicative of the self-service tool described in the 2020 final rules. Accordingly, the Departments indicated their intent to propose rulemaking and requested comment regarding whether compliance with the self-service tool requirements of the 2020 final rules satisfies the analogous requirements set forth in Code section 9819, ERISA section 719, and PHS Act section 2799A–4.

As noted in the proposed rules, the Departments considered requiring plans and issuers to develop a separate cost comparison tool to fulfill the requirements of the No Surprises Act, which could provide consumers another avenue to shop for services and make informed health care decisions. However, as explained in the proposed rules, the Departments determined that such a proposal would likely impose significant costs on plans and issuers for having to build an entirely new technical infrastructure, with little additional benefit for participants, beneficiaries, and enrollees, given that the provisions of the No Surprises Act largely duplicate the requirements of the Transparency in Coverage rules.

Additionally, the Departments noted that there would be a significant risk of public confusion, as participants, beneficiaries, and enrollees might be unsure of which tool to use, whether the tools serve different purposes, or whether search results will differ. Following implementation of the 2020 final rules, the Departments received feedback from plans and issuers indicating that participants, beneficiaries, and enrollees expressed similar concerns about confusion when plans and issuers transitioned from a legacy self-service tool to a tool that complied with the requirements of the 2020 final rules.

A commenter indicated that they appreciated the Departments' efforts to streamline price comparison tool requirements to avoid duplication. The Departments also did not receive any comments supporting a requirement for an additional self-service tool. The Departments note that consolidating the requirements into a single tool provides operational benefits, allowing plans and issuers to focus their resources on improving the availability and accuracy of cost-sharing information. Ultimately, this alignment promotes administrative efficiency and ensures a streamlined consumer experience for participants, beneficiaries, and enrollees. For the reasons related to burden and consumer confusion discussed in the proposed rules, the Departments are not finalizing an additional self-service tool.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601, *et seq.*) requires agencies to analyze options for regulatory relief of small entities, to prepare a final regulatory flexibility analysis, and to describe the impact of these final rules on small entities, unless the head of the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. The RFA generally defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a not-for-profit organization that is not dominant in its field, or (3) a small government

[224] 90 FR 60496 (December 23, 2025).

[225] The estimated annual storage cost ofapproximately $309,000 is calculated by applying AWS storage pricing tiers to1,200,000 GB of quarterly disclosure data retained over a one-year period: (50,000 GB × $0.023 per GB × 12 months) + (450,000 GB × $0.022 per GB × 12 months) + (700,000 GB × $0.021 per GB × 12 months) = $13,800 + $118,800 + $176,400 = $309,000.

[226] The estimated cumulative storage volume of approximately 8.4 million GB is calculated by assuming 300,000 GB of new data is added each quarter over a 7-year period: 300,000 GB × 28 quarters = 8,400,000 GB (8.4 petabytes).

[227] The estimated monthly storage cost of approximately $176,950 at the end of the 7-year period is calculated by applying AWS storage pricing tiers to 8,400,000 GB of cumulative data storage: (50,000 GB × $0.023 per GB) + (450,000 GB × $0.022 per GB) + (7,900,000 GB × $0.021 per GB) = $1,150 + $9,900 + $165,900 = $176,950.

[228] The estimated cumulative 7-year storage expenditure of approximately $7.71 million is calculated as follows: (($6,650 estimated initial monthly storage cost + $176,950 estimated monthly storage cost at the end of year 7) ÷ 2) × 84 months = approximately $7.71 million.

[229] 26 CFR 54.9816–8(c)(viii), 29 CFR 2590.716–8(c)(viii), and 45 CFR 149.510(c)(viii).

[230] U.S. Department of Labor, U.S. Department of Health & Human Services & U.S. Department of the Treasury, *FAQs about Affordable Care Act Implementation Part 49* (August 20, 2021), *https://www.cms.gov/cciio/resources/fact-sheets-and-faqs/downloads/faqs-part-49.pdf* and *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-49.pdf.*

jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of ''small entity.''

Consistent with HHS guidance regarding consideration of small entities under the Regulatory Flexibility Act [231] and with the approach adopted in prior HHS rulemakings, the Departments generally consider an economic impact to be ''significant'' if the rule's economic impacts represent 3 to 5 percent of the affected entities' revenues and consider a ''substantial'' number to be 5 percent or more of the affected small entities within an identified industry. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions.

As discussed in section V.F.5. of this preamble, the Departments estimate that most affected entities qualify as small entities based on SBA small business size standards for the purposes of this RFA. The data and conclusions presented in this section constitute the Departments' final regulatory flexibility analysis under the RFA.

1. Statement of Need for, and Objectives of, the Rules

These final rules amend and strengthen the existing Transparency in Coverage regulations under sections 1311(e)(3) and 2715A of the PHS Act (included in the Code by section 9815 of the Code and into ERISA by section 715 of ERISA) to enhance price transparency reporting requirements for non-grandfathered group health plans and health insurance issuers offering non-grandfathered group and individual health insurance coverage. Consistent with the goals of Executive Order 14221, these final rules aim to provide patients with clear, accurate, and actionable pricing information.[232]

More broadly, these final rules amend the Transparency in Coverage requirements at 26 CFR 54.9815–2715A2, 29 CFR 2590.715–2715A2, and 45 CFR 147.211 to improve the quality, accuracy, and usability of publicly available pricing disclosures and cost-sharing information for participants, beneficiaries, and enrollees. The finalized provisions also amend 26 CFR 54.9815–2715A3, 29 CFR 2590.715–2715A3, and 45 CFR 147.212 to improve the organization and standardization of machine-readable files, enhance provider network reporting, require additional contextual information to facilitate interpretation of pricing data, expand disclosures related to out-of-network allowed amounts, and improve the discoverability and usability of Transparency in Coverage data. In addition, these final rules amend 26 CFR 54.9815–2715A2(b), 29 CFR 2590.715–2715A2(b), and 45 CFR 147.211(b) to align certain disclosure requirements with protections established under the No Surprises Act and reduce duplicative reporting requirements.

By making pricing data more meaningful and accessible, these final rules are expected to help participants, beneficiaries, and enrollees better understand their potential costs, support more informed decision-making, and promote greater competition among health care providers and insurers. The Departments also expect that these improvements will facilitate more effective use of pricing data by researchers, policymakers, employers, third-party developers, and other interested parties seeking to evaluate pricing patterns, market dynamics, and health care costs over time.

It is the Departments' intention that implementation of these provisions will improve the transparency, accessibility, and usefulness of pricing and cost-sharing information for participants, beneficiaries, enrollees, providers, researchers, and other interested parties.

2. Summary of Significant Issues

The Departments received comments indicating that small and regional health plans may be disproportionately impacted by these requirements. A commenter stated that the investment required to support the proposed Change-log File would be especially burdensome for regional, not-for-profit plans with limited resources. Another commenter also noted that large national carriers are less likely to face similar challenges, as they have already invested in machine-readable file production infrastructure and maintain more complex contractual and reporting systems. The commenter also stated that machine-readable file requirements may impose greater technical burden on smaller carriers and regional plans that lack the infrastructure necessary to generate and maintain detailed machine-readable files at the required frequency. In addition, the commenter suggested that reducing or eliminating certain requirements could lessen compliance burden for smaller carriers, new market entrants, and self-funded plans while still achieving the transparency objectives of the rule.

The Departments acknowledge that these final rules may impose greater operational and implementation burden on certain small entities, particularly smaller and regional plans with more limited technical and administrative resources.

3. Steps Taken To Minimize Costs to Small Entities

The Departments have taken steps to reduce potential burden, including not finalizing the proposed Change-log File and enrollment data reporting, as well as refining underlying assumptions used in estimating burden to better reflect expected implementation costs and operational burden. The Departments are also adopting several provisions in these final rules that are intended to reduce operational burden across all plans and issuers, including smaller entities. In particular, the Departments highlight the decisions to reduce duplication and file size by allowing plans and issuers to aggregate and report information by provider network and market types, as well as the decision to extend reporting periods for certain files. The Departments expect these changes to reduce implementation and operational costs, particularly for plans and issuers with fewer resources and limited variability among the products offered to their client base. For example, smaller independent insurers may maintain fewer provider networks and products than larger insurers with more varied and complex provider network agreements and therefore may benefit more substantially from the ability to consolidate machine-readable file reporting by provider network and market type.

In these final rules, the Departments are also retaining and expanding policies enabling plans and issuers to enter into written agreements with service providers to aggregate, generate, and post machine-readable files and related text files. These policies enable smaller group health plans and health insurance issuers to outsource key compliance functions to service providers that are better equipped to manage these activities. Smaller health plans, including self-insured group health plans, may rely on service providers to manage their provider network agreements and claims processing, so relying on these service providers to manage the generation of these plans' machine-readable files may facilitate a more efficient path to compliance.

[231] Office of the Assistant Secretary for Planning and Evaluation, *Guidance on Proper Consideration of Small Entities in Rulemakings of the U.S. Department of Health and Human Services* (2023), *https://aspe.hhs.gov/reports/proper-consideration-small-entities-rulemakings-us-dhhs.*

[232] Exec. Order No. 14221, 90 FR 11005 (February 28, 2025).

4. Significant Alternatives

The regulatory alternatives considered in developing these final rules are discussed in section V.E. of this preamble. In evaluating these alternatives, the Departments considered their potential effects on small entities.

The Departments considered requiring plans and issuers to disclose claims volume in the In-network Rate File or Utilization File; requiring plans and issuers to use alternative methods for excluding unlikely provider-rate combinations from the In-network Rate File, including mock claims and historical claims data; requiring plans and issuers to retain machine-readable files long term; and requiring plans and issuers to develop of a separate price comparison tool to fulfill the requirements of the No Surprises Act. Although these alternatives could provide additional information, functionality, or analytical value, they would also impose additional administrative, technical, storage, and operational burdens on plans and issuers.

These additional burdens would likely disproportionately affect small entities that may have more limited technical, administrative, and financial resources. Accordingly, the Departments have determined that the approaches adopted in these final rules better balance the benefits of improved price information with minimizing unnecessary burden on small entities.

5. Affected Small Entities

These final rules affect health insurance issuers offering group or individual health insurance coverage.

For purposes of the RFA, the Departments have determined that health insurance companies are generally classified under the North American Industry Classification System (NAICS) code 524114 (Direct Health and Medical Insurance Carriers). According to SBA size standards, entities with average annual receipts of $47 million or less are considered small entities within this classification. Alternatively, some entities may fall under NAICS code 621491 (HMO Medical Centers), which has a size standard of $44.5 million or less in annual average receipts.

The Departments used the latest available data from the Census Bureau's Statistics of U.S. Businesses (SUSB) for 2022 [233] and the applicable SBA small business size standards.[234] Based on these data, the Departments estimate there are 1,217 affected firms across the relevant NAICS categories, of which 921 qualify as small entities under SBA standards, as shown in Table 43. The Departments use these estimates for purposes of the RFA analysis in these final rules.

TABLE 43: SBA Size Standards and Small Entity Counts for Applicable NAICS Industry Codes*

NAICS Code	Description	SBA Size Standard ($ in Millions)	Total Number of Firms	Number of Small Firms
524114	Direct Health and Medical Insurance Carriers	$47.0	1,071	803
621491	HMO Medical Centers	$44.5	146	118
	Total		1,217	921

*Source: U.S. Census Bureau 2022 Statistics of U.S. Businesses (SUSB)

6. Impacts on Small Entities

As noted in section V.F. of this preamble, the Departments consider annual average economic impacts exceeding approximately 3 to 5 percent of revenues to constitute a significant economic impact on a substantial number of small entities. For purposes of this RFA analysis, the Departments evaluate whether compliance costs exceed approximately 3 to 5 percent of firm revenues to determine whether these final rules will have a significant economic impact on a substantial number of small entities. To conduct this analysis, the Departments analyzed revenue data for Direct Health and Medical Insurance Carriers and HMO Medical Centers that met the SBA small business size standards presented in Table 44, along with the implementation costs estimated in section IV. of this preamble.

To assess the ratio of compliance costs to revenues, the Departments used the total number of firms classified as small entities based on the 2022 SUSB data (n=921). The Departments then categorized these firms by receipts-based size category and calculated the share of small firms within each category, as shown in the ''Percent of Small Firms'' column in Table 44. Using corresponding revenue data from the 2022 SUSB data, the Departments calculated average annual revenues for firms within each size category.

[233] U.S. Census Bureau, *Statistics of U.S. Businesses (SUSB), https://www.census.gov/programs-surveys/susb.html* (last visited May 8, 2026).

[234] U.S. Small Business Administration, *Table of Size Standards, https://www.sba.gov/document/support-table-size-standards* (last visited May 8, 2026).

TABLE 44: Small Firms and Revenue Estimates by SBA Receipts-Based Category*

Firm Size (by Receipts)	Firm Count	Percent of Small Firms	Total Revenue ($)	Average Annual Revenue ($)
SMALL FIRMS	921	100.00%	$1,931,063,000	$2,096,702
<100,000	181	19.65%	$9,325,000	$51,519
100,000-499,999	411	44.63%	$98,523,000	$239,715
500,000-999,999	123	13.36%	$87,136,000	$708,423
1,000,000-2,499,999	80	8.69%	$131,174,000	$1,639,675
2,500,000-4,999,999	39	4.23%	$129,842,000	$3,329,282
5,000,000-7,499,999	13	1.41%	$81,595,000	$6,276,538
7,500,000-9,999,999	14	1.52%	$110,824,000	$7,916,000
10,000,000-14,999,999	18	1.95%	$218,966,000	$12,164,778
15,000,000-19,999,999	12	1.30%	$177,179,000	$14,764,917
20,000,000-24,999,999	11	1.19%	$218,266,000	$19,842,364
25,000,000-29,999,999	4	0.43%	$79,041,000	$19,760,250
30,000,000-34,999,999	3	0.33%	$69,135,000	$23,045,000
35,000,000-39,999,999	0	0.00%	$0	$0
40,000,000-49,999,999	12	1.30%	$520,057,000	$43,338,083

* The firm counts include health plans and HMO medical centers.

For purposes of estimating annualized cost for each firm, the Departments estimate a high-end industry cost of approximately $480,187,007 during the first year as discussed in section IV. of this preamble. In addition, plans and issuers are expected to incur approximately $3,047,412 in cost to review and understand the regulatory requirements as described in section V.D. of this preamble for a total first-year cost of approximately $483,234,418. Assuming these costs are distributed evenly across all 1,303 issuers and 205 TPAs, the estimated average high-end one-time per-entity costs will be approximately $320,447. This equal allocation is a simplifying assumption and is not intended to suggest that each entity will incur the same costs. Actual costs may vary depending on entity size, existing technical and administrative infrastructure, and the degree of operational changes necessary to comply with the final requirements.

In the proposed rules,[235] the Departments stated their expectation that fully-insured group health plans will rely on health insurance issuers whereas self-insured group health plans will depend on TPAs, including issuers providing administrative services only and non-issuer TPAs, to implement the requirements. The Departments also noted that some self-insured plans may choose to comply independently and would likely incur a similar hour burden. Accordingly, the estimated per-entity costs are intended to reflect the expected burden on issuers and TPAs responsible for implementing the final requirements on behalf of plans.

To assess the ratio of compliance costs to revenues, the Departments divided the estimated annualized cost per firm by the average annual revenue for firms within each receipts-based size category and expressed the result as a percentage. This percentage, shown in the ''Compliance Cost-to-Revenue Ratio'' column in Table 45, represents the estimated compliance cost burden relative to revenue for small firms due to these final rules. The Departments consider a ''significant'' economic impact to be compliance costs that amount to approximately 3 to 5 percent or more of affected entities' total revenues.

Based on the estimated compliance cost-to-revenue ratios shown in Table 45, the Departments expect these final rules to impose a significant economic impact on a substantial number of small entities, particularly among firms in lower receipts-based size categories where estimated compliance costs exceed approximately 3 to 5 percent of annual revenues. Specifically, approximately 861 of the 921 small entities identified in this analysis fall within receipts-based size categories below $10 million in annual revenue, where the estimated compliance cost-to-revenue ratios meet or exceed the Departments' significance threshold.

[235] 90 FR 60432, 60504 (December 23, 2025).

TABLE 45: Compliance Costs as a Percentage of Revenues for Small Entities

Firm Size (Receipts, $)	Firm Count*	Average Annual Revenue ($)	Annualized Average Cost per Firm ($)	Compliance Cost-to-Revenue ratio (%)
SMALL FIRMS	921	$2,096,702	$320,447	15.3%
<100,000	181	$51,519	$320,447	622.0%
100,000-499,999	411	$239,715	$320,447	133.7%
500,000-999,999	123	$708,423	$320,447	45.2%
1,000,000-2,499,999	80	$1,639,675	$320,447	19.5%
2,500,000-4,999,999	39	$3,329,282	$320,447	9.6%
5,000,000-7,499,999	13	$6,276,538	$320,447	5.1%
7,500,000-9,999,999	14	$7,916,000	$320,447	4.0%
10,000,000-14,999,999	18	$12,164,778	$320,447	2.6%
15,000,000-19,999,999	12	$14,764,917	$320,447	2.2%
20,000,000-24,999,999	11	$19,842,364	$320,447	1.6%
25,000,000-29,999,999	4	$19,760,250	$320,447	1.6%
30,000,000-34,999,999	3	$23,045,000	$320,447	1.4%
35,000,000-39,999,999	0	-	-	-
40,000,000-49,999,999	12	$43,338,083	$320,447	0.7%

* The firm counts include health plans and HMO medical centers.

This conclusion differs from the assessment presented in the proposed rules, in which the Departments relied primarily on issuer-level MLR data to estimate the number of affected small entities and concluded that the proposed rules would not have a significant economic impact on a substantial number of small entities. In the proposed rules, the Departments used total premium revenue reported in MLR submissions to identify issuers below the applicable size threshold. The MLR-based analysis also accounted for whether entities were subsidiaries of larger organizations or had non-medical lines of business that could cause their total revenues to exceed the applicable SBA size standard. For purposes of these final rules, the Departments updated the analysis to rely on SUSB data and the applicable SBA size standards. SUSB data provide firm counts and receipts-based size categories by NAICS code, allowing the Departments to apply the relevant SBA size standards directly to firms in each of the relevant industries. The estimates derived from the two data sources are not directly comparable because the sources differ in scope, unit of analysis, and method of classifying small entities. The larger number of small entities identified using SUSB data reflects the broader firm-level scope of the final-rule analysis and does not indicate that the MLR data used in the proposed rules were inaccurate. As a result of this revised methodology and updated assumptions, the Departments estimate that these final rules may have a significant economic impact on a substantial number of small entities, particularly among entities in lower receipts-based size categories.

Some small plans and issuers may benefit from centralized functions that reduce the direct burden of compliance. In addition, based on 2024 MLR data, many of these entities are likely to have access to centralized administrative, operational, or compliance functions through affiliated parent organizations and may also have non-health lines of business that result in total revenues exceeding $47 million.[236] As a result, the estimated per-entity impacts presented in this analysis may overstate the burden experienced by individual entities.

The Departments also note that the analysis of impacts on small entities is based primarily on first-year implementation costs, which represent the largest share of the burden associated with these final rules as discussed in section IV. of this preamble. These first-year costs reflect one-time activities such as systems development, file creation and testing, operational coordination, and implementation planning. In subsequent years, plans and issuers are expected to incur primarily ongoing maintenance, reporting, and file update activities, which are substantially lower than the initial implementation burden. Accordingly, the Departments expect the economic impact of these final rules on small entities to decline significantly after the first year of implementation.

7. Duplication, Overlap, and Conflict With Other Rules and Regulations

The Departments do not anticipate that these final rules will duplicate, overlap, or conflict with other Federal rules or regulations. These final rules amend the Transparency in Coverage requirements to improve the quality, accuracy, and usability of pricing and cost-sharing disclosures, align certain requirements with protections established under the No Surprises Act, and reduce duplicative reporting requirements.

The Departments did not receive comments identifying any duplication, overlap, or conflict with other rules or regulations and conclude that these final rules do not create material

[236] Based on data from MLR annual report for the 2024 MLR reporting year. *See* Centers for Medicare and Medicaid Services, *Medical Loss Ratio Data and System Resources* (last updated Mar. 3, 2026), *https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.* Although the Departments' estimates in the proposed rules were based 2023 MLR data, the Departments have updated these estimates based on the latest available MLR data to improve their accuracy.

duplication, overlap, or conflict with other Federal requirements.

8. Small Rural Hospitals

Section 1102(b) of the Social Security Act (SSA) (42 U.S.C. 1302) requires agencies to prepare an RIA if a rule is expected to have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must align with the provisions of section 604 of the RFA. For purposes of section 1102(b) of the SSA, the Departments define a small rural hospital as a hospital that is located outside of a metropolitan statistical area with fewer than 100 beds.

While these final rules are not anticipated to directly regulate small rural hospitals, the Departments acknowledge that the transparency requirements in these final rules may have indirect effects on these facilities through potential changes in negotiated rates and patient cost-sharing, market dynamics that could impact hospital revenues, particularly given that rural providers typically operate with thinner profit margins than their urban counterparts. At the same time, the Departments recognize that rural hospitals may also face lower levels of competition in certain areas, which could limit the extent of any indirect effects that result from these final rules. Therefore, the Departments have determined that any indirect effects are not expected to rise to the level of a significant impact on the operations of a substantial number of small rural hospitals.

G. Unfunded Mandates Reform Act (UMRA)

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires agencies to assess anticipated costs and benefits before issuing any rule that may result in expenditures of $100 million or more in any one year (in 1995 dollars), adjusted annually for inflation. For 2025, this threshold is approximately $187 million. These final rules include disclosure requirements that may impact private sector entities, such as health insurance issuers offering coverage in the individual and group health insurance markets and TPAs administering group health plans. In addition, States, local, or Tribal governments may incur costs related to enforcement of certain provisions. The Departments expect the total burden on State, local, or Tribal governments and the private sector to exceed the UMRA threshold. The RIA in section V. of this preamble constitutes the assessment of anticipated costs and benefits required by UMRA.

H. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a final rule that imposes substantial direct costs on State and local governments, preempts State law, or otherwise has federalism implications. Federal agencies issuing regulations that have federalism implications must consult with States and local officials and describe the extent of their consultation and the nature of the concerns of States and local officials in the preamble to the regulation.

The Departments have determined these final rules may have federalism implications because they have direct effects on the States, the relationship between the Federal Government and States, or on the distribution of power and responsibilities among various levels of government relating to the disclosure of health insurance coverage information to consumers.

Under these final rules, all non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage, including non-Federal governmental plans as defined in section 2791(d)(8)(C) of the PHS Act, are required to enhance the accessibility and transparency of cost-sharing and pricing information for a participant, beneficiary, or enrollee (or an authorized representative on behalf of such individual). Specifically, plans and issuers need to update statements to reflect Federal balance billing protections, make cost-sharing estimates available by phone, and clarify how to meet the requirements for price comparison tools. These final rules also require improvements to the format and accessibility of machine-readable files, expansion of required data elements, and adjustments to posting frequency and structure to ensure pricing data is more usable and understandable for consumers.

Federal standards developed under section 2715A of the PHS Act do not preempt any related States' standards relating to health insurance issuers that require pricing information to be disclosed to participants, beneficiaries, or enrollees, or otherwise publicly disclosed, except to the extent that such State disclosure requirements prevent the application of a requirement under these final rules.

The Departments have determined that these final rules may have federalism implications based on the required disclosure of pricing information, as they are aware of at least 33 States that have passed some form of price transparency legislation, such as all-payer claims databases, consumer-facing price comparison tools, and right to shop programs, with varying requirements regarding the scope and level of disclosure.[237] While some States provide prices for individual services, others report aggregated costs across providers or over time to reflect the cost of an episode of care. The methods of sharing this information also vary. For instance, California requires uninsured patients to receive price estimates upon request, whereas other States use websites or software applications to enable consumers to compare prices across providers. Only seven States have published pricing information of issuers on consumer-facing public websites.[238] Therefore, these final rules may require plans and issuers to disclose more detailed pricing information than some State laws currently mandate.

In general, through section 514, ERISA supersedes State laws to the extent that they relate to any covered employee benefit plan but preserves State laws that regulate insurance, banking, or securities. Furthermore, the preemption provisions of section 731 of ERISA and section 2724 of the PHS Act (implemented in 29 CFR 2590.731(a) and 45 CFR 146.143(a)) apply so that the provisions of Part 7 of ERISA and title XXVII of the PHS Act (including the amendments made by the Affordable Care Act) are not to be ''construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to issuers in connection with group health insurance coverage except to the extent that such standard or requirement prevents the application of a 'requirement' of a Federal standard.'' The Departments have interpreted State law to ''prevent the application'' of a PHS Act provision where the State law makes it impossible for an issuer to comply with title XXVII of the PHS Act.[239] The conference

[237] National Conference of State Legislatures, *Health Costs, Coverage and Delivery State Legislation Database, https://www.ncsl.org/health/health-costs-coverage-and-delivery-state-legislation* (last updated May 19, 2026). To access the database, click ''NCSL Database'' and then filter under ''Topic Search'' for ''Market'' and then ''Price Transparency and Cost Cont.'' to see the total number of States that have adopted or enacted some form of price transparency legislation.

[238] Melanie Evans, *One State's Effort to Publicize Hospital Prices Brings Mixed Results,* Wall Street Journal (June 26, 2019), *https://www.wsj.com/articles/one-states-effort-to-publicize-hospital-prices-brings-mixed-results-11561555562.*

[239] U.S. Department of Labor, U.S. Department of Health & Human Services & U.S. Department of the Treasury, *FAQs about Affordable Care Act Implementation Part 54* (July 28, 2022), *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/*

report accompanying HIPAA indicates that this preemption is intended to be the ''narrowest'' preemption of State laws, and Health Care Financing Administration (HCFA) guidance similarly states that preemption is limited to the ''narrowest'' of circumstances.[240] States may therefore continue to apply State law requirements to health insurance issuers so long as such requirements do not prevent the application of the Affordable Care Act requirements that are the subject of this rulemaking. Accordingly, States have significant latitude to impose requirements on health insurance issuers that are more restrictive than the Federal law.

In compliance with the requirement of Executive Order 13132, which requires agencies to examine closely any policies that may have federalism implications or limit the policy making discretion of the States, the Departments have engaged in efforts to consult with and work cooperatively with affected States. These efforts have included participation in conference calls and events hosted by the National Association of Insurance Commissioners (NAIC), as well as direct engagement with State insurance officials. The Departments intend to act in a similar fashion in enforcing the Affordable Care Act, including the provisions of section 2715A of the PHS Act. While drafting these final rules, the Departments attempted to balance the States' interests in regulating issuers with the goal of enhancing price transparency nationwide. By doing so, the Departments have complied with the requirements of Executive Order 13132.

The Departments requested comment on any potential effects these requirements on States, including any duplicative burdens between State and Federal requirements and ways to address such burdens, if applicable. The Departments did not receive any comments on these issues.

In accordance with the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to these final rules, the Departments certify that the Department of the Treasury, Employee Benefits Security Administration, and CMS have complied with the requirements of Executive Order 13132 for these final rules in a meaningful and timely manner.

I. Executive Order 14192, ''Unleashing Prosperity Through Deregulation''

Executive Order 14192, titled ''Unleashing Prosperity Through Deregulation,'' was issued on January 31, 2025. Section 3(a) of Executive Order 14192 requires an agency, unless prohibited by law, to identify at least ten existing regulations to be repealed when the agency issues a new regulation. In furtherance of this requirement, section 3(c) of Executive Order 14192 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with prior regulations. A significant regulatory action (as defined in section 3(f) of Executive Order 12866) that would impose total costs greater than zero is considered an Executive Order 14192 regulatory action.

In the proposed rules, the Departments anticipated that these rules would qualify as an Executive Order 14192 regulatory action because total costs were estimated to be greater than zero for Executive Order 14192 accounting purposes. Upon further review, the Departments have determined that certain impacts erroneously characterized as quantified benefits are more appropriately classified as cost savings. These impacts correspond to categories of compliance costs and burdens that were calculated in the 2020 Transparency in Coverage final rules and that this rule would reduce or eliminate, including costs associated with the development, operation, maintenance, and updating of machine-readable files, as well as related data processing and reporting requirements. Because the quantified values reflect reductions in labor, computational, storage, data transfer, and other costs that plans, issuers, third-party developers, and other file users would otherwise incur to access, process, store, transmit, and maintain machine-readable file data, the Departments classify these impacts as cost savings for Executive Order 14192 accounting purposes.

Specifically, the Departments consider the estimated reductions in data cleaning and integration costs, storage costs and lower network egress expenses resulting from reducing the reporting frequency from monthly to quarterly to be cost savings for Executive Order 14192 accounting purposes. These savings are quantified and discussed in section V.D.3.c.(2). After incorporating this refinement, the Departments estimate that total costs are less than zero for Executive Order 14192 accounting purposes and therefore conclude that these rules are an Executive Order 14192 deregulatory action.

As indicated in section IV.D., these final rules will result in implementation costs of approximately $480.2 million for all plans and issuers, including both one-time implementation costs and first-year ongoing costs. Beginning in the second year and continuing thereafter, these final rules are expected to generate a net cost savings of approximately $174.5 million annually ($254.9 million in cost savings offset by $80.4 million in costs) across all plans and issuers. Using a perpetual time horizon and applying a 7 percent discount rate, the Departments estimate a present value (as of 2024) of net cost savings of approximately $1.73 billion (2024 dollars), assuming implementation begins in 2027 for all plans and issuers. On an annualized basis, the Departments estimate a net cost savings of approximately $121.1 million (2024 dollars) for all plans and issuers, discounted relative to 2024, at a 7 percent discount rate.

Although the rule will impose upfront implementation costs in the first year, the discounted value of cost savings exceeds the discounted value of costs over the period analyzed. Accordingly, the Departments conclude that these rules are an Executive Order 14192 deregulatory action for the purposes of meeting Executive Order 14192 requirements.

This final regulation is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to the Congress and the Comptroller General for review.

List of Subjects

26 CFR Part 54

Excise taxes, Health care, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2590

Child support, Employee benefit plans, Health care, Health insurance, Infants and children, Maternal and child health, Penalties, Pensions, Privacy, Reporting and recordkeeping requirements.

our-activities/resource-center/faqs/aca-part-54.pdf and *https://www.cms.gov/files/document/faqs-part-54.pdf.*

[240] HCFA Program Memorandum, *The Relationship of Certain Types of State Laws to the Application of the Guaranteed Availability Requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in the Small Group Market, Program Memorandum/Insurance Commissioners/Insurance Issuers, Transmittal No. 00–03* (June 2000), *https://www.cms.gov/Regulations-and-Guidance/Health-Insurance-Reform/HealthInsReformforConsume/downloads/HIPAA-00-03.pdf.*

45 CFR Part 147

Aged, Citizenship and naturalization, Civil rights, Health care, Health insurance, Individuals with disabilities, Intergovernmental relations, Reporting and recordkeeping requirements, Sex discrimination.

Frank J. Bisignano,

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Kevin Salinger,

Acting Assistant Secretary for Tax Policy, Department of the Treasury.

Daniel Aronowitz,

Assistant Secretary, Employee Benefits Security Administration.

Robert F. Kennedy, Jr.,

Secretary, Department of Health and Human Services.

Department of the Treasury

Internal Revenue Service

For the reasons stated in the preamble, the Department of the Treasury amends 26 CFR part 54 as set forth below:

PART 54—PENSION EXCISE TAXES

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 26 U.S.C. 7805, unless otherwise noted.

* * * * *

■ 2. Section 54.9815–2715A1 is amended by—

■ a. Redesignating paragraphs (a)(2)(xi) through (xxii) as paragraphs (a)(2)(xii) through (xxiii), respectively; and

■ b. Adding new paragraph (a)(2)(xi).

The addition reads as follows:

§ 54.9815–2715A1 Transparency in coverage—definitions.

(a) * * *

(2) * * *

(xi) *Health insurance market* means, irrespective of the State, one of the following:

(A) The individual market, as defined in 45 CFR 144.103 (other than short-term, limited-duration insurance or individual health insurance coverage that consists solely of excepted benefits, as defined in 45 CFR 148.220).

(B) The large group market, as defined in 45 CFR 144.103 (other than coverage that consists solely of excepted benefits, as defined in § 54.9831–1(c)).

(C) The small group market, as defined in 45 CFR 144.103 (other than coverage that consists solely of excepted benefits, as defined in § 54.9831–1(c)).

(D) For purposes of self-insured group health plans (other than account-based plans, as defined in § 54.9815–2711(d)(6)(i), and plans that consist solely of excepted benefits, as defined in § 54.9831–1(c)), all self-insured group health plans maintained by the plan sponsor.

* * * * *

■ 3. Section 54.9815–2715A2 is amended by—

■ a. Revising paragraphs (b)(1)(i)(A) and (B), (b)(1)(vii)(A), and (b)(2)(ii) introductory text;

■ b. Redesignating paragraph (b)(2)(ii)(D) as paragraph (b)(2)(iv);

■ c. Adding paragraph (b)(2)(iii);

■ d. Revising newly redesignated paragraph (b)(2)(iv);

■ e. Revising paragraphs (b)(3)(i) and (ii) and (c)(1); and

■ f. Adding paragraph (c)(7).

The revisions and additions read as follows:

§ 54.9815–2715A2 Transparency in coverage—required disclosures to participants and beneficiaries.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(A) If the request for cost-sharing information relates to items and services that are provided within a bundled payment arrangement, and the bundled payment arrangement includes items or services that have a separate cost-sharing liability, the group health plan or health insurance issuer must provide estimates of the cost-sharing liability for the requested covered item or service, as well as an estimate of the cost-sharing liability for each of the items and services in the bundled payment arrangement that have separate cost-sharing liabilities. While plans and issuers are not required to provide estimates of cost-sharing liability for a bundled payment arrangement where the cost-sharing is imposed separately for each item and service included in the bundled payment arrangement, nothing prohibits plans or issuers from providing estimates for multiple items and services in situations where such estimates could be relevant to participants or beneficiaries, as long as the plan or issuer also discloses information about the relevant items or services individually, as required in paragraph (b)(1)(v) of this section.

(B) For requested items and services that are recommended preventive services under section 2713 of the Public Health Service Act (PHS Act), if the group health plan or health insurance issuer cannot determine whether the request is for preventive or non-preventive purposes, the plan or issuer must display the cost-sharing liability that applies for non-preventive purposes. As an alternative, a plan or issuer may allow a participant or beneficiary to request cost-sharing information for the specific preventive or non-preventive item or service by including terms such as ''preventive,'' ''non-preventive,'' or ''diagnostic'' as a means to request the most accurate cost-sharing information.

* * * * *

(vii) * * *

(A) A statement that the cost-sharing information provided pursuant to this paragraph (b)(1) does not account for potential additional amounts in situations where applicable State or Federal law allow out-of-network providers to bill participants or beneficiaries for the difference between a provider's billed charges and the sum of the amount collected from the group health plan or health insurance issuer and from the participants or beneficiaries in the form of a copayment, coinsurance, or deductible amount (the difference referred to as balance billing). This statement is not required if the State in which the item or service was furnished prohibits all out-of-network providers from balance billing for all items and services payable by the plan or issuer;

* * * * *

(2) * * *

(ii) *Paper method.* Information provided under this paragraph (b) must be made available in plain language, without a fee, in paper form at the request of the participant or beneficiary. In responding to such a request, the group health plan or health insurance issuer may limit the number of providers with respect to which cost-sharing information for covered items and services is provided to no fewer than 20 providers per request. The plan or issuer is required to:

* * * * *

(iii) *Phone method.* Information provided under this paragraph (b) must be made available at the request of the participant or beneficiary via a telephone number indicated on any physical or electronic plan or insurance identification card issued to a participant or beneficiary through which a consumer may seek customer assistance pursuant to Code section 9816(e). Such information must be accurate at the time of the request and must be provided at the time of the request. In responding to such a request, the group health plan or health insurance issuer may limit the number of providers with respect to which cost-sharing information for covered items and services is provided to no fewer

than 20 providers per day. The plan or issuer is required to:

(A) Disclose the applicable provider-per-day limit to the participant or beneficiary; and

(B) Provide the cost-sharing information, in accordance with the requirements in paragraphs (b)(2)(i)(A) through (C) of this section.

(iv) *Alternative method.* In circumstances where participants and beneficiaries request disclosure other than by the internet-based self-service tool, paper, or phone (for example, by email) group health plans and health insurance issuers may provide the disclosure through alternative means and satisfy the requirements of this section, provided the participant or beneficiary agrees that such disclosure through such means is sufficient to satisfy the request and the plan or issuer meets the timing requirements established under paragraph (b)(2)(ii)(C) of this section for paper method disclosure.

(3) * * *

(i) *Special rule for insured group health plans.* To the extent coverage under a group health plan consists of group health insurance coverage, the plan satisfies the requirements of this paragraph (b) if the plan requires the health insurance issuer offering the coverage to provide the information required by this paragraph (b) in compliance with this section under a written agreement. Accordingly, if an issuer and a plan sponsor enter into a written agreement under which the issuer agrees to provide the information required under this paragraph (b) in compliance with this section, and the issuer fails to do so, then the issuer, but not the plan, violates the transparency disclosure requirements of this paragraph (b).

(ii) *Other contractual arrangements.* A group health plan or health insurance issuer may satisfy the requirements under this paragraph (b) by entering into a written agreement under which another party (such as a pharmacy benefit manager or other third-party) provides the information required by this paragraph (b) in compliance with this section. Notwithstanding the preceding sentence, if a plan or issuer chooses to enter into such an agreement and the party with which it contracts fails to provide the information in compliance with this paragraph (b), the plan or issuer violates the transparency disclosure requirements of this paragraph (b).

(c) * * *

(1) This section applies for plan years beginning on or after January 1, 2027. Until the applicability date in the preceding sentence, plans and issuers are required to continue to comply with § 54.9815–2715A2, revised as of April 1, 2025.

* * * * *

(7) A group health plan or health insurance issuer that provides to the participant or beneficiary the information required under paragraph (b)(1) of this section, in accordance with the method and format requirements set forth in paragraph (b)(2) of this section, satisfies the requirements set forth in Code section 9819, ERISA section 719, and PHS Act section 2799A–4.

* * * * *

■ 4. Section 54.9815–2715A3 is amended by—

■ a. Revising and republishing paragraph (b); and

■ f. Revising paragraph (c)(1).

The revisions and republications read as follows:

§ 54.9815–2715A3 Transparency in coverage—requirements for public disclosure.

* * * * *

(b) *Requirements for public disclosure of in-network provider rates for covered items and services, out-of-network allowed amounts and billed charges for covered items and services, negotiated rates and historical net prices for covered prescription drugs, and contextual information.* A group health plan or health insurance issuer must make available on an internet website the information required under paragraphs (b)(1) and (2) of this section in machine-readable files, in accordance with the method and format requirements described in paragraph (b)(3) of this section, and that are updated as required under paragraph (b)(4) of this section.

(1) *Required information.* Machine-readable files required under this paragraph (b) that are made available to the public by a group health plan or health insurance issuer must include:

(i) An in-network rate machine-readable file for each provider network maintained or contracted by a group health plan or health insurance issuer that includes the required information under this paragraph (b)(1)(i) for all covered items and services under each coverage option offered by the plan or issuer that uses such provider network, except for prescription drugs that are subject to a fee-for-service reimbursement arrangement, which must be reported in the prescription drug machine-readable file pursuant to paragraph (b)(1)(iii) of this section. Each in-network rate machine-readable file must include:

(A) The common provider network name;

(B) The provider network identifier;

(C) For each coverage option offered by a group health plan or health insurance issuer that uses such provider network, the name; the Health Insurance Oversight System (HIOS) identifier, or, if no HIOS identifier is available, the Employer Identification Number (EIN); and the product type (for example, including but not limited to health maintenance organization or preferred provider organization);

(D) A billing code, which in the case of prescription drugs must be a national drug code (NDC), and a plain language description for each billing code for each covered item or service included in the machine-readable file;

(E) For each covered item or service included in the machine-readable file, all applicable rates, which may include one or more of the following: Negotiated rates, underlying fee schedule rates, or derived amounts. If a group health plan or health insurance issuer does not use negotiated rates for provider reimbursement, then the plan or issuer should disclose derived amounts to the extent these amounts are already calculated in the normal course of business. If the plan or issuer uses underlying fee schedule rates for calculating cost sharing, then the plan or issuer should include the underlying fee schedule rates in addition to the negotiated rate or derived amount. Applicable rates, including for both individual items and services and items and services in a bundled payment arrangement, must be:

(*1*) Reflected as dollar amounts, with respect to each covered item or service that is furnished by an in-network provider. If the negotiated rate is subject to change based upon participant or beneficiary-specific characteristics, these dollar amounts should be reflected as the base negotiated rate applicable to the item or service prior to adjustments for participant or beneficiary-specific characteristics. For contractual arrangements under which a group health plan or health insurance issuer agrees to pay an in-network provider a percentage of billed charges and is not able to assign a dollar amount to an item or service prior to a bill being generated, plans and issuers must report a percentage number, in lieu of a dollar amount, in a form and manner as specified in guidance issued by the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services.

(*2*) Associated with the National Provider Identifier (NPI), Tax

Identification Number (TIN), and Place of Service Code for each in-network provider, except those specified in paragraph (b)(1)(i)(F) of this section;

(*3*) Associated with the last date of the contract term or expiration date for each provider-specific applicable rate that applies to each covered item or service; and

(*4*) Indicated with a notation where a reimbursement arrangement other than a standard fee-for-service model (such as capitation or a bundled payment arrangement) applies.

(F) A group health plan or health insurance issuer must exclude from each file under paragraph (b)(1)(i) of this section a provider and their negotiated rate (provider-rate combination) for an item or service if the plan or issuer determines it is unlikely that the provider would be reimbursed for the item or service given that provider's specialty according to the plan's or issuer's internal provider taxonomy or other internal rules used during the claims adjudication process.

(ii) For each health insurance market, as defined in § 54.9815–2715A1(a)(2)(xi), in which a group health plan or health insurance issuer offers a plan or coverage, an out-of-network allowed amount machine-readable file, including:

(A) For each coverage option offered by a group health plan or health insurance issuer in such health insurance market, the name and the HIOS identifier, or, if no HIOS identifier is available, the EIN; and the product type (for example, including but not limited to health maintenance organization or preferred provider organization);

(B) A billing code, which in the case of prescription drugs must be an NDC, and a plain language description for each billing code for each covered item or service under any coverage option offered by a group health plan or health insurance issuer in such health insurance market; and

(C) Aggregated unique out-of-network allowed amounts and billed charges with respect to each covered item or service under any coverage option offered by a group health plan or health insurance issuer in such health insurance market furnished by out-of-network providers during the 6-month time period that begins 9 months prior to the publication date of the machine-readable file (except that a plan or issuer must omit such data in relation to a particular item or service when compliance with this paragraph (b)(1)(ii)(C) would require the plan or issuer to report payment of out-of-network allowed amounts in connection with fewer than 11 different claims for payment of that item or service in a single health insurance market). Consistent with paragraph (c)(3) of this section, nothing in this paragraph (b)(1)(ii)(C) requires the disclosure of information that would violate any applicable health information privacy law. Each unique out-of-network allowed amount must be:

(*1*) Reflected as a dollar amount, with respect to each covered item or service that is furnished by an out-of-network provider; and

(*2*) Associated with the NPI, TIN, and Place of Service Code for each out-of-network provider.

(iii) A prescription drug machine-readable file, including:

(A) For each coverage option offered by a group health plan or health insurance issuer, the name and the 14-digit HIOS identifier, or, if the 14-digit HIOS identifier is not available, the 5-digit HIOS identifier, or, if no HIOS identifier is available, the EIN;

(B) The NDC and the proprietary and nonproprietary name assigned to the NDC by the Food and Drug Administration (FDA) for each covered item or service that is a prescription drug under each coverage option offered by a plan or issuer;

(C) The negotiated rates which must be:

(*1*) Reflected as a dollar amount, with respect to each NDC that is furnished by an in-network provider, including an in-network pharmacy or other prescription drug dispenser;

(*2*) Associated with the NPI, TIN, and Place of Service Code for each in-network provider, including each in-network pharmacy or other prescription drug dispenser; and

(*3*) Associated with the last date of the contract term for each provider-specific negotiated rate that applies to each NDC; and

(D) Historical net prices that are:

(*1*) Reflected as a dollar amount, with respect to each NDC that is furnished by an in-network provider, including an in-network pharmacy or other prescription drug dispenser;

(*2*) Associated with the NPI, TIN, and Place of Service Code for each in-network provider, including each in-network pharmacy or other prescription drug dispenser; and

(*3*) Associated with the 90-day time period that begins 180 days prior to the publication date of the machine-readable file for each provider-specific historical net price that applies to each NDC (except that a group health plan or health insurance issuer must omit such data in relation to a particular NDC and provider when compliance with this paragraph (b)(1)(iii)(D) would require the plan or issuer to report payment of historical net prices calculated using fewer than 20 different claims for payment). Consistent with paragraph (c)(3) of this section, nothing in this paragraph (b)(1)(iii)(D) requires the disclosure of information that would violate any applicable health information privacy law.

(iv) In each machine-readable file required under paragraphs (b)(1)(i) through (iii), and (b)(2)(i) and (ii) of this section, a plan or issuer:

(A) Must attest the following: To the best of its knowledge and belief, this plan or issuer has included all applicable information in accordance with the requirements of 26 CFR 54.9815–2715A3, and the information encoded is true, accurate, and complete as of the date in the file.

(B) Must encode the name of the plan's or issuer's chief executive officer, president, or senior official designated to oversee the encoding of true, accurate, and complete data as directed in paragraph (b)(1)(iv)(A) of this section.

(C) May satisfy the requirements of paragraphs (b)(1)(iv)(A) and (B) of this section by entering into a written agreement under which another party (such as a third-party administrator) makes the attestation required in paragraph (b)(1)(iv)(A) of this section on behalf of the plan or issuer and encodes the name of the other party's chief executive officer, president, or senior official designated to oversee the encoding of true, accurate, and complete data as directed in paragraph (b)(1)(iv)(A) of this section, only if the plan or issuer has entered into an agreement with the other party to provide the information in this paragraph (b) pursuant to the special rules in paragraph (b)(5) of this section.

(2) *Required contextual files.* A group health plan or health insurance issuer must make available in a machine-readable format:

(i) A utilization file, for each in-network rate machine-readable file specified in paragraph (b)(1)(i) of this section, that includes, for the most recent plan year that ends at least 6 months prior to the date the utilization file is made available as specified in paragraph (b)(4)(iii) of this section:

(A) Items and services covered under the plans or policies included in the files prepared as specified in paragraph (b)(1)(i) of this section for which a claim has been submitted and reimbursed (or would be reimbursed but for cost-sharing liability), in whole or in part; and

(B) Each in-network provider identified by the NPI, TIN, and Place of

Service Code who was reimbursed (or would be reimbursed but for cost-sharing liability), in whole or in part, for a claim for each covered item or service included as specified in paragraph (b)(2)(i)(A) of this section.

(ii) A taxonomy file, for each in-network rate machine-readable file prepared as specified in paragraph (b)(1)(i) of this section, which includes the group health plan's or health insurance issuer's internal provider taxonomy, or other internal rules, used to determine if the plan or issuer should deny reimbursement for an item or service based on the provider's specialty, as described in paragraph (b)(1)(i)(F) of this section. The information provided in the taxonomy file must be expressed as pairings of items and services (represented by billing codes) with provider specialties (represented by specialty codes which are derived from the Health Care Provider Taxonomy code set established by the National Uniform Claim Committee (NUCC)). Plans and issuers must use their internal provider taxonomy or other internal rules to determine whether to exclude certain provider-rate combinations from the in-network rate machine-readable file as specified in paragraph (b)(1)(i)(F) of this section.

(iii) A plain text file in a .txt format in the root folder (that is, the top-level directory on an electronic file system) of a group health plan's or health insurance issuer's website that includes:

(A) The source page URL for the internet website that hosts the machine-readable files required under paragraphs (b)(1) and (2) of this section;

(B) A direct link to the URL for the machine-readable files required under paragraphs (b)(1) and (2) of this section; and

(C) Point-of-contact information, including a monitored email address for an individual or group dedicated to receiving and responding to inquiries and issues related to the machine-readable files required under paragraphs (b)(1) and (2) of this section. This contact information (whether an individual or group) must be prominently displayed on the same website where the machine-readable files are made available and kept updated per the requirements in paragraph (b)(4)(v) of this section.

(3) *Required method and format for disclosing information to the public.* (i) Unless otherwise required by this section, the machine-readable files described in paragraphs (b)(1) and (2) of this section must be available in a single, non-proprietary, open-standards format, in a form and manner specified in guidance issued by the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services.

(ii) The machine-readable files described in paragraphs (b)(1) and (2) of this section must be publicly available and accessible to any person, automated script, or web crawler free of charge and without conditions, such as establishment of a user account, password, submission of personally identifiable information or other credentials, or blocking server configurations or firewalls to access the file.

(iii) The source page URL for the internet website that hosts the machine-readable files required under paragraphs (b)(1) and (2) of this section must be included as a link in the footer on the home page of the group health plan's or health insurance issuer's website, as well as any page of the website that features a footer, that is labeled ''Price Transparency'' or ''Transparency in Coverage'' and links directly to the publicly available web page that hosts the link to the machine-readable files.

(iv) The group health plan or health insurance issuer may satisfy the requirements of paragraph (b)(3)(iii) of this section by entering into a written agreement under which another party (such as a third-party administrator) posts the machine-readable files described in paragraphs (b)(1) and (2) of this section on its public website on behalf of the plan or issuer, including if the plan or issuer does not have a website. However, if the files are posted on a service provider's website, and the plan or issuer maintains a public website but chooses not to host the files separately on its own public website, it must provide a link on its own public website to the location where the files are made publicly available.

(4) *Timing.* A group health plan or health insurance issuer must update the machine-readable files in accordance with the following timeframes and clearly indicate the date that the files were most recently updated:

(i) The in-network rate and out-of-network allowed amount machine-readable files required by paragraphs (b)(1)(i) and (ii) of this section must be updated and posted quarterly on the first day of each calendar-year quarter beginning with the first calendar-year quarter following the applicability date under paragraph (c)(1) of this section;

(ii) The prescription drug machine-readable file required by paragraph (b)(1)(iii) of this section must be updated monthly;

(iii) The utilization machine-readable file required under paragraph (b)(2)(i) of this section must be posted beginning on July 1, 2028, and updated and posted on an annual basis thereafter;

(iv) The taxonomy machine-readable file required under paragraph (b)(2)(ii) of this section must be updated and posted quarterly on the first day of each calendar-year quarter beginning with the first calendar-year quarter following the applicability date under paragraph (c)(1) of this section. If there are no changes to the taxonomy that affect the information required in the machine-readable file required under paragraph (b)(1)(i) of this section in a subsequent quarter, the taxonomy file is still required to be posted but not updated for that quarter; and

(v) The text file required by paragraph (b)(2)(iii) of this section must be posted on the first day of the first calendar-year quarter following the applicability date under paragraph (c)(1) of this section and subsequently updated and posted as soon as practicable but no later than 7 calendar days following a change in any of the information required under paragraph (b)(2)(iii) of this section.

(5) *Special rules to prevent unnecessary duplication*—(i) Special rule for insured group health plans. To the extent coverage under a group health plan consists of group health insurance coverage, the plan satisfies the requirements of this paragraph (b) if the plan requires the health insurance issuer offering the coverage to provide the information under a written agreement. Accordingly, if an issuer and a plan sponsor enter into a written agreement under which the issuer agrees to provide, on behalf of the plan, the information required under this paragraph (b) in compliance with this section, and the issuer fails to do so, then the issuer, but not the plan, violates the transparency disclosure requirements of this paragraph (b).

(ii) *Other contractual arrangements.* A group health plan or health insurance issuer may satisfy the requirements under this paragraph (b) by entering into a written agreement under which another party (such as a third-party administrator or health care claims clearinghouse) will provide, on behalf of the plan or issuer, the information required by this paragraph (b) in compliance with this section. Notwithstanding the preceding sentence, if a plan or issuer chooses to enter into such an agreement and the party with which it contracts fails to provide the information in compliance with this paragraph (b), the plan or issuer violates the transparency disclosure requirements of this paragraph (b).

(iii) *Special rule for self-insured group health plans with respect to the disclosure of in-network rate machine-readable files.* A self-insured group health plan that enters into an agreement with another party described in paragraph (b)(5)(ii) of this section may permit such other party to make available in a single in-network rate machine-readable file as required under paragraph (b)(1)(i) of this section the information required under paragraph (b)(1)(i) of this section for each provider network used by more than one plan, insurance policy, or contract (including those offered by different plan sponsors with which that other party has an agreement) and across different health insurance markets if—

(A) Each in-network rate machine-readable file made available for a provider network includes the required information under paragraph (b)(1)(i) of this section for all covered items and services under each plan, insurance policy, or contract that uses the same provider network for which the in-network rate machine-readable file is made available; and

(B) Each of the self-insured group health plan's utilization and taxonomy machine-readable files include the information required under paragraphs (b)(2)(i) and (ii) of this section, respectively, for the same plans, insurance policies, or contracts (including those offered by different plan sponsors and across different health insurance markets, if applicable) represented in the corresponding in-network rate machine-readable files specified in paragraph (b)(1)(i) of this section.

(iv) *Special rule for self-insured group health plans with respect to the disclosure of out-of-network allowed amount machine-readable files.* A self-insured group health plan that enters into an agreement with another party described in paragraph (b)(5)(ii) of this section may permit such other party to make available the information required under paragraph (b)(1)(ii) of this section in a single out-of-network allowed amount file for more than one self-insured group health plan (including those offered by different plan sponsors with which the other party has an agreement), provided that the out-of-network allowed amount and billed charge data described in paragraph (b)(1)(ii)(C) of this section in relation to a particular item or service is omitted if it would require disclosure of out-of-network allowed amounts in connection with fewer than 11 different claims for payment of such item or service across all of the plans (including those offered by different plan sponsors) included in the out-of-network machine-readable file.

(c) * * *

(1)(i) Until the applicability date specified in paragraph (c)(1)(ii) of this section, plans and issuers are required to continue to comply with § 54.9815–2715A3, revised as of April 1, 2025.

(ii) The provisions of this section apply beginning March 6, 2027, except that paragraphs (b)(2), (b)(3)(iii), and (b)(4)(iii) through (v) of this section apply beginning September 6, 2027.

* * * * *

DEPARTMENT OF LABOR

Employee Benefits Security Administration

For the reasons stated in the preamble, the Department of Labor amends 29 CFR part 2590 as set forth below:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 5. The authority citation for part 2590 continues to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a–n, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L. 104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029; Division M, Pub. L. 113–235, 128 Stat. 2130; Pub. L. 116–260, 134 Stat. 1182; Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan 9, 2012).

■ 6. Section 2590.715–2715A1 is amended by—

■ a. Redesignating paragraphs (a)(2)(x) through (xxi) as paragraphs (a)(2)(xi) through (xxii), respectively; and

■ b. Adding new paragraph (a)(2)(x).

The addition reads as follows:

§ 2590.715–2715A1 Transparency in coverage—definitions.

(a) * * *

(2) * * *

(x) *Health insurance market* means, irrespective of the State, one of the following:

(A) The individual market, as defined in 45 CFR 144.103 (other than short-term, limited-duration insurance or individual health insurance coverage that consists solely of excepted benefits, as defined in 45 CFR 148.220).

(B) The large group market, as defined in 45 CFR 144.103 (other than coverage that consists solely of excepted benefits, as defined in § 2590.732(c)).

(C) The small group market, as defined in 45 CFR 144.103 (other than coverage that consists solely of excepted benefits, as defined in § 2590.732(c)).

(D) For purposes of self-insured group health plans (other than account-based plans, as defined in § 2590.715–2711(d)(6)(i), and plans that consist solely of excepted benefits, as defined in § 2590.732(c)), all self-insured group health plans maintained by the plan sponsor.

* * * * *

■ 7. Section 2590.715–2715A2 is amended by—

■ a. Revising paragraphs (b)(1)(i)(A) and (B), (b)(1)(vii)(A), and (b)(2)(ii) introductory text;

■ b. Redesignating paragraph (b)(2)(ii)(D) as paragraph (b)(2)(iv);

■ c. Adding paragraph (b)(2)(iii);

■ d. Revising newly redesignated paragraph (b)(2)(iv);

■ e. Revising paragraphs (b)(3)(i) and (ii) and (c)(1); and

■ f. Adding paragraph (c)(7).

The revisions and additions read as follows:

§ 2590.715–2715A2 Transparency in coverage—required disclosures to participants and beneficiaries.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(A) If the request for cost-sharing information relates to items and services that are provided within a bundled payment arrangement, and the bundled payment arrangement includes items or services that have a separate cost-sharing liability, the group health plan or health insurance issuer must provide estimates of the cost-sharing liability for the requested covered item or service, as well as an estimate of the cost-sharing liability for each of the items and services in the bundled payment arrangement that have separate cost-sharing liabilities. While plans and issuers are not required to provide estimates of cost-sharing liability for a bundled payment arrangement where the cost-sharing is imposed separately for each item and service included in the bundled payment arrangement, nothing prohibits plans or issuers from providing estimates for multiple items and services in situations where such estimates could be relevant to participants or beneficiaries, as long as the plan or issuer also discloses information about the relevant items or services individually, as required in paragraph (b)(1)(v) of this section.

(B) For requested items and services that are recommended preventive services under section 2713 of the Public Health Service Act (PHS Act), if

the group health plan or health insurance issuer cannot determine whether the request is for preventive or non-preventive purposes, the plan or issuer must display the cost-sharing liability that applies for non-preventive purposes. As an alternative, a plan or issuer may allow a participant or beneficiary to request cost-sharing information for the specific preventive or non-preventive item or service by including terms such as ''preventive,'' ''non-preventive,'' or ''diagnostic'' as a means to request the most accurate cost-sharing information.

* * * * *

(vii) * * *

(A) A statement that the cost-sharing information provided pursuant to this paragraph (b)(1) does not account for potential additional amounts in situations where applicable State or Federal law allow out-of-network providers to bill participants or beneficiaries for the difference between a provider's billed charges and the sum of the amount collected from the group health plan or health insurance issuer and from the participants or beneficiaries in the form of a copayment, coinsurance, or deductible amount (the difference referred to as balance billing). This statement is not required if the State in which the item or service was furnished prohibits all out-of-network providers from balance billing for all items and services payable by the plan or issuer;

* * * * *

(2) * * *

(ii) *Paper method.* Information provided under this paragraph (b) must be made available in plain language, without a fee, in paper form at the request of the participant or beneficiary. In responding to such a request, the group health plan or health insurance issuer may limit the number of providers with respect to which cost-sharing information for covered items and services is provided to no fewer than 20 providers per request. The plan or issuer is required to:

* * * * *

(iii) *Phone method.* Information provided under this paragraph (b) must be made available at the request of the participant or beneficiary via a telephone number indicated on any physical or electronic plan or insurance identification card issued to a participant or beneficiary through which a consumer may seek customer assistance pursuant to ERISA section 716(e). Such information must be accurate at the time of the request and must be provided at the time of the request. In responding to such a request, the group health plan or health insurance issuer may limit the number of providers with respect to which cost-sharing information for covered items and services is provided to no fewer than 20 providers per day. The plan or issuer is required to:

(A) Disclose the applicable provider-per-day limit to the participant or beneficiary; and

(B) Provide the cost-sharing information, in accordance with the requirements in paragraphs (b)(2)(i)(A) through (C) of this section.

(iv) *Alternative method.* In circumstances where participants and beneficiaries request disclosure other than by the internet-based self-service tool, paper, or phone (for example, by email) group health plans and health insurance issuers may provide the disclosure through alternative means and satisfy the requirements of this section, provided the participant or beneficiary agrees that such disclosure through such means is sufficient to satisfy the request and the plan or issuer meets the timing requirements established under paragraph (b)(2)(ii)(C) of this section for paper method disclosure.

(3) * * *

(i) *Special rule for insured group health plans.* To the extent coverage under a group health plan consists of group health insurance coverage, the plan satisfies the requirements of this paragraph (b) if the plan requires the health insurance issuer offering the coverage to provide the information required by this paragraph (b) in compliance with this section under a written agreement. Accordingly, if an issuer and a plan sponsor enter into a written agreement under which the issuer agrees to provide the information required under this paragraph (b) in compliance with this section, and the issuer fails to do so, then the issuer, but not the plan, violates the transparency disclosure requirements of this paragraph (b).

(ii) *Other contractual arrangements.* A group health plan or health insurance issuer may satisfy the requirements under this paragraph (b) by entering into a written agreement under which another party (such as a pharmacy benefit manager or other third-party) provides the information required by this paragraph (b) in compliance with this section. Notwithstanding the preceding sentence, if a plan or issuer chooses to enter into such an agreement and the party with which it contracts fails to provide the information in compliance with this paragraph (b), the plan or issuer violates the transparency disclosure requirements of this paragraph (b).

(c) * * *

(1) This section applies for plan years beginning on or after January 1, 2027. Until the applicability date in the preceding sentence, plans and issuers are required to continue to comply with § 2590.715–2715A2, revised as of July 1, 2025.

* * * * *

(7) A group health plan or health insurance issuer that provides to the participant or beneficiary the information required under paragraph (b)(1) of this section, in accordance with the method and format requirements set forth in paragraph (b)(2) of this section, satisfies the requirements set forth in Code section 9819, ERISA section 719, and PHS Act section 2799A–4.

* * * * *

■ 8. Section 2590.715–2715A3 is amended by—

■ a. Revising and republishing paragraph (b); and

■ b. Revising paragraph (c)(1).

The revisions and republications read as follows:

§ 2590.715–2715A3 Transparency in coverage—requirements for public disclosure.

* * * * *

(b) *Requirements for public disclosure of in-network provider rates for covered items and services, out-of-network allowed amounts and billed charges for covered items and services, negotiated rates and historical net prices for covered prescription drugs, and contextual information.* A group health plan or health insurance issuer must make available on an internet website the information required under paragraphs (b)(1) and (2) of this section in machine-readable files, in accordance with the method and format requirements described in paragraph (b)(3) of this section, and that are updated as required under paragraph (b)(4) of this section.

(1) *Required information.* Machine-readable files required under this paragraph (b) that are made available to the public by a group health plan or health insurance issuer must include:

(i) An in-network rate machine-readable file for each provider network maintained or contracted by a group health plan or health insurance issuer that includes the required information under this paragraph (b)(1)(i) for all covered items and services under each coverage option offered by the plan or issuer that uses such provider network, except for prescription drugs that are subject to a fee-for-service

reimbursement arrangement, which must be reported in the prescription drug machine-readable file pursuant to paragraph (b)(1)(iii) of this section. Each in-network rate machine-readable file must include:

(A) The common provider network name;

(B) The provider network identifier;

(C) For each coverage option offered by a group health plan or health insurance issuer that uses such provider network, the name; the Health Insurance Oversight System (HIOS) identifier, or, if no HIOS identifier is available, the Employer Identification Number (EIN); and the product type (for example, including but not limited to health maintenance organization or preferred provider organization);

(D) A billing code, which in the case of prescription drugs must be a national drug code (NDC), and a plain language description for each billing code for each covered item or service included in the machine-readable file;

(E) For each covered item or service included in the machine-readable file, all applicable rates, which may include one or more of the following: Negotiated rates, underlying fee schedule rates, or derived amounts. If a group health plan or health insurance issuer does not use negotiated rates for provider reimbursement, then the plan or issuer should disclose derived amounts to the extent these amounts are already calculated in the normal course of business. If the plan or issuer uses underlying fee schedule rates for calculating cost sharing, then the plan or issuer should include the underlying fee schedule rates in addition to the negotiated rate or derived amount. Applicable rates, including for both individual items and services and items and services in a bundled payment arrangement, must be:

(*1*) Reflected as dollar amounts, with respect to each covered item or service that is furnished by an in-network provider. If the negotiated rate is subject to change based upon participant or beneficiary-specific characteristics, these dollar amounts should be reflected as the base negotiated rate applicable to the item or service prior to adjustments for participant or beneficiary-specific characteristics. For contractual arrangements under which a group health plan or health insurance issuer agrees to pay an in-network provider a percentage of billed charges and is not able to assign a dollar amount to an item or service prior to a bill being generated, plans and issuers must report a percentage number, in lieu of a dollar amount, in a form and manner as specified in guidance issued by the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services.

(*2*) Associated with the National Provider Identifier (NPI), Tax Identification Number (TIN), and Place of Service Code for each in-network provider, except those specified in paragraph (b)(1)(i)(F) of this section;

(*3*) Associated with the last date of the contract term or expiration date for each provider-specific applicable rate that applies to each covered item or service; and

(*4*) Indicated with a notation where a reimbursement arrangement other than a standard fee-for-service model (such as capitation or a bundled payment arrangement) applies.

(F) A group health plan or health insurance issuer must exclude from each file under paragraph (b)(1)(i) of this section a provider and their negotiated rate (provider-rate combination) for an item or service if the plan or issuer determines it is unlikely that the provider would be reimbursed for the item or service given that provider's specialty according to the plan's or issuer's internal provider taxonomy or other internal rules used during the claims adjudication process.

(ii) For each health insurance market, as defined in § 2590.715–2715A1(a)(2)(x), in which a group health plan or health insurance issuer offers a plan or coverage, an out-of-network allowed amount machine-readable file, including:

(A) For each coverage option offered by a group health plan or health insurance issuer in such health insurance market, the name and the HIOS identifier, or, if no HIOS identifier is available, the EIN; and the product type (for example, including but not limited to health maintenance organization or preferred provider organization);

(B) A billing code, which in the case of prescription drugs must be an NDC, and a plain language description for each billing code for each covered item or service under any coverage option offered by a group health plan or health insurance issuer in such health insurance market; and

(C) Aggregated unique out-of-network allowed amounts and billed charges with respect to each covered item or service under any coverage option offered by a group health plan or health insurance issuer in such health insurance market furnished by out-of-network providers during the 6-month time period that begins 9 months prior to the publication date of the machine-readable file (except that a plan or issuer must omit such data in relation to a particular item or service when compliance with this paragraph (b)(1)(ii)(C) would require the plan or issuer to report payment of out-of-network allowed amounts in connection with fewer than 11 different claims for payment of that item or service in a single health insurance market). Consistent with paragraph (c)(3) of this section, nothing in this paragraph (b)(1)(ii)(C) requires the disclosure of information that would violate any applicable health information privacy law. Each unique out-of-network allowed amount must be:

(*1*) Reflected as a dollar amount, with respect to each covered item or service that is furnished by an out-of-network provider; and

(*2*) Associated with the NPI, TIN, and Place of Service Code for each out-of-network provider.

(iii) A prescription drug machine-readable file, including:

(A) For each coverage option offered by a group health plan or health insurance issuer, the name and the 14-digit HIOS identifier, or, if the 14-digit HIOS identifier is not available, the 5-digit HIOS identifier, or, if no HIOS identifier is available, the EIN;

(B) The NDC, and the proprietary and nonproprietary name assigned to the NDC by the Food and Drug Administration (FDA), for each covered item or service under each coverage option offered by a plan or issuer that is a prescription drug;

(C) The negotiated rates which must be:

(*1*) Reflected as a dollar amount, with respect to each NDC that is furnished by an in-network provider, including an in-network pharmacy or other prescription drug dispenser;

(*2*) Associated with the NPI, TIN, and Place of Service Code for each in-network provider, including each in-network pharmacy or other prescription drug dispenser; and

(*3*) Associated with the last date of the contract term for each provider-specific negotiated rate that applies to each NDC; and

(D) Historical net prices that are:

(*1*) Reflected as a dollar amount, with respect to each NDC that is furnished by an in-network provider, including an in-network pharmacy or other prescription drug dispenser;

(*2*) Associated with the NPI, TIN, and Place of Service Code for each in-network provider, including each in-network pharmacy or other prescription drug dispenser; and

(*3*) Associated with the 90-day time period that begins 180 days prior to the publication date of the machine-

readable file for each provider-specific historical net price that applies to each NDC (except that a group health plan or health insurance issuer must omit such data in relation to a particular NDC and provider when compliance with this paragraph (b)(1)(iii)(D) would require the plan or issuer to report payment of historical net prices calculated using fewer than 20 different claims for payment). Consistent with paragraph (c)(3) of this section, nothing in this paragraph (b)(1)(iii)(D) requires the disclosure of information that would violate any applicable health information privacy law.

(iv) In each machine-readable file required under paragraphs (b)(1)(i) through (iii), and (b)(2)(i) and (ii) of this section, a plan or issuer:

(A) Must attest the following: To the best of its knowledge and belief, this plan or issuer has included all applicable information in accordance with the requirements of 29 CFR 2590.715–2715A3, and the information encoded is true, accurate, and complete as of the date in the file.

(B) Must encode the name of the plan's or issuer's chief executive officer, president, or senior official designated to oversee the encoding of true, accurate, and complete data as directed in paragraph (b)(1)(iv)(A) of this section.

(C) May satisfy the requirements of paragraphs (b)(1)(iv)(A) and (B) of this section by entering into a written agreement under which another party (such as a third-party administrator) makes the attestation required in paragraph (b)(1)(iv)(A) of this section on behalf of the plan or issuer and encodes the name of the other party's chief executive officer, president, or senior official designated to oversee the encoding of true, accurate, and complete data as directed in paragraph (b)(1)(iv)(A) of this section, only if the plan or issuer has entered into an agreement with the other party to provide the information in this paragraph (b) pursuant to the special rules in paragraph (b)(5) of this section.

(2) *Required contextual files.* A group health plan or health insurance issuer must make available in a machine-readable format:

(i) A utilization file, for each in-network rate machine-readable file specified in paragraph (b)(1)(i) of this section, that includes, for the most recent plan year that ends at least 6 months prior to the date the utilization file is made available as specified in paragraph (b)(4)(iii) of this section:

(A) Items and services covered under the plans or policies included in the files prepared as specified in paragraph (b)(1)(i) of this section for which a claim has been submitted and reimbursed (or would be reimbursed but for cost-sharing liability), in whole or in part; and

(B) Each in-network provider identified by the NPI, TIN, and Place of Service Code who was reimbursed (or would be reimbursed but for cost-sharing liability), in whole or in part, for a claim for each covered item or service included as specified in paragraph (b)(2)(i)(A) of this section.

(ii) A taxonomy file, for each in-network rate machine-readable file prepared as specified in paragraph (b)(1)(i) of this section, which includes the group health plan's or health insurance issuer's internal provider taxonomy, or other internal rules, used to determine if the plan or issuer should deny reimbursement for an item or service based on the provider's specialty, as described in paragraph (b)(1)(i)(F) of this section. The information provided in the taxonomy file must be expressed as pairings of items and services (represented by billing codes) with provider specialties (represented by specialty codes which are derived from the Health Care Provider Taxonomy code set established by the National Uniform Claim Committee (NUCC)). Plans and issuers must use their internal provider taxonomy or other internal rules to determine whether to exclude certain provider-rate combinations from the in-network rate machine-readable file as specified in paragraph (b)(1)(i)(F) of this section.

(iii) A plain text file in a .txt format in the root folder (that is, the top-level directory on an electronic file system) of a group health plan's or health insurance issuer's website that includes:

(A) The source page URL for the internet website that hosts the machine-readable files required under paragraphs (b)(1) and (2) of this section;

(B) A direct link to the URL for the machine-readable files required under paragraphs (b)(1) and (2) of this section; and

(C) Point-of-contact information, including a monitored email address for an individual or group dedicated to receiving and responding to inquiries and issues related to the machine-readable files required under paragraphs (b)(1) and (2) of this section. This contact information (whether an individual or group) must be prominently displayed on the same website where the machine-readable files are made available and kept updated per the requirements in paragraph (b)(4)(v) of this section.

(3) *Required method and format for disclosing information to the public.* (i) Unless otherwise required by this section, the machine-readable files described in paragraphs (b)(1) and (2) of this section must be available in a single, non-proprietary, open-standards format, in a form and manner specified in guidance issued by the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services.

(ii) The machine-readable files described in paragraphs (b)(1) and (2) of this section must be publicly available and accessible to any person, automated script, or web crawler free of charge and without conditions, such as establishment of a user account, password, submission of personally identifiable information or other credentials, or blocking server configurations or firewalls to access the file.

(iii) The source page URL for the internet website that hosts the machine-readable files required under paragraphs (b)(1) and (2) of this section must be included as a link in the footer on the home page of the group health plan's or health insurance issuer's website, as well as any page of the website that features a footer, that is labeled ''Price Transparency'' or ''Transparency in Coverage'' and links directly to the publicly available web page that hosts the link to the machine-readable files.

(iv) The group health plan or health insurance issuer may satisfy the requirements of paragraph (b)(3)(iii) of this section by entering into a written agreement under which another party (such as a third-party administrator) posts the machine-readable files described in paragraphs (b)(1) and (2) of this section on its public website on behalf of the plan or issuer, including if the plan or issuer does not have a website. However, if the files are posted on a service provider's website, and the plan or issuer maintains a public website but chooses not to host the files separately on its own public website, it must provide a link on its own public website to the location where the files are made publicly available.

(4) *Timing.* A group health plan or health insurance issuer must update the machine-readable files in accordance with the following timeframes and clearly indicate the date that the files were most recently updated:

(i) The in-network rate and out-of-network allowed amount machine-readable files required by paragraphs (b)(1)(i) and (ii) of this section must be updated and posted quarterly on the first day of each calendar-year quarter beginning with the first calendar-year quarter following the applicability date under paragraph (c)(1) of this section;

(ii) The prescription drug machine-readable file required by paragraph (b)(1)(iii) of this section must be updated monthly;

(iii) The utilization machine-readable file required under paragraph (b)(2)(i) of this section must be posted beginning on July 1, 2028, and updated and posted on an annual basis thereafter;

(iv) The taxonomy machine-readable file required under paragraph (b)(2)(ii) of this section must be updated and posted quarterly on the first day of each calendar-year quarter beginning with the first calendar-year quarter following the applicability date under paragraph (c)(1) of this section. If there are no changes to the taxonomy that affect the information required in the machine-readable file required under paragraph (b)(1)(i) of this section in a subsequent quarter, the taxonomy file is still required to be posted but not updated for that quarter; and

(v) The text file required by paragraph (b)(2)(iii) of this section must be posted on the first day of the first calendar-year quarter following the applicability date under paragraph (c)(1) of this section and subsequently updated and posted as soon as practicable but no later than 7 calendar days following a change in any of the information required under paragraph (b)(2)(iii) of this section.

(5) *Special rules to prevent unnecessary duplication*—(i) Special rule for insured group health plans. To the extent coverage under a group health plan consists of group health insurance coverage, the plan satisfies the requirements of this paragraph (b) if the plan requires the health insurance issuer offering the coverage to provide the information under a written agreement. Accordingly, if an issuer and a plan sponsor enter into a written agreement under which the issuer agrees to provide, on behalf of the plan, the information required under this paragraph (b) in compliance with this section, and the issuer fails to do so, then the issuer, but not the plan, violates the transparency disclosure requirements of this paragraph (b).

(ii) *Other contractual arrangements.* A group health plan or health insurance issuer may satisfy the requirements under this paragraph (b) by entering into a written agreement under which another party (such as a third-party administrator or health care claims clearinghouse) will provide, on behalf of the plan or issuer, the information required by this paragraph (b) in compliance with this section. Notwithstanding the preceding sentence, if a plan or issuer chooses to enter into such an agreement and the party with which it contracts fails to provide the information in compliance with this paragraph (b), the plan or issuer violates the transparency disclosure requirements of this paragraph (b).

(iii) *Special rule for self-insured group health plans with respect to the disclosure of in-network rate machine-readable files.* A self-insured group health plan that enters into an agreement with another party described in paragraph (b)(5)(ii) of this section may permit such other party to make available in a single in-network rate machine-readable file as required under paragraph (b)(1)(i) of this section the information required under paragraph (b)(1)(i) of this section for each provider network used by more than one plan, insurance policy, or contract (including those offered by different plan sponsors with which that other party has an agreement) and across different health insurance markets if—

(A) Each in-network rate machine-readable file made available for a provider network includes the required information under paragraph (b)(1)(i) of this section for all covered items and services under each plan, insurance policy, or contract that uses the same provider network for which the in-network rate machine-readable file is made available; and

(B) Each of the self-insured group health plan's utilization and taxonomy machine-readable files include the information required under paragraphs (b)(2)(i) and (ii) of this section, respectively, for the same plans, insurance policies, or contracts (including those offered by different plan sponsors and across different health insurance markets, if applicable) represented in the corresponding in-network rate machine-readable files specified in paragraph (b)(1)(i) of this section.

(iv) *Special rule for self-insured group health plans with respect to the disclosure of out-of-network allowed amount machine-readable files.* A self-insured group health plan that enters into an agreement with another party described in paragraph (b)(5)(ii) of this section may permit such other party to make available the information required under paragraph (b)(1)(ii) of this section in a single out-of-network allowed amount file for more than one self-insured group health plan (including those offered by different plan sponsors with which the other party has an agreement), provided that the out-of-network allowed amount and billed charge data described in paragraph (b)(1)(ii)(C) of this section in relation to a particular item or service is omitted if it would require disclosure of out-of-network allowed amounts in connection with fewer than 11 different claims for payment of such item or service across all of the plans (including those offered by different plan sponsors) included in the out-of-network machine-readable file.

(c) * * *

(1)(i) Until the applicability date specified in paragraph (c)(1)(ii) of this section, plans and issuers are required to continue to comply with 29 CFR 2590.715–2715A3 revised as of July 1, 2025.

(ii) The provisions of this section apply beginning March 6, 2027, except that paragraphs (b)(2), (b)(3)(iii), and (b)(4)(iii) through (v) of this section apply beginning September 6, 2027.

* * * * *

DEPARTMENT OF HEALTH AND HUMAN SERVICES

For the reasons stated in the preamble, the Department of Health and Human Services amends 45 CFR part 147 as set forth below:

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

■ 9. The authority citation for part 147 is revised to read as follows:

Authority: 42 U.S.C. 300gg through 300gg–63, 300gg–91, 300gg–92, and 300gg–114, as amended.

■ 10. Section 147.210 is amended by—

■ a. Redesignating paragraphs (a)(2)(xi) through (xxii) as paragraphs (a)(2)(xii) through (xxiii), respectively; and

■ b. Adding paragraph (a)(2)(xi).

The addition reads as follows:

§ 147.210 Transparency in coverage—definitions.

(a) * * *

(2) * * *

(xi) *Health insurance market* means, irrespective of the State, one of the following:

(A) The individual market, as defined in § 144.103 (other than short-term, limited-duration insurance or individual health insurance coverage that consists solely of excepted benefits, as defined in § 148.220).

(B) The large group market, as defined in § 144.103 (other than coverage that consists solely of excepted benefits, as defined in § 146.145(b)).

(C) The small group market, as defined in § 144.103 (other than coverage that consists solely of excepted benefits, as defined in § 146.145(b)).

(D) For purposes of self-insured group health plans (other than account-based plans, as defined in § 147.126(d)(6)(i),

and plans that consist solely of excepted benefits, as defined in § 146.145(b)), all self-insured group health plans maintained by the plan sponsor.

* * * * *

■ 11. Section 147.211 is amended by—
■ a. Revising paragraphs (b)(1)(i)(A) and (B), (b)(1)(vii)(A), and (b)(2)(ii) introductory text;
■ b. Redesignating paragraph (b)(2)(ii)(D) as paragraph (b)(2)(iv);
■ c. Adding paragraph (b)(2)(iii);
■ d. Revising newly redesignated paragraph (b)(2)(iv);
■ e. Revising paragraphs (b)(3)(i) and (ii) and (c)(1); and
■ f. Adding paragraph (c)(7).

The revisions and additions read as follows:

§ 147.211 Transparency in coverage—required disclosures to participants, beneficiaries, and enrollees.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(A) If the request for cost-sharing information relates to items and services that are provided within a bundled payment arrangement, and the bundled payment arrangement includes items or services that have a separate cost-sharing liability, the group health plan or health insurance issuer must provide estimates of the cost-sharing liability for the requested covered item or service, as well as an estimate of the cost-sharing liability for each of the items and services in the bundled payment arrangement that have separate cost-sharing liabilities. While plans and issuers are not required to provide estimates of cost-sharing liability for a bundled payment arrangement where the cost-sharing is imposed separately for each item and service included in the bundled payment arrangement, nothing prohibits plans or issuers from providing estimates for multiple items and services in situations where such estimates could be relevant to participants, beneficiaries, or enrollees, as long as the plan or issuer also discloses information about the relevant items or services individually, as required in paragraph (b)(1)(v) of this section.

(B) For requested items and services that are recommended preventive services under section 2713 of the Public Health Service Act (PHS Act), if the group health plan or health insurance issuer cannot determine whether the request is for preventive or non-preventive purposes, the plan or issuer must display the cost-sharing liability that applies for non-preventive purposes. As an alternative, a plan or issuer may allow a participant, beneficiary, or enrollee to request cost-sharing information for the specific preventive or non-preventive item or service by including terms such as ''preventive,'' ''non-preventive,'' or ''diagnostic'' as a means to request the most accurate cost-sharing information.

* * * * *

(vii) * * *

(A) A statement that the cost-sharing information provided pursuant to this paragraph (b)(1) does not account for potential additional amounts in situations where applicable State or Federal law allow out-of-network providers to bill participants, beneficiaries, or enrollees for the difference between a provider's billed charges and the sum of the amount collected from the group health plan or health insurance issuer and from the participants, beneficiaries, or enrollees in the form of a copayment, coinsurance, or deductible amount (the difference referred to as balance billing). This statement is not required if the State in which the item or service was furnished prohibits all out-of-network providers from balance billing for all items and services payable by the plan or issuer;

* * * * *

(2) * * *

(ii) *Paper method.* Information provided under this paragraph (b) must be made available in plain language, without a fee, in paper form at the request of the participant, beneficiary, or enrollee. In responding to such a request, the group health plan or health insurance issuer may limit the number of providers with respect to which cost-sharing information for covered items and services is provided to no fewer than 20 providers per request. The plan or issuer is required to:

* * * * *

(iii) *Phone method.* Information provided under this paragraph (b) must be made available at the request of the participant, beneficiary, or enrollee via a telephone number indicated on any physical or electronic plan or insurance identification card issued to a participant, beneficiary, or enrollee through which a consumer may seek customer assistance pursuant to section 2799A–1(e)(3) of the PHS Act. Such information must be accurate at the time of the request and must be provided at the time of the request. In responding to such a request, the group health plan or health insurance issuer may limit the number of providers with respect to which cost-sharing information for covered items and services is provided to no fewer than 20 providers per day. The plan or issuer is required to:

(A) Disclose the applicable provider-per-day limit to the participant, beneficiary, or enrollee; and

(B) Provide the cost-sharing information, in accordance with the requirements in paragraphs (b)(2)(i)(A) through (C) of this section.

(iv) *Alternative method.* In circumstances where participants, beneficiaries, and enrollees request disclosure other than by the internet-based self-service tool, paper, or phone (for example, by email) group health plans and health insurance issuers may provide the disclosure through alternative means and satisfy the requirements of this section, provided the participant, beneficiary, or enrollee agrees that such disclosure through such means is sufficient to satisfy the request and the plan or issuer meets the timing requirements established under paragraph (b)(2)(ii)(C) of this section for paper method disclosure.

(3) * * *

(i) *Special rule for insured group health plans.* To the extent coverage under a group health plan consists of group health insurance coverage, the plan satisfies the requirements of this paragraph (b) if the plan requires the health insurance issuer offering the coverage to provide the information required by this paragraph (b) in compliance with this section under a written agreement. Accordingly, if an issuer and a plan sponsor enter into a written agreement under which the issuer agrees to provide the information required under this paragraph (b) in compliance with this section, and the issuer fails to do so, then the issuer, but not the plan, violates the transparency disclosure requirements of this paragraph (b).

(ii) *Other contractual arrangements.* A group health plan or health insurance issuer may satisfy the requirements under this paragraph (b) by entering into a written agreement under which another party (such as a pharmacy benefit manager or other third-party) provides the information required by this paragraph (b) in compliance with this section. Notwithstanding the preceding sentence, if a plan or issuer chooses to enter into such an agreement and the party with which it contracts fails to provide the information in compliance with this paragraph (b), the plan or issuer violates the transparency disclosure requirements of this paragraph (b).

(c) * * *

(1) This section applies for plan years (in the individual market, for policy years) beginning on or after January 1,

2027. Until the applicability date in the preceding sentence, plans and issuers are required to continue to comply with § 147.211, revised as of October 1, 2025.

* * * * *

(7) A group health plan or health insurance issuer that provides to the participant, beneficiary or enrollee the information required under paragraph (b)(1) of this section, in accordance with the method and format requirements set forth in paragraph (b)(2) of this section, satisfies the requirements set forth in Code section 9819, ERISA section 719, and PHS Act section 2799A–4.

* * * * *

■ 12. Section 147.212 is amended by—

■ a. Revising and republishing paragraph (b); and

■ b. Revising paragraph (c)(1).

The revisions and republications read as follows:

§ 147.212 Transparency in coverage—requirements for public disclosure.

* * * * *

(b) *Requirements for public disclosure of in-network provider rates for covered items and services, out-of-network allowed amounts and billed charges for covered items and services, negotiated rates and historical net prices for covered prescription drugs, and contextual information.* A group health plan or health insurance issuer must make available on an internet website the information required under paragraphs (b)(1) and (2) of this section in machine-readable files, in accordance with the method and format requirements described in paragraph (b)(3) of this section, and that are updated as required under paragraph (b)(4) of this section.

(1) *Required information.* Machine-readable files required under this paragraph (b) that are made available to the public by a group health plan or health insurance issuer must include:

(i) An in-network rate machine-readable file for each provider network maintained or contracted by a group health plan or health insurance issuer that includes the required information under this paragraph (b)(1)(i) for all covered items and services under each coverage option offered by the plan or issuer that uses such provider network, except for prescription drugs that are subject to a fee-for-service reimbursement arrangement, which must be reported in the prescription drug machine-readable file pursuant to paragraph (b)(1)(iii) of this section. Each in-network rate machine-readable file must include:

(A) The common provider network name;

(B) The provider network identifier;

(C) For each coverage option offered by a group health plan or health insurance issuer that uses such provider network, the name; the Health Insurance Oversight System (HIOS) identifier, or, if no HIOS identifier is available, the Employer Identification Number (EIN); and the product type (for example, including but not limited to health maintenance organization or preferred provider organization);

(D) A billing code, which in the case of prescription drugs must be a national drug code (NDC), and a plain language description for each billing code for each covered item or service included in the machine-readable file;

(E) For each covered item or service included in the machine-readable file, all applicable rates, which may include one or more of the following: Negotiated rates, underlying fee schedule rates, or derived amounts. If a group health plan or health insurance issuer does not use negotiated rates for provider reimbursement, then the plan or issuer should disclose derived amounts to the extent these amounts are already calculated in the normal course of business. If the plan or issuer uses underlying fee schedule rates for calculating cost sharing, then the plan or issuer should include the underlying fee schedule rates in addition to the negotiated rate or derived amount. Applicable rates, including for both individual items and services and items and services in a bundled payment arrangement, must be:

(*1*) Reflected as dollar amounts, with respect to each covered item or service that is furnished by an in-network provider. If the negotiated rate is subject to change based upon participant, beneficiary, or enrollee-specific characteristics, these dollar amounts should be reflected as the base negotiated rate applicable to the item or service prior to adjustments for participant, beneficiary, or enrollee-specific characteristics. For contractual arrangements under which a group health plan or health insurance issuer agrees to pay an in-network provider a percentage of billed charges and is not able to assign a dollar amount to an item or service prior to a bill being generated, plans and issuers must report a percentage number, in lieu of a dollar amount, in a form and manner as specified in guidance issued by the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services.

(*2*) Associated with the National Provider Identifier (NPI), Tax Identification Number (TIN), and Place of Service Code for each in-network provider, except those specified in paragraph (b)(1)(i)(F) of this section;

(*3*) Associated with the last date of the contract term or expiration date for each provider-specific applicable rate that applies to each covered item or service; and

(*4*) Indicated with a notation where a reimbursement arrangement other than a standard fee-for-service model (such as capitation or a bundled payment arrangement) applies.

(F) A group health plan or health insurance issuer must exclude from each file under paragraph (b)(1)(i) of this section a provider and their negotiated rate (provider-rate combination) for an item or service if the plan or issuer determines it is unlikely that the provider would be reimbursed for the item or service given that provider's specialty according to the plan's or issuer's internal provider taxonomy or other internal rules used during the claims adjudication process.

(ii) For each health insurance market, as defined in § 147.210(a)(2)(xi), in which a group health plan or health insurance issuer offers a plan or coverage, an out-of-network allowed amount machine-readable file, including:

(A) For each coverage option offered by a group health plan or health insurance issuer in such health insurance market, the name and the HIOS identifier, or, if no HIOS identifier is available, the EIN; and the product type (for example, including but not limited to health maintenance organization or preferred provider organization);

(B) A billing code, which in the case of prescription drugs must be an NDC, and a plain language description for each billing code for each covered item or service under any coverage option offered by a group health plan or health insurance issuer in such health insurance market; and

(C) Aggregated unique out-of-network allowed amounts and billed charges with respect to each covered item or service under any coverage option offered by a group health plan or health insurance issuer in such health insurance market furnished by out-of-network providers during the 6-month time period that begins 9 months prior to the publication date of the machine-readable file (except that a plan or issuer must omit such data in relation to a particular item or service when compliance with this paragraph (b)(1)(ii)(C) would require the plan or issuer to report payment of out-of-network allowed amounts in connection with fewer than 11 different claims for

payment of that item or service in a single health insurance market). Consistent with paragraph (c)(3) of this section, nothing in this paragraph (b)(1)(ii)(C) requires the disclosure of information that would violate any applicable health information privacy law. Each unique out-of-network allowed amount must be:

(*1*) Reflected as a dollar amount, with respect to each covered item or service that is furnished by an out-of-network provider; and

(*2*) Associated with the NPI, TIN, and Place of Service Code for each out-of-network provider.

(iii) A prescription drug machine-readable file, including:

(A) For each coverage option offered by a group health plan or health insurance issuer, the name and the 14-digit HIOS identifier, or, if the 14-digit HIOS identifier is not available, the 5-digit HIOS identifier, or, if no HIOS identifier is available, the EIN;

(B) The NDC, and the proprietary and nonproprietary name assigned to the NDC by the Food and Drug Administration (FDA), for each covered item or service that is a prescription drug under each coverage option offered by a plan or issuer;

(C) The negotiated rates which must be:

(*1*) Reflected as a dollar amount, with respect to each NDC that is furnished by an in-network provider, including an in-network pharmacy or other prescription drug dispenser;

(*2*) Associated with the NPI, TIN, and Place of Service Code for each in-network provider, including each in-network pharmacy or other prescription drug dispenser; and

(*3*) Associated with the last date of the contract term for each provider-specific negotiated rate that applies to each NDC; and

(D) Historical net prices that are:

(*1*) Reflected as a dollar amount, with respect to each NDC that is furnished by an in-network provider, including an in-network pharmacy or other prescription drug dispenser;

(*2*) Associated with the NPI, TIN, and Place of Service Code for each in-network provider, including each in-network pharmacy or other prescription drug dispenser; and

(*3*) Associated with the 90-day time period that begins 180 days prior to the publication date of the machine-readable file for each provider-specific historical net price that applies to each NDC (except that a group health plan or health insurance issuer must omit such data in relation to a particular NDC and provider when compliance with this paragraph (b)(1)(iii)(D) would require the plan or issuer to report payment of historical net prices calculated using fewer than 20 different claims for payment). Consistent with paragraph (b)(3) of this section, nothing in this paragraph (b)(1)(iii)(D) requires the disclosure of information that would violate any applicable health information privacy law.

(iv) In each machine-readable file required under paragraphs (b)(1)(i) through (iii), and (b)(2)(i) and (ii) of this section, a plan or issuer:

(A) Must attest the following: To the best of its knowledge and belief, this plan or issuer has included all applicable information in accordance with the requirements of 45 CFR 147.212, and the information encoded is true, accurate, and complete as of the date in the file.

(B) Must encode the name of the plan's or issuer's chief executive officer, president, or senior official designated to oversee the encoding of true, accurate, and complete data as directed in paragraph (b)(1)(iv)(A) of this section.

(C) May satisfy the requirements of paragraphs (b)(1)(iv)(A) and (B) of this section by entering into a written agreement under which another party (such as a third-party administrator) makes the attestation required in paragraph (b)(1)(iv)(A) of this section on behalf of the plan or issuer and encodes the name of the other party's chief executive officer, president, or senior official designated to oversee the encoding of true, accurate, and complete data as directed in paragraph (b)(1)(iv)(A) of this section, only if the plan or issuer has entered into an agreement with the other party to provide the information in this paragraph (b) pursuant to the special rules in paragraph (b)(5) of this section.

(2) *Required contextual files.* A group health plan or health insurance issuer must make available in a machine-readable format:

(i) A utilization file, for each in-network rate machine-readable file specified in paragraph (b)(1)(i) of this section, that includes, for the most recent plan year (in the individual market, policy year) that ends at least 6 months prior to the date the utilization file is made available as specified in paragraph (b)(4)(iii) of this section:

(A) Items and services covered under the plans or policies included in the files prepared as specified in paragraph (b)(1)(i) of this section for which a claim has been submitted and reimbursed (or would be reimbursed but for cost-sharing liability), in whole or in part; and

(B) Each in-network provider identified by the NPI, TIN, and Place of Service Code who was reimbursed (or would be reimbursed but for cost-sharing liability), in whole or in part, for a claim for each covered item or service included as specified in paragraph (b)(2)(i)(A) of this section.

(ii) A taxonomy file, for each in-network rate machine-readable file prepared as specified in paragraph (b)(1)(i) of this section, which includes the group health plan's or health insurance issuer's internal provider taxonomy, or other internal rules, used to determine if the plan or issuer should deny reimbursement for an item or service based on the provider's specialty, as described in paragraph (b)(1)(i)(F) of this section. The information provided in the taxonomy file must be expressed as pairings of items and services (represented by billing codes) with provider specialties (represented by specialty codes which are derived from the Health Care Provider Taxonomy code set established by the National Uniform Claim Committee (NUCC)). Plans and issuers must use their internal provider taxonomy or other internal rules to determine whether to exclude certain provider-rate combinations from the in-network rate machine-readable file as specified in paragraph (b)(1)(i)(F) of this section.

(iii) A plain text file in a .txt format in the root folder (that is, the top-level directory on an electronic file system) of a group health plan's or health insurance issuer's website that includes:

(A) The source page URL for the internet website that hosts the machine-readable files required under paragraphs (b)(1) and (2) of this section;

(B) A direct link to the URL for the machine-readable files required under paragraphs (b)(1) and (2) of this section; and

(C) Point-of-contact information, including a monitored email address for an individual or group dedicated to receiving and responding to inquiries and issues related to the machine-readable files required under paragraphs (b)(1) and (2) of this section. This contact information (whether an individual or group) must be prominently displayed on the same website where the machine-readable files are made available and kept updated per the requirements in paragraph (b)(4)(v) of this section.

(3) *Required method and format for disclosing information to the public.* (i) Unless otherwise required by this section, the machine-readable files described in paragraphs (b)(1) and (2) of this section must be available in a single, non-proprietary, open-standards format, in a form and manner specified

in guidance issued by the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services.

(ii) The machine-readable files described in paragraphs (b)(1) and (2) of this section must be publicly available and accessible to any person, automated script, or web crawler free of charge and without conditions, such as establishment of a user account, password, submission of personally identifiable information or other credentials, or blocking server configurations or firewalls to access the file.

(iii) The source page URL for the internet website that hosts the machine-readable files required under paragraphs (b)(1) and (2) of this section must be included as a link in the footer on the home page of the group health plan's or health insurance issuer's website, as well as any page of the website that features a footer, that is labeled ''Price Transparency'' or ''Transparency in Coverage'' and links directly to the publicly available web page that hosts the link to the machine-readable files.

(iv) The group health plan or health insurance issuer may satisfy the requirements of paragraph (b)(3)(iii) of this section by entering into a written agreement under which another party (such as a third-party administrator) posts the machine-readable files described in paragraphs (b)(1) and (2) of this section on its public website on behalf of the plan or issuer, including if the plan or issuer does not have a website. However, if the files are posted on a service provider's website, and the plan or issuer maintains a public website but chooses not to host the files separately on its own public website, it must provide a link on its own public website to the location where the files are made publicly available.

(4) *Timing.* A group health plan or health insurance issuer must update the machine-readable files in accordance with the following timeframes and clearly indicate the date that the files were most recently updated:

(i) The in-network rate and out-of-network allowed amount machine-readable files required by paragraphs (b)(1)(i) and (ii) of this section must be updated and posted quarterly on the first day of each calendar-year quarter beginning with the first calendar-year quarter following the applicability date under paragraph (c)(1) of this section;

(ii) The prescription drug machine-readable file required by paragraph (b)(1)(iii) of this section must be updated monthly;

(iii) The utilization machine-readable file required under paragraph (b)(2)(i) of this section must be posted beginning on July 1, 2028, and updated and posted on an annual basis thereafter;

(iv) The taxonomy machine-readable file required under paragraph (b)(2)(ii) of this section must be updated and posted quarterly on the first day of each calendar-year quarter beginning with the first calendar-year quarter following the applicability date under paragraph (c)(1) of this section. If there are no changes to the taxonomy that affect the information required in the machine-readable file required under paragraph (b)(1)(i) of this section in a subsequent quarter, the taxonomy file is still required to be posted but not updated for that quarter; and

(v) The text file required by paragraph (b)(2)(iii) of this section must be posted on the first day of the first calendar-year quarter following the applicability date under paragraph (c)(1) of this section and subsequently updated and posted as soon as practicable but no later than 7 calendar days following a change in any of the information required under paragraph (b)(2)(iii) of this section.

(5) *Special rules to prevent unnecessary duplication*—(i) Special rule for insured group health plans. To the extent coverage under a group health plan consists of group health insurance coverage, the plan satisfies the requirements of this paragraph (b) if the plan requires the health insurance issuer offering the coverage to provide the information under a written agreement. Accordingly, if an issuer and a plan sponsor enter into a written agreement under which the issuer agrees to provide, on behalf of the plan, the information required under this paragraph (b) in compliance with this section, and the issuer fails to do so, then the issuer, but not the plan, violates the transparency disclosure requirements of this paragraph (b).

(ii) *Other contractual arrangements.* A group health plan or health insurance issuer may satisfy the requirements under this paragraph (b) by entering into a written agreement under which another party (such as a third-party administrator or health care claims clearinghouse) will provide, on behalf of the plan or issuer, the information required by this paragraph (b) in compliance with this section. Notwithstanding the preceding sentence, if a plan or issuer chooses to enter into such an agreement and the party with which it contracts fails to provide the information in compliance with this paragraph (b), the plan or issuer violates the transparency disclosure requirements of this paragraph (b).

(iii) *Special rule for self-insured group health plans with respect to the disclosure of in-network rate machine-readable files.* A self-insured group health plan that enters into an agreement with another party described in paragraph (b)(5)(ii) of this section may permit such other party to make available in a single in-network rate machine-readable file as required under paragraph (b)(1)(i) of this section the information required under paragraph (b)(1)(i) of this section for each provider network used by more than one plan, insurance policy, or contract (including those offered by different plan sponsors with which that other party has an agreement) and across different health insurance markets if—

(A) Each in-network rate machine-readable file made available for a provider network includes the required information under paragraph (b)(1)(i) of this section for all covered items and services under each plan, insurance policy, or contract that uses the same provider network for which the in-network rate machine-readable file is made available; and

(B) Each of the self-insured group health plan's utilization and taxonomy machine-readable files include the information required under paragraphs (b)(2)(i) and (ii) of this section, respectively, for the same plans, insurance policies, or contracts (including those offered by different plan sponsors and across different health insurance markets, if applicable) represented in the corresponding in-network rate machine-readable files specified in paragraph (b)(1)(i) of this section.

(iv) *Special rule for self-insured group health plans with respect to the disclosure of out-of-network allowed amount machine-readable files.* A self-insured group health plan that enters into an agreement with another party described in paragraph (b)(5)(ii) of this section may permit such other party to make available the information required under paragraph (b)(1)(ii) of this section in a single out-of-network allowed amount file for more than one self-insured group health plan (including those offered by different plan sponsors with which the other party has an agreement), provided that the out-of-network allowed amount and billed charge data described in paragraph (b)(1)(ii)(C) of this section in relation to a particular item or service is omitted if it would require disclosure of out-of-network allowed amounts in connection with fewer than 11 different claims for payment of such item or service across all of the plans (including those offered by different plan sponsors) included in

the out-of-network machine-readable file.

(c) * * *

(1)(i) Until the applicability date specified in paragraph (c)(1)(ii) of this section, plans and issuers are required to continue to comply with § 147.212 revised as of October 1, 2025.

(ii) The provisions of this section apply beginning March 6, 2027, except that paragraphs (b)(2), (b)(3)(iii), and (b)(4)(iii) through (v) of this section apply beginning September 6, 2027.

* * * * *

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Part IV

Securities and Exchange Commission

17 CFR Parts 270, 274, 275, et al.
Adviser and Regulated Fund Custody Rules; Crypto Custody Rules; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270, 274, 275, and 279

[Release Nos. IA–7023; IC–36353; File No. S7–2026–35]

RIN 3235–AN46

Adviser and Regulated Fund Custody Rules; Crypto Custody Rules

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (the ''Commission'' or the ''SEC'') is proposing new custody rules under the Investment Company Act of 1940 (the ''Investment Company Act'') and amendments to related reporting and recordkeeping requirements to address how regulated investment companies may custody crypto securities and similar investments, and amendments to the custody rule and related reporting and recordkeeping rules under the Investment Advisers Act of 1940 (the ''Advisers Act'') to address how registered investment advisers may custody client crypto funds and securities. We are also proposing to amend the current custody rules to modernize their requirements, to better address current industry practices and feedback, and to implement certain conforming amendments. We are also proposing amendments to the recordkeeping rules under the Investment Company Act and Advisers Act related to these proposed modernization amendments to the custody rules. Additionally, we are proposing to redesignate the custody rule under the Advisers Act and to make corresponding amendments to Form ADV and Form ADV–E for registered investment advisers to reflect the Advisers Act custody rule redesignation. We are also proposing amendments to Form ADV for registered investment advisers and Form N–CEN for regulated investment companies and to improve the quality of public disclosures made on these forms. We are also proposing to add new questions to Form ADV and Form N–CEN related to tokenized private funds and regulated investment company shares, respectively.

DATES: This release was published in the **Federal Register** on October 6, 2026. Comments should be received on or before December 7, 2026.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/comments/s7-2026-35/adviser-regulated-fund-custody-rules-crypto-custody-rules*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–2026–35 on the subject line.

Paper Comments

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–2026–35. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (*https://www.sec.gov/rules-regulations/public-comments/s7-2026-35*). Do not include personally identifiable information in submissions; you should submit only information that you wish to make available publicly. The Commission may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

A summary of the proposal of not more than 100 words is posted on the Commission's website (*https://www.sec.gov/rules-regulations/2006/10/s7-2026-35*).

FOR FURTHER INFORMATION CONTACT: Janet Jun and Jill Pritzker, Senior Counsels; Samuel Thomas, Branch Chief; Robert Holowka, Assistant Director, Investment Adviser Regulation Office; Andrew Deglin, Alexis Hassell, and Gregory Scopino, Senior Counsels; Zeena Abdul-Rahman, Branch Chief; Amanda Hollander Wagner, Senior Special Counsel; and Brian M. Johnson, Assistant Director, Investment Company Regulation Office; Meghan Ryan, Assistant Chief Accountant, Chief Accountant's Office, Division of Investment Management, at (202) 551–6787, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for public comment: amendments to 17 CFR 270.17f–1 (''rule 17f–1''), 17 CFR 270.17f–2 (''rule 17f–2''), 17 CFR 270.17f–4 (''rule 17f–4''), 17 CFR 270.17f–5 (''rule 17f–5''), 17 CFR 270.17f–6 (''rule 17f–6''), 17 CFR 270.17f–7 (''rule 17f–7''), 17 CFR 270.31a–1 (''rule 31a–1''), 17 CFR 270.31a–2 (''rule 31a–2''), and 17 CFR 274.101 (''Form N–CEN'') under the Investment Company Act;[1] 17 CFR 270.17f–8 (''proposed rule 17f–8'') and 17 CFR 270.17f–9 (''proposed rule 17f–9'') under the Investment Company Act; to rescind 17 CFR 270.17f–3 (''rule 17f–3'') and 17 CFR 274.219 (''Form N–17f–1'') under the Investment Company Act; and amendments to 17 CFR 275.206(4)–2 under the Advisers Act[2] (''rule 206(4)–2'') and to redesignate it as 17 CFR 275.223–1 under the Advisers Act (''proposed rule 223–1''), 17 CFR 275.204–2 (''rule 204–2''), 17 CFR 275.279.1 (''Form ADV''), and 17 CFR 275.279.8 (''Form ADV–E''), under the Advisers Act.

[1] Unless otherwise noted, when we refer to the Investment Company Act, we are referring to 15 U.S.C. 80a, and when we refer to rules under the Investment Company Act, we are referring to title 17, part 270 of the Code of Federal Regulations [17 CFR 270].

[2] Unless otherwise noted, when we refer to the Advisers Act, we are referring to 15 U.S.C. 80b, and when we refer to rules under the Advisers Act, we are referring to title 17, part 275 of the Code of Federal Regulations [17 CFR 275].

Commission Reference	CFR Citation (17 CFR)
Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*] ("Investment Company Act")	
Rule 17f-1	§ 270.17f-1
Rule 17f-2	§ 270.17f-2
Rule 17f-3	§ 270.17f-3
Rule 17f-4	§ 270.17f-4
Rule 17f-5	§ 270.17f-5
Rule 17f-6	§ 270.17f-6
Rule 17f-7	§ 270.17f-7
Proposed rule 17f-8	§ 270.17f-8
Proposed rule 17f-9	§ 270.17f-9
Rule 31a-1	§ 270.31a-1
Rule 31a-2	§ 270.31a-2
Form N-CEN	§ 274.101
Form N-17f-1	§ 274.219
Investment Advisers Act of 1940 [15 U.S.C. 80b-1 *et seq.*] ("Advisers Act")	
Rule 204-2	§ 275.204-2
Rule 206(4)-2, redesignated as rule 223-1	§ 275.206(4)-2, redesignated as § 275.223-1
Form ADV	§ 279.1
Form ADV-E	§ 279.8

Table of Contents

I. Introduction
A. Custody of Crypto Assets
1. Development and Growth of Crypto Asset Market
2. Challenges of Custodial Compliance for Crypto Assets
B. Overview of the Proposal
II. Discussion
A. Adviser Self-Custody
1. Adviser Self-Custody Rule Overview
2. Qualified Custodian Determination
3. Safeguarding Expertise and Systems
4. Cybersecurity
5. Annual Review
6. Internal Control Report
7. Self-Custody Account Statements to Clients
8. Financial Asset Election
B. Self-Custody of Regulated Fund Crypto Assets
C. Custody of Crypto Assets by State Trust Companies
1. Overview and Scope
2. Initial and Annual Determinations
3. Financial Statement Audit
4. Internal Control Report
5. Segregation of Assets
6. Request for Comment on Other State Trust Company Issues
D. Decentralized Finance
E. Crypto Asset Trading
F. Investment Company Custody Rule Modernization
1. Business Development Companies
2. Broker-Dealer Custody
3. Free Cash Accounts
4. Other Amendments to Regulated Fund Custody Rules
5. Request for Comment on Other Regulated Fund Custody Issues
G. Investment Adviser Custody Rule Modernization
1. Redesignation to Section 223
2. Discretionary Trading Authority
3. PCAOB-Registered Accountant Requirement
4. Audit Provision
5. Standing Letters of Authorization
6. Treatment of Business Development Companies
7. Account Number in Notice to Clients
8. Notice to the Commission of Material Discrepancies
9. Inadvertent Custody
10. Segregation
11. Accommodation Reporting Guidance
H. Recordkeeping Requirements
1. Adviser Recordkeeping
2. Regulated Fund Recordkeeping
3. Records Related to Crypto Assets from a Crypto Network
I. Guidance for Accountants Updates
1. Revisions for Independent Verification
2. Revisions for Internal Control Report

3. Other Revisions
J. Disclosure and Reporting Requirements
1. Amendments to Form ADV
2. Amendments to Custody Reporting on Form N-CEN
3. Adviser and Regulated Fund Risk Disclosure Requirements
4. Conforming Amendments to Form ADV–E
K. Existing Staff No-Action Letters and Other Staff Statements
L. Compliance Date
III. General Request for Comment
IV. Economic Analysis
A. Introduction
B. Economic Baseline
1. Crypto Assets and Market Overview
2. Regulatory Baseline
3. Affected Parties and Industry Statistics
4. Market Practice
C. Benefits and Costs
1. General Economic Considerations
2. Adviser Self-Custody
3. Regulated Fund Self-Custody of Crypto Assets
4. Custody of Crypto Assets by State Trust Companies
5. Investment Company Custody Rule Modernizations
6. Investment Adviser Custody Rule Modernization
7. Recordkeeping Requirements
8. Guidance for Accountants Updates
9. Disclosure and Reporting Requirements
10. Aggregate Monetized Benefits and Costs
D. Effects on Efficiency, Competition, and Capital Formation
1. Efficiency
2. Competition
3. Capital Formation
E. Reasonable Alternatives
1. Alternative Qualified Custodian Determination Criteria in Adviser Self-Custody
2. Alternative Protective Measures in Adviser Self-Custody
3. Alternative Board Oversight Measure in Regulated Fund Self-Custody
4. State Trust Companies as Permitted Custodians
5. Alternative Conditions Attached to the Use of State Trust Companies as Custodians for Crypto Assets
6. Crypto Asset Trading
7. Other Alternatives for Investment Company Custody Rule Modernization
8. Alternative to the Independent Verification Requirement
9. Adviser Account Statements
10. Sharing Key Materials
F. Request for Comments
V. Paperwork Reduction Act Analysis
A. Introduction
B. Advisers Act Custody Rule 223–1
C. Investment Company Act
1. Proposed Rule 17f–9
2. Proposed Rule 17f–8
3. Proposed Rule 17f–1
4. Inclusion of BDCs in Investment Company Act Custody and Recordkeeping Rules
D. Recordkeeping Rules
1. Rule 204–2
2. Rule 31a–2
E. Disclosure
1. Form ADV
2. Form N–CEN
3. Rescission of Form N–17F–1
F. Request for Comments
VI. Initial Regulatory Flexibility Analysis
A. Reason for and Objectives of the Proposed Action
B. Legal Basis
C. Small Entities Subject to the Rule and Rule Amendments
D. Projected Reporting, Recordkeeping and Other Compliance Requirements
E. Duplicative, Overlapping, or Conflicting Federal Rules
F. Significant Alternatives
G. Solicitation of Comments
VII. Congressional Review Act
VIII. Other Matters
Incorporation by Reference
Statutory Authority

I. Introduction

A. Custody of Crypto Assets

Section 17(f) of the Investment Company Act and the rules thereunder (collectively, the ''Investment Company Act custody rules'') govern the custody of securities and similar investments of registered management investment companies and business development companies (''BDCs,'' and together with registered management investment companies, ''regulated funds'').[3] The Investment Company Act custody rules require that a regulated fund maintains fund securities and similar investments with certain specified custodians (''Investment Company Act custodians'') and subject to conditions designed to assure the safety of the regulated fund's assets.[4] Additionally, regulated funds are required to maintain a bond for officers and employees that singly, or jointly with others, have access to securities or funds.[5] The purpose of this bond is to protect shareholders against larceny and embezzlement by these officers or employees. This rule and any related bonding apply to crypto assets that are securities or similar investments.

Rule 206(4)–2 under the Advisers Act (the ''Advisers Act custody rule'' and, collectively with the Investment Company Act custody rules, the ''custody rules'') regulates the custodial practices of registered investment advisers (''advisers'').[6] The Advisers Act custody rule is designed to safeguard client funds and securities from loss, theft, misuse, misappropriation, and the adviser's financial reverses, including insolvency.[7]

Among other things, the Advisers Act custody rule requires that an adviser that has custody of client funds or securities maintain such funds or securities with a qualified custodian (collectively with Investment Company Act custodians, ''permitted custodians''), subject to specified exceptions.[8] An adviser has custody if it holds, directly or indirectly, client funds or securities or has any authority to obtain possession of them.[9] Under the Advisers Act custody rule, qualified custodians are limited to banks or savings associations, registered broker-dealers, registered futures commission merchants, and certain foreign financial

[3] Given the very limited universe of face-amount certificate companies (''FACCs'') and their particular regulatory requirements, the proposed rules related to regulated fund self-custody of crypto assets and custody of crypto assets by State trust companies (as proposed to be defined in proposed rule 17f–8) would not be applicable to FACCs. See 15 U.S.C. 80a–28(b). *See also* proposed rules 17f–8 and 17f–9. A FACC may apply for an order under section 28(c) of the Investment Company Act if they wish to hold crypto assets in the manner discussed in this release. Unit investment trusts (''UITs'') would similarly not be able to rely on the proposed rules related to regulated fund self-custody of crypto assets and custody of crypto assets by State trust companies. Given that UITs lack investment advisers and are unmanaged, it would not be possible for them to comply with certain aspects of the proposed rules.

[4] 15 U.S.C. 80a–17(f). *See also* 17 CFR 270.17f–1 (rule 17f–1) (custody with members of national securities exchanges); 17 CFR 270.17f–2 (rule 17f–2) (custody with the regulated fund); 17 CFR 270.17f–4 (rule 17f–4) (custody with a securities depository); 17 CFR 270.17f–5 (rule 17f–5) (custody of assets outside the U.S. with a foreign bank custodian); 17 CFR 270.17f–6 (rule 17f–6) (custody with a futures commission merchant or commodity clearing organization); 17 CFR 270.17f–7 (rule 17f–7) (custody with a foreign securities depository).

[5] *See* 15 U.S.C 80a–17(g); 17 CFR 270.17g–1.

[6] As used in this release, all references to registered investment advisers refer to SEC-registered investment advisers or investment advisers required to be SEC-registered, unless otherwise indicated.

[7] *See* Custody or Possession of Funds or Securities of Clients, Advisers Act Release No. 123 (Feb. 27, 1962) [27 FR 2149 (Mar. 6, 1962)] (''1962 Adopting Release''). *See also* Custody of Funds or Securities of Clients by Investment Advisers, Advisers Act Release No. 2176 (Sept. 25, 2003) [68 FR 56692 (Oct. 1, 2003)] (''2003 Adopting Release''); Custody of Funds or Securities of Clients by Investment Advisers, Advisers Act Release No. 2968 (Dec. 30, 2009) [75 FR 1456 (Jan. 11, 2010)] (''2009 Adopting Release''). In 2023, the Commission proposed, but did not adopt, a new rule under the Advisers Act that would have redesignated and amended the Advisers Act custody rule. *See* Safeguarding Advisory Client Assets, Advisers Act Release No. 6240 (Feb. 15, 2023) [88 FR 14672 (Mar. 9, 2023)] (''2023 Safeguarding Proposal''). The Commission formally withdrew the 2023 Safeguarding Proposal on June 12, 2025. See Withdrawal of Proposed Regulatory Actions, Advisers Act Release No. 6885 (June 12, 2025) [90 FR 25531 (June 17, 2025)].

[8] The scope of investments subject to the custody rule under the Advisers Act custody rule differs from the scope under the Investment Company Act custody rules. The Advisers Act custody rule only applies to custody of client funds or securities, while the Investment Company Act custody rules apply to a regulated fund's securities and similar investments. See rule 206(4)–2(a) and section 17(f)(1).

[9] *See* rule 206(4)–2(d)(2) (defining ''custody'' for purposes of the Advisers Act custody rule).

institutions.[10] The Commission has historically taken the view that maintaining client assets with only certain types of entities helps to guard against the risk that the adviser or its related person loses, misuses, or misappropriates client assets, or subjects them to an adviser's financial reverses or insolvency. When the custodian is a third party, there is a clear distinction between the roles of the adviser (advising the client on the buying and selling of assets and implementing the client's investment strategy) and of the custodian (safekeeping the assets). To effectuate a trade, the adviser must contact the custodian for the assets to be moved. An adviser is less likely to engage in unauthorized trading in a client's account when the adviser knows that the client will be receiving from the custodian an account statement detailing any trading activity. When the adviser and the custodian are the same party, the adviser can directly move the assets.

Shortly before the adoption of the Advisers Act custody rule in 1962, the Commission asked Congress for rulemaking and inspection authority under the Advisers Act's anti-fraud provisions because it was concerned about the custodial practices of advisers and the safety of client assets. Congress amended the Advisers Act to give the Commission rulemaking and inspection authority under the Advisers Act's antifraud provisions. The Advisers Act custody rule, when it was first adopted, required all advisers with custody of client funds and securities to deposit client funds into a bank account that was maintained in the adviser's name as agent or trustee and contained only client funds and to segregate client securities and hold them in safekeeping.[11] Similarly, the requirements of section 17(f) indicate that Congress intended fund investments to be kept by financially secure entities that have sufficient safeguards against misappropriation.[12]

The current custody rules were designed to address the custody and safekeeping of traditional assets. Since the Commission last amended the custody rules, there has been significant growth in the crypto asset market, with investors increasingly seeking investment exposure to crypto assets.[13] Crypto assets have unique attributes that present challenges under the current custodial frameworks, and advisers and regulated funds have encountered obstacles in attempting to comply with the current custody rules for crypto assets.[14]

In January 2025, the Commission's Acting Chairman, Mark T. Uyeda, established the Crypto Task Force to focus on developing a comprehensive and clear regulatory framework for crypto assets.[15] As a part of its public engagement, the Crypto Task Force solicited feedback and hosted a series of roundtables on a variety of compliance topics related to crypto assets, including issues related to adviser and regulated fund custody of crypto assets.[16] Among other topics, roundtable participants and commenters provided feedback on the current custody rules and the obstacles to compliance for crypto assets.[17]

Further, in January 2025, President Donald J. Trump issued an executive order titled ''Strengthening American Leadership in Digital Financial Technology.'' [18] Executive Order 14178, among other things, established the President's Working Group on Digital Asset Markets (the ''Digital Assets PWG''), which comprises the Chairman of the Commission and the heads of several other Federal financial regulators.[19] It furthermore directed the Digital Assets PWG to issue a report that recommends regulatory actions to advance the policy goals established in the Executive Order.[20] Pursuant to Executive Order 14178, the Digital Assets PWG issued a report (the ''Digital Assets PWG Report'') containing several regulatory recommendations related to crypto assets.[21] Among other recommendations, the Digital Assets PWG Report recommended that the Commission consider using its regulatory and exemptive authority under the Advisers Act and Investment Company Act to ''[p]rovide clarity on the custody of digital assets that are securities'' for advisers and regulated funds.[22] Following the publication of the Digital Assets PWG Report, Chairman Paul S. Atkins announced the launch of the Project Crypto initiative to, among other things, modernize the securities rules and regulations and develop rule proposals to implement the Digital Assets PWG Report's recommendations, including to modernize the Commission's crypto asset custody requirements.[23]

To address the evolution and growth of the crypto asset market and the Digital Assets PWG Report's recommendations to the Commission, the Commission is proposing new custody rules under the Investment Company Act and amendments to the Advisers Act custody rule to provide a tailored framework for crypto asset custody. We also considered feedback received by the Commission's Crypto Task Force. We are also proposing amendments to the recordkeeping and

[10] *See* rule 206(4)–2(d)(6) (defining ''qualified custodian'' for purposes of the Advisers Act custody rule).

[11] *See* 1962 Adopting Release, supra footnote 7; *see also* Custody of Funds or Securities of Clients by Investment Advisers, Advisers Act Release No. 2044 (July 18, 2002) [67 FR 48579 (July 25, 2002)], at nn.3–4 and accompanying text.

[12] *See* Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. 264 (1940). Cf. 10 SEC ANN.REP. 169 (1994) (discussing section 17(f) of the Investment Company Act and its protections against theft and embezzlement by affiliated persons).

[13] *See infra* section I.A.1 for discussion of development and growth of crypto asset market, including the definition of ''crypto asset'' as used herein.

[14] *See infra* section I.A.2 for discussion of challenges presented by crypto assets to the existing custodial framework.

[15] *See* SEC Press Release, *SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force,* Press Release No. 2025–30 (Jan. 21, 2025), *available at https://www.sec.gov/newsroom/press-releases/2025-30. See also SEC, Crypto Task Force Designation Letter from Acting Chairman Mark T. Uyeda* (Feb. 4, 2025), *available at https://www.sec.gov/files/crypto-task-force-designation-letter.pdf. See also* SEC, Crypto Task Force, *available at https://www.sec.gov/about/crypto-task-force.*

[16] *See* SEC, Crypto Task Force Roundtables, *available at https://www.sec.gov/about/crypto-task-force/crypto-task-force-roundtables.* See also Statement of Commissioner Hester Peirce, *There Must Be Some Way Out of Here* (Feb. 21, 2025), *available at https://www.sec.gov/newsroom/speeches-statements/peirce-statement-rfi-022125;* SEC, Crypto Task Force Written Input, *available at https://www.sec.gov/about/crypto-task-force/crypto-task-force-written-input*; SEC, Crypto Task Force Meetings, available at *https://www.sec.gov/about/crypto-task-force/crypto-task-force-meetings.*

[17] *See SEC, Crypto Task Force Roundtable—Know Your Custodian: Key Considerations for Crypto Custody* (Apr. 25, 2025), *available at https://www.sec.gov/newsroom/meetings-events/know-your-custodian-key-considerations-crypto-custody.* The written input letters submitted to the Commission's Crypto Task Force are *available at https://www.sec.gov/about/crypto-task-force/crypto-task-force-written-input.* Unless otherwise specified, all references in this release to comment letters are to the written input letters submitted to the Crypto Task Force.

[18] *See* Exec. Order No. 14178, *Strengthening American Leadership in Digital Financial Technology* (Jan. 23, 2025) [90 FR 8647 (Jan. 31, 2025)] (''Executive Order 14178'').

[19] *See id.* at § 4.

[20] *See id.* at § 4(c)(i).

[21] *See* Digital Assets PWG, Strengthening American Leadership in Digital Financial Technology (July 30, 2025), *available at https://www.whitehouse.gov/wp-content/uploads/2025/07/Digital-Assets-Report-EO14178.pdf.*

[22] *See id.,* at 52. The Digital Assets PWG Report also recommended that the Commission evaluate whether certain State-chartered trusts should be deemed a 'qualified custodian' under the Advisers Act custody rule or a 'bank' under the Investment Company Act.

[23] *See* Statement of Chairman Paul S. Atkins, *American Leadership in the Digital Finance Revolution* (July 31, 2025), *available at https://www.sec.gov/newsroom/speeches-statements/atkins-digital-finance-revolution-073125.*

disclosure requirements related to the proposed custody rules.

The proposed custody rules and related recordkeeping and disclosure amendments consider the unique aspects of crypto assets and are designed to maintain fair, orderly, and efficient crypto asset markets, facilitate investment in crypto assets, and protect crypto asset investors. In addition, we are also proposing several amendments to the Advisers Act and Investment Company Act custody rules to modernize the custody rules, better address current industry practices and feedback, and implement certain conforming amendments. These proposed amendments are designed to facilitate compliance, enhance investor protection, and help support the Commission's regulatory oversight function.

1. Development and Growth of Crypto Asset Market

A crypto asset is any digital representation of value that is recorded on a cryptographically secured distributed ledger.[24] The Commission's proposed definition of ''crypto asset'' is generally consistent with the definition of ''Digital Asset'' in section 2(6) of the GENIUS Act.[25] The term distributed ledger generally refers to technology in which data is shared across a network that creates a digital ledger of verified transactions or information among network participants, and in which cryptography is used to link the data to maintain the integrity of the ledger and execute other functions.[26]

Crypto assets are generated, issued, and transferred using a blockchain or similar distributed ledger technology network (a ''crypto network''). Ownership of a crypto asset is recorded on a crypto network, and access to the asset is controlled by a private cryptographic key (a ''private key'') that, when paired with the asset's public cryptographic key, allows the holder to transfer the asset, or participate in certain associated rights of many crypto assets, such as staking, yield farming, and exercising governance rights.[27] Private keys can be divided into distinct pieces, or ''shards,'' to disperse control of the crypto asset to more than one party. Transactions or data that are processed and recorded directly on a crypto network, or ''onchain,'' are immutable and verifiable by other market participants, and assets transferred onchain generally cannot be restored or recovered once transferred.[28] Some crypto assets (referred to as privacy tokens or privacy coins) are designed to preserve anonymity and mask identifying features of the holders or the transaction. Such transactions on the blockchain are only verifiable by the transacting parties.[29] In addition to digitally native crypto assets, traditional assets can also be formatted as or represented by crypto assets, or ''tokenized,'' where the record of ownership is maintained in whole or in part on or through one or more crypto networks.[30]

Since the advent of Bitcoin in 2008,[31] the crypto asset markets have grown significantly to reach a global market capitalization of approximately $2.7 trillion in May 2026, up from $800 billion at the beginning of 2021.[32] As the crypto asset market continues to grow and evolve, investors are demanding access to crypto assets as a part of their investment portfolios, although the extent of that ownership is subject to some uncertainty. According to a 2026 report by the Office of Investor Research within the Commission's Office of the Investor Advocate, approximately 9.2% of U.S. adults hold crypto assets.[33] This level of crypto asset ownership has remained relatively stable in recent years.[34] According to another survey in 2025, approximately 22% of U.S. surveyed respondents owned crypto assets, up from 14% in 2021.[35]

2. Challenges of Custodial Compliance for Crypto Assets

Advisers and regulated funds face challenges in complying with the current custody rules, which were designed to address safekeeping of traditional assets. These rules generally limit the types of financial institutions that are eligible to serve as custodians:

- *For an adviser,* a qualified custodian is limited to a bank or savings association, broker-dealer, futures commission merchant, or certain foreign financial institutions.[36]
- *For a regulated fund,* securities and similar investments must be maintained with certain specified custodians that include banks, broker-dealers that are members of a national securities

[24] *See* Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, Securities Act Release No. 11412 (Mar. 17, 2026) [91 FR 13714 (Mar. 23, 2026)] (''Commission Security Status Interpretation''), at n.1.

[25] *See* section 2(6) of the Guiding and Establishing National Innovation for U.S. Stablecoins Act, Public Law 119–27, 139 Stat. 419 (2025) (''GENIUS Act'').

[26] *See* section 2(8) of the GENIUS Act.

[27] *See, e.g.,* U.S. Securities and Exchange Commission, Division of Corporation Finance, *Statement on Certain Protocol Staking Activities* (May 29, 2025) (''Protocol Staking Statement''), *available at https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities-052925*; U.S. Securities and Exchange Commission, Division of Corporation Finance, *Statement on Certain Liquid Staking Activities* (Aug. 5, 2025) (''Liquid Staking Statement''), *available at https://www.sec.gov/newsroom/speeches-statements/corpfin-certain-liquid-staking-activities-080525*. Staff reports, statistics, and other staff documents (including those cited herein) represent the views of Commission staff and are not a rule, regulation, or statement of the Commission. Furthermore, the Commission has neither approved nor disapproved these documents and, like all staff statements, they have no legal force or effect, do not alter or amend applicable law, and create no new or additional obligations for any person.

[28] *See, e.g.,* Tuongvy Le and Austin Campbell, Crypto and the Evolution of the Capital Markets (May 12, 2025), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5250986*.

[29] *See* Gemini, What Are Privacy Tokens (Nov. 7, 2024), available at *https://www.gemini.com/cryptopedia/what-are-privacy-tokens*.

[30] *See* Commission Security Status Interpretation, supra footnote 24, at section III.E; see also Comment Letter to Crypto Task Force of Securitize Inc. (May 7, 2025); Comment Letter to Crypto Task Force of Robinhood Markets, Inc. and Robinhood Crypto (Apr. 25, 2025).

[31] *See* Satoshi Nakamoto, Bitcoin: A Peer-to-Peer Electronic Cash System (Oct. 31, 2008), available at *https://bitcoin.org/bitcoin.pdf*.

[32] *See* CoinGecko, Global Cryptocurrency Market Cap Charts, *available at https://www.coingecko.com/en/charts* (last visited May 20, 2026); see also Darren Aiello, Scott R. Baker, et. al., The Effects of Cryptocurrency Wealth on Household Consumption and Investment (Feb. 9, 2024), available at *https://www.fdic.gov/system/files/2024-07/johnson-paper.pdf*.

[33] *See* U.S. Securities and Exchange Commission, Office of the Investor Advocate (''OIAD''), Experiences with Crypto Assets in the U.S. Population, OIAD Working Paper 2026 No. 4 (July 2026), available at *https://www.sec.gov/files/experiences-crypto-assets-us-population.pdf* (''OIAD Report I'') (finding that 9.2% of adults in the U.S. hold crypto assets based on July 2025 survey results)]; see also Board of Governors of the Federal Reserve System (the ''Federal Reserve Board''), Economic Well-Being of U.S. Households in 2025 (May 13, 2026), *available at https://www.federalreserve.gov/publications/files/2025-report-economic-well-being-us-households-202605.pdf* (stating that, as of 2025, approximately one in ten U.S. adults bought or held cryptocurrencies for investment purposes in the prior 12 months).

[34] *See* U.S. Securities and Exchange Commission, OIAD, Cryptocurrency Owners in the U.S. Population, OIAD Working Paper 2026 No. 3 (July 2026), *available at https://www.sec.gov/files/cryptocurrency-owners-findings-us-population.pdf* (''OIAD Report II'').

[35] *See,e.g.,* Gemini, Global State of Crypto 2025, 2025 Trends Data-Driven Insights Into the Crypto Market, available at *https://www.gemini.com/state-of-crypto-2025* (the ''Gemini Global State of Crypto 2025''); Gemini, State of U.S. Crypto 2021, *available at https://www.gemini.com/gemini-2021-state-of-crypto-us.pdf* (the ''Gemini Global State of Crypto 2021''); see also Chris Wheat & George Eckerd, JPMorgan Chase, Crypto investor waves since 2017: What retail investor behavior reveals about digital asset adoption (Aug. 27, 2025), *available at https://www.jpmorganchase.com/institute/all-topics/financial-health-wealth-creation/crypto-investor-waves-since-2017-what-retail-investor-behavior-reveals-about-digital-asset-adoption* (finding 17% of customer accounts were invested in crypto assets from Jan. 2017 to May 2025).

[36] *See* rule 206(4)–2(d)(6).

exchange, and securities depositories, among others.[37]

While the current custody rules rely on permitted custodians to provide custodial services, in practice, few such traditional custodians have offered robust custodial services for a substantial range of crypto assets in part due to prior Commission action and staff statements, as well as other applicable regulatory guidance.[38]

For example, with respect to broker-dealers, in July 2019, the staff of our Division of Trading and Markets (''TM'') and the Financial Industry Regulatory Authority (''FINRA'') issued a joint statement that reminded broker-dealers of their responsibilities under the securities laws, including under rule 15c3–3 (the ''customer protection rule'') under the Securities Exchange Act of 1934 (the ''Exchange Act''), when maintaining custody of digital asset securities and provided examples of broker-dealer activities involving digital asset securities that would not involve the broker-dealer engaging in custody functions.[39] In December 2020, the Commission issued a statement regarding custody of digital asset securities by broker-dealers, which created a time-limited special-purpose broker-dealer (''SPBD'') safe harbor for broker-dealers seeking to custody digital asset securities in the circumstances where such SPBDs did not provide custody of traditional securities or any non-security digital assets.[40] According to some commenters, market participants interpreted this framework as restricting traditional broker-dealers from providing custodial services for crypto assets, and few broker-dealers offered crypto asset custodial services under the SPBD framework, due in part to limitations of the framework.[41]

For banks, applicable regulatory guidance historically oscillated between permitting banks to engage in certain crypto asset activities and dissuading banks from offering crypto asset custody services.[42] Although prior guidance from the OCC permitted national banks to engage in crypto asset custodial services,[43] subsequent guidance was interpreted by market participants to restrict the ability of banks to offer crypto asset custodial services, due to the conditions with which a bank would have to comply.[44] Further, in March 2022, Commission staff issued Staff Accounting Bulletin No. 121, which provided that, in the staff's view, it would be appropriate for entities with an obligation to safeguard crypto assets to record a safeguarding liability and corresponding asset on its balance sheet measured at the fair value of the crypto asset.[45] Some commenters stated that this guidance, along with guidance from the banking regulators, acted as an impediment to bank crypto asset custodians and dissuaded these custodians from offering crypto custodial services.[46] In January 2025, Commission staff rescinded SAB 121.[47]

During this period, certain alternative custodians emerged, most prominently among them State-chartered limited purpose trust companies (''State trust companies''). State trust companies, as creations of State law, are subject to State law and regulatory oversight, which varies depending on the applicable jurisdiction. Some State law frameworks specifically regulate these entities for crypto asset custodial services.[48] However, whether a State trust company is a permitted custodian under the Commission's custody rules requires additional legal and factual analysis from advisers and regulated funds, and as described below, the outcome of such analysis may not be clear.

Because State trust companies are not an enumerated category of permitted custodian under the current custody rules, regulated funds and advisers typically must first conclude that a State trust company is a bank for purposes of the custody rules and therefore eligible to be a custodian under the current applicable custody rule. However, determining whether an entity is a bank for purposes of the custody rules is a

[37] *See* section 17(f) and rules 17f–1 through 17f–7.

[38] *See, e.g.,* Comment Letter to Crypto Task Force of The Digital Chamber (May 12, 2025) (''TDC Comment Letter I''); Comment Letter to Crypto Task Force of Neel Maitra, Dechert LLP (Apr. 15, 2025) (''Dechert Comment Letter''); s*ee also The Future of Digital Assets: Identifying the Regulatory Gaps in Digital Asset Market Structure,* Hearing Before the Subcomm. on Digit. Assets, Fin. Tech., and Inclusion of the H. Comm. on Fin. Servs., 118th Cong. (2023), *available* at *https://www.congress.gov/event/118th-congress/house-event/115821/text.*

[39] *See* Division of Trading and Markets and FINRA, *Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities* (July 8, 2019), *available at https://www.sec.gov/newsroom/speeches-statements/joint-staff-statement-broker-dealer-custody-digital-asset-securities-joint-staff-statement-broker-dealer-custody-digital-asset-securities-withdrawn-may-15-2025* (the ''2019 FINRA Joint Statement''). The 2019 FINRA Joint Statement was withdrawn on May 15, 2025. *See* Division of Trading and Markets, SEC, Office of General Counsel, FINRA, Withdrawal of Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities (May 15, 2025), *available at https://www.sec.gov/newsroom/speeches-statements/withdrawal-joint-staff-statement-broker-dealer-custody-digital-asset-securities.*

[40] *See* Custody of Digital Asset Securities by Special Purpose Broker-Dealers, Exchange Act Release No. 90788 (Dec. 23, 2020) [86 FR 11627 (Feb. 26, 2021)]. This statement was limited to the custody of digital asset securities and did not address the custody of crypto assets that are not offered or sold as securities.

[41] *See, e.g.,* Comment Letter to Crypto Task Force of Coinbase Global, Inc. (Mar. 19, 2025); Comment Letter to Crypto Task Force of Securities Industry and Financial Markets Association (May 9, 2025) (''SIFMA Comment Letter''); Comment Letter to Crypto Task Force of Blockchain Association (May 2, 2025).

[42] *See, e.g.,* Office of the Comptroller of the Currency (the ''OCC''), Authority of a National Bank to Provide Cryptocurrency Custody Services for Customers, Interpretive Letter No. 1170 (July 22, 2020), *available at https://www.occ.gov/topics/charters-and-licensing/interpretations-and-decisions/2020/int1170.pdf*; OCC, OCC Chief Counsel's Interpretation on National Bank and Federal Savings Authority to Hold Stablecoin Reserves, Interpretative Letter No. 1172 (Sept. 21, 2020), *available at https://www.occ.gov/topics/charters-and-licensing/interpretations-and-decisions/2020/int1172.pdf*; OCC, OCC Chief Counsel's Interpretation on National Bank and Federal Savings Association Authority to Use Independent Node Verification Networks and Stablecoins for Payment Activities, Interpretative Letter No. 1174 (Jan. 4, 2021), *available at https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-2a.pdf*; Federal Reserve Board, Federal Deposit Insurance Corporation (the ''FDIC''), and OCC, Joint Statement on Crypto-Asset Risks to Banking Organizations (Jan. 3, 2023), *available at https://www.fdic.gov/news/press-releases/2023/pr23002a.pdf* (withdrawn).

[43] *See* OCC, Authority of a National Bank to Provide Cryptocurrency Custody Services for Customers, Interpretive Letter 1170 (July 22, 2020), *available at https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2020/int1170.pdf.*

[44] *See* OCC, Chief Counsel's Interpretation Clarifying: (1) Authority of a Bank to Engage in Certain Cryptocurrency Activities and (2) Authority of the OCC to Charter a National Trust Bank, Interpretive Letter 1179 (Nov. 18, 2021), *available at https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2021/int1179.pdf* (rescinded) (''OCC Interpretative Letter 1179''); *see also* OCC, Letter Addressing Certain Crypto-Asset Activities, Interpretive Letter No. 1183 (Mar. 7, 2025), *available at https://www.occ.treas.gov/topics/charters-and-licensing/interpretations-and-decisions/2025/int1183.pdf* (''OCC Interpretative Letter 1183'') (rescinding Interpretative Letter 1179); OCC, Clarification of Bank Authority Regarding Crypto-Asset Custody Services, Interpretive Letter 1184 (May 7, 2025), *available at https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2025/int1184.pdf* (''OCC Interpretative Letter 1184'') (confirming, in relevant part, that national banks and Federal savings associations may buy and sell crypto assets held in custody at the customer's direction in a manner consistent with the customer agreement and applicable law). *See* Financial Stability Oversight Council, Report on Digital Asset Financial Stability Risks and Regulation 27 (2022), *available at https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf*, at 18 (stating ''some banks have indicated publicly that they have interest in offering crypto-asset products and services but are waiting on regulatory clarity before doing so.'').

[45] *See* Staff Accounting Bulletin No. 121, Release No. SAB 121 (Mar. 31, 2022) (''SAB 121'').

[46] *See,e.g.,* Dechert Comment Letter; TDC Comment Letter I.

[47] *See* Staff Accounting Bulletin No. 122, Release No. SAB 122 (Jan. 23, 2025) (rescinding SAB 121).

[48] *See, e.g.,* NY Banking Law, Article 3, § 102–a; Wyo. Stat. Ann. § 34–29–104; SDCL Chapter 51A–6A.

fact-specific inquiry that requires analysis of applicable State and Federal banking laws. For example, a State trust company is a ''bank,'' and thus a permitted custodian for an adviser or regulated fund if, among other conditions, a substantial portion of the business of the State trust company consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the OCC. Legal counsel to State trust companies have historically identified challenges in determining whether crypto asset custodial activities, including crypto custodial activities characterized as fiduciary in nature under applicable State law, could satisfy this standard.[49] Given the historic uncertainty in determining whether a particular State trust company is a bank for purposes of the custody rules, regulated funds and advisers may have been reluctant to engage State trust companies as crypto asset custodians.

In recognition of the emergence of State trust companies as crypto asset custodians, Division of Investment Management (''IM'') staff issued a no-action letter on September 30, 2025, regarding the use of State trust companies as crypto asset custodians for purposes of the custody rules.[50] Specifically, the 2025 State Trust Company NAL stated that IM staff would not recommend enforcement action to the Commission against advisers or regulated funds if they elect to treat a State trust company as a bank for purposes of the custody rules for the placement and maintenance of advisory or regulated fund crypto assets and related cash and/or cash equivalents under certain circumstances.[51] Although the 2025 State Trust Company NAL sets forth the staff's position on enforcement actions against advisers or regulated funds treating State trust companies as banks for purposes of the custody rules, the 2025 State Trust Company NAL, like all staff statements, has no legal force or effect and does not alter or amend applicable law.

Custodians, including State trust company custodians, that do offer custodial services for crypto assets are not able to support all crypto assets given the large and continuously growing number of crypto assets in the market. Although there has been an increase in the number of permitted custodians offering custodial services for crypto assets, and this trend may continue, there may be few or no permitted custodians for certain crypto assets.[52] For example, as nascent or novel crypto assets are created, custodians must determine which crypto assets they will support and update their technology and other systems accordingly. Custodians may not yet offer custodial services for nascent or novel assets due to market demand and/or high upfront costs to set up the necessary custodial infrastructure.[53]

The continued development of the crypto asset market may further strain the availability of crypto asset custodial services. However, an adviser may determine, consistent with its fiduciary duties, that investing in a particular nascent or novel crypto asset is in the best interest of its client.[54] The lack of available custodial services for a particular crypto asset may constrain an adviser's ability to advise clients to invest in such crypto assets because, for example, existing crypto asset custodians have not yet developed or started offering custodial services for such assets.[55] The continued growth and development of the crypto asset market may continue to increase the demand for crypto asset custodial services, which could outpace the availability of custodians that are both permitted custodians under the current custody rules and willing and able to provide these highly technical and specialized custodial services for any given crypto asset. Additionally, a limited pool of custodians—that are both technically capable of offering competent crypto asset custodial services and eligible under the custody rules to act as a custodian—may create concentration risk and ultimately increase risks and costs to investors. In the context of regulated funds, rule 17f–2 under the Investment Company Act permits holding fund assets in the custody of the regulated fund itself, rather than a permitted custodian.

However, even for regulated funds, this rule does not address the challenges posed by the limited pool of permitted custodians for crypto assets because its conditions do not contemplate crypto assets.[56] For example, regulated fund assets maintained in the custody of the fund under the rule must be deposited in the safekeeping of, or in a vault or other depository maintained by, a bank or other company whose functions and physical facilities are supervised by Federal or State authority.[57] This and other conditions in rule 17f–2 are designed for stock certificates but do not address crypto assets. While rule 17f–2's conditions are not designed for crypto assets,[58] the rule does provide a framework designed to protect regulated fund assets from the risk of misappropriation, which can be applied to crypto assets, such as implementing access restrictions, requiring multiple authorized persons to act jointly in effecting transactions, maintaining certain specified records of all transactions in such assets, and requiring independent public accountants to verify assets held in self-custody.

Further, crypto assets may be subject to unique custodial risks due to their nature. Crypto assets are transferred via crypto networks that may vary in security or other access vulnerabilities. Many crypto asset transactions are immutable once executed and may be difficult or impossible to reverse. Further, crypto assets may be subject to cybersecurity risks that differ from those applicable to traditional assets. These challenges can increase the risk of loss, theft, misuse, and misappropriation of custodied crypto assets and may limit the pool of capable and permitted custodians.

B. Overview of the Proposal

In light of the challenges discussed above, and based on our experience and public feedback, we are proposing

[49] The OCC has since stated that custody and safekeeping activities are generally considered to be non-fiduciary activities of national banks. *See* OCC, National Bank Chartering, 91 FR 9977 (Mar. 2, 2026).

[50] *See* Simpson Thacher & Bartlett LLP, SEC Staff No-Act. Letter (pub. avail. Sept. 30, 2025), *available at https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-investment-management-staff-no-action-interpretive-letters/simpsonthacherbartlett093025* (the ''2025 State Trust Company NAL'').

[51] *See id.* In addition to the custody rules, the 2025 State Trust Company NAL also addresses section 26(a) of the Investment Company Act.

[52] *See infra* footnotes 877 through 879 and accompanying text.

[53] *See, e.g.,* Comment Letter to Crypto Task Force of Veda Tech Labs Inc. (Mar. 23, 2026); Comment Letter of Wave Digital Assets LLC Regarding Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, File No. S7–2026–09 (Apr. 28, 2026), *available at https://www.sec.gov/comments/S7-2026-09/s7202609-764287-2345754_0.pdf* (''Wave Digital Assets Comment Letter'') (stating that crypto asset custodial infrastructure is ''developing but incomplete'').

[54] *See, e.g.,* Comment Letter to Crypto Task Force of Unit 410, LLC (May 7, 2025) (''Unit 410 Comment Letter'').

[55] *See, e.g.,* Wave Digital Assets Comment Letter.

[56] Rule 17f–2 provides that a fund's investments are deemed to be in the custody of the fund if directors, officers, or employees or agents of the fund are authorized or permitted to withdraw the investments from a bank (or certain other companies) ''upon their mere receipt.'' *See* rule 17f–2(a).

[57] *See* rule 17f–2(b).

[58] *See, e.g.,* Comment Letter to Crypto Task Force of Kimber Labs Inc. (d/b/a Plume) (Apr. 23, 2026).

amendments to the Advisers Act custody rule and new custody rules under the Investment Company Act to help facilitate crypto asset custody. These proposed amendments and new custody rules would help to enhance investor protection by imposing protective conditions, and to promote investor choice and ability to invest by tailoring the custody rules to address the existing limitations of the custody rules as applied to crypto assets.[59] Without a workable regulatory framework that would expand the universe of permitted custodians, advisory clients (including regulated funds) would be limited in their ability to invest in certain crypto assets. Advisers would be unable to invest client assets in crypto assets for which permitted custodians are not available, which would limit investor choice and prevent investors from obtaining exposure to crypto assets with the investor protections provided by the involvement of an adviser or from obtaining that exposure through an investment in a regulated fund.[60]

Although a crypto asset may or may not meet the definition of a ''security'' under the Federal securities laws, the proposed Advisers Act custody rule amendments would only apply with respect to crypto assets that are funds or securities (or, with respect to the account of a regulated fund, a security or similar investment), and the proposed Investment Company Act custody rules would only apply with respect to crypto assets that are securities or similar investments.[61]

Self-Custody: We are proposing to amend the Advisers Act custody rule to add a new provision that would permit advisers to hold advisory clients', including regulated funds', crypto assets for which they provide investment advice in self-custody (the ''adviser self-custody rule'') and to add a new Investment Company Act custody rule to permit a regulated fund to maintain its crypto assets in custody through the regulated fund's adviser if the adviser complies with the adviser self-custody rule, and if the regulated fund's board of directors engages in oversight of the custody arrangement (the ''fund self-custody rule,'' and together with the adviser self-custody rule, the ''proposed self-custody rules'').[62] For purposes of this proposal, self-custody means the adviser holding a client's crypto asset through possession of any portion of the private keys that is necessary to access and effectuate transactions in the crypto asset, or a regulated fund holding the crypto asset through an adviser that complies with the adviser self-custody rule, in each case without maintaining the crypto asset at a permitted custodian.[63] This is consistent with the way the term ''self-custody'' often is used in the asset management industry, although we recognize that the term self-custody also is often used to refer to circumstances where the owner of a crypto asset holds the asset directly.[64]

The proposed self-custody rules' conditions, which are designed to address the inherent conflicts of interest associated with self-custody and the risks of maintaining custody of crypto assets, include the following:

- *Qualified custodian determination.* The proposed adviser self-custody rule would require that the adviser determine in writing, as an initial matter and on a quarterly basis, that a permitted custodian is not available to maintain the crypto asset.[65]
- *Safeguarding expertise and systems.* The proposed adviser self-custody rule would require the adviser to have expertise regarding the safeguarding of each crypto asset (and to document the basis of its determination that it has the safeguarding expertise) and to adopt, implement, and maintain the systems to safeguard each crypto asset against loss, theft, misuse, and misappropriation,[66] and to review its safeguarding systems and the effectiveness of their implementation on an annual basis.[67] The adviser's safeguarding systems would be required to address private key management and joint authorization of any crypto asset transactions by at least two people, and to maintain each client's (including a regulated fund's) crypto assets in one or more addresses, corresponding only to such client's crypto assets on the crypto network.[68]
- *Cybersecurity.* The proposed adviser self-custody rule would require that an adviser mitigate cybersecurity risks associated with safeguarding clients' crypto assets held in self-custody and review its cybersecurity controls and the effectiveness of their implementation no less than annually.[69]
- *Internal control reports.* The proposed adviser self-custody rule would require that the adviser obtain internal control reports concerning its safeguarding of crypto assets within six months of maintaining custody of crypto assets and on an annual basis thereafter.[70]
- *Self-custody account statements.* The proposed adviser self-custody rule would require account statements to be sent at least quarterly to each client whose crypto assets the adviser self-custodies, identifying the crypto asset address on the crypto network that stores the client's crypto assets and the crypto network on which such crypto asset address operates, the amounts of crypto assets stored in the client's crypto asset address at the end of the period and setting forth all transactions from that crypto asset address during that period, and a statement urging the client to compare the account statements from the adviser with the crypto asset balances and transaction information indicated under the client's crypto asset address (the ''self-custody account statement requirement''). Advisers may satisfy this requirement if, in lieu of an account statement, they transmit, or arrange for the transmission, to clients of the information required to be provided in the account statement in a human-readable and reasonably usable electronic format, provided that a notice is sent to the client identifying the crypto asset address that stores the client's crypto assets and the crypto

[59] As discussed further below in section II.D, the Commission also considered, but is not proposing at this time, amendments to the custody rules related to crypto asset trading.

[60] However, in such a circumstance, the adviser would not be limited in its ability to provide nondiscretionary investment advice to its client regarding investing in a particular crypto asset where the client then makes the investment on its own and not through the adviser.

[61] *See* proposed rule 223–1(d)(3); *see also infra* section II.A.1.b) for discussion of the proposed adviser self-custody rule terms and definitions. *See* also proposed rules 17f–8 and 17f–9.

[62] The proposed adviser self-custody rule under the Advisers Act is rule 223–1(b)(7). The proposed fund self-custody rule under the Investment Company Act is rule 17f–9.

[63] *See infra* section II.A for discussion of the proposed definition of ''self-custody'' under the Advisers Act custody rule.

[64] *See, e.g.,* Comment Letter to Crypto Task Force of Alternative Investment Management Association (Mar. 25, 2025) (''AIMA Comment Letter'') (stating that ''an exemption should allow investment advisers to engage in self-custody subject to certain conditions—such as maintaining written risk controls—if the investment adviser can document that no qualified custodian with appropriate capabilities exists for a particular asset''); Dechert Comment Letter (stating that allowing registered investment advisers to ''self-custody crypto assets'' would free them ''from having to find qualified custodians at a time when very few crypto asset custodians clearly meet the Advisers Act's definition of a qualified custodian''); Comment Letter to Crypto Task Force of World Federation of Exchanges (Mar. 18, 2025) (''World Federation of Exchanges Comment Letter'') (describing ''self-custody'' as the owner directly holding the crypto asset, using a ''personal digital wallet'' and where ''the owner is responsible for the safekeeping of their private keys'').

[65] Proposed rule 223–1(b)(7)(i).

[66] Proposed rule 223–1(b)(7)(ii).

[67] Proposed rule 223–1(b)(7)(v).

[68] Proposed rule 223–1(b)(7)(ii).

[69] Proposed rule 223–1(b)(7)(iii).

[70] Proposed rule 223–1(b)(7)(iv).

network on which such crypto asset address operates.[71]

• *Financial asset election.* The proposed adviser self-custody rule would require that the adviser and the client agree, in writing, to treat each crypto asset that is in the adviser's self-custody as a financial asset, and that the adviser holding the client's crypto asset in self-custody is a securities intermediary, pursuant to applicable State law that governs the written agreement between the adviser and the client.[72]

• *Board oversight requirements for regulated funds.* The proposed fund self-custody rule would require a regulated fund's board to determine that a crypto asset of the fund would be subject to reasonable care if self-custodied with the fund's investment adviser prior to the investment adviser maintaining the crypto asset and annually thereafter.[73] The board also would be required to review the adviser's qualified custodian determination prior to the investment adviser maintaining the crypto asset and quarterly thereafter.[74]

• *Distributed crypto assets.* The proposed Advisers Act custody rule and the proposed fund self-custody rule would include provisions that would deem the receipt of a distributed (*i.e.,* airdropped) crypto asset to not be in violation of the Commission's custody rules under the Advisers Act and the Investment Company Act, as applicable, provided that the adviser or the regulated fund meets the proposed conditions of these respective provisions.[75]

• *Recordkeeping.* We are also proposing corresponding recordkeeping requirements related to the proposed self-custody rules.[76]

The proposed self-custody rules are intended as generally applicable requirements informed by the Commission's current understanding of crypto assets and custodial practices involving crypto assets, including the typical transactional and structural features of crypto assets and crypto networks and the typical characteristics of custodial arrangements for crypto assets. However, the Commission recognizes that crypto asset features and custodial practices for crypto assets continue to evolve and that certain crypto assets as well as novel arrangements and transactions involving crypto assets may present circumstances not addressed in this proposal and the framework for the proposed self-custody rules. To help inform the Commission's ongoing consideration of these issues, we encourage members of the public to contact the Commission with any such unique or novel arrangements involving crypto assets that raise questions about custody and safeguarding of crypto assets in compliance with the Commission's custody rules.

State Trust Company Custody: We are also proposing to amend the custody rules to permit custody of client and regulated fund crypto assets by State trust companies (together, the ''proposed State trust company rules''),[77] subject to the following proposed conditions.

• *State regulation:* The proposed State trust company rules would require that prior to engaging a State trust company as a permitted custodian and annually thereafter, the adviser or regulated fund must have a reasonable basis, after due inquiry, for believing that the State trust company is authorized by the relevant State banking authority to provide crypto asset custody.[78]

• *Policies and procedures.* The proposed State trust company rules would require that, prior to engaging a State trust company as a permitted custodian and annually thereafter, the adviser or regulated fund must have a reasonable basis, after due inquiry, for believing that the State trust company maintains and implements written policies and procedures reasonably designed to safeguard crypto assets and related cash and/or cash equivalents from the risk of theft, loss, misuse, and misappropriation.[79]

• *Audited financial statements.* Under the proposed rules, the adviser or regulated fund would be required to receive and review the State trust company's most recent annual audited financial statements as an initial matter and on an annual basis thereafter.[80]

• *Internal control reports.* Under the proposed rules, the adviser or regulated fund would be required to receive and review the State trust company's most recent internal control report as an initial matter and on an annual basis thereafter.[81]

• *Segregation of assets.* Under the proposed rules, all advisory client (including regulated fund) crypto assets would be required to be segregated from the State trust company's proprietary assets.[82] Regulated funds would be required to enter into a custodial services agreement with the State trust company that provides for this asset segregation.[83]

• *Recordkeeping.* We are also proposing corresponding recordkeeping requirements related to the proposed State trust company rules.[84]

Similar to the proposed self-custody rules, the proposed protective conditions are intended to address the risks inherent to the custody of crypto assets and help ensure that the State trust company custodian can provide secure and effective crypto asset custodial services.

Regulated Fund Custody Modernization and Adviser Custody Modernization: We are proposing several amendments to the Investment Company Act and Advisers Act custody rules to modernize the custody rules, better address current industry practices and address feedback from industry participants, and implement certain conforming amendments.[85]

For the Investment Company Act custody rules:

• First, we are proposing to add references to BDCs throughout the Investment Company Act custody rules to clarify that BDCs, like registered investments companies, may rely on the rules to use permitted custodians other than banks.

• Second, we are proposing to amend rule 17f–1, the rule related to broker-dealer custodians, to expand eligible broker-dealer custodians to include all registered broker-dealers, rather than just members of a national securities exchange, and to replace the numerous conditions in the rule with the condition that regulated fund securities and similar investments may be placed or maintained with a broker-dealer whose custody of those securities or similar investments is subject to the

[71] Proposed rule 223–1(b)(7)(vi).

[72] Proposed rule 223–1(b)(7)(viii). State law governs the written contractual treatment of an asset as a financial asset and a party to the written agreement as a securities intermediary pursuant to the applicable State's enacted version of Article 8 of the Uniform Commercial Code (''UCC'').

[73] Proposed rule 17f–9(b)(1)(ii).

[74] Proposed rule 17f–9(b)(1)(i).

[75] Proposed rule 223–1(b)(11); proposed rule 17f–9(c).

[76] Proposed rule 204–2(a)(26); proposed rule 31a–2(a)(10).

[77] The proposed State trust company rule under the Advisers Act is rule 223–1(d)(13)(v). The proposed Investment Company Act State trust company rule is rule 17f–8.

[78] Proposed rule 223–1(d)(13)(v)(A)(1); proposed rule 17f–8(a)(1)(i).

[79] Proposed rule 223–1(d)(13)(v)(A)(2); proposed rule 17f–8(a)(1)(ii).

[80] Proposed rule 223–1(d)(13)(v)(B); proposed rule 17f–8(a)(2).

[81] Proposed rule 223–1(d)(13)(v)(C); proposed rule 17f–8(a)(3).

[82] Proposed rule 223–1(a)(1); proposed rule 17f–8(b).

[83] Proposed rule 17f–8(b).

[84] Proposed rule 204–2(a)(27); proposed rule 31a–2(a)(9).

[85] Certain of these proposed amendments are also consistent with previously stated staff views.

requirements of the customer protection rule.

• Third, we are proposing to rescind rule 17f–3 (the ''free cash accounts rule'') as we understand that regulated funds are no longer using this rule, and we do not perceive a need in modern markets for regulated funds to maintain free cash accounts.

• Fourth, we are proposing conforming amendments to rules related to domestic and foreign depositories to correct an outdated address and a cross reference to a provision that no longer exists.

• Fifth and finally, we are requesting comment on whether and how to modernize and update rule 17f–2, the fund self-custody rule, and other Investment Company Act custody rules.

We are proposing to amend the Advisers Act custody rule in several respects. First, pursuant to the authority that Congress has given us under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') specifically to prescribe investment adviser custody rules, we are proposing to redesignate the Advisers Act custody rule to new rule 223–1 and make certain conforming amendments to reflect the proposed redesignation.[86] Second, we are also proposing several amendments to modernize the Advisers Act custody rule, along with conforming amendments to update outdated references. In certain cases, such amendments are consistent with previously issued interpretive releases, staff FAQs, and staff no-action letters. These additional proposed amendments would facilitate compliance with the Advisers Act custody rule, better address industry practices, and reduce burdens. Third, we are also providing our views on several topics related to the application of the Advisers Act custody rule to improve advisers' compliance with the Advisers Act custody rule and therefore enhance investor protection. Our proposed amendments to the Advisers Act custody rule and related views include:

• *Redesignation to section 223*—As noted, we are proposing to redesignate the Advisers Act custody rule to new rule 223–1 and to make certain conforming amendments to reflect the proposed redesignation.

• *Discretionary trading authority exception*—We are proposing amendments to the Advisers Act custody rule to specify circumstances under which authorized discretionary trading authority is excepted from application of the Advisers Act custody rule.[87]

• *PCAOB-registered accountant requirement*—We propose to amend the Advisers Act custody rule to eliminate the requirements that the independent public accountants engaged to perform audit and examination services under the Advisers Act custody rule must be registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board (the ''PCAOB'').

• *Audit provision*—The proposed amendments would address several aspects of the audit provision. First, the proposed amendments would specify that all audited financial statements must be prepared in accordance with U.S. Generally Accepted Accounting Principles (''U.S. GAAP''), with an exception for foreign pooled investment vehicles. Second, the proposed amendments would extend the audited financial statements delivery deadlines for funds of funds and funds of funds of funds pooled investment vehicles and permit the delivery of audited financial statements to an independent representative of the investor. Third, the proposed amendments would modify the timing requirements for delivery of audited financial statements for pooled investment vehicles that are formed toward the end of their fiscal year.

• *Standing letters of authorization*—The proposed amendments would provide an exception from the surprise examination requirement for an adviser that has custody of client funds and securities solely because of a standing letter of authorization. We also propose to amend the Advisers Act recordkeeping rule to add a corresponding recordkeeping obligation.

• *Treatment of BDCs*—The proposed amendments would indicate that the Advisers Act custody rule's exception for registered investment companies also includes BDCs that elect to be regulated as investment companies under the Investment Company Act.

• *Account number in notice to clients*—The proposed amendments would require that the client notice sent by an adviser upon opening an account with a qualified custodian include the client's account number.

• *Notice to the Commission of material discrepancies*—We are proposing a conforming amendment to provide that accountants must send the notice of a finding of any material discrepancies during the course of a surprise examination to the Commission by electronic means to the Division of Examinations.

• *Inadvertent custody*—The amendments would specify the circumstances under which an adviser that becomes aware it has inadvertent custody of client funds or securities would not be considered to have custody of such funds or securities for purposes of the Advisers Act custody rule.

• *Segregation of assets*—We are setting forth our views on the Advisers Act custody rule's asset segregation requirement with respect to client funds and securities held at qualified custodians and client cash held at banks, as well as the use of escrow accounts for transaction purposes used in connection with the sale of portfolio companies owned by pooled investment vehicles.

• *Accommodation reporting*—We are providing our views on the circumstances under which accommodation reporting is permissible.

Recordkeeping: We are proposing amendments to the recordkeeping rules under the Advisers Act and Investment Company Act to provide that records required to be maintained and preserved under the applicable recordkeeping rules may be maintained and preserved on a crypto network, provided that the adviser or regulated fund[88] can provide, promptly upon request by the Commission (including its examiners and other representatives), such records to the Commission in a human-readable and reasonably usable electronic format. We are also proposing amendments to the recordkeeping rules under the Investment Company Act to specify the applicability of these rules to BDCs.

Accounting Guidance: We discuss revisions we expect to make to the 2009 Commission Guidance Regarding Independent Public Accountant Engagements.[89]

Form Amendments: Finally, we are proposing amendments to certain Commission forms. We are proposing amendments to Form ADV to: (1) implement the proposed rule amendments related to adviser crypto asset self-custody; (2) improve the readability of Item 9; (3) add new questions to Schedule D of Form ADV

[86] See section 411 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[87] Proposed rule 223–1(b)(9).

[88] *See infra* footnote 652. As used here, regulated fund would refer to all registered investment companies and BDCs and would include UITs and FACCs.

[89] *See* Commission Guidance Regarding Independent Public Accountant Engagements Performed Pursuant to Rule 206(4)–2 Under the Investment Advisers Act of 1940, Advisers Act Release No. 2969 (Dec. 30, 2009) [75 FR 1492 (Jan. 11, 2010)] (the ''2009 Guidance for Accountants'').

regarding tokenized private funds; [90] and (4) make certain conforming amendments, including to implement the proposed redesignation of the Advisers Act custody rule as rule 223–1.[91] These proposed amendments to Form ADV would support accurate and complete disclosure on Form ADV.

For regulated funds other than BDCs, we are proposing amendments to Form N–CEN to require reporting of the use of crypto asset self-custody or of a State trust company to custody crypto assets, as well as to require reporting of whether a registered investment company, other than a FACC, (or Series or Class thereof) is a tokenized fund.[92] In addition, we are providing our views on disclosures related to the proposed self-custody rules and the proposed State trust company rules (together, the ''proposed crypto custody rules'') for Part 2 of Form ADV for advisers and Forms N–1A and N–2 for regulated funds to help improve the quality of disclosure made to the Commission and the public on these forms related to any material facts and risks associated with crypto asset self-custody and custody of crypto assets by State trust company custodians.

II. Discussion

A. Adviser Self-Custody

1. Adviser Self-Custody Rule Overview

(a) Summary and Scope of the Proposed Adviser Self-Custody Rule

The Advisers Act custody rule generally requires advisers to maintain client assets at a qualified custodian (the ''qualified custodian requirement'').[93] However, as demand for crypto asset custodial services grows with the continued growth of the crypto asset market, the range of crypto assets that can be supported by qualified custodians that are both technically capable of offering custodial services and eligible under the Commission's custody rules to act as a custodian is limited.[94] Third-party custodians may not be capable of providing custodial services initially or quickly after launch of a particular crypto asset.[95] The timing delay in the offering of custodial services for a particular crypto asset may impair investors' ability to realize the available investment value for that crypto asset.[96]

In these instances, adviser self-custody may be a viable option to address this gap of custodial services for crypto assets. In particular, an adviser that conducts extensive due diligence of a crypto asset beginning in its early stage development as a novel or nascent crypto asset may have expertise on the functioning and operation of the crypto network, potentially allowing them to be well-positioned to securely self-custody the crypto asset. Advisers may be able to provide secure custodial services on a timelier basis than a third-party permitted custodian that may have less knowledge of the crypto asset and the operations of the crypto network.

We are also cognizant that an adviser's self-custody is subject to higher custodial risks such as the risk of loss, theft, misuse, misappropriation as well as the adviser's financial condition, as compared to maintaining a client's funds or securities at a qualified custodian, because advisers are not customarily engaged in the business of custody and therefore, many of them may lack the relevant experience, expertise and/or necessary controls to effectively safeguard an asset. In addition, there may be heightened custodial risk when the adviser and the custodian are the same party so that the adviser can move client assets without contacting an unaffiliated custodian. When there is a clear distinction between the roles of the adviser (advising the client on the buying and selling of assets and implementing the client's investment strategy), an adviser is less likely to engage in unauthorized trading in a client's account. Because an adviser self-custodial role goes beyond the services customarily associated with advisory businesses and presents heightened concerns on conflicts of interest, the proposed requirements under the adviser self-custody rule are necessary to ensure that the adviser has the qualifications and experience necessary to adequately safeguard client assets.

We are thus proposing an adviser self-custody rule under the Advisers Act that would permit an adviser to hold client crypto assets for which it provides investment advice without maintaining them at a qualified custodian; provided that the adviser complies with conditions designed to safeguard the self-custodied crypto assets from loss, theft, misuse and misappropriation as well as the adviser's financial condition.[97] As discussed further below, an adviser that possesses any portion of the key materials to a client's crypto asset would have ''self-custody'' of the client's crypto asset, and would thus be required to comply with the proposed adviser self-custody rule with respect to that crypto asset.[98]

The application of the adviser self-custody rule's heightened safeguards to the protection of key materials is critical to the safekeeping of a client's crypto asset because, unlike mechanisms used to transact in more traditional assets, access to crypto assets generally requires the use of public and private cryptographic key pairings, and the loss or theft of key materials can result in the irreversible loss of crypto assets.[99] Whereas processes and protocols exist to reverse erroneous or fraudulent transactions with respect to traditional

[90] Unlike investment advisers registered with the SEC, which must complete all of Form ADV, exempt reporting advisers (''ERAs'') that are not also registering with any State securities authority only need to complete certain items of Form ADV, Part 1A (Items 1, 2, 3, 6, 7, 10, and 11, as well as corresponding schedules). Because such ERAs are required to complete Item 7 of Form ADV Part 1A to which Schedule D relates, such ERAs would also be required to respond to the proposed additional questions related to tokenized funds. *See infra* section II.J.1.c) for further discussion. ERAs that are registering with any State securities authority must complete all of Form ADV, Part 1A. *See* Form ADV Instruction 3. An ERA is an investment adviser that is not registered with the Commission because the adviser relies on an exemption from registering with the Commission under section 203(l) or 203(m) of the Advisers Act. ERAs are subject to certain reporting, recordkeeping, and other obligations. *See* rule 204–4 [17 CFR 275.204–4].

[91] We are also proposing to amend Item 1.I of Form ADV and section 1.I. of Schedule D to Form ADV to remove a parenthetical that lists examples of social media platforms. Additionally, we are also proposing conforming amendments to Form ADV–E to implement the proposed redesignation of the Advisers Act custody rule to rule 223–1. *See infra* sections II.J.1.d) and II.J.4.

[92] *See* General Instruction A to Form N–CEN.

[93] *See* current rule 206(4)–2(a)(1).

[94] *See, e.g.,* TDC Comment Letter I (stating that the range of crypto assets supported by qualified custodians is limited because of the ''fast-moving space where new tokens and protocols are constantly being launched'' and due to the fact that ''every blockchain protocol generally requires the development of a custom technology build, which takes a significant amount of engineering work''); Dechert Comment Letter (stating that of the categories of qualified custodians permitted to hold client assets under the Advisers Act custody rule, ''very few are qualified to custody crypto assets, and even these few serve a relatively small number of crypto assets'').

[95] *See, e.g.,* Unit 410 Comment Letter.

[96] *See, e.g.,* TDC Comment Letter I (stating that some advisers have ''declined token allocations at the potential detriment of investors or asked portfolio companies to hold tokens until a custodial solution becomes available'').

[97] *See supra* section I.B for a more detailed discussion of the reasons we are proposing an adviser self-custody rule that would allow advisers to self-custody clients' crypto assets.

[98] *See* proposed rule 223–1(d)(16) for the proposed definition of ''self-custody'' and proposed rule 223–1(b)(7).

[99] *See, e.g.,* U.S. Securities and Exchange Commission, Office of Investor Education and Assistance, *Crypto Asset Custody Basics for Retail Investors—Investor Bulletin* (Dec. 12, 2025), *available at https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-bulletins/crypto-asset-custody-basics-retail-investors-investor-bulletin-0* (''OIEA Investor Bulletin'') (describing Commission staff's observations that the loss of private keys can result in permanent loss of access to the crypto assets).

assets, crypto networks, by design, generally make it difficult or impossible to reverse erroneous or fraudulent crypto asset transactions. Custodial risks associated with the immutability of records on crypto networks may be heightened in the context of permissionless crypto networks where anyone can participate in the network without permission, as opposed to permissioned crypto networks where participants must be approved in order to access the crypto network.[100] These specific characteristics of crypto assets put clients at risk of permanently losing their crypto assets or being unable to reverse erroneous or fraudulent transactions when key materials are lost or stolen. Because of these features and the highly interconnected nature of crypto networks, crypto assets are subject to heightened risks, such as the risk of loss and theft from cybersecurity attacks, as compared to the risks associated with traditional assets, thus necessitating highly specialized technical knowledge and capabilities as well as proficiency in cybersecurity practices, to adequately safekeep crypto assets and their associated key materials.

Although accounts of regulated funds are excepted from the application of the Advisers Act custody rule, the term ''client,'' for purposes of the proposed adviser self-custody rule would include regulated funds.[101] The current exception in the Advisers Act custody rule recognizes that the custody of regulated funds' assets is addressed by section 17(f) of the Investment Company Act and the rules thereunder.[102] The Investment Company Act and the rules thereunder, however, currently do not address self-custody of crypto assets by regulated funds. The heightened risk of loss and custodial challenges associated with crypto assets arise to the same extent across all advisory clients including regulated funds. Therefore, the safeguards in the proposed adviser self-custody rule are designed to protect crypto assets in the self-custody of registered advisers, regardless of the type of advisory client.

Rather than duplicating protections provided under the proposed fund self-custody rule under the Investment Company Act, the proposed adviser self-custody rule under the Advisers Act would apply to accounts of regulated funds as well. An adviser that has self-custody of crypto assets for accounts of regulated funds would thus be required to comply with the requirements of the proposed adviser self-custody rule under the Advisers Act with respect to those assets, although the adviser will continue to be excepted from the rest of the Advisers Act custody rule with respect to accounts of regulated funds.[103]

Consistent with the current scope of assets subject to the Investment Company Act and its custody rules for regulated funds, which apply to a regulated fund's securities and similar investments, when an adviser complies with the proposed adviser self-custody rule with respect to regulated funds, the scope of the rule would apply with respect to crypto assets that are ''securities and similar investments,'' to be consistent with the scope of the Investment Company Act custody rules. In order to effect this change, we are proposing to revise the lead-in language of the Advisers Act custody rule, which currently says, ''If you are an investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3), it is a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)) for you to have custody of client funds or securities unless . . .'' This proposal would amend the lead-in of the Advisers Act custody rule to state as follows: ''If you are an investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3), you must take the following steps to safeguard client funds and securities of which you have custody; provided that, where this section (17 CFR 275.223–1) applies to the account of a registered investment company or a business development company, references to funds and securities shall be understood to refer to the securities and similar investments held for such account.'' [104] The scope of the Advisers Act custody rule will continue to apply to funds and securities with respect to advisory clients that are not regulated funds.

Moreover, in addition to the safeguards required of registered advisers with self-custody of crypto assets under the proposed adviser self-custody rule, a regulated fund's board of directors would need to engage in the oversight of the self-custody arrangement as required under the proposed fund self-custody rule under the Investment Company Act. This would allow regulated funds to place and maintain crypto assets with an adviser to the regulated fund, subject both to the protections in the proposed adviser self-custody rule and the regulated fund's board of director's oversight of the arrangement under the proposed fund self-custody rule.[105]

An adviser that has self-custody of crypto assets would be required to comply with the proposed adviser self-custody rule's requirements. As discussed in more detail in subsequent sections below, as an initial matter and no less than quarterly, the adviser would need to determine, and record in writing, that a qualified custodian is not available to maintain the crypto asset.[106] In order to help ensure that only those advisers who are well-suited and have the capabilities to safeguard crypto assets have self-custody of client crypto assets, the proposed adviser self-custody rule would also require the adviser to have expertise regarding the safeguarding of each crypto asset; to document in writing the basis of such determination; and to adopt, implement, and maintain the systems necessary to safeguard each crypto asset against loss, theft, misuse, and misappropriation.[107]

Although the proposed adviser self-custody rule would not prescribe specific technical requirements for the adviser's safeguarding systems, the adviser's safeguarding systems would need to address, at a minimum, the following core elements designed to safeguard the crypto assets:

- private key management,
- joint authorization of any crypto asset transactions by at least two persons, and
- segregation of each client's crypto assets by the crypto asset addresses

[100] *See* Changelly, Permissioned vs. Permissionless Blockchains (Oct. 31, 2025), *available at https://changelly.com/blog/permissioned-vs-permissionless-blockchain/*.

[101] *See* current rule 206(4)–2(b)(5); proposed rule 223–1(b)(7); and proposed rule 223–1(b)(5).

[102] *See* 2003 Adopting Release, *supra* footnote 7, at section II.D.1 (stating that adviser need not comply with the Advisers Act custody rule with respect to clients that are registered investment companies because registered investment companies and their advisers must comply with the strict requirements of section 17(f) of the Investment Company Act and the custody rules adopted by the Commission under that section).

[103] *See* proposed rule 223–1(b)(5); proposed rule 223–1(a). *But see* proposed rule 223–1(b)(7)(vii) which would except advisers from the proposed requirement to send account statements to clients for which the adviser maintains crypto assets in self-custody with respect to the account of any regulated fund. *See infra* section II.A.7 for a detailed discussion of the proposed self-custody account statement requirement. *See also infra* section II.B for a detailed discussion of the proposed fund self-custody rule under the Investment Company Act that would apply to regulated funds with self-custody of crypto assets.

[104] *See* proposed rule 223–1(a).

[105] *See infra* section II.B for a detailed discussion of the proposed fund self-custody rule for regulated funds.

[106] Proposed rule 223–1(b)(7)(i). *See also* discussion *infra* Section II.A.2.

[107] Proposed rule 223–1(b)(7)(ii).

storing only such client's crypto assets on the crypto network.[108]

Other required safeguards under the proposed adviser self-custody rule include implementing cybersecurity controls[109] and obtaining an annual internal control report prepared by an independent public accountant.[110] The proposed adviser self-custody rule would also require an adviser to annually review, and to document its review in writing, the adviser's safeguarding systems and cybersecurity controls implemented pursuant to the adviser self-custody rule and the effectiveness of their implementation.[111] In addition, the proposed adviser self-custody rule would require an adviser to send quarterly account statements, or alternatively, to transmit or arrange for the transmission of information required in account statements at least quarterly in a human-readable and reasonably usable electronic format, to advisory clients for which they self-custody crypto assets.[112] Finally, the proposed adviser self-custody rule would require an adviser and its client to agree in writing to treat each crypto asset in the adviser's self-custody as a financial asset and that the adviser holding the client's crypto asset in self-custody is a securities intermediary pursuant to applicable State law that governs the written agreement between the adviser and the client.[113]

Structurally, the proposed adviser self-custody rule would be an exception from certain requirements of the Advisers Act custody rule, including the qualified custodian requirement.[114] The proposed adviser self-custody rule would also be an exception from the requirement to notify the client in writing of certain information if the adviser opens an account with a qualified custodian on the client's behalf and to have a reasonable basis, after due inquiry, for believing that the qualified custodian sends quarterly account statements to clients.[115] Advisers would remain subject to the other applicable portions of the Advisers Act custody rule unless eligible for a specific exception. For example, advisers subject to the Advisers Act custody rule must obtain a surprise examination at least once each calendar year verifying client funds and securities of which the adviser has custody, unless, for instance, the adviser manages a pooled investment vehicle subject to an annual financial statement audit by an independent public accountant.[116] Advisers with self-custody of crypto assets on behalf of an account of a regulated fund would only need to comply with the proposed adviser self-custody rule with respect to such crypto assets, and would remain excepted from the other parts of the Advisers Act custody rule with respect to the account of a regulated fund.[117]

In connection with the proposed adviser self-custody rule, we are proposing amendments to the Form ADV, Part 1A, to add new questions that would require the adviser to disclose certain information regarding its crypto asset self-custody practices.[118] We also discuss below disclosures regarding the material risks and conflicts of interest associated with self-custody of client crypto assets that advisers may need to provide in their brochures as well as separately to their clients pursuant to their fiduciary duty.[119]

Although the proposed adviser self-custody rule is designed to be generally flexible and principles-based in order to adapt to developments over time, we remind advisers to also consider, as fiduciaries, their fiduciary obligations when they have self-custody of client crypto assets. An adviser's fiduciary duty, which comprises a duty of loyalty and a duty of care, requires the investment adviser to act in the best interests of its client at all times and to not subordinate its client's interest to its own.[120] Under its duty of loyalty, an investment adviser must eliminate or make full and fair disclosure of all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which is not disinterested such that a client can provide informed consent to the conflict. This fiduciary duty extends to client funds and securities, and securities and similar investments with respect to advisory clients that are regulated funds, in the adviser's custody.[121] Therefore, an adviser that fails to take reasonable steps to safeguard self-custodied crypto assets or that misappropriates or misuses those assets would be acting in a manner inconsistent with the client's best interests and the adviser's fiduciary duty. Loss of client crypto assets in the adviser's self-custody resulting from the adviser's failure to take such reasonable steps may be a violation of its duty of care, while an adviser that misappropriates client crypto assets in self-custody would be breaching its duty of loyalty. An adviser's failure to make full and fair disclosure of the conflicts of interest arising from the self-custodial arrangement in order to allow the client to provide informed consent to such conflicts would be a breach of the adviser's duty of loyalty. Although the specific obligations that flow from the adviser's fiduciary duty depend on what functions the adviser has agreed to assume for the client, the relationship in all cases remains that of a fiduciary to the client and may not be waived.[122] We request comment on the proposed adviser self-custody rule under the Advisers Act:

1. Pursuant to the proposed adviser self-custody rule, an adviser would be permitted to have self-custody of a client's crypto asset without maintaining it at a qualified custodian,

[108] Proposed rule 223–1(b)(7)(ii)(A) through (C). *See also* discussion *infra* Section II.A.3(a).

[109] Proposed rule 223–1(b)(7)(iii).

[110] Proposed rule 223–1(b)(7)(iv).

[111] Proposed rule 223–1(b)(7)(v).

[112] Proposed rule 223–1(b)(7)(vi).

[113] Proposed rule 223–1(b)(7)(viii).

[114] *See* proposed rule 223–1(b)(7).

[115] *See* current rule 206(4)–2(a)(2) (to be redesignated under this proposal as rule 223–1(a)(2) (''notice requirement'')) and current rule 206(4)–2(a)(3) (to be redesignated under this proposal as rule 223–1(a)(3) (''account statement delivery requirement'')).

[116] *See* current rule 206(4)–2(a)(4) which would be redesignated as rule 223–1(a)(4) under this proposal (the ''surprise examination requirement''); current rule 206(4)–2(b)(4), which would be redesignated as rule 223–1(b)(4) under this proposal (the ''audit provision''). *See also infra* section II.G.4 for a detailed discussion of the proposed amendments to the audit provision.

[117] *See* proposed rule 223–1(b)(5).

[118] *See infra* section II.J.1 for a detailed discussion of the proposed amendments to Form ADV, Part 1A.

[119] *See infra* section II.J.3 for a detailed discussion of disclosures regarding adviser self-custody of crypto assets.

[120] *See, e.g., SEC* v. *Moran,* 944 F. Supp. 286, 297 (S.D.N.Y 1996) (''Investment advisers are entrusted with the responsibility and duty to act in the best interest of their clients.''). *See also* Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Investment Advisers Act Release No. 5248 (June 5, 2019) [84 FR 33669 (July 12, 2019)] at section II (''Standard of Conduct Release'') at section II and n.23 (discussing various interpretations of an adviser's fiduciary duty spanning several decades); Compliance Programs of Investment Companies and Investment Advisers, Advisers Act Release No. 2204 (Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003)] (''Compliance Program Adopting Release''), at n.22 and accompanying text (in discussing this fiduciary obligation in the context of business continuity plans, stating that an adviser's fiduciary obligation to its clients includes the obligation to take steps to protect the clients' interests from being placed at risk as a result of the adviser's inability to provide advisory services).

[121] *See* Standard of Conduct Release, *supra* footnote 120, at n. 17 (discussing the broad scope of the fiduciary duty in a variety of contexts); 2003 Adopting Release, *supra* footnote 7, at n.22 (in discussing an adviser's selection of a foreign financial institution to hold clients' assets, stating that an adviser's fiduciary obligations require it either to have a reasonable basis for believing that the foreign institution will provide a level of safety for client assets similar to that which would be provided by a ''qualified custodian'' in the United States or to fully disclose to clients any material risks attendant to maintaining the assets with the foreign custodian).

[122] *See* Standard of Conduct Release, supra footnote 120, at section II.A.

provided that the adviser complies with the requirements of the proposed adviser self-custody rule. Should an adviser be permitted to have self-custody of client crypto assets, including crypto assets of a regulated fund, as proposed? Why or why not?

2. Do commenters agree that qualified custodian availability is a particularly acute problem for certain kinds of crypto assets, such as nascent or novel crypto assets? If so, what types of crypto assets raise heightened challenges to finding available qualified custodians to maintain them? To what extent would the proposed rule permitting crypto asset custody at State trust companies discussed below (see section II.C) alleviate these challenges? [123]

3. The Advisers Act custody rule excepts securities that meet the description of privately offered securities from the qualified custodian requirement on the basis that they are hard to steal.[124] Privately offered securities are securities that are: (i) acquired from the issuer in a transaction or chain of transactions not involving any public offering; (ii) uncertificated, and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client; and (iii) transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer. Crypto assets would not be able to meet this exception if, for example, records of their ownership are not recorded only on the books of the issuer or its transfer agent in the name of the client, or if they can be transferred without the prior consent of the issuer. Are there crypto assets that could qualify as privately offered securities? If so, what characteristics of such crypto assets and/or their crypto networks satisfy the conditions of the privately offered securities exception? If there are crypto assets that could qualify as privately offered securities, should the privately offered securities exception be amended to except the adviser from the conditions of the proposed adviser self-custody rule with respect to any such crypto assets in the adviser's self-custody? Why or why not? If yes, how should the privately offered securities exception be amended, if at all, to accommodate characteristics unique to securities that are crypto assets and what conditions should apply to such crypto assets under the exception to ensure that the privately offered securities exception continues to exempt only those crypto assets that have features similar to privately offered securities that provide external safeguards against the kinds of abuse the custody rule seeks to prevent?

4. Is our understanding correct that some advisers engage in extensive due diligence of a crypto asset beginning in its early stage development, and that such advisers may acquire expertise on the functioning and operation of the associated crypto network, potentially allowing them to be well-positioned to securely self-custody the crypto asset? If not, why not? How does the adviser's due diligence of the crypto asset position the adviser to be better situated than a traditional custodian to custody the crypto asset? Does the adviser's involvement via the due diligence of the crypto asset create or enhance any conflicts of interest that the proposed custody rule amendments should uniquely address?

5. In a Commission interpretation addressing the application of certain Federal securities laws to certain types of crypto assets and certain transactions involving crypto assets, the Commission stated that non-security crypto assets may be offered and sold subject to an investment contract, which is a security.[125] Is any guidance or additional changes to the Commission's custody rules needed to address non-security crypto assets that are subject to an investment contract?

6. Would the proposed safeguards under the adviser self-custody rule raise any particular challenges for smaller advisers or regulated funds with smaller advisers? If so, what could we do to help mitigate those challenges?

7. Are there any services or business practices engaged in by advisers that could cause an adviser to become subject to regulation or become regulated entities under other regulatory frameworks outside of the Commission's rules (for example, regulations governing banks and money transmitters) if advisers were permitted to hold crypto assets in self-custody pursuant to the adviser self-custody rule?

(b) Adviser Self-Custody Rule Terms and Definitions

We propose to amend the Advisers Act custody rule to add the following terms in connection with the proposed adviser self-custody rule: ''crypto network,'' ''crypto asset,'' ''crypto asset address,'' ''key materials,'' ''self-custody,'' ''distributed crypto asset,'' and ''management persons.'' As a relatively novel and highly technological asset class, it is important that terms related to crypto assets be defined appropriately so that they can be understood by all market participants, regardless of their technological sophistication. Given the rapid pace of innovation in the crypto asset markets, it also is important that the terms be both accurate with respect to the current state of the technology and sufficiently flexible to cover potential developments in the market to avoid a need to continually revisit and update the definitions. The definitions proposed herein are intended to be consistent with the definitions of applicable terms used in a prior Commission interpretation and staff statements.[126]

The proposed amendments to the Advisers Act custody rule would thus set forth the following definitions that would apply to crypto assets pursuant to the proposed adviser self-custody rule:

''Crypto asset'' would mean any digital representation of value that is recorded on a cryptographically secured distributed ledger.[127] Consistent with the current scope of assets subject to the custody rule for advisers under the Advisers Act (which only applies to custody of client funds or securities) and the Investment Company Act and its custody rules for regulated funds (which apply to a regulated fund's securities and similar investments), crypto assets subject to the Advisers Act custody rule would only include crypto assets that are digital representations of funds (*e.g.,* cash, bank accounts, payment stablecoins issued by stablecoin issuers that are permitted payment stablecoin issuers under the GENIUS Act or foreign payment

[123] *See infra* section II.C for a detailed discussion of the proposed rule that would allow custody of crypto assets at State trust companies. *See also supra* section I.A.2 for a discussion of related staff actions such as the rescission of SAB 121 and the staff issuance of the 2025 State Trust Company NAL.

[124] *See* current rule 206(4)–2(b)(2) which would be redesignated as rule 223–1(b)(2) under this proposal (''privately offered securities exception'').

[125] *See* Commission Security Status Interpretation, *supra* footnote 24, at section IV.

[126] *See* Commission Security Status Interpretation, *supra* footnote 24, at n.1; U.S. Securities and Exchange Commission, Division of Corporation Finance, Division of Investment Management, Division of Trading and Markets, *Statement on Tokenized Securities* (Jan. 28, 2026), *available at https://www.sec.gov/newsroom/speeches-statements/corp-fin-statement-tokenized-securities-012826-statement-tokenized-securities* (''Tokenization Statement''), at n.1; U.S. Securities and Exchange Commission, Division of Trading and Markets, *Staff Statement Regarding Broker-Dealer Registration of Certain User Interfaces Utilized to Prepare Transactions in Crypto Asset Securities* (Apr. 13, 2026), *available at https://www.sec.gov/newsroom/speeches-statements/staff-statement-regarding-broker-dealer-registration-certain-user-interfaces-utilized-prepare-staff-statement-regarding-broker-dealer-registration-certain-user-interfaces-utilized#_ftn3* (''User Interface Statement''), at n.3.

[127] *See* proposed rule 223–1(d)(3).

stablecoin issuers registered pursuant to section 18 of the GENIUS Act,[128] tokenized deposits) or securities, or with respect to crypto assets self-custodied for the accounts of regulated funds, that are securities or similar investments.[129] For purposes of the Advisers Act custody rule, crypto assets would include, but are not limited to, crypto assets that are native to a particular crypto network.[130] Crypto assets native to a crypto network include native digital commodities (*e.g.,* Bitcoin (BTC), Ether (ETH), Solana (SOL)) that, although they are generally not subject to the Advisers Act custody rule with respect to advisory clients that are not regulated funds because they are not funds or securities,[131] would qualify as ''securities and similar investments'' subject to the proposed Advisers Act custody rule to the extent an adviser holds them in self-custody pursuant to the proposed adviser self-custody rule for the account of a regulated fund.[132] Crypto assets would also include digital securities (commonly known as ''tokenized'' securities), which are financial instruments enumerated in the definition of ''security'' under the Federal securities laws that are formatted as or represented by a crypto asset, where the record of ownership is maintained in whole or in part on or through one or more crypto networks.[133]

''Crypto asset address'' would mean the unique identifier on the crypto network that designates the destination for sending, receiving, and storing a crypto asset on the crypto network.[134] This term is used in the proposed segregation and self-custody account statement requirements under the proposed adviser self-custody rule.[135]

''Crypto network'' would mean a blockchain or similar distributed ledger technology network.[136]

''Key materials'' would mean the cryptographic private keys or any part thereof that is necessary to access and effectuate transactions in the corresponding crypto asset.[137] Because private keys control access to and movements of crypto assets, it is appropriate in our view to define key materials to refer specifically to private keys. The term ''key materials'' appears in the proposed definition of self-custody.[138] The term also appears in the proposed adviser self-custody rule's provision requiring advisers to adopt, implement and maintain systems that manage and protect key materials.[139] It is appropriate to include, in the definition for key materials, ''any part'' of the private key necessary to access and effectuate transactions in a crypto asset, because the loss of any portion of the private key could result in the inability to access the crypto asset, and the safekeeping of any and all parts of the private key held with an adviser in accordance with the proposed adviser self-custody rule's conditions is essential to the safeguarding of the crypto asset.

''Self-custody'' would mean, with respect to crypto assets, possession of any portion of a client crypto asset's key materials.[140] Self-custody of crypto assets, however, would not include possession of key materials by the adviser or its related person solely in its capacity as a qualified custodian maintaining the crypto asset under proposed rule 223–1(a)(6) (the ''related person QC rule''), as discussed further below in section II.A.1(c)(2). Relatedly, we also propose to amend the first prong of the definition of ''custody'' in the Advisers Act custody rule that addresses custody by way of possession of client funds or securities, to include possession of client crypto assets via self-custody.[141] This is because self-custody of the key materials to a client's crypto asset effectuates possession of the crypto asset. Moreover, registered investment advisers are subject to the Advisers Act custody rule only if they have custody of client funds or securities (or, under the proposed custody rule, custody of securities and similar investments with respect to advisory clients that are regulated funds) as ''custody'' is defined in the Advisers Act custody rule, and, by characterizing self-custody as a type of possession in the first prong of the custody definition, the proposed amendment is intended to help ensure that the crypto assets in the adviser's self-custody are afforded the protections under the proposed adviser self-custody rule.

''Distributed crypto asset'' would mean a crypto asset received as a distribution for no or nominal consideration in connection, or as a result of activity associated, with a client's crypto asset in an adviser's custody.[142] This term, which is intended to be synonymous and used interchangeably with airdropped crypto assets in this proposal, is used in the proposed provision for distributed crypto assets that would allow advisers a grace period to come into compliance with the Advisers Act custody rule with respect to distributed crypto assets received unexpectedly.[143]

Finally, ''management persons'' would have the same meaning as set forth in Form ADV, Glossary of Terms.[144] This term is used in the proposed joint authorization requirement under the adviser self-

[128] A ''payment stablecoin'' is, subject to certain exclusions, defined as a digital asset that is, or is designed to be, used as a means of payment or settlement, and the issuer of which is obligated to convert, redeem, or repurchase the digital asset for a fixed amount of monetary value, not including a digital asset denominated in a fixed amount of monetary value, and represents that it will maintain, or create the reasonable expectation that it will maintain, a stable value relative to the value of a fixed amount of monetary value. *See* section 2(22) of the GENIUS Act. The term ''digital asset'' in the GENIUS Act is generally consistent with the proposed definition of ''crypto asset'' in the proposed Advisers Act custody rule. *See* section 2(6) of the GENIUS Act. A ''permitted payment stablecoin issuer'' is defined as a person formed in the United States that is: (1) a subsidiary of an insured depository institution that has been approved to issue payment stablecoins under section 5 of the GENIUS Act; (2) a Federal qualified payment stablecoin issuer; or (3) a State qualified payment stablecoin issuer. *See* section 2(23) of the GENIUS Act. A ''foreign payment stablecoin issuer'' is defined as an issuer of a payment stablecoin that is: (1) organized under the laws of or domiciled in a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands; and (2) not a permitted payment stablecoin issuer. *See* section 2(12) of the GENIUS Act.

[129] *See* rule 206(4)–2(a) under the Advisers Act and section 17(f)(1) of the Investment Company Act. *See also* proposed rule 223–1(a) and proposed rule 223–1(b)(5).

[130] *See* Commission Security Status Interpretation, *supra* footnote 24, at n.49 (providing that the term ''native'' in the context of a crypto asset refers to a crypto asset generated for use on a particular crypto system). *See also id.,* at section VII.A. (defining ''crypto system'' to refer collectively to crypto networks and software applications running on a crypto network (''crypto applications'')).

[131] However, as discussed in the Commission Security Status Interpretation, digital commodities may be offered and sold subject to an investment contract, which is a security. *See supra* footnote 24.

[132] *See also* Commission Security Status Interpretation, *supra* footnote 24, at section III.A (discussing digital commodities).

[133] *See also* Commission Security Status Interpretation, *supra* footnote 24, at section III.E.

[134] *See* proposed rule 223–1(d)(4).

[135] *See* proposed rule 223–1(b)(7)(ii)(C) and *infra* section II.A.3.b)(3) for a detailed discussion of the proposed segregation requirement; proposed rule 223–1(b)(7)(vi) and *infra* section II.A.7 for a detailed discussion of the proposed self-custody account statement requirement.

[136] *See* proposed rule 223–1(d)(5).

[137] *See* proposed rule 223–1(d)(10).

[138] *See* proposed rule 223–1(d)(16).

[139] *See* proposed rule 223–1(b)(7)(ii)(A).

[140] *See* proposed rule 223–1(d)(16).

[141] *See* proposed rule 223–1(d)(6)(i) (stating that custody includes possession of client funds or securities (including possession of client crypto assets via self-custody of crypto assets) (but not of checks drawn by clients and made payable to third parties) unless the adviser receives them inadvertently and the adviser returns them to the sender promptly but in any case within three business days of receiving them).

[142] *See* proposed rule 223–1(d)(7).

[143] *See* proposed rule 223–1(b)(11).

[144] *See infra* section II.A.3.b)(2) for further discussion of how the Form ADV, Glossary of Terms, defines ''Management Persons,'' and examples of persons that could qualify as management persons.

custody rule, which would require that at least one of the persons jointly authorizing a crypto asset transfer be a management person.[145]

We request comment on the proposed terms and definitions in connection with the adviser self-custody rule:

8. Are the terms and definitions proposed in connection with the proposed adviser self-custody rule (''crypto network,'' ''crypto asset,'' ''crypto asset address,'' ''key materials,'' ''self-custody'' and ''distributed crypto asset'') clear? Why or why not? Do they accurately reflect the current technology for crypto assets and are they flexible enough to accommodate technological developments in the future? Are there other definitions of these terms we should use? For example, given how fundamental the term ''crypto asset'' is to this proposal, is there a more specific definition we should consider? Is the definition too limiting or too encompassing? Does the definition for ''crypto asset'' scope in the appropriate range of assets as applied to registered advisers and regulated funds? Is the term ''self-custody,'' as used in this proposal, appropriate to describe an adviser holding a client's crypto asset, or a regulated fund holding through an adviser a crypto asset, without maintaining it with a permitted custodian? Instead of ''self-custody,'' is there a more apt term to describe such custodial arrangements for crypto assets?

9. Are there any defined terms that we either should not adopt or that we should change in the final rule? If so, please identify those defined terms along with any recommended changes to the definitions.

10. Are there additional terms used in the proposed adviser self-custody rule that we should define?

11. As noted above, the proposed Advisers Act custody rule would continue to apply to client assets that are funds or securities (and would be amended to apply to securities and similar investments held for the accounts of regulated funds that are subject to the proposed adviser self-custody rule), and we express our view that tokenized deposits and payment stablecoins issued by stablecoin issuers that are permitted payment stablecoin issuers under the GENIUS Act and foreign payment stablecoin issuers registered pursuant to section 18 of the GENIUS Act are crypto assets that are digital representations of funds subject to the Advisers Act custody rule. Are there other types of crypto assets, if any, that need clarification as to whether they are digital representations of ''funds'' subject to the Advisers Act custody rule, and why?

12. As noted above, ''crypto asset'' for purposes of this proposal would include digital securities, commonly known as ''tokenized'' securities. There are a variety of models used to tokenize securities, which may vary in terms of structure and the rights afforded to holders.[146] What guidance or adjustments to the Commission's custody rules, if any, are needed to address the custody of tokenized securities? Are there any circumstances in which maintaining the associated crypto asset at a permitted custodian, or in self-custody by an adviser pursuant to the proposed adviser self-custody rule, would not be sufficient to effectively hold the tokenized security in custody under the Commission's custody rules?

(c) Scope of Activity Subject to the Proposed Adviser Self-Custody Rule

Under this proposal, an adviser that has self-custody of client crypto assets would be required to comply with the proposed adviser self-custody rule with respect to those crypto assets. An adviser would have self-custody of a crypto asset if the adviser possesses *any portion* of a client crypto asset's key materials. As mentioned above, the proposal would add a new term ''self-custody'' to mean, with respect to a client's crypto asset, possession of any portion of the crypto asset's key materials.[147]

The proposed self-custody definition is intended to confer self-custody of a client's crypto asset and the attendant obligations under the proposed adviser self-custody rule on an adviser if the adviser possesses any portion of the key materials to the crypto asset. For purposes of the proposed adviser self-custody rule, an adviser would have self-custody of a crypto asset and would need to comply with the adviser self-custody rule's requirements with respect to such crypto asset only if the adviser actually possesses (rather than merely having the authority to obtain possession of) the key materials to the crypto asset.[148]

The proposed crypto self-custody definition reflects a longstanding principle of the definition of custody, under which the Advisers Act custody rule applies when an adviser has the ability to change a client's ownership and possession of its assets, since an adviser with this ability can subject a client's assets to the risks of loss, misuse, misappropriation, theft, or financial reverses of the adviser. For example, an adviser that physically holds a check drawn by the advisory client and made payable to a third party is not subject to the rule solely as a result of holding the check, since the adviser cannot use the check to change ownership of the client's underlying cash holdings.[149] An adviser with the full set of key materials over a crypto asset would have unilateral ability to change a client's ownership and possession of the crypto asset.

However, an adviser's possession of even a non-controlling portion of the key materials would subject its client's crypto assets to custody risks because loss of or unauthorized access to even a portion of the key materials could potentially result in the permanent loss of ownership and possession of the crypto asset, and consequently, harm to clients. Moreover, an adviser holding a crypto asset's key materials, regardless of whether they constitute a non-controlling share of the crypto asset's private keys, raises misappropriation risks because an adviser could coordinate with one or more other private key holders to conduct unauthorized actions with the crypto asset.

Guarding against potential loss and fraud is particularly important in the context of crypto assets due to the immutability of most crypto asset transactions and the bearer nature of many crypto assets and their associated key materials, which create a heightened risk that any loss of the crypto assets would be irreversible. Moreover, crypto assets held with an adviser are subject to higher custodial risks such as the risk of loss, theft, misuse, misappropriation as well as the adviser's financial reverses, as compared to maintaining them at a qualified custodian, because advisers are not customarily engaged in the business of custody and therefore, many of them may lack the relevant experience, expertise and/or necessary controls to effectively safeguard a crypto asset. The application of the proposed adviser self-custody rule's heightened safeguarding requirements to an adviser with self-custody of client crypto assets is intended to ensure that an adviser that holds any key materials to the

[145] *See* proposed rule 223–1(b)(7)(ii)(B).

[146] *See* Commission Security Status Interpretation, *supra* footnote 24, at section III.E. (discussing digital securities).

[147] *See* proposed rule 223–1(d)(16).

[148] *But see infra* section II.A.1(c)(2) for a discussion of how custody (though not self-custody) and the attendant obligations under the Advisers Act custody rule may still be imputed to an adviser if an adviser has the authority to obtain possession of (but does not actually possess) the key materials to a client's crypto asset.

[149] *See* current rule 206(4)–2(d)(2)(i).

crypto assets takes affirmative steps to safeguard them against the custodial risks that the Advisers Act custody rule is designed to protect against. Moreover, an adviser may self-custody crypto assets only in the limited circumstances when a qualified custodian is not available and when the adviser has the appropriate expertise and custodial infrastructure to mitigate against such risks.

(1) Use of Service Providers

The proposed adviser self-custody rule is not intended to preclude an adviser from engaging third parties (including related persons) as service providers to support its crypto asset self-custody and to help administer the required safeguards under the proposed adviser self-custody rule, provided the adviser exercises appropriate oversight and continues to comply with the substantive requirements of the adviser self-custody rule. For example, an adviser may engage the services and personnel of a third party or a related person with cybersecurity expertise in order to implement cybersecurity controls required under the proposed adviser self-custody rule.[150] In these instances, however, the adviser would ultimately remain responsible for its compliance with the requirements of the proposed adviser self-custody rule, and violations of the adviser self-custody rule resulting from the adviser's use of third parties or related persons engaged to administer the adviser's self-custody program would not waive nor reduce the adviser's obligation to comply with the custody rule or to meet its fiduciary duty.

An adviser may also engage a service provider to license the provider's cryptographic wallet technology and/or software platform to manage the key materials rather than build its own technology in-house, provided that the service provider of the wallet technology does not have access to the crypto asset's key materials nor otherwise have the ability to unilaterally move a client's crypto asset. For purposes of this release, a cryptographic wallet (also referred to as ''wallet'' or ''crypto wallet'' herein) is software or hardware that is used to store a crypto asset's private key.[151] For example, providers may provide the wallet technology to generate and/or maintain the key materials as well as backup recovery services to reset a crypto asset's key materials when they are lost or damaged.[152] In some instances, the crypto wallet provider may also be the provider of the user interface, provided by a website, browser extension, or other software application (*e.g.,* mobile application), that may be embedded in a wallet or separately available for download, designed to assist users engaging in user-initiated crypto asset transactions on blockchain protocols (or blockchain-based smart contracts) utilizing the user's wallet (''covered user interface'').[153] A crypto wallet is self-custodial if neither the provider of the wallet nor the wallet's associated covered user interface has custody of, or access to, the wallet user's encrypted or decrypted private key.[154]

An adviser could not satisfy the proposed adviser self-custody rule if it places a client's crypto asset in a wallet technology or other key management platform that is not self-custodial, or if such service provider otherwise is able to access and/or unilaterally move a client's crypto asset through its services. For example, the adviser would not be able to satisfy the rule requirement to limit access to key materials to only designated persons that are supervised persons of the adviser, if a third party has access to a client's crypto asset.[155] Therefore, in order to ensure their compliance with the proposed adviser self-custody rule, it is our view that advisers would need to determine as part of their due diligence of these service providers prior to engaging them whether or not the service providers' capabilities give them access to the key materials and/or other means to unilaterally move a client's crypto asset.

(2) Crypto Asset Custody Not Subject to Adviser Self-Custody Rule

An adviser that does not have self-custody of a client's crypto assets (*i.e.,* because the adviser does not possess any portion of the crypto asset's key materials) would not be required to comply with the proposed adviser self-custody rule, although it would be required to comply with other applicable provisions of the Advisers Act custody rule with respect to client crypto assets of which the adviser has custody for other reasons besides self-custody.

The Advisers Act custody rule defines ''custody'' as holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them.[156] An adviser also has custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services the adviser provides to clients.[157] Proposed rule 223–1(d)(6) would retain the three prongs provided in the current definition of custody where custody of client funds or securities is conferred on an adviser in the following arrangements: (i) Possession of client funds or securities (including, pursuant to this proposal, possession of client crypto assets *via* self-custody) (but not of checks drawn by clients and made payable to third parties) unless the adviser receives them inadvertently and returns them to the sender promptly but in any case within three business days of receiving them; (ii) any arrangement (including a general power of attorney) under which the adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the adviser's instruction to the custodian; and (iii) any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the adviser or its supervised person legal ownership of or access to client funds or securities.[158]

Custody could arise pursuant to paragraph (ii) or paragraph (iii) under the definition of ''custody'' in the Advisers Act custody rule. For instance, mere authority to obtain possession of

[150] *See* proposed rule 223–1(b)(7)(iii) and *infra* section II.A.4 for a detailed discussion of the cybersecurity requirement under the proposed adviser self-custody rule.

[151] Commission staff has taken a similar view. *See* User Interface Statement (defining for purposes of that staff statement a wallet as software or hardware that is used to store a crypto asset security investor's private key, which is used to engage in crypto asset securities transactions).

[152] *See, e.g.,* Ledger, Manage Your Private Keys, Own Your Crypto (Oct. 31, 2025), *available at https://support.ledger.com/article/360000380313-zd* (''When you set up your device, a unique set of private keys is created by Ledger's secure hardware and software.''); Fireblocks, Digital Asset Custody and Transaction Processing Leading Practices Using Fireblocks' MPC Solution (June 26, 2025), *available at https://www.fireblocks.com/report/digital-asset-custody-and-transaction-processing-leading-practices-using-fireblocks-mpc-solution* (stating that Fireblocks provides multi-party computational (''MPC'') wallet infrastructure that offers ''governance, generation, storage and recovery of key shares''). *See infra* section II.A.3.b)(2) for a more detailed discussion of MPC solutions for private key management.

[153] *See* User Interface Statement (stating that covered user interfaces can be used for a variety of purposes, such as preparing code enabling users to interact with blockchain protocols or providing users with market data, such as potential execution routes, asset prices, and estimated transaction costs for crypto asset transactions).

[154] Commission staff has taken a similar view. *See id.*

[155] *See* proposed rule 223–1(b)(7)(ii)(A) and *infra* section II.A.3.b)(1) for further discussion of the proposed key management requirement.

[156] *See* current rule 206(4)–2(d)(2), which would be redesignated as rule 223–1(d)(6) under this proposal.

[157] *See id.*

[158] Compare current rule 206(4)–2(d)(2) with proposed rule 223–1(d)(6).

the key materials to a client's crypto asset, without actually possessing the key materials, would not impute *self-custody* of the crypto asset to an adviser. However, such authority would nevertheless confer on the adviser *custody* of the crypto asset, because the adviser effectively has the authority to obtain possession of the crypto asset.[159] An adviser with custody, but not self-custody, of the crypto asset, would not need to comply with the proposed adviser self-custody rule. The adviser would, however, be subject to other applicable portions of the custody rule, for instance, the qualified custodian requirement and the annual surprise examination requirement, unless an exception applies.

An adviser would also, under paragraphs (ii) and (iii) of the definition of custody, have custody of crypto assets in which a private fund client is invested if the adviser or its related person has power of attorney with respect to the private fund's crypto assets and/or is a general partner of the private fund; however, the adviser would not have self-custody of those crypto assets, and would not be required to comply with the proposed adviser self-custody rule with respect to those assets, if the private fund's crypto assets and their associated key materials are maintained at a qualified custodian. To avoid having self-custody and being subject to the attendant requirements, an adviser intending to place and maintain a client's crypto asset at a qualified custodian would not be able to hold any portion of the crypto asset's private key materials. In such a case, the adviser would not be able to satisfy the self-custody requirement, because an adviser can only hold a crypto asset in self-custody if no permitted custodian is available.[160]

The proposed adviser self-custody rule would not apply to crypto assets that are maintained by an adviser or its related person, in each case acting in its capacity as a qualified custodian. The proposed self-custody definition would state that an adviser does not have self-custody of a crypto asset if the adviser or a related person possesses key materials associated with that crypto asset solely in its capacity as a qualified custodian maintaining the crypto asset under the related person QC rule. Likewise, although custody would be imputed to an adviser if its related person maintains client crypto assets as a qualified custodian in connection with advisory services provided by the adviser, the adviser would not have self-custody of the crypto assets if all of their associated key materials are held by the related person acting as a qualified custodian. In both instances, where the adviser itself or its related person acts as a qualified custodian to hold client crypto assets and their key materials, the related person QC rule, rather than the proposed adviser self-custody rule, would apply.

Advisers relying on the related person QC rule in these custodial arrangements would remain obligated to comply with the other applicable provisions under the Advisers Act custody rule such as the notice and account statement delivery requirements, unless an exception applies (for instance, the audit provision).[161] The application of the related person QC rule, as opposed to the proposed adviser self-custody rule and the heightened safeguards thereunder, is appropriate in these arrangements, because crypto assets in those instances would be maintained by a traditional custodian entity that is customarily engaged in the business of custody and is subject to other extensive regulatory requirements that govern traditional custodians.

We request comment on the proposed scope of activities that would be subject to the adviser self-custody rule and the related proposed definition of self-custody:

13. Is the proposed definition for self-custody appropriate in imputing self-custody to an adviser that possesses any portion (including a non-controlling share) of the key materials associated with its client's crypto asset? If not, what portion of a crypto asset's key materials in an adviser's possession should confer self-custody on the adviser and trigger the application of the self-custody requirements to the adviser? For example, should self-custody be conferred on an adviser only when the adviser holds all or a controlling share of the key materials? How should a ''controlling'' private key share be defined for this purpose? If the custody rule did not confer self-custody on an adviser that holds a non-controlling portion of the key materials, what protections, if any, should instead apply to ensure that the key materials held with the adviser are appropriately safeguarded and how, if at all, should such protections differ from the conditions in the proposed adviser self-custody rule?

14. Currently, under what circumstances, if any, is the private key to a client's crypto asset shared among the adviser and third parties? Which parties in those circumstances would hold the shares of a private key, and for what purpose? For example, do wallet solution providers ever need to retain a portion of the user's key materials? Is doing so necessary to enhance the security of key materials?

15. Under this proposal, a qualified custodian maintaining a client's crypto asset would not be able to share the key materials to the crypto asset with an adviser because, if the adviser held any portion of the key materials, the adviser would be required to comply with the self-custody requirements, which are limited to circumstances where no qualified custodian is available. Are there circumstances today in which a qualified custodian (*e.g.,* a bank) would maintain a client's crypto asset and some portion of its key materials while the adviser retains a non-controlling portion of the key materials, such that the adviser does not have the unilateral ability to access and/or move the crypto asset? If so, what would be the purpose of these arrangements? Are custodial risks, such as the risk of misappropriation by the adviser or the loss of the crypto asset resulting from the loss of any private key held with the adviser, mitigated in these arrangements, so that only some of the proposed adviser self-custody rule's requirements (or none at all) should apply to the adviser? If yes, which of the proposed adviser self-custody rule's requirements should apply to the adviser in these arrangements? In such arrangements, should the adviser self-custody rule apply only to the portion of the key materials held with the adviser, and should other applicable requirements under the Advisers Act custody rule (*e.g.,* the qualified custodian requirement, the notice requirement, and the account statement delivery requirement) apply to the portion of the key materials held with a qualified custodian? Would it be possible, in practice, to apply the Advisers Act custody rule to different shares of key materials distributed between a qualified custodian and an adviser?

16. Alternatively, are there circumstances in which a qualified custodian would share the key materials to a client's crypto asset with the adviser, such that neither the adviser nor the qualified custodian would have *exclusive* control over the crypto asset? If so, what would be the purpose of these arrangements? If yes, would the qualified custodian and the adviser share control over the crypto asset, or would each independently have control

[159] *See id.*

[160] *See* proposed rule 223–1(b)(7)(i).

[161] *See* current rule 206(4)–2(a)(2), 206(4)–2(a)(3), and 206(4)–2(b)(4), which would be redesignated as rule 223–1(a)(2), rule 223–1(a)(3), and rule 223–1(b)(4) respectively.

over the crypto asset, in that each party independently would have the unilateral ability to access and move the crypto asset? Is the loss of the crypto asset resulting from the loss of any private key share mitigated or increased in these arrangements where neither the adviser nor the qualified custodian has exclusive control over the crypto asset?

17. Under this proposal, the proposed related person QC rule, as opposed to the adviser self-custody rule, would apply to custodial arrangements where the adviser, or its related person, holds all of the key materials to a client's crypto asset, in each case in its capacity as a qualified custodian. Should the proposed adviser self-custody rule apply instead of the related person QC rule to these arrangements? Why or why not? Would the proposed related person QC rule and the internal control report requirement thereunder, as proposed, sufficiently address risks of adviser fraud and misappropriation through the adviser and its related persons that are qualified custodians maintaining client crypto assets? [162]

18. Are there circumstances today in which an adviser's related person that is a qualified custodian would share a client crypto asset's key materials with a qualified custodian that is not the related person of an adviser? How should the requirements of the related person QC rule apply to those arrangements?

19. The Advisers Act custody rule sets forth conditions that must be met in order to overcome the presumption that a related person of the adviser is not operationally independent of the adviser.[163] Are there circumstances today in which an adviser's use of a related person that is operationally independent of the adviser would raise issues related to the proposed adviser self-custody rule? For example, do advisers today utilize related persons that are operationally independent of the adviser to hold client crypto assets outside of a traditional custodian, and if so, what functions do such related persons serve for purposes of self-custody, and how do advisers oversee the practices of such related persons in light of their operational independence from the adviser?

20. In what circumstances, if any, would multiple qualified custodians need to hold copies of the key materials to a crypto asset or share portions of the key materials to a crypto asset? Should the Advisers Act custody rule prohibit the sharing of access to a client crypto asset's key materials by multiple qualified custodians? Why or why not?

21. Is our view provided under section II.A.1c)(1) (''Use of Service Providers'') regarding the use of service providers and related persons sufficiently clear? Should we provide any additional clarification regarding an adviser's use of service providers and related persons for purposes of the proposed adviser self-custody rule? If so, what clarifications are needed? What, if any, additional protections are needed in self-custody arrangements for crypto assets that involve the use of service providers and related persons? What arrangements involving the use of service providers and/or related persons for purposes of crypto asset custody that are commonly in place today would be prohibited by limiting access to crypto asset key materials to qualified custodians and registered investment advisers complying with the adviser self-custody rule?

22. Are there any instances today where a service provider (including a related person that is not a registered adviser) could have possession and control of a crypto asset even without access to the key materials to such crypto asset? If so, for what services are those providers used, and what protections are in place to prevent such service providers from unilaterally and impermissibly moving a crypto asset for unauthorized purposes?

23. In what circumstances, if any, does a service provider have access to a portion, but not all, of a crypto asset's key materials? Do service providers in those instances have possession and control of the crypto asset, or otherwise the ability to unilaterally move a crypto asset? Notwithstanding whether a service provider in those instances has the unilateral ability to move a crypto asset, does a service provider having access to a portion of the key materials still raise custodial risks such as the risk of loss resulting from the loss of the key share? If not, should the adviser be permitted to engage such service provider, and if so, what protections should apply to those arrangements where a service provider has access to a portion of the key materials, to ensure that such access does not result in the loss or theft of the crypto asset?

24. Are commenters aware of any examples of advisers using related persons that are not qualified custodians to safeguard crypto assets including their key materials? If so, what type of entities are such related persons that provide custodial services for client crypto assets in an adviser's custody? Are these examples necessary and helpful to investor protection? Why or why not?

25. Do advisers anticipate that they would enter into separate custodial agreements with clients for whom they hold crypto assets in self-custody, or would advisers specify the terms and conditions of self-custody services within the client's overall investment advisory agreement? Whether reflected in a separate agreement with the client or otherwise, an adviser holding a client's crypto asset in self-custody—and not any third party assisting the adviser in these efforts—would be responsible for the safekeeping of the crypto asset and compliance with the proposed adviser self-custody rule. Should the adviser be required to acknowledge and clearly delineate this responsibility in an agreement with the client?

26. Is our understanding correct that some third-party service providers offer key backup and recovery services? From a technical standpoint, what steps are involved in the key recovery process and which parties (*e.g.,* the adviser, the client, the service provider) are required to be involved when the service provider recovers key materials? Could the key materials ever be recovered or reset in a way that would grant the service provider access to and control of the key materials, or deny the adviser exclusive access to and control over the key materials? If yes, under what circumstances could this occur? If not, what technology prevents this from happening? Could an adviser's non-payment for the provider's services ever result in the service provider gaining control of the adviser's key materials or the service provider preventing the adviser from accessing the key materials? What technology prevents the service provider from doing this?

27. In what circumstances, if any, would an adviser have the authority to obtain possession of a client's crypto asset's key materials, but not actually possess the key materials? In what circumstances, if any, would an adviser have the authority to obtain possession

[162] *See infra* footnotes 550 and 551 and accompanying text for further discussion of the proposed changes to the related person QC rule.

[163] *See* current rule 206(4)–2(d)(5)(stating that a related person is presumed not to be operationally independent unless each of the following conditions is met and no other circumstances can reasonably be expected to compromise the operational independence of the related person: (i) Client assets in the custody of the related person are not subject to claims of the adviser's creditors; (ii) advisory personnel do not have custody or possession of, or direct or indirect access to client assets of which the related person has custody, or the power to control the disposition of such client assets to third parties for the benefit of the adviser or its related persons, or otherwise have the opportunity to misappropriate such client assets; (iii) advisory personnel and personnel of the related person who have access to advisory client assets are not under common supervision; and (iv) advisory personnel do not hold any position with the related person or share premises with the related person).

of, but not actually possess, only a portion of the key materials to a client's crypto asset? Is it more difficult for an adviser to misappropriate or lose a crypto asset when it has the authority to obtain possession of only a portion of a crypto asset's key materials? Why or why not? If yes, should the custody rule's protections apply to such crypto asset differently, and if so, how?

(d) Airdropped Crypto Assets

The proposed Advisers Act custody rule would include a provision that would deem the receipt of distributed crypto assets (*i.e.,* airdropped crypto assets) to not be in violation of the Advisers Act custody rule, provided that, as soon as reasonably practicable, the adviser either (i) comes into compliance with the requirements of the adviser self-custody rule with respect to such distributed crypto asset; or (ii) places and maintains the distributed crypto asset at a permitted custodian (''adviser airdrop provision'').[164]

For clients that are regulated funds, we are also proposing a parallel provision under the Investment Company Act that, consistent with the proposed amendments to the Advisers Act custody rule, would deem the receipt of distributed crypto assets to not be in violation of section 17(f) of the Investment Company Act and the rules thereunder, provided that, as soon as reasonably practicable, the regulated fund places and maintains the distributed crypto asset with (i) an investment adviser to the regulated fund in compliance with proposed rule 17f–9(b); or (ii) a permitted custodian in compliance with section 17(f) of the Investment Company Act or the rules thereunder (''fund airdrop provision,'' and together with ''adviser airdrop provision,'' ''airdrop provisions'').[165] The proposed fund airdrop provision, part of the fund self-custody rule, would apply to all regulated funds and would provide that a ''distributed crypto asset'' has the same meaning as in the proposed adviser airdrop provision.[166]

In some circumstances, a crypto asset may be broadly distributed, or ''airdropped,'' to a large number of crypto wallet addresses in exchange for no or nominal consideration.[167] For example, an issuer of a crypto asset may, usually in the early stages of development of a crypto system, effectuate an airdrop by transferring its crypto asset to specific cryptographic wallets or other addresses.[168] An issuer of a crypto asset may airdrop crypto assets to recipients that it chooses for a variety of reasons. For example, crypto assets may be airdropped to cryptographic wallets holding another specified crypto asset, with or without minimum ownership thresholds of that other crypto asset, or to selected users of a crypto system for meeting specific criteria, such as holding a minimum amount of the crypto asset or based on their prior or current level of activity with the associated crypto system.[169] An adviser that has self-custody of a crypto asset could receive a separate, new crypto asset in an airdrop by virtue of holding the first crypto asset on behalf of a client. Advisers may also receive new crypto assets through an airdrop as reward distributions on the crypto network in connection with staking or trading a client's crypto asset on that network.[170] Airdrops may facilitate the implementation of a client's investment objectives because the airdropped crypto asset may allow an adviser to generate returns for the client, for example by selling the airdropped crypto asset to generate returns for a profit.

An adviser holding a client's crypto asset at a qualified custodian or in self-custody under the proposed adviser self-custody rule may receive a new crypto asset through an airdrop with little or no advance notice. Likewise, a regulated fund holding a crypto asset in self-custody through its investment adviser, may also unexpectedly receive a new crypto asset through an airdrop. In some cases, a permitted custodian may not immediately offer custodial services for the airdropped crypto asset, and immediate compliance with the proposed adviser and fund self-custody rules' requirements with respect to an airdropped crypto asset received with little or no advance notice would not be possible. For example, an adviser may receive a new crypto asset through an airdrop in connection with a crypto asset held in self-custody before the adviser has had an opportunity to assess whether an appropriate qualified custodian is available to maintain the airdropped crypto asset and to determine whether holding such crypto asset in self-custody would be compliant with the adviser self-custody rule.[171] A crypto asset may also be airdropped into a wallet held for a regulated fund with no advance notice and before the regulated fund's board makes the requisite determinations under the proposed fund self-custody rule regarding the availability of a permitted custodian to hold the airdropped crypto asset and the adviser's self-custody arrangement for the asset.[172]

As the proposed adviser self-custody rule requires an adviser to have the relevant expertise and safeguarding systems particularized to each crypto asset in self-custody, an adviser may also need time to evaluate whether its existing expertise and systems in place are appropriate to self-custody the airdropped crypto asset, and if necessary, time to develop and onboard the relevant expertise and systems to safeguard the airdropped crypto asset.[173]

Accordingly, in these circumstances, the proposed adviser airdrop provision on distributed crypto assets would provide that the receipt of a distributed crypto asset would not be in violation of the Advisers Act custody rule provided that, as soon as reasonably practicable, the adviser complies fully with the requirements of the proposed self-custody rule with respect to such distributed crypto asset, or, alternatively, places and maintains the distributed crypto asset with a qualified custodian, if available. We are also proposing the fund airdrop provision for regulated funds for the same reasons discussed above. A regulated fund, like any other client of an adviser, may receive a new crypto asset through an airdrop with little or no advance notice and face the same custodial challenges discussed above.

The proposed airdrop provisions are intended to provide an adviser and a regulated fund a grace period to comply

[164] *See* proposed rule 223–1(b)(11); proposed rule 223–1(d)(7) (defining ''distributed crypto asset'' as a crypto asset received as a distribution for no or nominal consideration in connection, or as a result of activity associated, with a client's crypto asset in the adviser's custody).

[165] *See* rule 17f–9(c); see also infra section II.B for a discussion of the proposed regulated fund self-custody rule.

[166] *See* rule 17f–9(d).

[167] *See* Commission Security Status Interpretation, supra footnote 24, at section VII.A.

[168] *Id.* (stating that airdrops may be used for a variety of reasons, ''such as to generate interest in and expand ownership and use of . . . crypto assets, reward early users or loyalty of users of a crypto system, promote a software application, build a community, decentralize governance authority with respect to an open-source crypto system, or award high-scoring players of an associated video game'').

[169] *Id.*

[170] *See, e.g.,* Kraken, What is a crypto airdrop? (June 11, 2025), available at *https://www.kraken.com/learn/what-are-crypto-airdrops#:~:text=In%20crypto%2C%20an%20airdrop%20refers,for%20being%20a%20loyal%20client*; Coinbase, Earning Through Crypto Airdrops (2025), available at *https://www.coinbase.com/learn/crypto-basics/what-is-a-crypto-airdrop.*

[171] *See* proposed rule 223–1(b)(7)(i); *infra* section II.A.2 for a detailed discussion of the proposed qualified custodian determination requirement.

[172] *See* proposed rule 17f–9(b).

[173] *See* proposed rule 223–1(b)(7)(ii); *infra* section II.A.3 for a detailed discussion of the proposed safeguarding expertise and systems requirement.

with the Advisers Act and the Investment Company Act custody rules, as applicable, upon an unexpected receipt of an airdropped crypto asset with little or no advance notice. Both airdrop provisions do not specify the time period by which the adviser or the regulated fund must come into compliance with the applicable custody rules, because the amount of time needed depends on the facts and circumstances. Accordingly, under the proposed airdrop provisions, the adviser or a regulated fund, as applicable, must, as soon as reasonably practicable, either comply with the applicable self-custody rules if the adviser will hold the crypto asset in self-custody, or otherwise place and maintain the distributed crypto asset with a permitted custodian.

An adviser that seeks to self-custody a distributed crypto asset in reliance on the proposed adviser airdrop provision would need to build or adapt as necessary and as quickly as its systems and resources practicably allow its safeguarding systems and self-custody controls to accommodate the airdropped crypto asset. Consequently, we expect that an adviser that self-custodies the distributed crypto asset in reliance on the proposed adviser airdrop provision would be able to satisfy, and should come into compliance with, certain provisions of the proposed adviser self-custody rule more quickly than others, for instance, the self-custody account statement and the financial asset election requirements discussed later in this proposal.[174]

We request comment on all aspects of the proposed airdrop provisions:

28. Are there any circumstances where an adviser would receive distributed crypto assets in connection with its advisory services but of a different kind from the crypto assets already in the adviser's self-custody or maintained at a qualified custodian? How much advance notice, if any, would an adviser typically have of an upcoming airdrop? If the adviser receives an airdrop in connection with a crypto asset held in custody for a client, whether in the adviser's self-custody or maintained at a qualified custodian, to what extent would the custodial infrastructure developed in connection with the client's initial crypto asset be expected to apply to the airdropped crypto asset? To what extent would a qualified custodian be able to accommodate, or an adviser be able to adapt its self-custody infrastructure in order to hold, an airdropped crypto asset in full compliance with the Advisers Act custody rule upon receipt of the airdropped crypto asset?

29. Do advisers enter into written agreements with clients that include provisions relating to the custody treatment of distributed crypto assets? What do custodial agreements typically provide for with respect to the custody treatment of distributed crypto assets?

30. Should the airdrop provisions impose an outer limit of the time period within which an adviser and a regulated fund must come into full compliance with the Advisers Act and Investment Company Act custody rules, as applicable, with respect to an airdropped crypto asset, and if so, what should that time period be (*e.g.,* no later than 30 business days, 60 days, or 90 days, after receipt of the airdrop), and why? In the case of airdropped crypto assets received for the account of a regulated fund, should the time period within which the regulated fund's board must make the requisite determination pursuant to rule 17f–9 be more specific (for example, within 2 months of receiving the airdropped crypto asset or by the next regularly scheduled board meeting)?

31. When an adviser receives a distributed crypto asset in connection with its advisory services relating to crypto assets in its self-custody, how does the adviser ensure that the distributed crypto asset is correctly allocated to the relevant client? Does the adviser receive the distributed crypto asset in the wallet that holds the key materials to the crypto asset self-custodied for the corresponding client? Are there any circumstances where the distributed crypto asset is distributed into an adviser's proprietary wallet, or the wallet of another client? Would the proposed segregation requirement under the adviser self-custody rule as discussed later in this proposal help ensure that distributed crypto assets are correctly allocated to the relevant parties? Are there any circumstances where an adviser treats a distributed crypto asset received in connection with its advisory services as belonging to the adviser, as opposed to the client, and if so, what are those circumstances? Should any amendments to the Advisers Act custody rule address the allocation of distributed crypto assets received in connection with the adviser's custody of client crypto assets?

32. Are there any limited exigent circumstances where an adviser or a regulated fund could unexpectedly receive a crypto asset, other than an airdropped crypto asset, in connection with the adviser's advisory services provided to a client including a regulated fund? If so, what are those circumstances? For example, if the permitted custodian holding a client's crypto asset suddenly becomes unavailable to hold the crypto asset, should the adviser be required to comply immediately with the proposed self-custody rules or otherwise cease to hold the crypto asset? Should the airdrop provisions be expanded to more generally cover such crypto assets received in these or other limited exigent circumstances?

33. The proposed fund airdrop provision would largely mirror the conditions set forth in the proposed adviser airdrop provision. We request comment on all of the matters discussed in the above requests for comment as applied to the proposed fund airdrop provision for regulated funds. Is there a reason to address the receipt of distributed crypto assets differently for regulated funds as compared to other kinds of advisory clients?

34. Is the scope of the proposed fund airdrop provision under the Investment Company Act for regulated funds, *i.e.,* registered management investment companies and business development companies, appropriate? Do UITs, which hold an unmanaged portfolio, receive airdrops such that the fund airdrop provision under the Investment Company Act should include UITs in addition to registered management investment companies?

2. Qualified Custodian Determination

The proposed adviser self-custody rule would require an adviser to make a determination in writing, prior to taking self-custody of each crypto asset and no less frequently than quarterly thereafter, that the adviser has a reasonable basis, after due inquiry, for believing that no qualified custodian will maintain the crypto asset (a ''QC determination'').[175] This QC determination would be a prerequisite to an adviser taking self-custody of a client's crypto asset. For accounts of regulated funds, advisers would be required to make this determination as to the availability of custodians authorized to serve as a custodian for the regulated fund under the Investment Company Act and applicable rules thereunder.[176] This is because an

[174] *See* proposed rule 223–1(b)(vi); proposed rule 223–1(b)(7)(viii).

[175] See proposed rule 223–1(b)(7)(i). We are also proposing an amendment to Advisers Act rule 204–2 to include the adviser's written QC determination as a required record. See proposed rule 204–2(a)(26)(i) and *infra* section II.H.1 for a detailed discussion of the proposed amendments to rule 204–2.

[176] *See* proposed rule 223–1(b)(7)(i) (stating that for purposes of any of any qualified custodian determination made with respect to the account of a regulated fund, qualified custodian shall be understood to refer to a bank or other person

adviser assessing the availability of, and services provided by, custodians for a regulated fund would have to assess the types of custodians permitted to serve as the regulated fund's custodian. If the adviser determines that a qualified custodian has become available to maintain the client's crypto asset, the adviser must place such crypto asset with the qualified custodian as soon as reasonably practicable.

The proposed QC determination requirement is meant to mitigate custodial compliance challenges for certain crypto assets that advisers may face today.[177] While maintaining client crypto assets at a qualified custodian would decrease the risk of misappropriation of those assets by the adviser as compared to holding crypto assets in the adviser's self-custody, there may be limited availability of traditional custodians offering custodial services for certain types of crypto assets of interest to investors.[178] For example, an adviser may struggle to find a qualified custodian for a particular type of crypto asset, such as a nascent crypto asset, because no qualified custodian has yet developed the requisite technological sophistication or procedural safeguards to hold that crypto asset while an adviser, for example, that had conducted extensive due diligence of the nascent crypto asset and its associated crypto network in its early-stage development, may have already developed the expertise to well-position itself as a potential custodian of that crypto asset.[179] The QC determination requirement is thus designed to allow adviser self-custody of client crypto assets only when, as a threshold matter, there is a need for an alternative to a qualified custodian. This approach is also consistent with the approach suggested in many of the Crypto Task Force comment letters that advocated for a crypto self-custody solution.[180]

The proposed adviser self-custody rule would require an adviser to make the QC determination, in writing, prior to taking self-custody of each crypto asset.[181] This means that an adviser would need to make a QC determination individualized to each crypto asset; an adviser would not be allowed to make a blanket QC determination covering all types of crypto assets. This is because the custodial capabilities and availability of qualified custodians may differ depending on the particular crypto asset in question, and the individualized determination would enable advisers to conduct the requisite due inquiry to form its reasonable basis for believing that an appropriate qualified custodian is not available with respect to each crypto asset.

We do not intend for the proposed adviser self-custody rule to require an adviser to conduct boundless analysis or the identification of every possible custodian to confirm no qualified custodian exists to hold the crypto asset. Rather, the proposed adviser self-custody rule would require an adviser to form a *reasonable basis*, upon due inquiry, for believing that no qualified custodian will maintain a crypto asset. We anticipate that the adviser's reasonable basis for its QC determination would be formed by due inquiry of material facts concerning, among other things, each individual crypto asset and its characteristics; the custodial marketplace for the crypto asset; and whether custodians generally known in the custodial marketplace provide custodial services for a crypto asset in question. For example, an adviser could form its QC determination if reasonable due diligence of generally known custodians in the crypto custody market reveal that those custodians have not developed the infrastructure to support custody of a particular crypto asset. The proposed adviser self-custody rule would not permit the adviser to make the QC determination based on the costs associated with engaging a qualified custodian. The cost of utilizing a custodian is not relevant to whether a custodian has the appropriate capabilities to custody and safeguard client assets against loss, theft, misuse and misappropriation, and therefore does not serve the custody rule's policy objective of protecting investors and their assets from harm.

The proposed adviser self-custody rule would also require an adviser to reassess the QC determination, in writing, no less frequently than quarterly after taking self-custody of each crypto asset.[182] This quarterly reassessment is designed to permit an adviser to continue holding clients' crypto assets in self-custody only if the adviser has a reasonable basis to believe, after due inquiry, that no qualified custodian will maintain the crypto asset. As the custodial market for crypto assets continues to evolve with an increasing number of sophisticated entrants, including traditional asset custodians potentially developing the technology to effectively custody crypto assets, and custodians expanding the types of crypto assets they custody, the quarterly reassessment of the QC determination would enable advisers to consider whether more suitable custodial options have emerged following their prior QC determination and to timely place client crypto assets with a qualified custodian that has become available. For example, whereas an adviser may have initially faced challenges finding a qualified custodian to maintain a crypto asset (*e.g.,* a nascent crypto asset), with time, qualified custodians in many cases will emerge. In those circumstances, placing the crypto assets with a third-party qualified custodian that is customarily engaged in the business of custody would reduce the risk of advisers misplacing or misappropriating client crypto assets.[183]

The proposed adviser self-custody rule would require the adviser to conduct this quarterly reassessment of its QC determinations only with respect to the crypto assets still held in the adviser's self-custody at the time of the

authorized to hold assets for the regulated fund under section 17(f) of the Investment Company Act or the rules thereunder). Commission staff issued no-action letters stating that the staff would not recommend enforcement actions if certain entities custodied assets for regulated funds subject to certain conditions, and this proposal would not withdraw those letters. *See, e.g.,* Franklin Templeton Investments, SEC Staff No-Act. Letter (pub. avail. June 19, 2009), *available at https://www.sec.gov/divisions/investment/noaction/2009/franklintempleton061909.htm*; The Brink's Company, SEC Staff No-Act. Letter (pub. avail. Feb. 11, 2014), *available at https://www.sec.gov/divisions/investment/noaction/2014/brinks-021114-17f1.htm;* Depository Trust Company of Delaware, LLC dba Delaware Depository, SEC Staff No-Act. Letter (pub. Avail. Sept. 12, 2026), *available at https://www.sec.gov/divisions/investment/noaction/2016/depository-trust-company-of-delaware-091216.html;* See also infra section II.K for discussion and requests for comment on status of certain no-action letters in connection with this proposal.

[177] *See supra* section I.A.2 for a more detailed discussion of challenges of custodial compliance for crypto assets.

[178] *See supra* section I.A for a detailed discussion of the view the Commission has historically taken about maintaining client assets with only certain types of entities. *See also* 2009 Adopting Release, *supra* footnote 7, at section II.C for a discussion of the rationale for prophylactic safeguards under the custody rule applied to advisers and their related persons holding client assets in custody rather than keeping them at an independent custodian.

[179] *See* Unit 410 Comment Letter (stating that nascent and novel crypto networks heighten the challenges of supporting early-stage digital assets).

[180] *See, e.g.,* Comment Letter to Crypto Task Force of Andreessen Horowitz (Apr. 9, 2025) (''A16z Comment Letter II'') (supporting a self-custody solution where a qualified custodian is not readily available); Dechert Comment Letter (stating that an adviser should be required to determine that no qualified custodian can provide the full scope of services required to custody a crypto asset prior to such adviser holding the crypto asset in self-custody, among other conditions).

[181] *See* proposed rule 223–1(b)(7)(i).

[182] *See* proposed rule 223–1(b)(7)(i).

[183] *See supra* section I.A for a detailed discussion of the view the Commission has historically taken with respect to maintaining client assets with only certain types of entities.

reassessment.[184] Moreover, in the event an adviser has taken self-custody of different crypto assets at different points in time over the course of the quarter, it is our view that an adviser would be permitted to conduct this quarterly reassessment for all the different crypto assets in its self-custody at the same time, as long as the adviser conducts the review for each crypto asset no more than a quarter after the adviser has taken self-custody of it.

Under the proposed requirement, an adviser that determines a qualified custodian has become available to maintain a client's crypto asset would be required to place such crypto asset with the qualified custodian as soon as reasonably practicable. This obligation would arise when an adviser discovers a newly available qualified custodian from its quarterly reassessment of its QC determination as well as when the adviser becomes aware of an available qualified custodian between quarterly reassessments. The proposed requirement is designed to provide an adviser a grace period to move the crypto asset from its self-custody to an available qualified custodian and does not specify the time period by which the crypto asset must be moved in order to provide an adviser flexibility to transfer the crypto asset as quickly as its systems and resources practicably allow.

We request comment on the proposed QC determination requirement:

35. Is the QC determination requirement, as proposed, appropriate and necessary to protect investors and to further the policy goals of the custody rule with respect to crypto assets? Why or why not? Alternatively, should the adviser be able to self-custody crypto assets without making the QC determination, as long as the adviser determines that holding the client's crypto asset in self-custody is consistent with its fiduciary duty? Why or why not?

36. The proposed adviser self-custody rule would require the adviser to determine in writing that it has a reasonable basis, after due inquiry, for believing that no qualified custodian will maintain the crypto asset. Are there concerns that the ''reasonable basis'' standard in the proposed QC determination requirement would enable advisers to avoid using a qualified custodian, even where qualified custodians are generally available to custody a particular crypto asset? Should the Commission instead apply a different standard to the adviser's QC determination? If so, what alternative approaches to the QC determination would be necessary and appropriate to protect clients and to further the policy goals of the custody rule?

37. As an alternative, or in addition, to the proposed QC determination requirement, should an adviser that seeks to self-custody crypto assets be required to provide custodial services at the same level of quality as those typically provided by a qualified custodian for crypto assets or, alternatively, as those provided by a similarly situated qualified custodian? What should be the criteria or standard to determine which qualified custodian is appropriate as a benchmark for the quality of an adviser's self-custody services? Alternatively, should the adviser self-custody rule require an adviser to provide custodial services in accordance with reasonable commercial standards? Why or why not?

38. As an alternative, or in addition, to the proposed QC determination requirement, should an adviser that seeks to self-custody crypto assets be permitted to hold a crypto asset in self-custody, even where a qualified custodian is available, if the adviser determines that using the available qualified custodian(s) would prevent the adviser from implementing its investment advice in the best interests of the client, based on the client's investment objective? Why or why not? If so, under what circumstances could an adviser reasonably make this determination? Under what circumstances would it be in the best interests of the client for an adviser to self-custody a crypto asset when no available qualified custodian is able or willing to support or accommodate the activities associated with the adviser's investment advice regarding the crypto asset? If an adviser placing and maintaining a crypto asset at an available qualified custodian would prevent the adviser from implementing its investment advice in the best interests of the client due to the nature of the qualified custodian's services, such as limited capacity to stake the associated crypto asset or to support a level of trading activity, or due to the adviser's view that the available custodial services are inadequate to the extent they do not meet due care compared to the adviser's own custodial services, how should the adviser be required to analyze these issues and document its conclusions? Is there a way for the adviser self-custody rule to identify objective criteria, rather than the adviser's subjective determination, under this alternative approach? Should an adviser be able to make such a best interest determination based on, for example, the cost of the qualified custodian, the quality of service provided by the qualified custodian, and the level of the qualified custodian's technological sophistication? What parameters, if any, should guide the adviser's best interest determination? What should the adviser use as a benchmark to compare such qualities of the qualified custodian in making such best interest determination? If the benchmark is the adviser's own custodial services, how should such a best interest determination be made in light of the adviser's conflict of interest in finding that its own custodial services are in the client's best interest?

39. Under the proposed adviser self-custody rule, the QC determination would be required with respect to each crypto asset that the adviser holds in self-custody. Is the requirement that the adviser makes the QC determination individualized to each crypto asset necessary and appropriate to protect investors and to further the policy goals of the custody rule? In what circumstances, if any, would a blanket determination for multiple crypto assets be appropriate without undermining the policy goals of the custody rule?

40. In some instances, a crypto network may require users to pay transaction (or ''gas'') fees in crypto assets native to the crypto network, typically used as an incentive mechanism to reward participation in and use of the crypto network.[185] Are there any circumstances where an adviser would need to self-custody crypto assets for which qualified custodians are generally available in limited amounts necessary to pay gas fees associated with executing a transaction or operation on the crypto network involving other types of crypto assets in the adviser's self-custody? What are the custodial compliance challenges, if any, that an adviser would face in maintaining at a qualified custodian those crypto assets used for paying gas fees even though a qualified custodian is generally available to hold them? Should the adviser self-custody rule provide an exception from the proposed QC determination requirement for such crypto assets held for gas fees, notwithstanding the availability of a qualified custodian to maintain them? If so, should such an exception be available only for crypto assets that are held in amounts necessary to effect, and

[184] *See* proposed rule 223–1(b)(7)(i) (stating that the quarterly reassessment of the QC determination must be done ''with respect to crypto assets in [the adviser's] self-custody'').

[185] *See also* Commission Security Status Interpretation, *supra* footnote 24, at section III.A.

for the sole purpose of effecting, a transaction or operation on the crypto network involving another type of crypto asset in the adviser's self-custody? Why or why not? Would such an exception be appropriate for protecting investors and furthering the policy goals of the Advisers Act custody rule? Why or why not?

41. Should the QC determination requirement specify certain elements that must be considered by the adviser to reach its determination? If so, what factors should be considered by the adviser in reaching its determination?

42. Is the proposed guidance provided on the factors relevant to an adviser's reasonable basis for its QC determination useful? For example, is it appropriate for an adviser to consider, as part of its due inquiry to make its QC determination, each individual crypto asset and its characteristics; the custodial marketplace for the crypto asset; and whether custodians generally known in the custodial marketplace provide custodial services for a crypto asset in question? If not, what adjustments or clarifications are needed to the guidance to alleviate compliance and interpretive challenges with respect to the proposed QC determination requirement?

43. What are best practices that commenters have developed or are aware of with respect to assessing the availability of custodians to hold crypto assets? Conversely, are there any factors and considerations that commenters have found to be ineffective or relatively less effective?

44. Should the adviser self-custody rule require the adviser to reassess its QC determination with respect to the crypto assets held in self-custody on a quarterly basis, as proposed? Why or why not? Should the requirement impose a different review period (*e.g.,* monthly, every six months, annually, no less frequently than once every two years), and if so, why?

45. The proposed adviser self-custody rule requires an adviser to move a client's crypto asset from the adviser's self-custody to the qualified custodian as soon as reasonably practicable if the adviser determines that a qualified custodian has become available to maintain the crypto asset. Should the rule require an outer limit to the time period by which the crypto asset must be moved (*e.g.,* no later than by the end of the next quarter)? If so, what time period should that be, and why? How long does it typically take in practice to transfer a crypto asset from one custodian to another?

3. Safeguarding Expertise and Systems

The proposed adviser self-custody rule under the Advisers Act would require an adviser to have expertise regarding the safeguarding of each crypto asset and to document in writing the basis for its determination that it has such expertise.[186] The proposed adviser self-custody rule would also require an adviser to adopt, implement, and maintain the systems, including the appropriate technology, software, hardware, and other associated systems and processes around their use, necessary to safeguard each crypto asset against loss, theft, misuse and misappropriation (collectively, ''safeguarding systems'').[187] Because crypto asset self-custody arrangements would involve the adviser holding clients' crypto assets without an independent qualified custodian, the proposed safeguarding expertise and systems requirement is a critical protection to ensure that only advisers that have the technical capabilities to safeguard crypto assets on their clients' behalf are permitted to hold these assets in self-custody.

(a) Safeguarding Expertise

Under the Advisers Act custody rule, advisers have generally maintained client assets with qualified custodians, such as banks or registered broker-dealers, with expertise regarding custodial services.[188] However, an adviser holding clients' crypto assets in self-custody under the proposed adviser self-custody rule would be serving as a custodian of those assets in lieu of a qualified custodian. Because this custodial role goes beyond the services customarily associated with advisory businesses and presents heightened concerns on conflicts of interest, this proposed requirement is necessary to ensure that the adviser has the qualifications and experience necessary to adequately safeguard client assets. Moreover, given the highly technological nature of crypto assets and the potential complex and unique risks they carry, only advisers who are well-positioned to manage these risks associated with crypto assets should self-custody clients' crypto assets.

The proposed requirement does not enumerate specific criteria for the expertise that would satisfy the rule. Different advisers may utilize different types of expertise regarding the safeguarding of crypto assets depending on the type of crypto asset. Rather than the rule taking a prescriptive approach in identifying a specific level or type of expertise that the adviser must have, the proposed requirement is designed to provide flexibility such that advisers taking self-custody of client crypto assets have the expertise that is relevant and tailored to the unique risks and characteristics specific to the crypto asset in the adviser's self-custody.

However, advisers should have, at a minimum, the expertise sufficient to establish, implement and oversee the appropriate systems and controls necessary to safeguard each crypto asset as required under the proposed adviser self-custody rule. An assessment of the adviser's expertise in this regard should entail due diligence of the different technological components of the adviser's safeguarding systems that would be used to self-custody crypto assets (including, for example, the cryptographic wallet in which the crypto assets' key materials are maintained and stored). This assessment would help ensure the adviser has the relevant expertise necessary to efficiently operate its systems and to address any vulnerabilities or weaknesses therein that could raise the risk of theft or inadvertent loss of clients' crypto assets.

The proposed adviser self-custody rule would require the adviser to have expertise regarding the safeguarding of ''each'' crypto asset.[189] This is intended to ensure that in assessing whether they have the expertise for purpose of the rule, advisers consider the characteristics and specific custodial risks of each crypto asset considered for self-custody. Because different kinds of crypto assets may carry different custodial risks and vulnerabilities, an assessment of each crypto asset and its specific technology would be necessary for the adviser to determine the appropriate expertise needed to reduce the client's exposure to these risks.[190]

[186] *See* proposed rule 223–1(b)(7)(ii). We also propose to amend rule 204–2 to include this written determination as a required record. *See* proposed rule 204–2 (a)(26)(ii); *infra* section II.H for further discussion of the proposed recordkeeping requirement.

[187] *See* proposed rule 223–1(b)(7)(ii).

[188] *See* 2003 Adopting Release, *supra* footnote 7, at section II.B. (explaining that ''qualified custodians'' under the Advisers Act custody rule include the types of financial institutions to which clients and advisers customarily turn to for custodial services).

[189] *See* proposed rule 223–1(b)(7)(ii).

[190] *See, e.g.,* OIEA Investor Bulletin, *supra* footnote 99 (describing Commission staff's observations that because characteristics and designs of crypto assets, and the distributed ledger or blockchain technology through which they are issued and/or transferred, can vary significantly, different crypto assets present different benefits or risks); A16z Comment Letter II (stating that

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Key factors for this analysis may include an evaluation of each crypto asset's crypto network, such as its extensibility (*i.e.,* whether the crypto network can have new functionality added, and continue processing transactions, without data loss or corruption) and governance (including how protocol updates and changes are determined and implemented).[191] An assessment of the crypto network would enable an adviser to identify significant weaknesses and operational issues with the network that could impact the adviser's access to the crypto asset and determine whether it has the systems and the expertise to implement and operate the systems relevant to effectively safeguard client crypto assets from related risks.

Moreover, as discussed above, although the proposed adviser self-custody rule would not preclude an adviser from obtaining assistance from third parties in connection with the adviser's self-custody services, an adviser should have the expertise sufficient to oversee any functions performed and services provided by third parties. The adviser would remain responsible for its obligations under the adviser self-custody rule, and it should therefore have the expertise to ensure that it is complying with the adviser self-custody rule on an ongoing basis notwithstanding its use of services provided by third parties. In other words, an adviser cannot just ''set it and forget it'' when using the services of third parties to administer its self-custody program.

We request comment on the proposed safeguarding expertise requirement:

46. What requirements other than safeguarding expertise and systems, as proposed, should we consider to help ensure that an adviser, which is not typically engaged in the custodial business, is able to adequately safeguard clients' crypto assets from loss, theft, misuse and misappropriation?

47. Is the proposed requirement that the adviser has ''expertise regarding the safeguarding of each crypto asset'' sufficiently clear? Would this raise questions about what expertise would suffice for purposes of the rule?

48. Should the rule identify specific qualifications, training, or experience an adviser must have that would suffice as ''expertise'' for purposes of the rule? Why or why not? If so, what should they be and why? Could any such qualifications, training, or experience be identified in a way that was not unique to a particular crypto asset but rather could apply to any crypto asset the adviser self-custodies?

49. Should we provide any additional clarification regarding the proposed safeguarding expertise requirement? If so, what changes should we make?

50. Are there best practices and/or considerations, in addition to those discussed above, that commenters have developed or are aware of with respect to the types of qualifications and amount of experience that should be relevant to the determination of whether an adviser has expertise regarding the safeguarding of crypto assets? For example, what other aspects of a crypto asset besides the characteristics of its associated crypto network should be relevant to an adviser's assessment of its safeguarding expertise?

51. The proposed adviser self-custody rule would require an adviser to identify the specific characteristics and risks of each crypto asset including its associated crypto network in order to assess whether the adviser has the relevant expertise to safeguard that crypto asset. To what extent do advisers currently have such, or similar, processes in place? Do commenters agree with our characterization of key factors that may be relevant to an evaluation of each crypto asset for purposes of determining whether the adviser has the expertise to safeguard the crypto asset? Are there other factors, risks, or potential harms to clients that our analysis has not identified, and if so, what are those considerations that an adviser should include in its evaluation of each crypto asset for purposes of the proposed safeguarding expertise requirement?

52. Would the proposed safeguarding expertise requirement raise any particular challenges for smaller advisers or regulated funds with smaller advisers? If so, what could we do to help mitigate these challenges?

53. To what extent do advisers already consider the level of their expertise regarding the safeguarding of crypto assets when providing advisory services with respect to crypto assets?

(b) Safeguarding Systems

The proposed adviser self-custody rule also would require the adviser to adopt, implement, and maintain the systems, including the appropriate technology, software, hardware, and associated systems and processes around their use, necessary to safeguard each crypto asset against loss, theft, misuse and misappropriation.[192] The safeguarding systems subject to the rule would capture at a minimum the hardware and/or software system (*e.g.,* a cryptographic wallet) in which the crypto asset's key materials are stored and maintained. Safeguarding systems may also include, depending on the adviser's and the client's circumstances, any other software platforms, hardware devices, physical and/or technical safeguards that advisers may utilize to implement and administer their self-custody program.

Like the safeguarding expertise requirement discussed above, the safeguarding systems requirement would not prescribe specific technological measures. Rather, under the proposed adviser self-custody rule, the adviser's safeguarding systems, at a minimum, must address the following three elements discussed further below: (1) key management; (2) joint authorization of crypto asset transactions; and (3) segregation of each client's crypto assets from the assets of others, including those of the adviser and the adviser's related persons.[193] These requisite elements are essential to mitigate the unique risks associated with the specific characteristics of crypto assets and the fact that an independent custodian is not involved to deter and thwart misconduct by the adviser in self-custody arrangements.

Although the proposed adviser self-custody rule does not require additional explicit written policies and procedures related to the safeguarding systems, if the proposed adviser self-custody rule were adopted, advisers would be required under existing rule 206(4)–7 of the Advisers Act (''Advisers Act compliance rule'') to have policies and procedures reasonably designed to prevent violations of the Advisers Act and rules under the Act, and this requirement would apply to the proposed adviser self-custody rule.[194] In order to be reasonably designed to

custodians of crypto assets should ''take steps to assess, document and reasonably guard against the specific risks and vulnerabilities associated with the individual blockchains or networks on which specific crypto assets are based (including, for example, around the speed, scalability, resiliency, extensibility, and consensus mechanisms of such blockchains)'').

[191] Commission staff has previously outlined similar considerations in the context of broker-dealer custody of crypto assets. *See* U.S. Securities and Exchange Commission, Division of Trading and Markets, *Statement on the Custody of Crypto Asset Securities by Broker-Dealers* (Dec. 17, 2025), *available at https://www.sec.gov/newsroom/speeches-statements/trading-markets-121725-statement-custody-crypto-asset-securities-broker-dealers* (''BD Crypto Custody Statement''), at nn.9–10 and accompanying text (discussing the various aspects of a crypto asset security's distributed ledger technology and associated crypto network that a broker-dealer carrying crypto asset securities for customers should consider).

[192] *See* proposed rule 223–1(b)(7)(ii).

[193] *See* proposed rule 223–1(b)(7)(ii)(A) through (C).

[194] *See* Compliance Program Adopting Release, *supra* footnote 120.

prevent violations of the proposed adviser self-custody rule, an adviser's policies and procedures adopted under the Advisers Act compliance rule would need to specifically address each element of the adviser self-custody rule, including the QC determination, processes to determine whether an adviser has the expertise necessary to safeguard a given crypto asset and the adviser's safeguarding systems including the key management, joint authorization, and segregation elements of the adviser's safeguarding systems as well as cybersecurity measures implemented pursuant to the proposed adviser self-custody rule.[195]

Similar to the safeguarding expertise requirement, the adviser would need to have the systems necessary to safeguard ''each'' crypto asset. As discussed above, each crypto asset may carry different risks and vulnerabilities, and the adviser would need to ensure that its safeguarding systems are appropriately tailored to address and mitigate the particularized risks associated with each crypto asset held with the adviser and such crypto asset's associated crypto network.[196] For example, certain types of crypto assets may be more prone to targeted attacks from malicious actors and require elevated levels of protections against theft. Moreover, in developing the appropriate safeguarding systems, advisers may also need to consider the nature of their advisory services provided with respect to each crypto asset and what specific custodial protections are needed to mitigate the risks associated with those services. For example, an adviser that intends to frequently trade a client's crypto assets using primarily ''hot'' (online) (as opposed to ''cold'' (offline)) wallets connected to the network would need to consider whether any additional safeguards are needed to mitigate the risks typically associated with hot wallets such as the risk of malware and cyberattacks.[197]

To comply with the proposed safeguarding systems requirement, advisers would be able to employ different self-custody frameworks and practices rather than a ''one-size-fits-all'' approach. As discussed above, in developing their self-custody practices, advisers would need to consider the specific characteristics and risks of the crypto assets held in adviser self-custody and the services provided with respect to those crypto assets. An understanding of these elements would enable advisers to develop safeguarding systems that are tailored to their practices and would help mitigate the risks specific to their circumstances and particular operations. Advisers could look to industry best practices to develop appropriate safeguarding systems and processes around their use. Based on the staff's outreach with the industry and comments received through the Crypto Task Force, effective safeguarding systems, among other things, would protect crypto assets against inside threats (*e.g.,* the threat of employees stealing crypto assets) and outside threats (*e.g.,* cyber attacks)[198] as well as mitigate the risk of inside error[199] (*e.g.,* accidental loss or use of private keys resulting in the inability to access the crypto assets; erroneous crypto asset transactions). Effective safeguarding systems should also generally address business continuity and disaster recovery practices to ensure continued access to and integrity of the crypto assets in the wake of disruptive events.[200] These elements are consistent with the core policy objectives of the Advisers Act custody rule which is to safeguard client assets from the risk of loss, theft, misuse and misappropriation.

We request comment on the safeguarding systems requirement of the proposed adviser self-custody rule:

54. Is it appropriate to require, as proposed, the adviser to have the expertise and to adopt, implement, and maintain the safeguarding systems necessary to safeguard each crypto asset against loss, theft, misuse and misappropriation? Why or why not?

55. Is the proposed requirement that the adviser adopt, implement, and maintain ''the systems, including the appropriate technology, software, hardware, and other associated systems and processes around their use, necessary to safeguard each crypto assets against loss, theft, misuse and misappropriation'' sufficiently clear? Would any changes to the proposed requirement be useful?

56. Would this proposed requirement (which does not prescribe specific practices or technology that should be incorporated into the adviser's safeguarding systems) provide appropriate flexibility for advisers including smaller advisers? Would this raise questions about what safeguarding systems would suffice for purposes of the rule? Should the rule identify specific practices (in addition to the three minimum requirements of key management, joint authorization and segregation discussed further below) or specific technological components that the adviser must establish and implement as part of its safeguarding systems? Why or why not? If so, what should they be and why?

57. Are there best practices that commenters have developed or are aware of with respect to the types of measures that should be implemented as part of the proposed safeguarding

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[195] *See infra* section II.A.4 for further discussion of the cybersecurity requirement under the proposed adviser self-custody rule.

[196] *See supra* section II.A.3.a) discussing key aspects of a crypto asset's crypto network that may be relevant to an adviser's assessment of the crypto network's risks. *See also* Federal Reserve Board, et al., *Crypto-Asset Safekeeping by Banking Organizations* (July 14, 2025), *available at https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20250714a1.pdf* (''FRB Statement'') (in discussing crypto asset safekeeping by banking organizations, stating that different types of crypto assets may require different key management solutions).

[197] *See, e.g.,* Comment Letter to Crypto Task Force of Professor J.W. Verret (Feb. 23, 2025) (stating that common risks of hot wallets include phishing and malware); A16z Comment Letter II (stating that online systems for holding crypto assets generally have greater risks but, with ''well-managed risk mitigation systems,'' can be more secure than offline storage systems that are less rigorously managed); Comment Letter to Crypto Task Force of The Digital Chamber (June 23, 2025) (''TDC Comment Letter II'') (stating that cold storage solutions mitigate risks associated with hacking and fraud); Blockchain Association Comment Letter II (stating that policies and procedures to identify, mitigate, and prevent hacks are particularly relevant with respect to hot storage). *See also infra* section II.A.3.b)(1) (discussing key management best practices including measures to mitigate risks associated with hot wallets).

[198] *See, e.g.,* A16z Comment Letter II (stating that one of the main categories of custodial risks relating to crypto assets is the loss of funds to an external attacker); World Federation of Exchanges Comment Letter (explaining that security controls provided by wallet services are structured to ''necessitate individual approvals from different operators within the organisation, enhancing protection against insider threats and collusion'').

[199] *See, e.g.,* A16z Comment Letter II (explaining that risk mitigation measures should address the potential loss of keys and funds resulting from inside risk or user error).

[200] Commission staff has previously outlined similar considerations in the context of broker-dealer custody of crypto assets. *See* BD Crypto Custody Statement, *supra* footnote 191 (stating that broker-dealers carrying customers' crypto asset securities for purposes of rule 15c3–3 of the Exchange Act should establish, maintain and enforce reasonably designed written policies, procedures and arrangements to identify, in advance, the steps it would take in the wake of certain events that could affect the firm's possession of crypto asset securities). *See also, e.g.,* Comment Letter to Crypto Task Force of Blockchain Association (June 26, 2025) (''Blockchain Association Comment Letter II'') (stating that registered investment advisers seeking to custody crypto assets should have policies and procedures addressing disaster recovery); A16z Comment Letter II (stating that audits of crypto asset custodians' practices should include tests of their disaster recovery procedures and business continuity plans). *See also* Compliance Program Adopting Release, *supra* footnote 120, at section II.A.1 (stating that an adviser's policies and procedures implemented pursuant to the Advisers Act compliance rule should address, among other issues, business continuity plans to the extent relevant to that adviser).

systems requirement or, alternatively, are there any measures that commenters have found to be ineffective or relatively less effective?

58. Does the proposed requirement create any operational challenges for related persons of advisers that may be engaged for self-custody purposes? For example, are there any aspects of the proposed safeguarding expertise and systems requirement that would make it operationally difficult to engage the services of a related person that is operationally independent of the adviser to help administer its self-custody program? If so, what are those challenges and what changes to the proposed adviser self-custody rule would be necessary to mitigate those challenges?

59. The proposed adviser self-custody rule would require an adviser to identify the specific characteristics and risks of each crypto asset including its associated crypto network, as well as the services to be provided with respect to that crypto asset, in order to tailor the appropriate safeguarding systems. To what extent do advisers currently have such, or similar, processes in place? Do commenters agree with our characterization of risks relevant to the development of adequate safeguarding systems? Are there other risks or potential harms to clients that our analysis has not identified? Should an adviser, for instance, consider the threat of quantum computing to the security of a crypto asset and its associated crypto network in assessing the adequacy of its safeguarding systems and other related measures required under this proposal such as cybersecurity measures? [201]

60. To what extent do advisers already take the steps that would be required by the proposed adviser self-custody rule's safeguarding systems requirement to hold clients' crypto assets in self-custody?

(1) Key Management

Because access to the crypto asset is controlled by its pairing to a private key, proper management of key materials to protect against their loss or misappropriation is critical to the safeguarding of crypto assets.[202] The proposed adviser self-custody rule would thus require an adviser that has self-custody of client crypto assets to adopt, implement, and maintain safeguarding systems that manage and protect key materials against loss and unauthorized access, including by limiting access to key materials to only supervised persons designated by the adviser.[203] With respect to crypto assets held for an account of a regulated fund, the regulated fund's board of directors would need to designate such persons from the adviser's supervised persons by resolution of the board.[204]

The proposed key management requirement does not prescribe specific technical safeguards and is intended to provide advisers the flexibility to tailor their measures in the context of their business practices and the specific advisory services that they provide with respect to the clients' crypto assets. The requirement is also designed to adapt to developments over time as cryptographic key management practices continue to evolve to reflect changes in technology. Input received from commenters as well as our staff's experience indicate that the industry has developed best practices with respect to key management, including secure key generation and storage methods as well as vigorous authentication measures, to protect key materials against unauthorized access and use. For example, to enhance the security of key generation processes and to protect against access by unauthorized persons during the key generation process and thereafter, advisers could consider encrypting all levels of key generation and having designated authenticators be physically present at a secure and monitored location.[205] Advisers would also need to consider secure storage methods to back up and protect private keys against unauthorized and accidental use. These methods could include ''airgapping'' key materials to ensure that they are disconnected from any network, and/or holding key materials in tamper-resistant devices known as hardware security modules.[206]

Although the proposed adviser self-custody rule would not mandate a particular type of key storage method between cold and hot storage, effective safeguarding of client assets may necessitate, in many cases, that key materials be held in a cold wallet to protect against the risks typically associated with hot wallets; however, depending on the facts and circumstances, such as when the adviser seeks to trade the client's crypto assets frequently,[207] an adviser may need to use hot or warm wallets [208] in combination with other risk mitigation measures such as the use of encryption to store key materials (as opposed to storing them in plain text),[209] multi-signature wallets,[210] ''whitelisting'' recipients of crypto asset transfers,[211]

[201] *See, e.g.,* Deloitte, Quantum Computers and the Bitcoin Blockchain, *available at https://www.deloitte.com/nl/en/services/consulting-risk/perspectives/quantum-computers-and-the-bitcoin-blockchain.html* (last visited July 14, 2026) (stating that quantum computers pose serious challenges to the security of the Bitcoin blockchain); Chainalysis, Quantum Computing and Cryptocurrency: Preparing for the Next Security Revolution, *available at https://www.chainalysis.com/blog/quantum-computing-crypto-security/* (last visited July 14, 2026) (''While cryptocurrencies face theoretical vulnerability to quantum computing . . . practical limitations and ongoing development of quantum-resistant solutions provide a window for preparation'').

[202] *See, e.g.,* Blockchain Association Comment Letter II (stating that registered investment advisers seeking to custody crypto assets should have policies and procedures addressing private key management); A16z Comment Letter II (describing key management as ''the foundation of wallet security''). *See also* Coindesk, Private Keys, Not Smart Contracts, Caused 40% of Crypto's $16 Billion Hack Losses (Jun. 29, 2026), *available at https://www.coindesk.com/tech/2026/06/29/private-keys-not-smart-contracts-caused-40-of-crypto-s-usd16-billion-hack-losses-here-s-whats-being-done* (stating that private key hacks account for roughly 40% of all crypto hack losses to date).

[203] *See* section 202(a)(25) of the Advisers Act (15 U.S.C. 80b–2(a)(25)) (defining ''supervised person'' as ''any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser'').

[204] *See infra* section II.B for a detailed discussion of the fund self-custody rule proposed under the Investment Company Act applicable to self-custody of crypto assets by regulated funds.

[205] *See* A16z Comment Letter II (discussing secure key generation practices).

[206] *See, e.g.,* A16z Comment Letter II (describing measures to ensure airgapping such as using ''Faraday cages (shields that block wireless signals), biometrics access (like fingerprint or iris scanners), motion sensors (to trip alarms in case of unauthorized use), and SCIFs, or Sensitive Compartmented Information Facilities (special areas for processing classified information)''); Dechert Comment Letter.

[207] *See* Blockchain Association Comment Letter II (explaining that advisers should be permitted to use any combination of cold and/or hot storage as they reasonably deem appropriate based on, for example, their and their clients' specific trading activity and investment strategies, provided that they implement appropriate cybersecurity safeguards).

[208] *See* Fireblocks, Hot vs. cold vs. warm wallets: Which crypto wallet is right for me?, *available at https://www.fireblocks.com/blog/hot-vs-warm-vs-cold-which-crypto-wallet-is-right-for-me* (Apr. 15, 2022) (describing ''warm wallets'', which ''combine the transaction speed of hot wallets with an additional level of security, similar to cold wallets. The keys are held online and transactions can be created automatically, but human involvement is needed to sign the transaction and send it to the blockchain'').

[209] *See* A16z Comment Letter II.

[210] *See, e.g.,* A16z Comment Letter II (describing multi-signature wallets as requiring ''the cryptographic coordination of multiple independent keys in the construction of a complete transaction'' and that this ''can be achieved using offchain advanced cryptographic methods (*e.g.,* secure multiparty computation or threshold signature schemes) or onchain enforced by smart contract logic (*e.g.,* ''multisig wallets''); AIMA Comment Letter.

[211] *See, e.g.,* A16z Comment Letter II (''[w]hitelisting and address verification . . . restrict transfers to addresses approved through separate processes, or addresses verified as being under the control of known counterparties''); AIMA

and time-delayed withdrawals.[212] Additional risk mitigation measures could include physically separating copies of key materials across different geographic locations and individuals, prohibiting the concentration of personnel with key materials at a particular location at any given time (*e.g.,* prohibiting personnel with private key access from travelling together), and other physical security protections and protocols to secure any facilities and hardware storing key materials against intruders and to enhance the physical safety of personnel with access to key materials.[213]

Effective safeguarding of key materials would likely also need exit procedures to ensure that departing firm personnel that had access to key materials do not leave their employment at the firm with continued access to the key materials. Advisers could consider adopting measures to mitigate the risks associated with any particular set of key materials, for example, by periodically changing the crypto asset's key materials and crypto asset addresses, establishing limits on sizes of cryptographic wallets, and avoiding the use of key materials for more than one purpose.[214]

Advisers would also consider whether their private key storage methods are adequately designed to protect key materials from being corrupted, lost or destroyed. Moreover, advisers should consider putting in place plans to ensure the continued safekeeping of the crypto assets in the wake of events that could disrupt access to the crypto assets including, but not limited to, a disruption or destruction of the facility, software, hardware system, or other format or system on which the key materials are stored and/or used. Advisers should also consider the legal and jurisdictional risks of placing crypto assets in hardware wallets in jurisdictions that lack robust regulatory frameworks or meaningful recourse protective of wallet owners in the event the wallet is compromised.

Advisers could draw from industry developed practices to tailor their safeguarding systems in accordance with their circumstances and the specific advisory services that they provide with respect to the clients' crypto assets. As crypto assets and distributed ledger technology continue to evolve, so do key management practices, and advisers should periodically reevaluate industry developed practices for key management and update and tailor their own key management practices as appropriate.

The proposed key management requirement would require the adviser to limit access to key materials to only designated persons that are supervised persons of the adviser and, with respect to crypto assets held in an account of a regulated fund, the regulated fund's board of directors must designate such persons from the supervised persons of the adviser (collectively, ''designated persons'').[215] This requirement is similar to the requirement under current rule 17f–2 under the Investment Company Act that requires the board of the investment company to designate persons with access to the assets in the self-custody of the investment company.[216] Limiting access to key materials is important because of the risk inherent in the bearer nature of crypto asset keys and the heightened challenges of recovering many types of crypto assets when lost or stolen. Limiting access to key materials to designated persons would reduce the risk of misappropriation or accidental loss of crypto assets by limiting the universe of persons who could access them to those that are subject to the adviser's ongoing supervision and control. Limiting the universe of designated persons with private key access to supervised persons of the adviser is important to ensuring that the adviser is able to enforce the various protective requirements of the proposed adviser self-custody rule for such persons and oversee their compliance with those requirements.[217]

It is our view that in order to comply with the proposed key management requirement, an adviser must have exclusive possession of the key materials to the crypto asset, as sharing key materials with anyone outside of the adviser would be a violation of the requirement that private key access be limited to supervised persons of the adviser. This also means advisers would not be permitted to share key materials with the client, which is necessary to limit the parameters of access to the private keys and to reduce the risk of inadvertent loss or theft of the key materials.

An adviser would be permitted to rely on the proposed adviser self-custody rule only with respect to crypto assets for which it provides investment advice.[218] For instance, an adviser would not be permitted under this proposal to place the key materials to an advisory client's crypto assets with an affiliate adviser (including a foreign affiliate adviser) that is not designated as the investment adviser to that client in the advisory agreement, since that affiliate would not be the entity providing investment advice to the client with respect to those crypto assets. It is necessary in our view to limit adviser self-custody to crypto assets for which an adviser provides investment advice in order to reduce instances of advisers placing key materials to client crypto assets with affiliates that may be operationally difficult to supervise and control for compliance with the required safeguards of the rule. This limitation is also necessary to address the possibility that advisory affiliates could serve primarily as custodians for client crypto assets rather than as providers of investment advice. Such advisers may not be subject to fiduciary and other obligations under the Advisers Act associated with providing investment advice.

We request comment on the proposed key management requirement:

61. Is the proposed requirement that the adviser's safeguarding systems must ''manage and protect key materials against loss and unauthorized access'' sufficiently clear? Would this raise questions about what key management practices would suffice for purposes of the rule? Should we provide any additional clarification regarding the proposed key management requirement? If so, what changes should we make?

Comment Letter (stating that risk mitigation measures for hot wallets include ''withdrawal allowlists''). For purposes of this release, ''whitelisting'' is the practice of explicitly allowing only pre-approved applications, users, email addresses, or IP addresses to access a crypto system or service. *See also* Commission Security Status Interpretation, *supra* footnote 24, at section III.B.

[212] *See* AIMA Comment Letter.

[213] *See* A16z Comment Letter II. *See also* Bloomberg, Small-Time Crypto Investors Are Facing Violent Attacks (Jan. 2, 2026), *available at https://www.bloomberg.com/features/2026-crypto-thieves-kidnappers/* (discussing physical security vulnerabilities related to crypto assets).

[214] *See* A16z Comment Letter II (stating that a best practice is avoiding reuse of key materials for more than a single purpose, for example, using separate key materials for encryption and signing).

[215] This proposal includes amending Advisers Act rule 204–2 to require records identifying designated persons. *See* proposed rule 204–2(a)(26)(iii). *See also infra* section II.H.1 for a detailed discussion of the proposed amendments to rule 204–2.

[216] *See* rule 17f–2(d).

[217] *See also supra* section II.A.1c)(1) for a discussion on the use of service providers and our stated view that in order to ensure their compliance with the proposed adviser self-custody rule, advisers would need to determine, as part of their due diligence of these service providers prior to engaging them, whether or not the service providers' capabilities impermissibly give them access to the key materials and/or other means to unilaterally move a client's crypto asset.

[218] *See* proposed rule 223–1(b)(7) (providing that an adviser is not required to comply with paragraphs (a)(1), (a)(2) and (a)(3) of the Advisers Act custody rule if it has self-custody of client crypto assets for which it provides investment advice).

Would any changes to the proposed adviser self-custody rule be useful?

62. Conversely, would this proposed requirement (which does not prescribe specific practices or technology enabling key management) provide appropriate flexibility necessary to tailor safeguarding systems to the unique aspects of a crypto asset held in the adviser's self-custody? Should the rule identify specific key management practices or technology that the adviser must establish and implement for purposes of the rule? Why or why not? If so, what should they be and why?

63. What are best practices that commenters have developed or are aware of with respect to the types of measures that should be implemented as part of the proposed key management requirement or, alternatively, are there any measures that commenters have found to be ineffective or relatively less effective?

64. Would the proposed requirement that access to key materials be limited to supervised persons designated by the adviser (and in the case of crypto assets held in an account of a regulated fund, supervised persons designated by the board of the regulated fund) create any particular challenges for advisers, such as smaller advisers? Would the board designation requirement create any particular challenges for any regulated funds or their advisers? If so, what modifications to the proposed adviser self-custody rule would be necessary to mitigate these challenges?

65. Do advisers to regulated funds anticipate a need to change designated persons frequently such that compliance with the proposed board designation requirement would be challenging? If so, why would frequent changes in designated persons be necessary and how should a regulated fund's board oversee this process?

66. Are supervised persons the appropriate persons to have access to the key materials? Should the requirement be a higher standard, for example, that only the adviser's management persons have access to the key materials?

67. To the extent advisers engage third parties such as software providers to support their management of key materials, are there concerns that those third parties would have access to the adviser's key materials (for example, when generating new private keys), therefore violating the requirement that only the adviser's supervised persons have access to the key materials? Are there any instances when access to key materials by third parties would be necessary and helpful to investor protection? If so, what are those examples?

68. Are commenters aware of any examples of advisers sharing key materials with the client? In what circumstances, if any, would this arrangement be necessary? Would sharing key materials with the client enhance investor protection? Why or why not? Do advisers anticipate that sharing key materials with clients would be necessary as an additional cybersecurity resilience measure to ensure that no single party is able to instruct the movement of a given crypto asset without the client also agreeing to the movement? Or does sharing key materials with clients exacerbate custodial risks because it exposes key materials to additional parties that are not subject to the adviser's supervision and control? If the adviser self-custody rule permitted the sharing of key materials with clients, under what conditions should this be allowed? For example, should the adviser self-custody rule allow the client to have only a non-controlling share of the key materials (*i.e.,* a private key share that is necessary to effectuate a crypto asset transaction but not sufficient for the client to unilaterally move the crypto asset), and only if such private key share is recoverable? Should the adviser self-custody rule require an adviser in such arrangement to obtain explicit client authorization for each transfer of the client's crypto asset? [219]

69. Are the security and control of key materials impacted by the geographic location of the systems in which they are stored, relative to the adviser? Could an adviser maintain the security and control of key materials stored in a system located outside of the adviser's jurisdiction as effectively as an adviser could maintain the security and control of key materials stored in a system located in the adviser's jurisdiction? What jurisdictional barriers, if any, could undermine an adviser's ability to maintain its control and security of key materials that are stored outside of the jurisdiction of the adviser? Should the proposed adviser self-custody rule require advisers to maintain a client's key materials in the United States? Given the virtual nature of key materials, would it be operationally possible to limit the location of key materials to the United States?

(2) Joint Authorization

Under the proposed adviser self-custody rule, an adviser holding client crypto assets in self-custody would be required to adopt, implement, and maintain safeguarding systems that prevent unauthorized transfers of crypto assets.[220] At a minimum, such systems must require joint authorization of crypto asset transfers by two or more designated persons, at least one of which must be a management person and, in the case of crypto assets held for an account of a regulated fund, such management person must be an officer of that regulated fund. Crypto assets carry a heightened risk of irreversible loss because of the bearer nature of private keys and the irreversibility of most crypto asset transactions on crypto networks. Controls and processes governing how a client's crypto assets are transferred are thus a critical element of safekeeping crypto assets.[221]

Under the proposed adviser self-custody rule, advisers would have to establish systems that require joint authorization of crypto asset transfers by two or more designated persons.[222] This is to ensure that multiple persons subject to the adviser's ongoing supervision and control are independently involved to oversee and gatekeep access to the clients' crypto assets, which would help to reduce the ability of any single bad actor to misappropriate clients' crypto assets. Although we recognize that the proposed requirement would preclude an adviser with only one employee from relying on the adviser self-custody rule, the proposed requirement is appropriate because a single person at an adviser having the authority to unilaterally transfer a client's crypto assets heightens the risk of misappropriation and misuse of the crypto asset by the adviser.

This requirement parallels a provision in rule 17f–2 under the Investment Company Act that requires two or more (but not more than five) designated persons to act jointly in accessing assets in the investment company's own

[219] *See* section IV.E.10 for a discussion on this alternative that would have permitted an adviser to share key materials with the client.

[220] *See* proposed rule 223–1(b)(7)(ii)(B).

[221] *See, e.g.,* World Federation of Exchanges Comment Letter (explaining that a key aspect of security controls used by wallet providers is requiring ''multiple verifications for a transaction to proceed, ensuring that no single individual or group can unilaterally move assets''); A16z Comment Letter II (stating that the risk of loss and theft of crypto assets can be mitigated by the use of multi-party computation (''MPC'') or multi-signature transaction controls that require the involvement of multiple persons to approve transactions); Comment Letter to Crypto Task Force of Figure Markets (Mar. 25, 2025) (''Figure Markets Comment Letter'') (explaining that self-custody of crypto assets should be accommodated by the use of MPC to ''prevent unilateral asset movement'').

[222] *See supra* section II.A.3.b)(1) for a discussion of designated persons under the proposed adviser self-custody rule.

custody.[223] In our view, similar protections should apply when the adviser has self-custody of clients' crypto assets without the involvement of an independent custodian to deter potential misconduct. Although like the key management requirement, this joint authorization requirement is intended to be technologically neutral, advisers should implement protections that effectively allow them to safeguard clients' crypto assets against unauthorized access and use of the private keys.

Advisers could establish different security measures to satisfy the proposed requirement that multiple designated persons jointly authorize any transactions in the crypto assets. Several commenters recommended different technology solutions that enable joint authorization requirements gating crypto asset transfers. Advisers may consider, for example, MPC, which prevents any one person from unilaterally transferring crypto assets by distributing among independent users private key shares that are privately maintained from each other and requiring the input of some or all of the key share holders in order to effectuate a crypto asset transaction.[224] Alternatively, depending on their circumstances, advisers could also consider multi-signature wallets, which involve multiple independent private keys to approve transactions.[225] Advisers would also generally want to consider establishing protocols to verify the identity of the designated persons, such as multi-factor authentication that implements layers of security and identity verifications in order to ensure that the persons seeking authorization to move the crypto assets are, in fact, who they claim to be.[226] Advisers should also consider using other protective measures to prevent crypto assets from falling into the hands of unauthorized actors or being moved for unauthorized purposes, such as measures to prevent blind signing by authorized signatories [227] and address verification technology that restricts recipients of crypto asset transfers to authorized and vetted persons (*e.g.,* whitelisting).[228]

At least one of the persons authorizing crypto asset transfers would have to be a management person, and in the case of crypto assets held for an account of a regulated fund, such management person must be an officer of the regulated fund.[229] Proposed rule 223–1(d)(11) defines ''management persons'' as having the same meaning as that term in the Form ADV, Glossary of Terms, which currently defines ''Management Persons'' as anyone with the power to exercise, directly or indirectly, a controlling influence over the adviser's management or policies, or to determine the general investment advice given to the clients of the adviser.[230] Generally, all of the following are management persons:

(1) The adviser's principal executive officers, such as the adviser's chief executive officer, chief financial officer, chief operations officer, chief legal officer, and chief compliance officer; the adviser's directors, general partners, or trustees; and other individuals with similar status or performing similar functions;

(2) The members of the adviser's investment committee or group that determines general investment advice to be given to clients; and

(3) If the adviser does not have an investment committee or group, the individuals who determine general investment advice provided to clients.

This requirement parallels the requirement under rule 17f–2 under the Investment Company Act that at least one of the persons acting jointly to access a registered investment company's self-custodied assets be an officer. The requirement is intended to ensure that at least one of the persons authorizing crypto asset transactions has the authority sufficient to oversee self-custodied crypto asset activities across the firm and to monitor transactions conducted by authorized personnel, which would help mitigate the risk of a bad actor conducting unauthorized activities with the crypto asset. A management person, and an officer in the case of a regulated fund, would be more likely to have the seniority compared to a non-management employee to effectively oversee and monitor crypto asset activities across the firm. As the definition of ''management persons'' includes anyone with ''the power to exercise, directly or indirectly, a controlling influence over the adviser's management or policies,'' the proposed requirement would not limit authorized signatories for this purpose to only senior investment professionals.[231] For example, an adviser's cybersecurity director or a chief information security officer could be designated as an authorized signatory for this purpose. We request comment on the joint authorization element of the proposed safeguarding systems requirement:

70. Is the proposed requirement that the adviser's safeguarding systems ''prevent unauthorized transfers of crypto assets'' including by requiring joint authorization of crypto asset transfers by two or more designated persons (at least one of which must be a management person, and in the case of crypto assets held for an account of a regulated fund, such management person must be an officer of the regulated fund) sufficiently clear? Would this raise questions about what joint authorization measures would suffice for purposes of the rule? Should we provide any additional clarification or changes regarding the proposed joint authorization requirement? If so, what changes should we make?

[223] *See* rule 17f–2(d).

[224] *See, e.g.,* Figure Markets Comment Letter (explaining that MPC distributes private key shares among vetted persons, ''ensuring no single entity can unilaterally move assets''); A16z Comment Letter II (stating that investment advisers that custody crypto assets will typically use, among other protective measures, MPC, which is ''a method for joint computation of a crypto asset transaction while each component input is maintained privately from one another''); Dechert Comment Letter (stating that ''most'' entities that custody crypto assets use, among other measures, MPC); Blockchain Association Comment Letter II (stating that crypto asset custodians should adopt, among other safeguards, MPC).

[225] *See supra* footnote 210 for examples of comment letters submitted to the Crypto Task Force describing multi-signature wallets; A16z Comment Letter II (stating that multi-signature wallets help prevent a single stored key from being compromised to effectuate malicious transactions); see also Fireblocks, MPC vs. Multi-sig, (Nov. 1, 2024), *available at https://www.fireblocks.com/blog/mpc-vs-multi-sig* (explaining that ''[w]hen it comes to securing digital assets, multisig wallet solutions and MPC crypto technologies represent two leading approaches to enhanced security'').

[226] *See* A16z Comment Letter II (explaining that multifactor authentication involves ''multiple independent verification methods (*e.g.,* passwords, TOTP codes, hardware authentication devices, or biometrics) to authenticate users initiating or approving transactions'').

[227] It is our understanding that a known problem for private key management is authorized signatories not knowing what they are signing. One way to address this issue is to explain to signatories in plain English the details of the transaction that they are authorizing. *See, e.g.,* Coinbureau, What You Need to Know About Crypto Blind Signing (Before It's Too Late) (Dec. 19, 2025), *available at https://coinbureau.com/education/what-is-crypto-blind-signing*

[228] *See supra* footnote 211 for examples of comment letters submitted to the Crypto Task Force describing whitelisting and other safeguards utilizing crypto asset address verifications.

[229] Regulated fund officers are typically elected by the fund's board. *See* Investment Company Institute, Understanding the Role of Mutual Fund Directors, *available at https://www.ici.org/system/files/attachments/pdf/bro_mf_directors.pdf* (last visited May 7, 2026) (stating that duties of mutual fund directors include electing officers); 8 DE Code § 142 (b) (''Officers shall be chosen in such manner and shall hold their offices for such terms as are prescribed by the bylaws or determined by the board of directors or other governing body'').

[230] *See* proposed rule 223–1(d)(11); Form ADV, Glossary of Terms (defining ''management persons'').

[231] *See* Form ADV, Glossary of Terms (definition of ''Management Persons'').

71. Conversely, would this proposed requirement (which does not prescribe specific practices or technology enabling joint authorization of crypto asset transactions) provide appropriate flexibility for advisers including smaller advisers and regulated funds with smaller advisers? Or would this raise questions about what joint authorization practices would suffice for purposes of the rule? Should the rule identify specific practices or technology that the adviser must utilize for purposes of the rule? Should the rule specifically require, for example, that the adviser use MPC or multi-signature wallets to authorize transactions of crypto assets? Why or why not? If so, what should these practices and/or technology be, and why?

72. What are best practices that commenters have developed or are aware of with respect to the types of measures that should be implemented as part of the proposed joint authorization requirement or, alternatively, are there any measures that commenters have found to be ineffective or relatively less effective?

73. Would the proposed requirement that two or more designated persons jointly authorize any crypto asset transactions raise any particular challenges for advisers, including smaller advisers and, if so, what could we do to help mitigate these challenges? For example, should we modify the proposed adviser self-custody rule to permit advisers to authorize the use of third parties not employed by the adviser to authorize transactions and, if so, under what conditions? Why or why not?

74. Are management persons of the adviser and an officer of the regulated fund the appropriate persons to authorize crypto asset transactions, as proposed? Why or why not? Would the proposed requirement that at least one of the persons authorizing crypto asset transactions be a management person of the adviser and, in the case of a regulated fund, also an officer of the regulated fund, be overly burdensome for advisers and regulated funds? Are there any persons at the adviser or the regulated fund other than management persons and officers that should be required to authorize crypto asset transactions? For example, should the rule instead require an adviser or regulated fund's chief compliance officer or their designee(s) to participate in the authorization of a crypto asset transaction given their involvement in compliance functions? Alternatively, should the adviser self-custody rule instead require that at least one of the persons authorizing crypto asset transactions have authority sufficient to oversee self-custodied crypto asset activities across the firm and monitor transactions conducted by authorized personnel?

75. Instead of requiring at least one of the designated persons to be a ''management person'' and, in the case of a regulated fund, also an ''officer,'' as proposed, should the rule instead permit advisers and regulated funds to designate persons with authorization privileges based on a principles-based facts and circumstances approach? If so, which facts and circumstances should inform the adviser's designation of persons with authorization privileges? Would the proposed requirement that at least one of the designated persons be a management person or an officer of the regulated fund raise the risk of targeted attacks by malicious actors acting upon their knowledge of who holds these titles?

76. Is ''two or more'' the appropriate number of persons to provide joint authorization of crypto asset transactions? Why or why not? Should this requirement be revised with a higher minimum number of persons that must jointly authorize crypto asset transactions? Should the rule, like rule 17f–2(d), apply a limit to the number of persons to provide joint authorization of crypto asset transactions?

77. Are commenters aware of any examples of advisers and custodians utilizing non-human, software-based agents as signatories of crypto asset transactions, such as automated smart contracts and artificial intelligence? Should the proposed joint authorization requirement expressly permit or prohibit the use of software-based agents as signatories of crypto asset transactions? Does the use of software-based agents as signatories enhance or undermine the safeguarding of a crypto asset?

(3) Segregation

The proposed adviser self-custody rule would require an adviser that has self-custody of client crypto assets to adopt, implement, and maintain safeguarding systems that maintain each client's crypto assets in one or more crypto asset addresses on the crypto network storing only such client's crypto assets.[232] This aspect of the proposed adviser self-custody rule is designed to segregate each client's crypto assets in the adviser's self-custody from the crypto assets of others, including other clients, the adviser and its related persons. Segregation of client assets continues to be a foundational element of safeguarding client assets and is particularly essential in light of the unique custodial risks inherent in crypto assets.[233]

The proposed requirement that a client's crypto assets be maintained in crypto asset addresses storing only such client's crypto assets on the crypto network is intended to ensure that the client's crypto assets are clearly identifiable as belonging to the appropriate client. Ownership and transfers of crypto assets today are recorded on the crypto network and are controlled by pairings of the crypto asset's private key materials to its corresponding crypto asset address, a bespoke and public identifier on the crypto network that functions as a destination or ''wallet address'' for storing, receiving and sending crypto assets.[234] The crypto asset address can be used to view the corresponding crypto asset's balances and transactions on the crypto network on which the crypto asset's transfers and ownership are recorded. Maintaining client crypto assets in a segregated manner under crypto asset addresses that store only the relevant client's assets, rather than commingling them with the crypto assets of others, would help isolate each client's crypto assets and allow a client to monitor activity at the wallet address holding the client's crypto assets.

The proposed segregation requirement is necessary in the context of adviser self-custody to prevent circumstances that could result in the misuse or misappropriation of the client's crypto assets by the adviser.[235] Segregation of

[232] *See* proposed rule 223–1(b)(7)(ii)(C); proposed rule 223–1(d)(4) (defining ''crypto asset address'' as the unique identifier on the crypto network that designates the destination for sending, receiving, and storing a crypto asset on the crypto network).

[233] *See* A16z Comment Letter II (stating that custodians of crypto assets should generally segregate crypto assets from those of other entities).

[234] *See* Ledger Academy, What is A Crypto Wallet Address? (June 28, 2024) *available at https://www.ledger.com/academy/topics/blockchain/what-is-a-crypto-wallet-address* (''A crypto wallet address is derived from your public key. To explain, every blockchain account has a unique key pair comprised of a private key and a public key. The private key grants you control over the account, allowing you to sign transactions. The public key, on the other hand, serves as the account's unique identifier.''); Coinbase, What is a wallet address?, *available at https://www.coinbase.com/learn/wallet/what-is-a-wallet-address* (last visited Feb. 11, 2026) (''Wallet addresses play a vital role in cryptocurrency transactions. They allow users to send and receive digital assets across blockchain networks. When you want to receive cryptocurrency, you provide your wallet address to the sender. Conversely, to send cryptocurrency, the recipient's wallet address is required.'').

[235] *See, e.g.,* Financial Stability Board, The Financial Stability Implications of Multifunction Crypto-Asset Intermediaries (Nov. 28, 2023) at 15–16, *available at https://www.fsb.org/uploads/P281123.pdf* (explaining that lack of adequate segregation of crypto assets could result in

client crypto assets under separate crypto asset addresses would serve as an important check on potential misconduct by the adviser by helping ensure the client's continued ownership and authorized use of its crypto assets. When client crypto assets are isolated from the assets of others under separate crypto asset addresses, records of crypto asset ownership and transactions viewable under the relevant addresses onchain would provide transparency as to the adviser's uses of the client's crypto assets and consequently reduce the likelihood that advisers or their related persons use client crypto assets for their own purposes in a manner not authorized by the client. Commenters have also stated that segregation of client crypto assets and clear identification of those assets as belonging to the client may also help protect client crypto assets from claims by a third party looking to secure or satisfy an obligation of the adviser including in cases of insolvency or bankruptcy of the adviser, or its related persons.[236]

Moreover, to the extent the adviser primarily relies on onchain records of crypto asset ownership and transactions to track and notify clients of the crypto asset's activities, segregation of clients' crypto assets by address would be critical to preserve the benefits of onchain transparency.[237] This is because the crypto network shows transactions in the relevant crypto asset, allowing a client to monitor the client's own account by monitoring the activity associated with crypto asset addresses holding only the client's crypto assets. This monitoring would not be possible if the client's assets were commingled with other client assets in an omnibus crypto asset address. In that case, client transactions would not always be visible on the crypto network because, while they could be effected on the books and records of the adviser, any transactions visible on the crypto network could not be used to monitor activity affecting any particular client's account.[238]

We recognize that even with segregated crypto asset addresses, an adviser may need to supplement onchain records with records of transactions or data that are processed and recorded outside of a crypto network (''offchain''), such as offchain logs identifying owners of each crypto asset address by name, since a crypto asset address comprises a pseudonymous combination of letters and numbers.[239] Segregating crypto assets by address, however, would allow clients with their address information to easily identify and monitor their crypto asset balances and transactions on the crypto network rather than having to rely on the adviser to parse out which crypto asset activity under a commingled address relates to a client's account. Segregation of crypto assets by address is therefore an essential component of furthering transparency through the use of cryptography's protective onchain features and reducing the risk of adviser misconduct.

We request comment on the proposed segregation requirement:

78. Is this proposed segregation requirement sufficiently clear? Should we provide any additional clarification regarding the proposed segregation requirement? If so, what changes should we make?

79. Conversely, would this proposed segregation requirement provide appropriate flexibility for advisers including smaller advisers? Or would this raise questions about what segregation practices would suffice for purposes of the rule? Should the rule identify specific practices or technology that the adviser must establish and implement for purposes of the rule?

80. What are best practices that commenters have developed or are aware of with respect to the types of measures that should be implemented to effectively segregate crypto assets or, alternatively, are there any measures that commenters have found to be ineffective or relatively less effective?

81. Should we modify the rule to permit advisers to use omnibus wallets to hold all clients' crypto assets and, if so, under what conditions, if any? Why or why not?

82. Would the proposed segregation requirement increase the likelihood that client crypto assets would be available to be returned to clients if the adviser experiences financial events such as insolvency or bankruptcy? For example, do commenters believe the requirements would help ensure that client crypto assets are more readily identifiable as client property? Would the proposed segregation requirement offer substantial protections in the event of a bankruptcy or financial losses involving the adviser?

4. Cybersecurity

Under the proposed adviser self-custody rule, an adviser that has self-custody of clients' crypto assets must mitigate any cybersecurity risks to the safeguarding of each such crypto asset.[240] The proposed adviser self-custody rule provides certain general core elements that advisers would need to address when implementing their cybersecurity measures: (1) periodic but no less than annual written assessments of cybersecurity risks to crypto assets in the adviser's self-custody and cybersecurity risks associated with the adviser's safeguarding systems; (2) measures reasonably designed to detect, mitigate and remediate any cybersecurity threats and vulnerabilities with respect to the adviser's safeguarding systems; and (3) measures reasonably designed to detect, respond to, and recover from a cybersecurity incident relating to the adviser's safeguarding systems.

Crypto assets are a highly technological asset class that operate virtually on interconnected networks composed of crypto systems.[241] As a result, crypto assets are subject to heightened cybersecurity risks, and cybersecurity breaches could result in the theft of crypto assets and significant financial losses.[242] For example, cyber

misappropriation and permanent loss of crypto assets); A16z Comment Letter II (stating that audits performed on crypto assets self-custodied with a registered investment adviser should confirm that such assets are duly segregated from the assets of the adviser); TDC Comment Letter I (stating that registered investment advisers should be permitted to self-custody crypto assets under a principles-based framework informed by concepts of the current custody rule including, among others, segregation of client and proprietary assets).

[236] *See* World Federation of Exchanges Comment Letter (in discussing segregated accounts at crypto asset trading platforms, stating that segregated accounts help protect client assets in the event of the trading platform's bankruptcy as well as against the platform using client assets for their own purposes).

[237] *See infra* section II.A.7 for a detailed discussion of the proposed self-custody account statement requirement, which would allow an adviser, in lieu of sending a consolidated account statement prepared offchain, to transmit the information required in an account statement to a client, for example by providing the client access to records onchain and sending quarterly notifications of onchain activity. See proposed rule 223–1(b)(7)(vi).

[238] *See, e.g.,* Fortris, Omnibus vs Segregated Accounts in Digital Asset Management (last visited May 7, 2026), *available at https://www.fortris.com/blog/omnibus-vs-segregated-account-digital-assets* (''Commingling individual assets within the shared account makes it difficult to track specific assets allocated to each user, raising concerns regarding asset ownership and auditability'').

[239] *See infra* section II.H.3 for a detailed discussion of the use of onchain records to satisfy recordkeeping obligations under the Advisers Act.

[240] *See* proposed rule 223–1(b)(7)(iii).

[241] *See supra* footnote 130 (defining ''crypto systems'').

[242] *See, e.g.,* Reuters, Crypto's biggest hacks and heists after $1.5 billion theft from Bybit (Feb. 24, 2025), *available at https://www.reuters.com/technology/cybersecurity/cryptos-biggest-hacks-heists-after-15-billion-theft-bybit-2025-02-24/;* Reuters, Coinbase warns of up to $400 million hit from cyberattack (May 15, 2025), *available at https://www.reuters.com/business/coinbase-says-cyber-criminals-stole-account-data-some-customers-2025-05-15/.*

threat actors could take advantage of potential vulnerabilities associated with an adviser's custodial infrastructure, including aspects of that infrastructure that are owned or operated by third parties, to conduct malicious activities, including unauthorized access to cryptographic wallets holding clients' key materials. Crypto systems may also be vulnerable to cyber attacks that exploit vulnerabilities in the underlying code of the crypto applications running on those systems, resulting in the theft of crypto assets deposited therein.[243] Timely cybersecurity risk assessments and robust cybersecurity protocols are therefore critical to the proper safekeeping of crypto assets.[244] Advisers may have already implemented cybersecurity programs under the existing regulatory framework that implicates cybersecurity considerations. For example, under 17 CFR 248.1 through 248.31 (*i.e.,* Regulation S–P), every investment adviser registered with the Commission and regulated fund is required to, among other things, adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer information, *i.e.,* any record containing nonpublic personal information about an adviser's customer, which, under Regulation S–P, is an individual advisory client.[245] These policies and procedures must be reasonably designed to (i) ensure the security and confidentiality of customer information, (ii) protect against any anticipated threats or hazards to the security or integrity of customer information, and (iii) protect against unauthorized access to or use of customer information that could result in substantial harm or inconvenience to any customer as well as include a program reasonably designed to detect, respond to, and recover from unauthorized access to or use of customer information. Accordingly, registered investment advisers with self-custody already must have programs under Regulation S–P that they could enhance or build upon, to the extent necessary or appropriate, to satisfy the cybersecurity requirement under the proposed adviser self-custody rule.

Advisers and funds subject to 17 CFR 248.201 through 202 (''Regulation S–ID'') must also develop and implement a written identity theft program that includes policies and procedures to identify relevant types of identity theft red flags, detect the occurrence of those red flags, and respond appropriately to the detected red flags.[246]Advisers holding crypto assets in self-custody would be required to comply with Regulation S–ID and establish a red flags program to the extent that they are financial institutions or creditors that offer or maintain covered accounts under Regulation S–ID.[247]

Furthermore, funds and advisers may have put in place measures to prevent, detect, and respond to cyber attacks as necessary to address their compliance obligations under other provisions of the Federal securities laws. Advisers are encouraged to leverage and/or enhance their existing cybersecurity programs to comply with the proposed cybersecurity requirement under the adviser self-custody rule.

The proposed cybersecurity requirement otherwise gives advisers the flexibility to address the three general elements based on the particular cybersecurity risks posed by each adviser's safeguarding systems as well as the particular characteristics of the self-custodied crypto assets and the crypto networks on which they operate. Given the number and varying characteristics (*e.g.,* size, business, and sophistication) of advisers, this flexibility is necessary to allow advisers the ability to tailor their cybersecurity protocols based on their individual facts and circumstances. Cybersecurity threats are also constantly evolving, and as measures to address those threats continue to advance, this approach would allow advisers' cybersecurity measures to evolve accordingly as firms reassess the cybersecurity risks to their self-custody practices.

(a) Risk Assessment

The first core element of the proposed cybersecurity requirement would require periodic but no less than annual written assessments of cybersecurity risks to crypto assets in the adviser's self-custody and cybersecurity risks associated with the adviser's safeguarding systems used to self-custody crypto assets.[248] This assessment is necessary for an adviser to design effective cybersecurity protocols and controls tailored to the firm's particular operations and the specific characteristics and vulnerabilities associated with each crypto asset in the adviser's self-custody. Advisers may be subject to different cybersecurity risks that necessitate different cybersecurity measures depending on, for example, whether a crypto system associated with a particular crypto asset in the adviser's self-custody is vulnerable to, or has been subject to, a cybersecurity breach; an adviser's investment and trading activities involving the self-custodied crypto assets; [249] whether an adviser utilizes hot wallets versus cold wallets to store private keys; [250] whether designated private key holders work remotely or travel internationally; an adviser's degree of vulnerability to inside and/or outside threats; and/or whether an adviser utilizes a cryptographic wallet provider that has previously experienced a cybersecurity breach. Given that this assessment is necessary to implement effective cybersecurity measures and adequate safeguarding systems for a particular crypto asset based on its particularized risks, advisers would consequently need to conduct the first risk assessment before the adviser takes self-custody of a crypto asset, which would help ensure that those risks are mitigated before a cybersecurity incident happens.

This assessment would need to include an evaluation of the particular characteristics and specific vulnerabilities associated with each crypto asset and its associated crypto network on which it operates. An understanding of the crypto asset's specific technology including its associated crypto system is necessary for the adviser to develop appropriate

[243] Gemini, Dao Hack Explained: How a Vulnerability Split Ethereum (Dec. 4, 2025), *available at https://www.gemini.com/cryptopedia/the-dao-hack-makerdao.*

[244] *See, e.g.,* TDC Comment Letter II (stating that a rule that allows investment companies to self-custody crypto assets should require advanced cybersecurity measures to protect crypto assets from theft, hacking, and other cyberthreats); Blockchain Association Comment Letter II (stating that in evaluating its custody arrangements for crypto assets, an adviser should consider whether it or its custodian of crypto assets has policies and procedures in place to regularly test the effectiveness of cybersecurity controls).

[245] *See* Regulation S–P: Privacy of Consumer Financial Information and Safeguarding Customer Information (May 16, 2024) [89 FR 47688 (June 3, 2024)] (''Regulation S–P Release''); 17 CFR 248.30(d)(4); 17 CFR 248.30(d)(5)(i); 17 CFR 248.3(j); 17 CFR 248.3(g)(1); 17 CFR 248.3(k)(1).

[246] *See* Identity Theft Red Flags Rules, Advisers Act Release No. 3582 (Apr. 10, 2013) [78 FR 23638 (Apr. 19, 2013)] (''Regulation S–ID Adopting Release'').

[247] *See* Regulation S–ID Adopting Release at section II (discussing and providing illustrative examples of entities registered with the Commission, including registered investment advisers, that could fall within the definition of financial institutions, and examples of covered accounts).

[248] *See supra* section II.A.3.b) which discusses the proposed safeguarding systems requirement. We are also proposing to amend Advisers Act rule 204–2 to include a copy of this written assessment as a required record. See proposed rule 204–2(a)(26)(iv); *infra* section II.H.1 for a detailed discussion of the proposed amendments to rule 204–2.

[249] *See* Blockchain Association Comment Letter II.

[250] *See supra* footnote 197 for examples of comment letters submitted to the Crypto Task Force discussing risks associated with hot wallets.

cybersecurity protocols to mitigate risks that could affect the adviser's continued ability to access the crypto asset.[251] Such assessments would allow the adviser to identify significant weaknesses or other potential operational issues associated with a crypto asset and its associated crypto system, or other risks posed to the adviser's business by the crypto asset, and to take appropriate action to identify and reduce its exposure to such risks by establishing cybersecurity measures tailored to mitigate those risks.

Due to the ongoing and emerging nature of cybersecurity threats to crypto assets, advisers would be required to conduct these risk assessments periodically but no less than annually. An adviser that holds a crypto asset in self-custody for less than a year would not be expected to conduct an annual risk assessment with respect to such crypto asset when it is no longer in the adviser's self-custody by the time the annual assessment is due. However, although the proposed requirement specifies an outer limit for the frequency of this assessment (*i.e.,* annual), it is our view that an adviser would not be able to satisfy the proposed adviser self-custody rule unless it conducts this risk assessment as material cybersecurity risks arise and to reflect internal changes (*e.g.,* changes to the firm's business practices, new crypto assets taken under the adviser's self-custody, and the scope and nature of the adviser's services with respect to the crypto assets) as well as external changes (*e.g.,* changes in technology, the crypto asset market, and the emergence of new cybersecurity threats). For instance, a cybersecurity breach at a crypto wallet provider that occurs two months after the adviser had placed a self-custodied crypto asset in the wallet licensed from that provider may warrant a risk assessment to determine whether the breach poses any risks to the adviser's ability to safeguard the crypto asset utilizing such wallet. Timely assessment of cybersecurity risks as they arise to the crypto assets in the adviser's self-custody and to its safeguarding systems is critical to taking steps to mitigate those risks and to safeguard client crypto assets before they are lost.

(b) Threat and Vulnerability Management

The second core element of the proposed cybersecurity requirement would require the adviser to take measures reasonably designed to detect, mitigate and remediate any cybersecurity threats and vulnerabilities with respect to the adviser's safeguarding systems. Cybersecurity vulnerabilities may present weaknesses in the adviser's custodial environment for self-custodied crypto assets that attackers may exploit to obtain unauthorized access to the client's crypto assets and key materials, which could lead to adverse consequences and substantial harm to an advisory client. Effective management of cybersecurity threats and vulnerabilities is therefore critical to the safekeeping of crypto assets.

Detecting, mitigating, and remediating cybersecurity threats and vulnerabilities is essential to preventing cyber incidents before they occur. Advisers could seek to detect cybersecurity threats and vulnerabilities through ongoing monitoring, which could include, for example, conducting regular security audits and penetration testing by independent parties.[252] We also would encourage advisers to monitor industry and government sources for new threat and vulnerability information that may assist them in detecting cybersecurity threats and vulnerabilities to their custodial infrastructure.[253]

Once a threat or vulnerability is detected, advisers would need to mitigate and remediate such threat or vulnerability in their safeguarding systems. Advisers would generally be advised to do so with a view toward minimizing the window of opportunity for attackers to exploit the vulnerability. Cybersecurity measures could also include processes for establishing accountability for handling vulnerability reports, and processes for intake, assignment, escalation, remediation, and remediation testing. Advisers could also consider cybersecurity threat, vulnerability and response training, especially for persons designated by the adviser to have access to private keys. For example, trainings could include phishing and social engineering awareness training for employees and executives. Proactively identifying and addressing threats and vulnerabilities reduces the likelihood that the firm's self-custody environment, and therefore the crypto assets held therein, will be compromised.

(c) Cybersecurity Incident Response and Recovery

The third core element of the proposed cybersecurity requirement would require the adviser to implement measures reasonably designed to detect, respond to, and recover from a cybersecurity incident relating to the adviser's safeguarding systems. Cybersecurity incidents can lead to significant disruptions, including unauthorized access to cryptographic wallets holding private keys, which could result in the permanent loss of crypto assets. Having controls designed to respond to cybersecurity incidents can help mitigate risks of substantial harm to advisory clients resulting from unauthorized access to self-custodied crypto assets or a compromise in the adviser's safeguarding systems. A clear incident response plan reasonably designed to ensure continued operational capability and to facilitate recovery even if there is a breach in the adviser's systems would be necessary to mitigate the effects of a cybersecurity incident on the adviser's ability to safeguard client crypto assets. Advisers, therefore, may wish to consider maintaining physical copies of their incident response plans—and other cybersecurity controls and processes—to help ensure they can be accessed and implemented during the times they may be needed most.

An effective incident response plan may need to designate adviser personnel to perform specific roles in the case of a cybersecurity incident. This could entail identifying personnel or third parties who have the requisite cybersecurity and recovery expertise (or are able to coordinate effectively with outside experts if necessary) as well as identifying personnel who should be kept informed throughout the response and recovery process. In addition, an incident response plan may generally need a clear escalation protocol to ensure that an adviser's senior officers, including appropriate legal and compliance personnel, and a regulated fund's board (as applicable) receive necessary information regarding cybersecurity incidents on a timely basis.

We request comment on the proposed cybersecurity requirement:

83. Are the proposed elements of the cybersecurity requirement appropriate? Should we modify or remove any of the proposed elements? Why or why not? Should we require that each element

[251] *See supra* section II.A.3.a), which discusses aspects of a crypto asset's crypto network that may be relevant to an adviser's assessment of the network's risks.

[252] *See* TDC Comment Letter II (stating that cybersecurity measures accompanying self-custody of crypto assets should undergo audits and penetration testing by independent third parties).

[253] *See, e.g.,* CISA, Cybersecurity Alerts & Advisories, *available at https://www.cisa.gov/news-events/cybersecurity-advisories* (last visited Feb. 10, 2026) (providing information about current security issues, vulnerabilities, and exploits).

include more specific measures, and if so, what should they be?

84. What are cybersecurity best practices as they relate to the safekeeping of crypto assets that commenters have developed or are aware of with respect to the types of measures that should be implemented as part of the proposed cybersecurity requirement or, alternatively, are there any measures that commenters have found to be ineffective or relatively less effective?

85. Would advisers expect to use sub-advisers or other third parties and service providers to administer their cybersecurity programs? If so, to what extent and in what manner? Should there be additional or specific requirements for advisers that delegate cybersecurity management responsibilities to a sub-adviser or third party, such as a service provider? If so, what requirements and why?

86. Should we include any other cybersecurity requirements as they relate to the safeguarding of crypto assets? If so, what? For example, should we include a requirement for training staff responsible for day-to-day management of the adviser's cybersecurity program? If we require such training, should that involve setting minimum qualifications for staff responsible for carrying out the requirements of the program? Why or why not? If so, what minimum qualifications should we require?

87. Should we require that advisers respond to cybersecurity incidents within a specific timeframe? If so, what would be an appropriate timeframe?

88. As stated above, advisers must have already implemented cybersecurity programs under the existing regulatory framework that implicates cybersecurity considerations, such as Regulation S–P and Regulation S–ID, as applicable, and advisers are encouraged to leverage and/or enhance their existing cybersecurity programs to comply with the proposed cybersecurity requirement. Would the proposed cybersecurity requirement under the adviser self-custody rule raise any interpretive or compliance challenges as advisers also try to comply with existing regulatory requirements under Regulation S–ID and Regulation S–P? If so, what clarifications or guidance is needed to facilitate advisers' compliance with the proposed cybersecurity requirement alongside their existing obligations under Regulation S–ID and Regulation S–P? Would there be any overlaps in the way advisers comply with and implement their cybersecurity pursuant to Regulation S–ID, Regulation S–P and the proposed adviser self-custody rule's cybersecurity requirement, in that the proposed cybersecurity requirement under the adviser self-custody rule or certain aspects of it are duplicative and unnecessary? If so, what are those overlapping areas?

89. Should the adviser self-custody rule require an adviser to obtain an independent attestation report (*e.g.,* System and Organization Controls for Cybersecurity report) that assesses an adviser's compliance with the proposed cybersecurity requirement? Why or why not?

5. Annual Review

The proposed adviser self-custody rule would require advisers that have self-custody of client crypto assets to review, within a year of taking self-custody of each crypto asset and no less frequently than annually thereafter, the following including the effectiveness of their implementation: (i) the adviser's safeguarding systems, and (ii) the cybersecurity controls implemented pursuant to the proposed cybersecurity requirement.[254] Advisers must document their review in writing.[255] The proposed annual review requirement is intended to ensure that advisers evaluate periodically, but no less than annually, whether the safeguarding systems and cybersecurity controls that they have in place to self-custody clients' crypto assets continue to work as designed and whether changes are necessary to assure their continued effectiveness.

The annual review of the adviser's safeguarding systems should consider any compliance matters that arose during the previous year. This would include consideration of compliance matters that arose in the previous year with respect to crypto assets no longer held in the adviser's self-custody by the time of the annual review. Custodial and compliance matters as to such crypto assets could raise risk of recurrence for other crypto assets currently in the adviser's self-custody, for instance, if a governance protocol for a previously held crypto asset is similar to that of a crypto asset currently in the adviser's self-custody. The annual review should also consider any changes in the business activities of the adviser or its affiliates, and any changes or technological developments and custodial service best practices with respect to crypto assets that might suggest a need to revise or update the adviser's safeguarding systems. An adviser would not be expected to conduct this annual review, however, to the extent the adviser does not hold any client crypto assets in self-custody by the time an annual review is due. For instance, an adviser that held a crypto asset in self-custody for less than a year and does not hold any other client crypto assets in self-custody would not be required to conduct this annual review, because that adviser would no longer be subject to the adviser self-custody rule.

An adviser's annual review of its cybersecurity controls generally should include, among other things, testing of its incident response plan to assess its efficacy and to determine whether any changes to the incident response plan are necessary. These tests would help to assess the design and effectiveness of the adviser's incident response plan and whether any amendments are necessary to correct any identified weaknesses in the plan's design or effectiveness. Such periodic testing of the incident response plan is critical in light of the continuing emergence of novel cybersecurity threats to crypto assets and to ensure that an adviser is adequately prepared to address and mitigate the impact of a cybersecurity incident on the adviser's safeguarding systems.

In the event an adviser has taken on self-custody of different types of crypto assets at different points in time over the course of the review period, an adviser would be permitted to conduct this annual review for all the different types of crypto assets in its self-custody at the same time, as long as the adviser conducts the review for each type of crypto asset no more than a year after the adviser has taken self-custody of it.

Advisers may need to periodically reevaluate their safeguarding systems and cybersecurity practices to determine that they still meet the conditions in the proposed adviser self-custody rule in light of any changes in industry developed practices with respect to crypto asset custody or to account for any novel cybersecurity threats to crypto assets as they emerge.

We request comment on the annual review requirement of the proposed adviser self-custody rule:

90. Should we require advisers to document the annual review of their safeguarding systems and cybersecurity measures in writing, as proposed? If not, why?

91. Should we specify certain elements that must be included in the

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[254] *See* proposed rule 223–1(b)(7)(v). This annual review can be included in the annual review of the adviser's policies and procedures conducted pursuant to Advisers Act rule 206(4)–7(b).

[255] This proposal also includes an amendment to rule 204–2 to include records documenting the adviser's annual review as required records. *See* proposed rule 204–2(a)(26)(vi). *See infra* section II.H for further discussion of the proposed recordkeeping requirements related to the proposed adviser self-custody rule.

adviser's written documentation of the annual review? If so, what should those elements be?

92. Should the proposed adviser self-custody rule require the review of the adviser's safeguarding systems and cybersecurity measures to occur no less frequently than annually, as proposed? Should the rule instead require the review to occur over longer (*e.g.,* every two years) or shorter (*e.g.,* every quarter, every six months) review periods? If so, what time period, and why?

93. Should there be specific requirements for designating responsible persons to oversee and implement an adviser's safeguarding systems and cybersecurity program for purposes of the adviser self-custody rule? [256] For example, should we require an adviser to specify an individual, such as a chief information security officer and/or a chief compliance officer, or group of individuals, as responsible for overseeing and implementing the adviser's safeguarding systems and cybersecurity program or parts thereof as well as functions performed and services provided by third parties in connection with the adviser's self-custody program? Why or why not? If so, should the adviser self-custody rule require the adviser to establish, maintain, and enforce reasonably designed written policies and procedures that include the criteria for identifying such individual(s) and the designation and documentation of responsible individual(s)? Should such an individual or group of individuals be required to have certain qualifications or experience related to crypto asset custody and cybersecurity, and if so, what type of qualifications or experience should be required?

6. Internal Control Report

The proposed adviser self-custody rule would require an adviser that takes self-custody of client crypto assets to obtain an internal control report prepared by an independent public accountant.[257] As discussed further below, the internal control report must include an opinion of an independent public accountant as to whether controls were suitably designed and implemented and operating effectively throughout the period to achieve control objectives relating to custodial services, including the safeguarding of crypto assets held by the adviser on behalf of the adviser's advisory clients.[258]

Relatedly, we recognize that certain aspects of the 2009 Guidance for Accountants may benefit from updating to address attestation standards for crypto assets and other industry developments since its publication.[259] The modified guidance is intended to provide accountants with the overall objectives and scope of the internal control examination as it relates to clients' crypto assets in the adviser's self-custody.

We are proposing this internal control report requirement to address the heightened custodial risks associated with self-custody arrangements and to provide additional safeguards to protect advisory clients' crypto assets from these risks. Arrangements where an adviser acts as the custodian of client assets can present higher risks to advisory clients than maintaining assets with an independent custodian. Where the adviser holds client assets without an independent custodian to act as a check on potential misconduct, there is a greater risk that the adviser may engage in fraud by compromising custodial records. In supporting the internal control report requirement under the related person QC rule, the Commission noted several enforcement actions alleging misappropriation or other misuse of client assets involving advisers or related persons that maintained client assets.[260] Self-custody arrangements involving crypto assets may heighten these risks due to the fact that fraudulent crypto asset transactions are generally difficult or impossible to reverse. Requiring advisers to obtain an internal control report would provide an important check on the safeguards relating to client crypto assets held by the adviser.

This proposed internal control report requirement is consistent with the current Advisers Act custody rule that requires an annual internal control report when the adviser or its related person acts as a qualified custodian of client assets, as well as our understanding of best practices regarding control assessments of crypto asset custody. Based on our experience with the Advisers Act custody rule, the benefits and protections provided by the internal control report in custody arrangements involving the adviser or its related person as a qualified custodian should be expanded to adviser self-custody of crypto assets. Several commenters writing to the Crypto Task Force highlighted the importance of independent assessments of the adviser's self-custody practices to ensure their efficacy and suitability.[261]

The first internal control report would need to be obtained within six months of the adviser taking self-custody of a client crypto asset, and thereafter no less frequently than once each calendar year as long as the adviser has any client crypto asset in self-custody. A six-month requirement for the first internal control report would help ensure that deficiencies in the adviser's self-custody controls that could enable fraudulent activities are discovered early and rectified, therefore reducing the risk of client losses. The calendar year requirement, which is consistent with the calendar year cadence for the internal control report requirement under the current related person QC rule,[262] is intended to ensure that advisers periodically engage independent assessments of their safeguarding practices and controls, which would increase the likelihood that significant control issues are detected and addressed. The periodic checks on the adviser's safeguarding controls may also act as a deterrent to advisers that may consider misappropriating client crypto assets.

Under the proposed rule, advisers would need to obtain the first internal control report only once within six months of taking self-custody of a client's crypto asset. For example, if the adviser takes self-custody of one type of crypto asset (''Crypto Asset A''), and within the six month period obtains self-custody of another type of crypto asset (''Crypto Asset B''), the first

[256] *See infra* section IV.E.2 for a discussion of reasonable alternatives for protective measures under the adviser self-custody rule.

[257] *See* proposed rule 223–1(b)(7)(iv).

[258] We also propose to amend rule 204–2 to include a copy of any internal control report obtained pursuant to the proposed adviser self-custody rule as a required record. See proposed rule 204–2(a)(26)(v); *infra* section II.H.1 for further discussion of the proposed amendments to rule 204–2.

[259] *See infra* section II.I for a detailed discussion of the expected revisions to the 2009 Guidance for Accountants.

[260] *See* 2009 Adopting Release, *supra* footnote 7, at n.75 and accompanying text. *See also* Custody of Funds or Securities of Clients by Investment Advisers, Advisers Act Release No. 2876 (May 20, 2009) [74 FR 25354 (May 27, 2009)] (''2009 Proposing Release'') at n.11.

[261] *See, e.g.,* Blockchain Association Comment Letter II (stating that advisers that maintain self-custody of crypto assets should obtain independent financial and technical audits); A16z Comment Letter II (stating that custodians of crypto assets should undergo financial controls and technical audits no less than annually); Unit 410 Comment Letter (recommending that an adviser that acts as a custodian of crypto assets should, among other things, receive independent verifications of the digital assets such as through an internal control report); Comment Letter to Crypto Task Force of KPMG LLP (Apr. 24, 2025) (''KPMG Comment Letter'') (highlighting the continued importance of SOC reports ''for preparers and auditors to be able to evaluate and rely on the design and operating effectiveness of controls at third-party service organizations (*e.g.* third-party custodians), particularly over the security and accessibility of private keys'').

[262] *See* current rule 206(4)–2(a)(6)(ii) and proposed rule 223–1(a)(6).

internal control report may cover both controls for Crypto Asset A and Crypto Asset B, as long as the first internal control report is obtained within six months of taking self-custody of Crypto Asset A. If the adviser takes self-custody of Crypto Asset B after the first six months of taking self-custody of Crypto Asset A but before the next internal control report is due, the adviser would not be required to get a separate internal control report related to Crypto Asset B, but rather would obtain the next internal control report covering controls for both Crypto Asset A and Crypto Asset B (and any other crypto assets held in self-custody at that time) no less than one calendar year after the first internal control report is obtained.

We recognize that some advisers may need to move crypto assets from their self-custody to qualified custodians that become available to maintain the crypto assets or cease their self-custody operations, and that this could happen in less than the applicable time periods that an internal control report would cover. An adviser would not be expected to obtain an internal control report if it does not hold any client crypto assets in self-custody by the time an internal control report would otherwise be due. For instance, an adviser that held a client crypto asset in self-custody for less than six months and does not hold any other client crypto assets in self-custody would not be required to obtain an internal control report. An adviser that holds a crypto asset in self-custody for more than six months but less than a year would need to obtain the first internal control report but would not be required to obtain the annual internal control report to the extent the adviser does not hold any other crypto asset in self-custody.

The proposed adviser self-custody rule would require the internal control report to be prepared by an ''independent public accountant'' with reference to that term's definition in the Advisers Act custody rule, meaning a public accountant that meets the standards of independence described in rule 2–01(b) and (c) of Regulation S–X.[263] The Commission has long recognized that an audit by an objective, impartial, and skilled professional contributes to both investor protection and investor confidence.[264] We continue to adhere to this bedrock principle, which is critical in the context of the internal control report, because requiring the accountant to be independent in fact and in appearance would contribute to investor protection and investor confidence in connection with the relationship between an accountant and the adviser.[265]

Under the proposed adviser self-custody rule, for the internal control report to satisfy the rule's requirements, the accountant preparing the report must verify that the client's crypto assets are reconciled to the crypto network. This requirement parallels the current custody rule's provision whereby accountants preparing the internal control report for advisers and related persons acting as qualified custodians must verify that the client's funds and securities are reconciled to a custodian,[266] for example, the Depository Trust Corporation, unaffiliated with the adviser or its related person.[267] Because transactions in and ownership of crypto assets are recorded on their crypto networks, at this time, the crypto asset's associated crypto network serves as the most appropriate and analogous location unaffiliated with the adviser to verify the adviser's reconciliations. Verification with the crypto network serves as a critical check on potential fraud when the adviser self-custodies the crypto assets. The accountant preparing the internal control report is in the best position to perform this check because the accountant will have access to the information necessary to verify crypto assets when testing controls over the adviser's reconciliation processes. Reconciliation of an adviser's custodial records to the crypto network is a key control objective of the internal control report, which will report on, among other things, tests of controls designed to meet this specific objective. Internal control reports regarding custody, such as SOC 1 Type 2 reports, however, may not necessarily include specific procedures performed by the accountant that are designed to verify the reconciliation of crypto assets. For this reason, we are requiring this verification to be performed in connection with, and reported in, the internal control report.[268]

As long as the control objectives are addressed, the proposed requirement is intended to provide advisers the flexibility to leverage existing attestation work to satisfy regulatory requirements, or work currently performed as part of internal control reports prepared to meet client demand. For example, a report that provides a description of controls and whether the controls were suitably designed and implemented and operating effectively throughout the period, commonly referred to as a ''SOC 1 Type 2 Report,'' would satisfy the requirements of the internal control report. A report that simply provides a description of controls and whether the controls were suitably designed and implemented as of a specified date, commonly referred to as a ''SOC 1 Type 1 Report,'' would not satisfy the requirements of the internal control report because it does not test operating effectiveness of the controls.

Although this proposal would not require an adviser to file with the Commission the internal control report received from an independent public accountant, advisers would be required to disclose in Form ADV, Part 1, consistent with current practice, whether reports prepared by an independent public accountant that examined the adviser's internal controls contained unmodified opinions.[269] If an adviser checks ''Report Not Yet Received'' in response to this question, the adviser must promptly file an amendment to its Form ADV to update its response when the accountant's report becomes available. This information, together with the proposed amendments to Item 9 of Form ADV, Part 1, where advisers would need to report whether they self-custody crypto assets, would be crucial to the Commission staff's ability to identify areas in need of further outreach and examination regarding controls at advisers that self-custody crypto assets.[270]

We request comment on the proposed internal control report requirement:

94. Do commenters agree that an adviser that has self-custody of client crypto assets presents risks to client assets that are not present when an independent qualified custodian that is neither the adviser nor a related person

[263] *See* proposed rule 223–1(d)(8).

[264] *See* Revision of the Commission's Auditor Independence Requirements, Securities Act Release No. 7919 (Nov. 21, 2000) [65 FR 76008 (Dec. 5, 2000)].

[265] *See* Qualifications of Accountants, Securities Act Release No. 10876 (Oct. 16, 2020) [85 FR 80508 (Dec. 11, 2020)] (discussing bedrock principles).

[266] *See* current rule 206(4)–2(a)(6)(ii)(B).

[267] *See* 2009 Guidance for Accountants, *supra* footnote 89, at section III. *See also infra* section II.I for a detailed discussion of expected revisions to the guidance for accountants set forth in the 2009 Guidance for Accountants.

[268] *See also infra* section II.I for a detailed discussion of expected revisions to the guidance for accountants set forth in the 2009 Guidance for Accountants.

[269] *See* proposed Section 9.C.(4) of Schedule D of Form ADV, Part 1. Under this proposal, we are making a technical change to replace the term ''unqualified opinion'' with ''unmodified opinion'' throughout Form ADV Part 1A to reflect that AU–C 700.10 uses the term ''unmodified opinion.'' *See infra* section II.J.1.d) for further discussion of this change.

[270] *See infra* section II.J.1 for a detailed discussion of the proposed amendments to Form ADV, Part 1.

of the adviser maintains client assets including crypto assets? Do commenters agree that the proposed internal control report requirement would help to reduce those risks? Would the requirement enhance the safeguarding of client assets not maintained with a qualified custodian and reduce the risk of loss or misappropriation?

95. Would the proposed internal control report requirement result in significant operational burdens or costs for advisers including smaller advisers and regulated funds with smaller advisers? Would the proposed internal control report requirement result in additional costs or operational burdens on advisory clients? For example, would the requirement cause advisory clients to lose access to services or other efficiencies they currently receive? Would the requirement result in higher costs for advisory clients? Would obtaining an internal control report present additional issues if the adviser providing self-custody of client crypto assets is located outside of the United States?

96. Would requiring the internal control report to be prepared by an independent public accountant raise any particular challenges for advisers? Would using independent public accountants increase the costs of obtaining these reports or make it too difficult to obtain a qualified accounting firm to provide an internal control report? Should there be a different independence standard for accountants performing the engagement for purposes of the internal control report requirement under the proposed adviser self-custody rule? Does an independent public accountant have the expertise and technical skills with crypto assets, crypto networks, and crypto systems necessary to prepare an internal control report? If not, who else is better situated to prepare an internal control report that would further the objectives of the Advisers Act custody rule? Should the rule permit advisers to obtain the internal control report from other categories of persons, other than independent public accountants, if those persons have experience and expertise in assessing custody-related controls for crypto assets? If so, what standards (including independence standards) should apply to these persons and internal control reports prepared by such persons?

97. The current and proposed Advisers Act custody rule define an independent public accountant as a public accountant that meets the standards of independence described in rule 2–01(b) and (c) of Regulation S–X (17 CFR 210.2–01(b) and (c)).[271] Do advisers that voluntarily obtain internal control reports, for example, due to investor demand or risk management purposes, obtain them from independent public accountants that are independent according to this standard? If not, do they have another standard for determining independence? For example, do advisers require independent public accountants to meet the independence standard set by the American Institute of Certified Public Accountants? Do advisers require an independent public accountant to be unaffiliated from the custodian?

98. Under the current and proposed definition of ''independent public accountant'' in the Advisers Act custody rule, accountants performing surprise examinations, preparing internal control reports, or conducting financial statement audits are required to meet the standards of independence described in rule 2–01(b) and (c) of Regulation S–X (17 CFR 210.2–01(b) and (c)). Should the definition of ''independent public accountant'' be amended so that it is defined as a public accountant that meets the standards of independence described in rule 2–01 of Regulation S–X, under which all the independence provisions, definitional provisions, and other related provisions in rule 2–01 of Regulation S–X, in addition to existing restrictions on the financial, employment, and business relationships between an accountant and an audit client and restrictions on an accountant providing certain non-audit services to an audit client, would apply to accountants performing engagements under the Advisers Act custody rule? Why or why not?

99. Should the adviser self-custody rule prescribe particular steps an adviser should take to review internal control reports for control exceptions? For example, should we expressly require an annual review of these reports by the adviser's Chief Compliance Officer and the adviser's personnel with the technical skill set to review such reports (for example, the adviser's cybersecurity personnel and accountants)? Should we require the adviser to provide disclosure to its investors regarding material control exceptions?

100. We state our view above that a SOC 1 Type 2 report, which examines internal controls over financial reporting, would satisfy the requirements of the internal control report under the proposed adviser self-custody rule. Should the rule, however, require the adviser to obtain certain other type(s) of internal control report(s), given the highly technological nature of crypto assets? If so, what type(s) of internal control report(s) should we require and why? For example, should the adviser self-custody rule require the adviser to obtain an internal control report that addresses its controls relevant to security, availability, processing integrity, confidentiality, and/or privacy (*e.g.,* System and Organization Controls 2 (''SOC 2'') report)? What concerns, if any, do commenters have about an adviser obtaining a SOC 1 Type 2 report regarding crypto assets in its self-custody, but not a SOC 2 Type 2 report? Are there different attestation reports that should be considered or required to satisfy the requirements of the internal control report under the proposed self-custody rule?

101. Should an internal control report for advisers having self-custody of crypto assets have similar control objectives to the internal control report we would require of qualified custodians that are related persons of advisers? Or should those control objectives be different from those required of qualified custodians that are related persons of advisers? If so, what should those control objectives be? Should an internal control report relating to the safeguarding of crypto assets have similar control objectives to the internal control report we would require of custodial services for traditional assets? Or should those control objectives be different due to the different nature of the assets? If so, what should those control objectives be?

102. When preparing an internal control report for purposes of the proposed adviser self-custody rule, should an accountant verify that client crypto assets are reconciled to the crypto network, as proposed? Should this verification occur at a location other than the crypto network? Why or why not? Is any guidance needed on this verification requirement?

103. Under the proposed adviser self-custody rule, for the internal control report to satisfy the rule's requirements, the accountant preparing the report must verify that the client's crypto assets are reconciled to the crypto network. Could there be instances where an adviser is affiliated with a crypto network that stores the crypto assets in the adviser's self-custody? If so, what would be the nature of that affiliation between the adviser and the crypto network, and does that affiliation create or enhance conflicts of interest that the proposed custody rule

[271] *See* definition of ''independent public accountant'' under current rule 206(4)–2(d)(3) and proposed rule 223–1(d)(8).

amendments should uniquely address? [272] What additional or different requirements in those instances should apply to the internal control report to verify the adviser's reconciliations, to preserve the integrity of the internal control report, and to promote investor protection under the custody rule?

104. What challenges, if any, do accountants face or foresee bespoke to the testing of controls relating to custodial services for crypto assets, such as challenges associated with the inherent features of a crypto network that make it difficult to test in a traditional manner?

105. Should we require a different time period in which an adviser would be required to obtain the internal control report? For example, should we require the adviser to obtain its first internal control report within one year after taking self-custody of client crypto assets, as opposed to the proposed six months? Should we require the adviser to obtain an internal control report at least annually thereafter? Alternatively, should the internal control report be obtained more or less frequently?

106. Does the proposed internal control report requirement create any particular challenges for advisers including smaller advisers and regulated funds with smaller advisers? If so, what changes should be made to the rule to mitigate those challenges?

107. Do service providers of crypto wallet technology and software platforms provide internal control reports? If not, could the use of service providers by an adviser to administer its self-custody program create any challenges with respect to testing controls for purpose of obtaining an internal control report required under the proposed self-custody rule? [273]

108. If advisers are subject to both the proposed adviser self-custody rule and the related person QC rule with respect to different client assets, would it be possible for an adviser to use the same accountant to perform both examinations under a single internal control report to satisfy both rules? Why or why not? Does an accountant need specialized knowledge with respect to crypto assets to prepare the internal control report pursuant to the proposed adviser self-custody rule, such that it would be difficult to use the same accountant to satisfy the internal control report requirement under both the adviser self-custody rule and the related person QC rule?

7. Self-Custody Account Statements to Clients

The proposed adviser self-custody rule would require account statements to be sent at least quarterly to each of the adviser's clients whose crypto assets the adviser has in self-custody. The statement would identify the crypto asset address on the crypto network that stores the client's crypto assets and the crypto network on which such crypto asset address operates and the amounts of crypto assets stored in the client's crypto asset address at the end of the period, and set forth all transactions from that crypto asset address during that period. The statement also would urge the client to compare the account statements from the adviser with the crypto asset balances and transaction information indicated under the client's crypto asset address (''self-custody account statement requirement''). [274] Advisers may satisfy this self-custody account statement requirement if, at least quarterly in lieu of an account statement, they transmit, or arrange for the transmission, to clients, the information required to be provided in the account statement in a human-readable and reasonably usable electronic format, provided that a notice is sent to the client identifying the crypto asset address that stores the client's crypto assets and the crypto network on which such crypto asset address operates. [275] The proposed self-custody account statement requirement is intended to provide clients with transparency into their crypto assets in the adviser's self-custody and to help deter fraudulent conduct by the adviser. We also propose corresponding amendments to the Advisers Act recordkeeping rule to require advisers to maintain copies of these account statements, records of transmissions and notices sent to clients. [276]

For purposes of the self-custody rule, ''account'' would mean the crypto asset address under which the client's crypto assets are stored. As discussed above, the crypto asset address functions as a unique identifier on the crypto network that is used to send and receive crypto assets and to identify the corresponding crypto asset's balances and transactions on the crypto network, similar to a bank account number. [277] Moreover, under the proposed segregation requirement, advisers would be required to maintain each client's crypto assets under crypto asset addresses that store only such client's crypto assets. [278] As such, the account statements sent to clients pursuant to the proposed adviser self-custody rule should in effect reflect crypto asset amounts and transactions identified under the corresponding crypto asset address that stores the client's crypto assets on the crypto network.

Account statements would provide investors with transparency as to holdings of and transactions in their crypto assets, thereby increasing the likelihood that a loss would be detected sooner, and misconduct would be deterred. The Advisers Act custody rule currently requires the adviser to have a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which the qualified custodian maintains funds or securities. [279] If the adviser or a related person is a general partner of a limited partnership or holds a comparable position with another type of pooled investment vehicle, the account statement under rule 206(4)–2(a) must be provided to the limited partners or other beneficial owners in the pooled investment vehicle. [280] Because there would be no qualified custodian involved in self-custody arrangements, the proposed adviser self-custody rule would require quarterly account statements to be sent to the client when the adviser has self-custody of client crypto assets. This requirement would enhance investor protection by allowing clients to review their account statements to evaluate the legitimacy of any movement of their crypto assets, for example, by comparing the activity purported in the account statements to the actual activity under the relevant crypto asset addresses on the associated crypto network. Furthermore, an adviser would be less likely to engage in unauthorized trading with clients' crypto assets when account statements are delivered to clients showing trading and account activity. [281]

[272] Under an adviser's duty of loyalty, an investment adviser must eliminate or make full and fair disclosure of all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which is not disinterested such that a client can provide informed consent to the conflict. *See* Standard of Conduct Release, *supra* footnote 120, at section II.

[273] *See supra* section II.A.1.c)(1) for a detailed discussion of the use of service providers.

[274] *See* proposed rule 223–1(b)(7)(vi).

[275] *See id.*

[276] *See* proposed rule 204–2(a)(26)(vii); *infra* section II.H.1 for further discussion of the proposed amendments to rule 204–2.

[277] *See supra* section II.A.3.b)(3) for a discussion about crypto asset addresses.

[278] *See* proposed rule 223–1(b)(7)(ii)(C); *supra* section II.A.3.b)(3) for a detailed discussion of the proposed segregation requirement.

[279] *See* current rule 206(4)–2(a)(3).

[280] *See* current rule 206(4)–2(a)(5).

[281] Some commenters writing to the Crypto Task Force mentioned account statements as an important protection of crypto asset custody. *See, e.g.,* Unit 410 Comment Letter; A16z Comment Letter II.

The proposed adviser self-custody rule would require the account statement to identify the crypto asset address on the crypto network that stores the client's crypto assets and the crypto network on which such crypto asset address operates as well as a statement urging the client to compare the account statements from the adviser with crypto asset balances and transaction information indicated under the client's crypto asset address on the crypto network. This requirement draws from the current notice requirement in the Advisers Act custody rule, which requires an adviser to promptly notify the client in writing of identifying information about any accounts that an adviser opens on behalf of a client.[282] As discussed earlier in this proposal, the proposed adviser self-custody rule would require advisers to maintain client crypto assets segregated by crypto asset addresses that store only the client's crypto assets and not the crypto assets of others.[283] This and the self-custody account statement requirement would allow clients to identify and monitor their crypto asset holdings and transactions by their bespoke crypto asset addresses on the crypto network.

We continue to believe that the notice requirement provides important client protections and that similar information should be provided to clients pursuant to the proposed adviser self-custody rule to enhance the transparency of the adviser's use of client crypto assets held in self-custody. Clients would be able to monitor their crypto asset balances and transactions directly on the crypto network, and potentially reduce the likelihood that an adviser would misappropriate crypto assets in their self-custody, provided that clients know where their crypto assets are stored on the crypto network. Moreover, the required legend included in the account statement urging clients to compare the adviser's account statements with information indicated under the client's crypto asset address would serve to effectively remind clients to proactively take steps to protect their crypto assets by regularly reviewing their crypto asset balances and transactions on the crypto network. This would help to reduce the likelihood that any loss or unauthorized use of a client's crypto assets would go undetected for an extensive time.

The proposed adviser self-custody rule is designed to remain principles-based and adapt to developments over time in order to allow advisers the flexibility to utilize the inherent functionalities of crypto assets and their crypto networks and the available technology to provide clients with access to their account activity, and it would not require the adviser to be the one to deliver the required information for purposes of the proposed self-custody rule. Several commenters writing to the Crypto Task Force stated that onchain records of crypto asset ownership and transactions are reliable and independently verifiable.[284] Software tools such as blockchain explorers may provide clients with a user-friendly interface to review crypto asset transactions and balances directly on the crypto network in an easily readable format. These tools may also enable real-time alerts of crypto asset transactions to clients through various communication channels such as email, SMS or in-app notifications, thus enhancing transparency and reducing the risk of fraud by keeping clients informed about their crypto assets and facilitating prompt detection of suspicious activities. These tools, by providing clients with timely and accurate information about their crypto assets and allowing them to verify the legitimacy of each crypto asset transaction directly on the crypto network, may reduce the likelihood that advisers engage in fraud.

Given the potentially protective elements of the technology discussed above, the proposed adviser self-custody rule would not preclude advisers from utilizing these tools to satisfy the proposed self-custody account statement requirement. As noted above, the proposed adviser self-custody rule would permit advisers to satisfy the self-custody account statement requirement by transmitting, or arranging for the transmission, to clients the information required to be provided in an account statement, *i.e.,* the amount of crypto assets stored in the client's crypto asset address at the end of the period and all transactions in the crypto assets that occurred under the client's crypto asset address during that period, at least quarterly in a human-readable and reasonably usable electronic format, in lieu of delivering a consolidated account statement prepared offchain. The specific technology, systems or files that comprise the required information as well as the method of delivery to satisfy this requirement would generally be within the adviser's discretion.

In order to further the proposed self-custody account statement requirement's intended benefits of transparency for advisory clients, however, the information transmitted to clients must be accurate in a human-readable and reasonably usable electronic format, and comply with the requirements of the proposed adviser self-custody rule discussed above. A human-readable format is a format that can be naturally read by a human, and a reasonably usable electronic format is a format that is common and compatible with commonly used systems for accessing and reading electronic records.[285] An adviser may, for example, satisfy the proposed requirement by utilizing a software application (*e.g.,* a wallet alert) that sends notifications to clients, at least quarterly, alerting them of transactions under their crypto asset addresses, so that clients can review their crypto asset transactions and balances under those addresses on the crypto network or through a blockchain explorer. In some instances, transaction and ownership data with respect to some crypto assets may be obscured and untraceable on the crypto network, as in the case of privacy tokens which are designed to preserve the anonymity of crypto asset users and their transactions on the network.[286] To satisfy the proposed self-custody account statement requirement, an adviser that has self-custody of privacy tokens would need to additionally provide clients with access to view the required crypto asset balances and transactions information in a human-readable and reasonably usable electronic format.

Rule 206(4)–2 currently requires an adviser that acts as general partner of a pooled investment vehicle to send account statements to each limited partner (or member or other beneficial owner) in the pooled vehicle.[287] Under the proposed adviser self-custody rule, an adviser that holds client crypto assets in self-custody on behalf of a pooled

[282] *See* current rule 206(4)–2(a)(2). The notice required under this rule must include the qualified custodian's name, address, and the manner in which the funds or securities are maintained.

[283] *See* proposed rule 223–1(b)(7)(ii)(C).

[284] *See, e.g.,* Blockchain Association Comment Letter II; A16z Comment Letter II; Figure Markets Comment Letter.

[285] *See also* Electronic Recordkeeping Requirements for Broker-Dealers, Security-Based Swap Dealers, and Major Security-Based Swap Participants, Exchange Act Release No. 96034 (Oct. 12, 2022) [87 FR 66412 (Nov. 3, 2022)] at section II.D.5.

[286] *See* Wall Street Journal, It's a More Secret Version of Bitcoin and It's on a Tear (May 14, 2026), *available at https://www.wsj.com/finance/currencies/zcash-crypto-winklevoss-78d71d51?mod=lead_feature_below_a_pos1* (describing a privacy token that helps users to ''hide sensitive data, such as the sender, receiver and transaction amount''); TRM Labs, Privacy Coins, *available at trmlabs.com/glossary/privacy-coins* (last visited Feb. 11, 2026); Ledger Academy, Privacy Token (Dec. 16, 2025), *available at https://www.ledger.com/academy/glossary/privacy-token.*

[287] *See* current rule 206(4)–2(a)(5).

investment vehicle must do the same with respect to any account statements, transmissions or notices sent pursuant to proposed rule 223–1(b)(7)(vi) if the adviser or its related person is a general partner (or managing member or holds a comparable position for another type of pooled investment vehicle) of such pooled vehicle.[288] This is required because delivery of account statements to the adviser itself but not to the limited partners would not afford investors the intended benefit of transparency from the account statement nor deter the adviser's misuse of client crypto assets.[289] This delivery requirement would also apply to any transmissions and notices sent pursuant to the proposed adviser self-custody rule, which would help to provide investors in pooled vehicles transparency into pooled vehicles' crypto asset activities on the crypto network.[290] An adviser that seeks to satisfy the self-custody account statement requirement by transmitting, or arranging for the transmission of, the required information as discussed above would need to transmit, or arrange for the transmission of, the required information, along with the required notice identifying the crypto asset address on the crypto network where the crypto assets are stored and the crypto network on which such crypto asset address operates, to each limited partner (or member or other beneficial owner) in the pooled vehicle.

The proposed adviser self-custody rule would allow for two circumstances under which an adviser would not be required to comply with the proposed self-custody account statement requirement.[291] First is with respect to an account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that undergoes a financial statement audit at least annually and upon liquidation in accordance with paragraphs (i) through (ii) of the audit provision.[292] This largely mirrors the audit provision under the current Advisers Act custody rule that permits pooled investment vehicles to deliver audited financial statements in lieu of having a reasonable belief that a qualified custodian delivers account statements to investors.[293] Moreover, this proposal would not preclude an adviser from relying on the audit provision to be excepted from the annual surprise examination requirement with respect to pooled investment vehicles that invest in self-custodied crypto assets.

We are permitting pooled investment vehicles that invest in self-custodied crypto assets to rely on the audit provision because the benefits of a financial statement audit are not less protective in the context of self-custodied crypto assets compared to other custody arrangements for pooled vehicles pursuant to the Advisers Act custody rule. A financial statement audit regularly involves an accountant confirming account balances and securities holdings as of a point in time and includes the testing of transactions that have occurred throughout the year. We believe that the common types of audit evidence procedures typically performed by accountants during a financial statement audit, *e.g.,* physical examination or inspection, confirmation, documentation, inquiry, recalculation, re-performance, observation, and analytical procedures, serve as important checks on adviser behavior with respect to transactions and withdrawals.

Secondly, under the proposed adviser self-custody rule, an adviser that holds crypto assets in self-custody with respect to an account of a regulated fund need not send account statements to those regulated funds.[294] Like pooled investment vehicle clients of advisers relying on the audit provision, regulated funds also undergo financial statements audits.[295] Investors are able to review the regulated fund's audited annual financial statements each year via required annual reports. Open-end regulated funds, including exchange-traded funds, are required to transmit to their investors annual and semi-annual shareholder reports that highlight key information for investors. These shareholder reports include a website address where the regulated fund's annual and semi-annual financial statements are available, and the regulated fund is also required to file its financial statements (which, in the case of annual financial statements, must be audited) on Form N–CSR.[296] Closed-end management investment companies include audited financial statements in their annual shareholder reports, which are required to be filed on Form N–CSR.[297] BDCs are required to file Form 10–K annually, which includes audited financial statements.[298] The proposed account statement delivery requirement is not necessary for regulated funds for the same reasons it is not necessary for other pooled investment vehicles that provide audited financial statements to their investors.

The current Advisers Act custody rule allows advisers to send any required account statements and notices to an independent representative designated by the client.[299] We are amending this provision to allow advisers to do the same for account statements, transmissions and notices sent on any crypto assets in their self-custody.[300] We understand that some clients may not wish to receive account statements and would prefer to have an independent representative receive account statements on their behalf. As long as the designated recipient of the account statements meets the definition of ''independent representative,'' [301] we believe advisers should be able to deliver account statements, transmissions, and notices regarding self-custodied crypto assets in accordance with the clients' preferred method of receipt regardless of the asset class.

We request comment on the proposed self-custody account statement requirement:

109. Should the proposed adviser self-custody rule include the requirement

[288] *See* proposed rule 223–1(b)(7)(vi).

[289] *See* 2003 Adopting Release, *supra* footnote 7, at section II.C (explaining the rationale for the account statement delivery requirement under the current Advisers Act custody rule for affiliated pooled investment vehicles).

[290] We also are proposing to amend current rule 206(4)–2(c), which would be redesignated as proposed rule 223–1(c), to include account statements, transmissions, and notices sent pursuant to proposed rule 223–1(b)(7)(vi) in the delivery requirement relating to recipients that are related persons of the adviser. Accordingly, sending an account statement, transmission, or notice pursuant to proposed rule 223–1(b)(7)(vi) would not satisfy the requirement of that rule if the account statement, transmission or notice is sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are the adviser's related persons.

[291] *See* proposed rule 223–1(b)(7)(vii).

[292] *See* proposed rule 223–1(b)(4), which would be redesignated from the current audit provision under rule 206(4)–2(b)(4), with proposed amendments.

[293] *See* current rule 206(4)–2(b)(4).

[294] *See* proposed rule 223–1(b)(7)(vii).

[295] *See, e.g.,* 17 CFR 210.3–18 and 210.6–10 [rules 3–18 and 6–10 of Regulation S–X].

[296] *See* Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Investment Company Act Release No. 34731 (Oct. 26, 2022) [87 FR 72758 (Nov. 25, 2022)]; *see also* Items 27 and 27A of Form N–1A; Item 7 of Form N–CSR.

[297] *See* Item 24 of Form N–2; Item 1 of Form N–CSR.

[298] *See* Item 8 of Form 10–K.

[299] *See* current rule 206(4)–2(a)(7).

[300] *See* proposed rule 223–1(a)(7). We are also proposing to amend this provision to provide that the audited financial statements required to be distributed to investors under the Advisers Act custody rule's audit provision may be distributed to an independent representative of the investor. *See infra* section II.G.4.b).

[301] *See* current rule 206(4)–2(d)(4), which would be redesignated as rule 223–1(d)(9) under this proposal, for the definition of ''independent representative.''

that account statements are sent at least quarterly to clients? Why or why not? Would the proposed requirement have a significant cost impact on advisers and would those costs be passed on to advisory clients? Are there alternatives to the proposed self-custody account statement requirement to ensure that clients are given auditable records to monitor their crypto asset balances and transactions?

110. Is the proposed self-custody account statement requirement sufficiently clear? Should we provide any additional clarification regarding the proposed requirement? If so, what changes should we make?

111. Should we prescribe particular steps an adviser should take to ensure that account statements are sent to clients? For example, should the rule affirmatively require the adviser *to deliver* account statements to clients (as opposed to a requirement that account statements ''must be provided,'' as proposed)? Should the rule instead require an adviser to deliver account statements to clients and additionally to provide clients with access to the crypto network against which they could verify their crypto asset balances and transactions indicated on the adviser's account statements? Should the rule expressly require the adviser to set up notifications to go out to clients at least every quarter alerting them to review their crypto asset activities on the crypto network? How would this or other alternatives impact costs to advisers and advisory clients?

112. Is our understanding correct that there are tools that allow crypto asset owners to monitor activities and balances under their crypto asset addresses (including their crypto asset balances and transactions) on the crypto network in a human-readable and reasonably usable electronic format and that provide real-time alerts regarding crypto asset transactions? Can the frequency of these alerts be configured so that, for example, alerts go out at the end of every quarter as opposed to at every transaction?

113. Would providing advisory clients the ability to monitor their crypto assets directly on the crypto network reduce the risk of fraud? Why or why not? Could onchain records regarding crypto asset transactions and ownership, whether by themselves or translated into human-readable and reasonably usable electronic formats, satisfy the substantive requirements of the proposed self-custody account statement requirement (*i.e.,* that account statements provide the amounts of crypto assets in the account at the end of the quarterly period and set forth all transactions in the crypto assets in the account during that period)? Do traditional account statements provide other information that is not available onchain but necessary to protect clients and reduce the risk of fraud (for example, notices regarding any changes in the client's crypto asset address, which would not be reflected onchain), in that delivery of account statements should be required by the adviser self-custody rule?

114. Is information viewable directly on the crypto network, or through a blockchain explorer, sufficient to convey to advisory clients in a human-readable and reasonably usable electronic format the information otherwise required in an account statement (*i.e.,* the crypto asset address on the crypto network that stores the client's crypto assets and the crypto network on which such crypto asset address operates, the amounts of crypto assets stored in the client's crypto asset address at the end of the period and all transactions from that crypto asset address during that period)? What modifications, if any, should be made to the self-custody account statement requirement to ensure that advisory clients are able to obtain the information they need to verify their crypto asset balances and transactions directly onchain in lieu of receiving an account statement?

115. What are best practices with respect to the types of formats, files or systems used as account statements or similar equivalents to provide clients with information regarding their crypto asset balances and transactions? Or, alternatively, are there any measures that commenters have found to be ineffective or relatively less effective?

116. Many advisers or their related persons serve as advisers to pooled investment vehicles or to other similar entities (*e.g.,* general partner of a limited partnership). The proposed adviser self-custody rule would except these advisers from the requirement to have account statements sent with respect to pooled investment vehicles that are audited annually and distribute their audited financial statements to the investors in the pool. Should we except these advisers from the proposed self-custody account statement requirement? Should we except advisers from this requirement with respect to crypto assets held in self-custody for a regulated fund for the same reasons, as proposed? Would the investors in those pools or regulated funds find the account statement useful to monitor the pooled vehicle's or regulated fund's account activity? Are there other persons that we should except from the proposed self-custody account statement requirement?

117. For what purpose are privacy tokens used? Does one need a privacy token's private keys to access information on the crypto network regarding the privacy token's balance and associated transactions? If so, what compliance challenges would advisers face with respect to satisfying the proposed self-custody account statement requirement for privacy tokens in their self-custody?

8. Financial Asset Election

The proposed adviser self-custody rule would require an adviser and the client to agree, in writing, to treat each crypto asset held in the adviser's self-custody for such client as a financial asset, and that the adviser holding the client's crypto asset in self-custody is a securities intermediary, pursuant to applicable State law that governs the written agreement between the adviser and the client (a ''financial asset election'').[302] Under this proposal, an adviser would be required to retain copies of these financial asset elections.[303]

State law governs the written contractual treatment of an asset as a financial asset and a party to the written agreement as a securities intermediary pursuant to the applicable State's enacted version of Article 8 of the UCC. Article 8 of the UCC governs how financial assets are held by a ''securities intermediary'' that maintains ''securities accounts'' for others (*e.g.,* a clearing corporation, broker-dealer or a bank). While ''financial asset'' has a specific definition in Article 8 that includes a security, it is also defined as any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under Article 8 of the UCC.[304] Article 8 of the UCC defines a ''securities intermediary'' to include a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.[305] ''Securities account'' means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the

[302] *See* proposed rule 223–1(b)(7)(viii).

[303] *See* proposed rule 204–2(a)(26)(viii); *infra* section II.H.1 for a detailed discussion of proposed amendments to rule 204–2.

[304] *See* UCC § 8–102(a)(9).

[305] *See* UCC § 8–102(a)(14).

rights that comprise the financial asset.[306] Although Article 8 mentions broker-dealers, banks, and clearing corporations as examples of securities intermediaries, Article 8's broad definitions for securities intermediary and securities account do not preclude their application to investment advisers and accounts managed for advisory clients.[307]

A financial asset election allows parties to an agreement to opt into treating certain assets held at a securities intermediary in a securities account as financial assets under Article 8 of the UCC even if they may not otherwise qualify as a financial asset.[308] A financial asset election, accompanied by crediting of the financial asset to a person's securities account by the securities intermediary in its records, allows a person to acquire a security entitlement (*i.e.,* rights and property interest), and to become an entitlement holder, with respect to the financial asset in that securities account.[309] The proposed requirement would not impose additional recordkeeping requirements to perfect a financial asset election because an adviser's current recordkeeping obligations under Advisers Act rule 204–2 already require an adviser to maintain, among other things, a record for each security in which each client has a position and showing the name of each such client having an interest in such security.[310] Under this proposal, this provision would apply to any records that the adviser makes and keeps pursuant to the proposed adviser self-custody rule, including with respect to regulated funds, provided that references to securities under rule 204–2(b) would also be understood to include any crypto assets of a regulated fund that the adviser self-custodies.[311]

A financial asset election, in turn, subjects the securities intermediary to the rules and duties owed to the entitlement holder as set forth in Article 8 and provides certain protections and priorities to entitlement holders. For example, a securities intermediary is required to maintain a financial asset in sufficient quantities corresponding to all security entitlements with respect to that financial asset.[312] Article 8 also provides that the financial asset is not the property of the securities intermediary and is generally not subject to claims of creditors of the securities intermediary,[313] and that entitlement holders have priority of claims to the financial asset over the claims of other creditors.[314]

The UCC is a model commercial code and does not have the effect of law unless a State enacts it. Therefore, the proposed financial asset election requirement provides that the adviser must make the financial asset election pursuant to applicable State law that governs the written agreement between the adviser and the client. Currently, all fifty States have enacted Article 8, although the specific version adopted may vary from State to State.[315] The proposed requirement is intended to allow the adviser and the client to invoke the financial asset election and the attendant obligations as provided for in the applicable State's enacted version of Article 8 that governs the written agreement between the adviser and the client.

The proposed financial asset election requirement is critical to the protection of advisory clients in light of uncertainty that often exists with respect to the proprietary status of customer assets held at financial intermediaries in the event of their bankruptcy or insolvency.[316] In many cases, whether customer assets are the property of the customer as opposed to the intermediary depends on written agreements between the customer and the intermediary.[317] The proposed requirement is thus intended to help ensure that a client's crypto asset in an adviser's self-custody is clearly maintained as the client's property and protected from adverse claims by a third party looking to secure or satisfy an obligation of the adviser in cases of the adviser's insolvency or bankruptcy. A financial asset election provides important protections in the context of self-custodied crypto assets given that advisers are not otherwise governed by other protections typical of other custody arrangements (*e.g.,* FDIC protections for banks or Securities Investor Protection Corporation (''SIPC'') protections for broker-dealers). This requirement, in combination with the proposed segregation requirement that would help to attribute client crypto assets as clearly belonging to the appropriate client, would directly and comprehensively achieve a longstanding policy goal of the Advisers Act custody rule which includes protecting client assets from the adviser's financial condition.

We request comment on the proposed financial asset election requirement under the Advisers Act self-custody rule:

118. Should the proposed self-custody rule include the financial asset election requirement? Is the proposed requirement sufficiently clear? If not, why not? Would it be more efficient for practitioners if we set forth the definitions of ''financial asset,'' ''securities intermediary,'' and other terms used in Article 8 of the UCC relevant to a financial asset election (*e.g.,* ''securities account'') in the text of the Advisers Act custody rule itself? Alternatively, should the Advisers Act custody rule incorporate by reference the terms ''financial asset'' and ''securities intermediary'' by defining

[306] *See* UCC § 8–501(a).

[307] *See* Uniform Law Commission and the American Law Institution, Uniform Commercial Code Amendments (2022) with Prefatory Note and Comments (May 29, 2025), *available at https://www.uniformlaws.org/viewdocument/final-act-164?CommunityKey=1457c422-ddb7-40b0-8c76-39a1991651ac&tab=librarydocuments* (stating that a person need not be a clearing corporation, bank, or a broker in order to be a securities intermediary and that a person may be a securities intermediary even if that person does not credit securities to a securities account).

[308] *See* UCC § 8–102(a)(9) and UCC § 8–501(a). *See also* American Bar Association, Missing an Opportunity: Cryptocurrency Exchanges and Their Customers Should Consider Using UCC Article 8 (Apr. 3, 2023), *available at https://www.americanbar.org/groups/business_law/resources/business-law-today/2023-april/missing-opportunity-cryptocurrency-exchanges-their-customers/* (''American Bar Association'') (stating that a financial asset ''could, indeed, be cryptocurrencies'').

[309] ''Entitlement holder'' means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of section 8–501(b)(2) or (3) of the UCC, that person is the entitlement holder. *See* UCC § 8–102(a)(7). ''Security entitlement'' means the rights and property interest of an with respect to a specified in Part 5 of Article 8 of the UCC. *See* UCC § 8–102(a)(17).

[310] *See* current rule 204–2(b)(4). An adviser would continue to be required to maintain the records that are prescribed under rule 204–2 for an adviser that has custody or possession of securities or funds of any clients. *See* current rule 204–2(b).

[311] *See* proposed rule 204–2(a)(26)(x) and *infra* section II.H.1 for further discussion of the proposed amendments to rule 204–2.

[312] *See* UCC § 8–504(a).

[313] *See* UCC § 8–503(a).

[314] *See* UCC § 8–511(a).

[315] In 2022, the UCC was amended to address emerging technologies such as virtual currencies, and not all States have adopted the 2022 amendments to the UCC. *See* Uniform Law Commission, UCC, 2022 Amendments to, *available at https://www.uniformlaws.org/committees/community-home?communitykey=1457c422-ddb7-40b0-8c76-39a1991651ac* (last visited Jul. 21, 2026).

[316] *See* American Bar Association (''We have seen a tsunami of cryptocurrency exchange bankruptcies—FTX, Celsius, and Voyager, to name a few. Often, disputes arise among stakeholders in these bankruptcy cases regarding whether cryptocurrency maintained by a customer with an exchange in a pure custody relationship is property of the customer or property of the bankruptcy estate.'').

[317] *See id.* (''Usually the litigation turns on the account agreement, including what are often referred to as the 'Terms of Service,' entered into between the customer and the exchange, and the application of nonstatutory common law contract and property law principles.'').

such terms as having the same meanings as are attributed to those terms in Article 8 of the UCC, and if so, from which specific edition (*e.g.,* the 2025–2026 edition) or version (*e.g.,* 2022 amended) of the UCC should the Advisers Act custody rule incorporate these terms by reference, and why? Would parties to an agreement making the financial asset election be able to effectuate a financial asset election and invoke its attendant obligations under relevant State law if that State has not adopted the specific edition or version of the UCC from which the Advisers Act custody rule has incorporated these terms by reference?

119. Would the financial asset election requirement as proposed allow parties to invoke the financial asset election and the attendant obligations under the applicable State's laws that govern the written agreement between the adviser and the client? Why or why not? Would this approach help ensure that the financial asset election requirement remains evergreen in the Advisers Act custody rule? Why or why not?

120. Would the proposed financial asset election requirement offer substantial protections for advisory clients in the event of an adviser's bankruptcy or insolvency? If not, why not? Would the proposed financial asset election requirement help ensure that a client's crypto asset in an adviser's self-custody is clearly maintained as the client's property? If not, why not?

121. In order for a financial asset election to be effectuated under Article 8 of the UCC, the securities intermediary must credit in its records the financial asset to a person's securities account, which then allows a person to acquire a security entitlement (*i.e.,* rights and property interest), and to become an entitlement holder, with respect to the financial asset in that securities account. The proposed financial asset election requirement would not impose additional recordkeeping obligations beyond an adviser's current obligations under Advisers Act rule 204–2. Are any additional records beyond those already required by Advisers Act rule 204–2 necessary to ensure that a client acquires a security entitlement and becomes an entitlement holder with respect to the financial asset?

122. To make the proposed financial asset election, the adviser would be a ''securities intermediary'' as such term is defined in Article 8 of the UCC. A ''securities intermediary'' includes a person that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity. ''Securities account'' means an account to which a financial asset is or may be credited, and is not limited to accounts holding securities as defined in the Federal securities laws or in Article 8. An adviser holding client assets in self-custody could come within that definition because the adviser, like banks and brokers traditionally viewed as security intermediaries, would be maintaining assets on behalf of clients rather than solely providing investment advice about assets maintained at a qualified custodian. Are there any reasons as to why an investment adviser could not be a securities intermediary under Article 8 of the UCC? Should the adviser self-custody rule include, as proposed, that the adviser and client agree that the adviser holding the client's crypto assets in self-custody is a securities intermediary? Why or why not?

123. Are there any crypto assets within the scope of the proposed adviser self-custody rule that cannot be subject to a financial asset election under Article 8 of the UCC? If so, which crypto assets are they, and why? Are there any other steps necessary to effectuate a financial asset election, or any ramifications that would stem from a financial asset election, that the proposed adviser self-custody rule should address?

124. Are there any ramifications of requiring a financial asset election, under State law or otherwise, that we should consider? For example, what negative ramifications or consequences, if any, arise from an investment adviser acting as a securities intermediary under Article 8 of the UCC?

B. Self-Custody of Regulated Fund Crypto Assets

As described in more detail below, the proposal would permit an investment adviser to custody a regulated fund client's crypto assets if the adviser complies with the adviser self-custody rule described above, and if the regulated fund's board of directors engages in oversight of the custody arrangement as required under proposed rule 17f–9, the fund self-custody rule.[318]

The custodial challenges associated with crypto assets discussed above in section I.A.2 apply to regulated funds just as they do to other types of advisory clients. Permitting a regulated fund's adviser to maintain the regulated fund's crypto assets pursuant to the proposed adviser self-custody rule would allow the regulated fund, like other clients of the adviser, to invest in crypto assets where a qualified custodian is unavailable and the adviser maintains the assets in self-custody subject to conditions designed to safeguard the regulated fund's crypto assets from loss, theft, misuse and misappropriation.

The proposed fund self-custody rule would require, prior to the investment adviser maintaining a regulated fund's crypto asset and quarterly thereafter, that the fund's board of directors, including a majority of directors who are not interested persons of the fund, reviews the investment adviser's written report documenting the basis for the adviser's determination for believing that no qualified custodian will maintain the crypto asset.[319]

In addition, the proposed rule would require, prior to the investment adviser maintaining the regulated fund's crypto asset and annually thereafter, that the board of directors, including a majority of directors who are not interested persons of the fund, determines that the crypto asset will be subject to reasonable care, if maintained with the regulated fund's adviser, after considering the factors relevant to the safekeeping of the crypto asset.[320] To facilitate the board's determination, the proposed rule would require the regulated fund's adviser to furnish and the regulated fund's board to evaluate, such information as may reasonably be necessary for the board to evaluate the fund's custody arrangement of the crypto asset.[321]

This information must include at a minimum, the following:

- A written report documenting the basis for the investment adviser's determination under the adviser self-custody rule that it has expertise regarding the safeguarding of the crypto asset and the systems, including the appropriate technology, software, hardware, and other associated systems and processes, necessary to safeguard

[318] For the reasons discussed herein, permitting a regulated fund to maintain its crypto assets with the regulated fund's adviser if the adviser complies with the adviser self-custody rule is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act. *See* 15 U.S.C. 80a–6(c).

[319] *See* proposed rule 17f–9(b)(1)(i); proposed rule 223–1(b)(7)(i). The fund airdrop provision provides an exception to this general requirement for a regulated fund that receives distributed crypto assets, provided that, as soon as reasonably practicable, the regulated fund places and maintains the distributed crypto asset with (i) an investment adviser to the regulated fund in compliance with proposed rule 17f–9(b); or (ii) a permitted custodian. *See* proposed rule 17f–9(c); *supra* section II.A.1.d) (further discussion about the fund airdrop provision and corresponding requests for comment).

[320] *See* proposed rule 17f–9(b)(1)(ii).

[321] *Id.*

the crypto asset against loss, theft, misuse, and misappropriation.[322]

- The most recent written annual review of the adviser's safeguarding systems and cybersecurity controls, including the effectiveness of their implementation pursuant to the annual review requirement in the proposed adviser self-custody rule, if available at the time of the board's determination, and if not available, such information must be furnished by the adviser to the board for its evaluation after it becomes available by the next regularly scheduled board meeting.[323]
- The most recent written internal control report as required under the proposed adviser self-custody rule, if one is available at the time of the board's determination, and if not available, such information must be furnished by the adviser to the board for its evaluation after it becomes available by the next regularly scheduled board meeting.[324] A written internal control report may not be available if, at the time of the board's determination, the adviser has not been holding a crypto asset in self-custody for any client for at least six months.

The board oversight requirements in the proposed fund self-custody rule for crypto assets reflect that board oversight is appropriate where there are heightened risks of misappropriation of fund assets by the regulated fund's investment adviser. These proposed requirements also reflect a similar approach in the current fund self-custody rule for traditional assets, which likewise requires board involvement in a regulated fund's self-custody arrangements.[325] Rule 17f–2 requires a regulated fund's board to approve the personnel that have access to self-custodied fund assets and the fund personnel that receive the related transaction records.

The proposed board review of the investment adviser's written determination that no qualified custodian is available to maintain the regulated fund's crypto asset is designed to allow the board to provide oversight of the adviser's QC determination.[326] The board's review of the QC determination will allow the board to evaluate the necessity of self-custody by, for example, asking questions regarding the material facts upon which the QC determination is based and the adviser's process for making its QC determination.

The written report we propose to require the adviser to furnish, containing information regarding the adviser's safeguarding expertise and systems under the proposed adviser self-custody rule, would include information that is fundamental to the adviser's justification for self-custodying a fund's crypto asset.[327] The written report would help the board evaluate the adviser's capability to take on the role of custodian and put in place effective safeguards to address the risk of loss, theft, misuse, or misappropriation.

The annual review of safeguarding systems and cybersecurity controls, including the effectiveness of their implementation, would help the board evaluate the adviser's safeguarding systems and cybersecurity controls.[328] This requirement is designed to ensure that the board is evaluating the safeguards and cybersecurity controls used for self-custody and considering, at least on an annual basis, whether the safeguarding systems and cybersecurity controls continue to reflect that the adviser is capable of self-custodying the regulated fund's assets. Since self-custody poses a risk of misappropriation by the investment adviser, the board's evaluation of the safeguarding systems would help to ensure the adviser remains capable of safeguarding regulated fund crypto assets and continues to implement robust safeguards when self-custodying fund crypto assets. As the self-custody of crypto assets involves cybersecurity risks, the annual review requirement would also facilitate board oversight of the effectiveness of the adviser's cybersecurity controls. The board's oversight of whether the adviser's cybersecurity controls remain up to date is critical in light of the continuous emergence of novel cybersecurity threats to crypto assets and to ensure that the controls adequately address and mitigate the risk of cybersecurity incidents.

Similarly, requiring advisers to provide the internal control reports they have obtained would provide an important check on risks relating to regulated fund crypto assets held by the adviser. In this regard, these internal control reports, as described above, must include an opinion of an independent public accountant as to whether the adviser's controls associated with its holding client crypto assets in self-custody were suitably designed and implemented and operating effectively throughout the period to achieve control objectives relating to custodial services.[329] These reports therefore would supplement the adviser's own determination that a crypto asset is subject to appropriate safeguarding systems and would represent an independent source of information that the board would review and rely on in making its reasonable care determination.

The written report documenting the basis for the investment adviser's QC determination would be reviewed by the board initially before the adviser were to hold a regulated fund's crypto asset in self-custody and thereafter on an quarterly basis.[330] Receiving the report initially would allow the regulated fund's board, prior to the adviser taking self-custody of a fund's crypto asset, to evaluate the adviser's QC determination that there is a need for self-custody. This timing would also allow the board to prevent the adviser's self-custody of the regulated fund's crypto asset if the board determines that the QC determination is not based on adequate due inquiry, is not supported by the facts in the written report, or is inconsistent with the regulated fund's best interests. The board may also choose to request further information from the adviser regarding the availability of qualified custodians to help it evaluate the need for self-custody. Receiving the required written report quarterly would allow the board to provide oversight of the adviser's ongoing quarterly QC determinations and evaluate each quarter whether self-custody of a fund's crypto asset continues to be necessary and justified by the most recent quarterly report.

The proposed fund self-custody rule would require certain other information to be provided to the board initially before the adviser were to hold a regulated fund's crypto asset in self-custody and thereafter on an annual basis. For example, the written report documenting the adviser's safeguarding expertise and systems would be provided on this schedule.[331] Receiving the required information initially would

[322] *See* proposed rule 17f–9(b)(1)(ii)(A); proposed rule 223–1(b)(7)(ii); *see also supra* section II.A.3.

[323] *See* proposed rules 17f–9(b)(1)(ii)(B) and 17f–9(b)(1)(ii)(D); proposed rule 223–1(b)(7)(v).

[324] *See* proposed rules 17f–9(b)(1)(ii)(C) and 17f–9(b)(1)(ii)(D); proposed rule 223–1(b)(7)(iv); *see also supra* section II.A.5.

[325] *See* rule 17f–2(d) and rule 17f–2(e).

[326] *See* proposed rule 223–1(b)(7)(i); *supra* section II.A.2 for a further discussion of the proposed adviser self-custody rule's requirement that an investment adviser reassess its QC determination in writing at least quarterly after taking self-custody of each crypto asset.

[327] *See* proposed rule 17f–9(b)(1)(ii)(A); proposed rule 223–1(b)(7)(ii).

[328] *See* proposed rule 17f–9(b)(1)(ii)(B); proposed rule 223–1(b)(7)(v).

[329] *See supra* section II.A.6.

[330] *See* proposed rule 17f–9(b)(1)(i); proposed rule 223–1(b)(7)(i).

[331] *See* proposed rule 17f–9(b)(1)(ii)(A); proposed rule 223–1(b)(7)(ii).

allow the regulated fund's board to evaluate the custodial arrangement for a crypto asset before the adviser takes the crypto asset into self-custody. This timing would allow the board to probe the self-custody arrangement and request changes, if any, to the arrangement consistent with the regulated fund's best interests. The timing would also allow the board to prevent the adviser's self-custody of the regulated fund's crypto asset if the board determines that self-custody is inconsistent with the regulated fund's best interests. Receiving the required written report annually would help the board stay up to date on the adviser's safeguarding expertise and systems that may impact the board's reasonable care determination.

The proposed rule would also require the adviser to furnish, and the board to evaluate, the most recent written annual review of the adviser's safeguarding systems and cybersecurity controls prior to the investment adviser self-custodying the crypto asset, if available, and annually thereafter.[332] If the most recent written annual review is not available prior to the investment adviser self-custodying the fund's crypto asset, such information must be furnished by the adviser to the board for its evaluation by the next regularly scheduled board meeting.[333] A written annual review of the adviser's safeguarding systems may not be available at the time of the board's initial determination if the investment adviser had not been holding crypto assets in self-custody for the regulated fund or other clients for at least one year at the time of the board's determination. This timing is intended to ensure that the board is informed about the current state of the safeguarding systems used to protect the regulated fund's crypto asset so that the board can evaluate whether the safeguarding systems work prior to the adviser self-custodying the regulated fund's crypto asset and on a continuing basis. The proposed rule would also require the adviser to furnish, and the board to evaluate, the adviser's most recent internal control report prior to the adviser's initial custody of the crypto asset, if available, and then annually thereafter.[334] If the most recent written internal control report is not available prior to the adviser self-custodying the fund's crypto asset,[335] such information must be furnished by the adviser to the board for its evaluation by the next regularly scheduled board meeting after the information becomes available to the adviser. If the adviser has not been holding a crypto asset in self-custody for any client for at least six months at the time of the next regularly scheduled board meeting, then the information must be furnished by the first regularly scheduled board meeting following expiration of the six-month time period.[336] The board's ongoing oversight aided by the receipt of the internal control reports may act as an incentive for an adviser to ensure its safeguarding systems and processes continue to be sufficiently robust to prevent potential misappropriation of crypto assets.

Serious safeguarding issues must be brought to the board's attention promptly and cannot be delayed until the next board meeting. In addition, individual safeguarding matters that, taken in isolation, may not be material may collectively suggest a serious safeguarding issue. The adviser must promptly notify the board if any of the regulated fund's crypto assets maintained by the adviser are lost, stolen, misused, or misappropriated. Other examples of serious matters that would need to be brought to the board's attention promptly include significant cybersecurity events that materially raise the risk of harm to the regulated fund or an internal control report where the auditor will not issue an unmodified opinion. Alerting the board to such serious matters is consistent with the adviser's fiduciary duty and necessary to lower the risk of loss, theft, misuse, and misappropriation.

As discussed above, under the proposed fund self-custody rule, advisers would be required to provide, such information as may reasonably be necessary for the board to evaluate the regulated fund's custody arrangement. Such information may include further information beyond that explicitly required by the proposed rule that may be relevant to the board's determination. This could include, for example (and if not already provided in the required written report), additional information or assessments by an independent third party, relating to the adviser's safeguarding expertise and systems. Other factors the board may wish to consider in making its determination that the regulated fund's crypto asset will be subject to reasonable care could include, for example, the availability of insurance or other arrangements put in place by the adviser to reimburse the regulated fund in the event of loss of the regulated fund's crypto asset and the terms of such arrangements and how the adviser intends to use third-party service providers (if at all) in self-custodying the crypto asset and what steps the adviser takes to manage risk from such arrangements.

We request comment on the proposed board oversight requirements:

125. Pursuant to the proposed fund self-custody custody rule, a regulated fund would be permitted to maintain its crypto asset with the regulated fund's adviser without the involvement of a qualified custodian provided that the adviser complies with the adviser self-custody rule described above (and the regulated fund complies with certain board oversight requirements). Should a regulated fund be permitted to maintain its crypto asset with the fund's adviser? Why or why not? Is it appropriate to permit a regulated fund to maintain its crypto asset with the fund's adviser only where the adviser complies with the proposed adviser self-custody rule? Why or why not?

126. The proposed fund self-custody rule can only be relied on by registered investment management companies and BDCs. Should the rule permit other types of entities to rely on it? For example, should UITs or FACCs be able to rely on the rule? If so, how should the rule be modified, if at all, to accommodate these entities? For example, could the trustee or sponsor of a UIT, instead of a regulated fund board, comply with the rule's board oversight requirements?

127. The proposed fund self-custody rule would require board oversight of the custody arrangement between the regulated fund and its adviser. Is board oversight of the custody arrangement appropriate and necessary to protect against misappropriation by the adviser? Why or why not?

128. As part of the board oversight of the custody arrangement between the regulated fund and its adviser, the proposed fund self-custody rule would require the board to determine that the regulated fund's crypto asset will be subject to reasonable care, if maintained with the regulated fund's adviser, after considering the factors relevant to the safekeeping of the crypto asset. Is the board's reasonable care determination the appropriate standard to facilitate board oversight of the custody arrangement? Why or why not? Should the proposed rule provide additional detail about the reasonable care standard, for example, by requiring the

[332] *See* proposed rule 17f–9(b)(1)(ii)(B) and proposed rule 223–1(b)(7)(v).

[333] *See* proposed rule 17f–9(b)(1)(ii)(D).

[334] *See* proposed rule 17f–9(b)(1)(ii)(C) and proposed rule 223–1(b)(7)(iv).

[335] A written internal control report may not be available if, at the time of the board's determination, the adviser has not been holding a crypto asset in self-custody for any client for at least six months.

[336] *See* proposed rule 17f–9(b)(1)(ii)(D) and proposed rule 223–1(b)(7)(iv).

reasonable care standard to be based on standards applicable to safekeeping the crypto asset?

129. The proposed fund self-custody rule would require the board to review the written report documenting the basis for the investment adviser's determination that no qualified custodian will maintain a regulated fund's crypto asset before the investment adviser maintains the crypto asset and quarterly thereafter. Is it appropriate to require the regulated fund's board to review and evaluate, this specific information? Why or why not? Is such information necessary for the board to evaluate the adviser's justification for self-custodying a regulated fund's crypto asset? Should the fund self-custody rule provide specific matters that must be addressed in the report? Should the regulated fund's board be required to review and evaluate such information at an in-person board meeting, as proposed, or would it be appropriate for the board to evaluate such information by written consent in lieu of an in-person board meeting?

130. The proposed fund self-custody rule would require the investment adviser to furnish, and the regulated fund's board of directors to evaluate, a written report documenting the basis for the investment adviser's determination under the adviser self-custody rule that the adviser has expertise regarding the safeguarding of the regulated fund's crypto asset and the systems necessary to safeguard such crypto asset against loss, theft, misuse and misappropriation. Is it appropriate to require the adviser to furnish, and the regulated fund's board to evaluate, this specific information? Why or why not? Is such information necessary for the board to evaluate whether the regulated fund's crypto asset will be subject to reasonable care if maintained at the adviser? Should any other information be required to be in the written report or otherwise provided to the board in addition to the basis for the adviser's determination it has the expertise and systems necessary to safeguard the fund's crypto asset?

131. Should the proposed fund self-custody rule require a regulated fund's board to make a determination that a fund's crypto asset maintained with the regulated fund's investment adviser will be subject to reasonable care prior to the adviser maintaining the regulated fund's crypto asset? Why or why not? Should the rule require a regulated fund's board to, at least annually, determine that a regulated fund crypto asset maintained with the regulated fund's investment adviser continues to be subject to reasonable care?

132. The proposed adviser self-custody rule would require the investment adviser to make its QC determination at least quarterly and, if it determines that a qualified custodian has become available to maintain the regulated fund's crypto asset, the adviser must place such crypto asset with the qualified custodian as soon as reasonably practicable.[337] If the adviser places the regulated fund's crypto asset with a qualified custodian under such circumstances, should the fund self-custody rule require that the board be notified? If so, how soon should the board be notified after the placement at the qualified custodian, for example, at the next quarterly board meeting or ''as soon as reasonably practicable''? Should the board instead be notified as soon as the adviser determines that a qualified custodian has become available? If so, how soon should the board be notified after the determination, for example, at the next quarterly board meeting or ''as soon as reasonably practicable''?

133. Should the proposed fund self-custody rule require the regulated fund's investment adviser to furnish, and the regulated fund's board of directors to evaluate, the most recent internal control report obtained by the adviser pursuant to the adviser self-custody rule? Would this requirement help the regulated fund's board in making its determination that a crypto asset maintained by the regulated fund's investment adviser will be subject to reasonable care? Would this requirement potentially incentivize the adviser to ensure its processes for maintaining the regulated fund's crypto asset are robust? Would the requirement act as a deterrent against the adviser's potential misappropriation of the regulated fund's crypto asset? Is there any other information an adviser should be required to provide the regulated fund's board to help evaluate the internal control report? Should the proposed fund self-custody rule require the adviser to furnish, and the board to evaluate, the most recent internal control report prior to the adviser's initial custody of the crypto asset if available, and annually thereafter? Why or why not? If not, what initial and ongoing cadence should be required instead and why? If such information is not available prior to the investment adviser self-custodying the crypto asset, should the fund self-custody rule require, as proposed, the most recent written internal control report to be furnished by the adviser to the board for its evaluation by the next regularly scheduled board meeting after the information becomes available to the adviser, but in no case later than the next regularly scheduled board meeting following six months from the date the adviser takes self-custody of the crypto asset? Why or why not? If not, what timing standard would be more appropriate than ''by the next regularly scheduled board meeting''?

134. Should the proposed fund self-custody rule require the regulated fund's investment adviser to furnish, and the board of directors to evaluate, any other documents or reports to assist the board in its reasonable care determination, for example, reports related to the adviser's financial asset election discussed above? [338]

135. Should the proposed fund self-custody rule require the adviser to furnish, and the board to evaluate, the most recent written annual review of the adviser's safeguarding systems and cybersecurity controls prior to the investment adviser self-custodying the crypto asset, if available, and annually thereafter? Why or why not? If not, what cadence should be required instead and why? If such information is not available prior to the investment adviser self-custodying the crypto asset, should the fund self-custody rule, as proposed, require the most recent written annual review to be furnished by the adviser to the board for its evaluation by the next regularly scheduled board meeting after the information becomes available? Why or why not? If not, what timing standard would be more appropriate?

C. Custody of Crypto Assets by State Trust Companies

1. Overview and Scope

The custody rules generally require that advisory clients' and regulated funds' assets be maintained with certain permitted custodians. For the reasons discussed above in section I.A.2, the Commission is proposing amendments to the Advisers Act custody rule and a new custody rule under the Investment Company Act (together, the ''proposed State trust company rules'') to add State trust companies as an additional category of permitted custodian for crypto assets, subject to certain conditions designed to safeguard client crypto assets from loss, theft, misuse, and misappropriation.[339] The proposed

[337] *See* proposed rule 223–1(b)(7)(i); *supra* section II.A.2.

[338] *See supra* section II.A.8.

[339] *See* proposed rules 223–1(d)(13)(v) and 17f–8; *see also supra* section I.A.2 for discussion of State trust company custodians and related custodial compliance challenges. For the reasons discussed below, permitting a fund to place and maintain its

conditions are designed to address common custodial risks that bank regulations generally address, as well as to address the custodial risks that are unique to the custody of crypto assets. Because State trust companies are subject to State regulations that can vary from State to State, the proposed conditions are designed to provide that the adviser or regulated fund has made a determination that the State trust company is authorized and regulated by an applicable State authority and that certain protective conditions apply that are designed to help ensure that the State trust company is an appropriate custodian for crypto assets.

Under the proposed State trust company rules, prior to engaging a State trust company as a custodian for crypto assets, and on an annual basis thereafter, the adviser or regulated fund must determine in writing that it has a reasonable basis, after due inquiry, for believing that the State trust company:

(1) is authorized by the relevant State banking authority to provide custody services for crypto assets and related cash and/or cash equivalents and

(2) maintains and implements written policies and procedures reasonably designed to safeguard crypto assets and related cash and/or cash equivalents from the risk of theft, loss, misuse, and misappropriation.

These policies and procedures would be required, at a minimum, to address private key management and cybersecurity.

In addition, the adviser or regulated fund would be required to receive and review the State trust company's audited annual financial statements and most recent internal control report prior to engaging the State trust company as a custodian and on an annual basis thereafter.

Further, under the proposed State trust company rules, all client crypto assets must be held in segregated accounts.[340] For regulated funds, the regulated fund must enter into a custodial services agreement with the State trust company that provides that all crypto assets and related cash and/or cash equivalents held in custody for the fund will be held in accounts segregated from the State trust company's proprietary assets.[341]

In the event an advisory client engages the State trust company custodian directly, the adviser would be required to satisfy the proposed conditions prior to the adviser having custody of those client crypto assets that are maintained at the State trust company as custodian. If the adviser did not satisfy the proposed conditions, the adviser would nonetheless not be limited in its ability to provide nondiscretionary investment advice to its client regarding the client's crypto asset investment that is maintained at a State trust company where the client makes the investment on its own and not through the adviser and the adviser does not have custody of the client's assets maintained at the State trust company.

In connection with the proposed State trust company rule, we are also proposing to amend Form ADV to require an adviser to disclose whether a State trust company maintains client funds or securities pursuant to the proposed rule.[342] We describe all these requirements in more detail below.

For other types of permitted custodians, we rely on the existing regulatory framework to ensure that the custodian has appropriate internal controls. For example, under Federal banking laws, banks are subject to certain regulatory requirements related to internal controls.[343] In the absence of a uniform set of regulatory controls for State trust companies, which may vary by State, requiring the adviser or regulated fund to receive and review a State trust company's internal control reports would help ensure that the State trust company has adequate internal controls in place and is implementing such controls. In addition to the proposed requirements, an adviser would continue to be required to exercise its fiduciary duty of care to act in the best interests of its clients.[344] An adviser's fiduciary duty applies to the selection and monitoring of a custodian and would therefore also apply to the selection of a State trust company as a permitted custodian for client crypto assets under the proposed State trust company rules.[345]

Under the proposed State trust company rules, the adviser or regulated fund would be limited to maintaining only crypto assets and related cash and/or cash equivalents at the State trust company custodian. The proposed rules are intended to facilitate crypto asset custody by State trust companies and enhance investor protection by requiring certain protective conditions. As discussed further above in section I.A.2, we have observed that funds and advisers have historically experienced challenges in obtaining crypto asset custodial services with traditional custodians and that State trust companies have emerged as a custodial solution for crypto assets specifically. We are not aware of similar challenges with respect to other asset classes nor a significant need or demand for custodial services from State trust companies for other asset classes at this time, but we request comment on whether the proposed State trust company rules should be expanded to include any other asset classes.

For the rules applicable to both advisers and regulated funds, we propose to define a State trust company as ''a legal entity organized under State law that is supervised and examined by a State authority having supervision over banks and permitted to exercise fiduciary powers under applicable State law.'' [346] The requirement in the proposed definition for the State trust company to be ''supervised and examined by a State authority having supervision over banks'' is designed to ensure that a State banking authority regulates the custodial activities of the State trust company and that the State trust company is subject to State examination and supervision, similar to that of a State bank.

Although under the proposed State trust company rules, a State trust company would be a separate category of permitted custodian, a regulated fund or adviser would not need to rely on the proposed rules with respect to a State trust company if the State trust company meets the definition of ''bank'' under the Investment Company Act or Advisers Act, as applicable.[347] The proposed State trust company rules are designed to permit a regulated fund or adviser to use a State trust company as a custodian for crypto assets without having to determine the entity's status as a ''bank'' under the relevant statutes. The proposed rules, however, would not

crypto assets and related cash and/or cash equivalents with a State trust company is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act. *See* 15 U.S.C. 80a–6(c).

[340] *See* proposed rule 17f–8 and current rule 206(4)–2(a)(1) (proposed to be redesignated as rule 223–1(a)(1)).

[341] *See* proposed rule 17f–8(b).

[342] *See infra* section II.J.1.b)(5) for discussion of this proposed amendment to Form ADV.

[343] *See* 12 CFR 30, 12 CFR 363, and 15 U.S.C. 78m; *see also* OCC, Internal Control: Comptroller's Handbook (Jan. 2001), *available at https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/internal-control/pub-ch-internal-control.pdf*.

[344] *See* Standard of Conduct Release, *supra* footnote 120.

[345] *See id.*, at section II (''The investment adviser's fiduciary duty is broad and applies to the entire adviser-client relationship.'').

[346] *See* proposed rules 17f–8(c) and 223–1(d)(18).

[347] *See* proposed rules 17f–8 and 223–1(d)(13)(v).

preclude a regulated fund or adviser from performing this analysis.[348]

We request comment on all aspects of the scope of the proposed State trust company rules and the proposed definitions of State trust company, including the following:

136. Pursuant to the proposed State trust company rules, a State trust company (that is not otherwise a bank as defined for purposes of the applicable custody rule) would be a permitted custodian for client or regulated fund crypto assets and related cash and/or cash equivalents only. Alternatively, should a State trust company custodian be permitted to act as custodian for any other types of assets? If so, which asset classes and why? Are regulated funds and advisers experiencing custodial challenges for other types of assets for which State trust companies provide custodial services? Are State trust company custodians generally engaged for custodial services for asset classes other than crypto assets and related cash and/or cash equivalents?

137. As proposed, should the rules scope the definition of State trust company to include only those State trust companies that are organized under State law and are supervised and examined by a State authority having supervision over banks? Is it necessary to limit the scope of State-registered entities in this way? Why or why not? If not, how should we define the State regulation requirements? Alternatively, should the proposed definition be expanded to include all State-regulated trust companies, including those that are not supervised and examined by a State authority having supervision over banks?

138. Is it clear what it means for a State trust company to be ''supervised and examined'' by a State authority? If not, how should we modify the definition to make it clear? Should the proposed definition instead refer to the State trust company being subject to examination by a State authority on a particular frequency, such as on an annual basis?

139. Should we, as proposed, limit the definition of State trust company to State trust companies that are *permitted* to exercise fiduciary powers under applicable State law? Why or why not? Would this aspect of the proposed definition appropriately limit the entities that would satisfy the definition? Alternatively, should the definition be modified to include any State-registered entity that is authorized to provide custodial services for crypto assets? Why or why not?

140. Should the proposed definition require that the applicable State regulatory framework include any particular considerations? For example, for the purposes of the proposed rules, should the State trust company definition be limited to those State trust companies that are subject to State regulations that require ongoing supervision and periodic examination by State authorities, minimum capital requirements for State trust companies, restrictions on activities and balance sheet investments, periodic financial condition and/or business operation reporting requirements, recordkeeping requirements, and/or supervision by State banking authorities having authority to bring enforcement proceedings for non-compliance? Alternatively, should the proposed State trust company definition be limited to those State trust companies that are subject to State supervision and examination with standards substantially similar to those in equivalent Federal regulatory frameworks?

141. Should the proposed State trust company definition instead require that the State trust company be licensed under applicable State law and be subject to certain minimum eligibility requirements for licensing under applicable State law?

142. Should the scope of the proposed rules be modified to include other non-trust entities, for example an entity that operates pursuant to a New York BitLicense (which is explicitly not authorized to exercise fiduciary powers under New York law) or any other State-regulated entity that would not otherwise meet the proposed definition of a ''State trust company''? How are these entities regulated and how does the regulatory treatment of such non-trust entities differ from State trust companies that are supervised and examined by a State authority having supervision over banks?

143. Is the meaning of the term ''related cash and cash equivalents'' in this context clear? Would it be burdensome to determine whether certain cash and cash equivalents constitute ''related'' cash and cash equivalents?

144. The proposed rule 17f–8 can only be relied on by registered investment management companies and BDCs. Should the rule permit other types of entities to rely on it? For example, should UITs or FACCs be able to rely on the rule? Could the trustee or sponsor of a UIT comply with the rule's requirements to make a reasonable basis determination?

2. Initial and Annual Determinations

As described in more detail below, the proposed rules would require that an adviser or regulated fund make certain reasonable basis determinations, after due inquiry, regarding the State trust company, prior to engaging the State trust company as a custodian for crypto assets and on an annual basis thereafter.[349] The proposed reasonable basis determinations are intended to require the adviser or regulated fund to perform sufficient due diligence to determine that the State trust company is an appropriate and capable custodian for crypto assets.

To demonstrate a reasonable basis for its determinations under the proposed State trust company rules, an adviser or regulated fund would need to conduct reasonable due diligence of the State trust company. The due diligence would not require identification of every custodial risk associated with using a State trust company as a custodian for crypto assets or boundless analysis of the State trust company. The proposed rule is intended to be flexible and allow advisers and regulated funds to tailor their due diligence practices, while ensuring that the due diligence performed covers certain key areas that are relevant to the use of a State trust company as a custodian for crypto assets. We are also proposing corresponding amendments to the recordkeeping rules to require advisers and regulated funds to maintain records related to these reasonable basis determinations.[350]

(a) Authorization to Custody Crypto Assets

Under the proposed State trust company rules, the adviser or regulated fund would be required, prior to engaging the State trust company custodian and on an annual basis, to determine in writing that it has a reasonable basis, after due inquiry, for believing that the State trust company is authorized by the relevant State banking authority to provide custody services for crypto assets and related cash and/or cash equivalents. In forming its reasonable basis, an adviser or regulated fund should conduct due inquiry into

[348] As is the case under the existing regulatory framework, an adviser or regulated fund could determine that a particular State trust company satisfies the applicable definition of a bank for purposes of the custody rules and continue to apply the existing custody rule applicable for use of a bank as a custodian. *See supra* footnote 346.

[349] The adviser or fund would also be required to maintain records documenting these required reasonable basis determinations. *See infra* section II.H for discussion of proposed recordkeeping requirements related to the proposed custody rules.

[350] *See infra* section II.H for discussion of the proposed amendments to the recordkeeping rules.

the State trust company and the governing State laws and regulations that apply to the State trust company to determine whether the State trust company is authorized to provide crypto asset custodial services.[351] An adviser or regulated fund may consider obtaining a legal opinion of counsel and/or a certification from the State trust company regarding the State trust company's authorization to custody crypto assets under applicable State law, in conjunction with other due diligence, to support its reasonable basis determination.

In addition to the proposed definitions of State trust company discussed above, this proposed condition is designed to provide that the adviser or regulated fund diligences whether the State trust company is permitted under applicable State law to provide custodial services for crypto assets and is subject to applicable custodial regulation. This proposed condition is intended to help ensure that the adviser or regulated fund has a reasonable basis for believing that the State trust company is qualified, able, and authorized to properly safeguard crypto assets and is subject to appropriate regulatory oversight for its custodial activities. The annual requirement is designed to ensure that the adviser or regulated fund periodically reassesses whether there have been any applicable State law or regulatory changes that may impact whether the State trust company continues to be authorized under State law to provide crypto asset custodial services.

We request comment on all aspects of the proposed State authorization requirement, including the following items:

145. Should any guidance be provided on how an adviser or regulated fund can satisfy the proposed reasonable basis requirement or what due diligence would be required to support a reasonable basis determination?

146. The proposed State trust company rules require that the adviser or regulated fund has a reasonable basis for believing that the State trust company is authorized by the State to provide custodial services for crypto assets. Is this requirement clear? Do commenters anticipate any challenges associated with satisfying this requirement?

147. Alternatively, should the proposed rules require that the adviser or regulated fund determine that the State trust company is in ''good standing'' (or an equivalent status) in the applicable State?

(b) Policies and Procedures

The proposed State trust company rules would require that, prior to engaging a State trust company as a permitted custodian for client crypto assets and on an annual basis thereafter, the adviser or regulated fund must determine in writing that it has a reasonable basis, after due inquiry, for believing that the State trust company maintains and implements written policies and procedures reasonably designed to safeguard crypto assets and related cash and/or cash equivalents from the risk of theft, loss, misuse, and misappropriation, with such policies and procedures, at a minimum, addressing private key management and cybersecurity. In forming this reasonable basis, the adviser or regulated fund should review the State trust company's policies and procedures to determine whether the policies and procedures address private key management and cybersecurity, as well as assess the adequacy and effectiveness of the policies and procedures on these topics, and whether the State trust company's policies and procedures as a whole are reasonably designed to safeguard crypto assets and related cash and/or cash equivalents from the risk of theft, loss, misuse, and misappropriation. As a part of the reasonable basis determination, the adviser or regulated fund should also conduct a reasonable investigation to determine whether the State trust company adequately implements its policies and procedures. An adviser or regulated fund may consider obtaining a certification from the State trust company or an assessment by counsel or other third party regarding the adequacy and implementation of the State trust company's policies and procedures to support its reasonable basis determination.

As discussed above in sections II.A.3.b)(1) and II.A.4, secure private key management and cybersecurity are essential to the ability to safeguard crypto assets. Similar to the proposed requirements for adviser or regulated fund self-custody, the proposed condition for required adviser or regulated fund due diligence of the State trust company policies and procedures is designed not to be prescriptive as to specific policies and procedures and to be flexible and adaptable to changes that may occur over time. This would permit advisers or regulated funds to rely on the State trust company custodians tailoring and evolving their policies and procedures for their custodial practices to adapt to evolutions in technology and best practices in crypto asset safeguarding. The proposed requirement for advisers or regulated funds to review the policies and procedures on an annual basis allows the adviser or regulated fund to regularly reassess whether the State trust company's policies and procedures continue to appropriately safeguard crypto private key material and address cybersecurity risks, which are central to crypto asset safeguarding and may evolve over time.

The proposed requirement for the adviser or regulated fund to diligence the State trust company's policies and procedures to determine if they address private key management reflects that proper private key management is a critical aspect of safeguarding crypto assets.[352] In order for the State trust company's policies and procedures to address private key management, the adviser or regulated fund would need to consider whether the State trust company's private key management policies and procedures cover the essential elements related to private key management, such as private key generation, managing access to key materials, and location and means of key material storage. For example, the adviser or regulated fund may consider whether the State trust company's policies and procedures limit the number and/or geographic dispersal of persons with access to private key material, address the number of persons required to authorize transactions, and adequately govern the use of cold, warm, and hot storage for maintaining crypto assets.

While the proposed State trust company rules would not require that the adviser's or regulated fund's diligence confirm that any specific key management policies and procedures are in place, the adviser or regulated fund must determine whether the State trust company's policies and procedures, including those related to key management, are reasonably designed to safeguard crypto assets and related cash and/or cash equivalents from the risk of theft, loss, misuse, and misappropriation. Due to the rapid evolution of technology and development of best practices in the crypto asset market, an adviser's or regulated fund's reasonable basis determination may change over time; as such, the adviser or regulated fund would need to consider any relevant industry and market changes to be able to continue to have a reasonable basis

[351] The complexity of this analysis may vary depending on the applicable State laws and regulations and how and to what extent those laws and regulations address crypto asset custody.

[352] *See supra* section II.A.3.b)(1).

for believing that the State trust company's policies and procedures are designed to adequately safeguard custodied crypto assets.

The proposed requirement for the adviser or regulated fund to determine that it has a reasonable basis for believing that the State trust company's policies and procedures address cybersecurity similarly reflects the Commission's view that cybersecurity is an important component of secure custody of crypto assets given the heightened vulnerability of crypto assets to adverse cyber events. Similar to the inquiry related to private key management, the adviser would need to make a due inquiry into the State trust company's policies and procedures related to cybersecurity in forming its reasonable basis. While the proposed rules would not require that the adviser confirm whether any particular cybersecurity-related policies and procedures are in place, the adviser may consider whether and to what extent the State trust company's policies and procedures address such relevant cybersecurity topics as cyber-attack prevention, cyber-attack event detection, cybersecurity incident response and escalation, and external reporting of cybersecurity incidents. The adviser may also consider the State trust company's policies and procedures related to system access privileges and management, systems and network security and monitoring, cybersecurity training, and data management and disposal.[353] Given the constant evolution of cybersecurity vulnerabilities and threats, the adviser should consider, as a part of its annual determination, whether the State trust company's policies and procedures can continue to adequately address evolving cybersecurity risks to the crypto assets that it custodies. For example, the adviser may consider whether the State trust company's policies and procedures provide for periodic review of the adequacy of its cybersecurity controls and practices to ensure the security of its systems and/or mandate regular ongoing cybersecurity trainings that are routinely updated to reflect relevant risks.

Finally, other aspects of the State trust company's policies and procedures may be relevant in determining whether the policies and procedures are reasonably designed to safeguard crypto assets and related cash and/or cash equivalents. For example, other relevant considerations may include whether the State trust company's policies and procedures cover such topics as, minimum required insurance related to the loss or theft of client crypto assets, minimum levels of reserves, physical security protections, and privacy protections for customers.[354]

We request comment on all aspects of this proposed rule, including the following:

148. Is the proposed requirement for the adviser or regulated fund to determine in writing that it has a reasonable basis, after due inquiry, for believing that the State trust company maintains and implements written policies and procedures reasonably designed to safeguard crypto assets and related cash and/or cash equivalents appropriate? Why or why not?

149. Would it be burdensome for advisers or regulated funds to be required to review the State trust company's policies and procedures? Alternatively, should the rule permit advisers or funds to review a summary of the State trust company's policies and procedures and/or a certification that verifies that the State trust company's policies and procedures are reasonably designed to safeguard crypto assets and related cash and/or cash equivalents and include private key management and cybersecurity policies and procedures?

150. The proposed State trust company rules would require the adviser or regulated fund to determine in writing that it has a reasonable basis, after due inquiry, for believing that the State trust company maintains and implements written policies and procedures reasonably designed to safeguard crypto assets and related cash and/or cash equivalents with such policies and procedures addressing, at a minimum, private key management and cybersecurity. Should the proposed State trust company rules refer to any specific key management and/or cybersecurity policies and procedures? If so, what key management and/or cybersecurity policies and procedures? For example, should the adviser or regulated fund be required to have a reasonable basis, after due inquiry, for believing that the State trust company's policies and procedures require the State trust company to maintain client crypto assets in cold storage at all times or limit the amount of crypto assets and/or time that crypto assets can be held outside of cold storage or for believing that the State trust company custodian's key management-related policies and procedures mandate joint authorization of transactions?

151. Should the State trust company custodian's cybersecurity-related policies and procedures be required to address certain topics? For example, should the rule require that the adviser or regulated fund has a reasonable basis, after due inquiry, for believing that the State trust company's policies and procedures address particular topics, such as minimum required technical expertise and/or systems?

3. Financial Statement Audit

Under the proposed State trust company rules, the adviser or regulated fund would be required to receive and review the State trust company's most recent annual financial statements both prior to engaging the State trust company as a custodian and on an annual basis. The adviser or regulated fund would also be required to receive and review the financial statements to confirm they were prepared in accordance with U.S. GAAP and subject to an audit performed by an independent public accountant.[355] In the event the State trust company's financial statements are presented on a consolidated basis with its parent or other affiliates that have substantive activities, an adviser or regulated fund may be able to satisfy this proposed requirement by receiving and reviewing copies of the parent's or affiliate's audited financial statements, provided that the adviser or regulated fund is able to make the confirmations required under the proposed rule by reviewing such consolidated financial statements. We are also proposing corresponding amendments to the recordkeeping rules to require advisers and regulated funds to maintain copies of these audited financial statements.[356]

The proposed audited financial statements requirement would provide advisers and regulated funds with important information about the State trust company's financial position. Receipt and review of the State trust company's audited financial statements can provide the adviser and regulated fund with important information about the ongoing financial stability of the State trust company, which is a relevant

[353] *See, e.g.,* New York Department of Financial Services (the ''NYDFS''), Cybersecurity Resource Center, *available at https://www.dfs.ny.gov/industry_guidance/cybersecurity.*

[354] *See, e.g.,* Chainanalysis, 2026 Crypto Crime Report, *available at https://www.chainalysis.com/blog/crypto-hacking-stolen-funds-2026*; *see also supra* footnote 213.

[355] For the purposes of the State trust company rules, an independent public accountant means a public accountant that meets the standards of independence described in rule 2–01(b) and (c) of Regulation S–X (17 CFR 210.2–01(b) and (c)). *See* rule 206(4)–2(d)(3) (proposed to be redesignated as rule 223–1(d)(8)) and proposed rule 17f–8(c).

[356] *See infra* section II.H for discussion of the proposed recordkeeping rule amendments related to the proposed State trust company rules.

consideration for its ability to safeguard client crypto assets effectively.

We request comment on all aspects of the proposed audited financial statements requirement, including the following items:

152. Would requiring that advisers and regulated funds receive and review audited financial statements from the State trust company custodian provide important information about the State trust company's financial position?

153. Should the rule instead require that the audited financial statements that the adviser or regulated fund is required to receive and review also include an evaluation of the State trust company's internal controls over financial reporting?

154. In the event that the State trust company's financial statements are presented on a consolidated basis with its parent and/or other affiliates that have substantive activities and the adviser or regulated fund is not able to make the determination required under the proposed rule, should the audited financial statements requirement be met if the adviser or regulated fund obtains a written certification or representation from the State trust company that the most recent annual financial statements of its parent have been subject to an audit by an independent public accountant and have been prepared in accordance with U.S. GAAP? Would such a certification or representation provide comparable information about the State trust company's financial position? Would there be any risks associated with permitting the adviser or regulated fund to satisfy the audited financial statement requirement by obtaining a certification or representation from the State trust company custodian? If so, how could these risks be mitigated?

4. Internal Control Report

Further, the adviser or regulated fund would be required to receive and review the State trust company's most recent written internal control report prepared by an independent public accountant during the current or prior calendar year both prior to engaging the State trust company as a custodian and on an annual basis. The adviser or regulated fund would have to confirm that such internal control report contains an opinion of an independent public accountant as to whether controls were suitably designed and implemented and operating effectively throughout the period to achieve control objectives relating to custodial services, including the safeguarding of crypto assets and related cash and/or cash equivalents. We are also proposing corresponding amendments to the recordkeeping rules to require advisers and regulated funds to maintain copies of these internal control reports.[357]

As discussed above, the design and implementation of internal controls is particularly important for crypto assets, many of which are bearer instruments and are vulnerable to unique risks of loss compared to other asset classes, such as from cybersecurity incidents.[358] Requiring the adviser or regulated fund to receive and review a written internal control report for the State trust company would provide important information on the design and effectiveness of internal control measures in place to protect client crypto assets from risk of loss. We request comment on all aspects of the proposed internal control report requirement, including the following items:

155. Would requiring that the adviser or regulated fund review an internal control report from the State trust company custodian provide the adviser or regulated fund with adequate information to manage the risks associated with providing custodial services for crypto assets?

156. Should the proposed State trust company rules permit an adviser or regulated fund to receive and review an internal control report prepared by persons other than an independent public accountant, if those persons have experience and expertise in assessing custody-related controls for crypto assets? If so, what standards (including independence standards) should apply to these persons and internal control reports prepared by such persons and who would set those standards?

157. Are there best practices and/or considerations regarding the control objectives and associated controls that the proposed State trust company rules should require the adviser or regulated fund to review in connection with its receipt and review of the State trust company's internal control report? If so, what are they?

5. Segregation of Assets

The proposed State trust company rules would require that all assets held in custody at a State trust company be held in accounts that are segregated from the State trust company's assets.[359] For regulated funds, the custodial services agreement with the State trust company would have to provide for the segregation required by the proposed rule.[360] Segregation of client assets from a custodian's proprietary assets is a long-established principle of custody and critical to safeguarding assets held in custody for the adviser's client or regulated fund, particularly in the case of insolvency of the custodian.[361] In the event of a State trust company custodian's insolvency or bankruptcy, client assets maintained at the State trust company custodian, without proper segregation, could be subject to the claims of the State trust company's other creditors and/or property of the State trust company's estate and subject to the automatic stay in a bankruptcy proceeding.[362]

We request comment on the following:

158. Are there any State or Federal regulations that would prevent a State trust company from segregating assets held in custody for the adviser's client or regulated fund? Are there any State or Federal regulations that would otherwise impact the segregation of assets being held in custody?

159. Should we require that, for regulated funds or advisers to custody assets with a State trust company, the assets must be segregated from other client assets of the State trust company, as well as from the State trust company's own assets? Are there certain circumstances under which omnibus accounting should be permitted and other circumstances where it should not? If so, what are these circumstances? Should we require segregation of client assets according to some other principles?

160. Rehypothecation of client assets by registered broker-dealers is primarily used to finance lending to clients and reduce the costs of the financing. Fiduciary custodians, such as many

[357] *See infra* section II.H for discussion of the proposed recordkeeping rule amendments related to the proposed State trust company rules.

[358] *See supra* section II.A.6 for discussion of the proposed adviser self-custody rule related to internal control reports.

[359] Proposed rule 17f–8(b); proposed rule 223–1(a)(1) (applicable with respect to all custodians, including State trust companies). *See also infra* section II.G.10 (setting forth the Commission's views on the Advisers Act custody rule's asset segregation requirement).

[360] Proposed rule 17f–8(b).

[361] *See* rule 206(4)–2(a)(1)(i); *see also* 1962 Adopting Release, *supra* footnote 7; *see also supra* section II.A.3.b)(3) (discussing this requirement in the context of the adviser serving as the custodian when self-custodying assets).

[362] *See, e.g.,* NYDFS, *Updated Guidance on Custodial Structures for Customer Protection in the Event of Insolvency* (Sept. 30, 2025), *available at https://www.dfs.ny.gov/industry-guidance/industry-letters/il20250930-updated-guidance-custodial-structures* (''NYDFS Custodial Structures Guidance''); *see also* Comment Letter to Crypto Task Force of the Bank Policy Institute, *et. al.* (Sept. 18, 2025) (discussing application of bankruptcy law to banks); Jessica G. McKinlay, *Enforcing the Rights of Cryptocreditors*, 20 Berkeley Bus. L.J. 83 (2023) (discussing treatment of crypto assets in crypto exchange bankruptcy proceedings).

State trust companies in many jurisdictions, have regulatory restrictions on lending to clients and rehypothecating client assets.[363] Do any State regulatory regimes permit rehypothecation of client assets by State trust companies? If so, what restrictions do these states impose on trust rehypothecation? To what extent and under what conditions do State trust company regulations permit lending by trusts to their custodial clients? Do any State trust company regulatory regimes permit margin accounts or similar arrangements?

161. Are there State trust companies that currently rehypothecate client assets? If so, please provide examples and describe any relevant practices, contract terms and client protections of this rehypothecation. Are affiliates, control affiliates, or entities with significant financial ties to a State trust company receiving rehypothecated assets of the State trust company's clients? If so, please describe these arrangements and what protections are in place for the client's assets.

162. Do any State trust companies hold assets for clients in a non-fiduciary capacity? If so, do practices differ in these arrangements relative to fiduciary custodial arrangements with respect to rehypothecation?

163. To the extent that a State trust company rehypothecates client assets or has authority under State law and the terms of the custodial agreement to rehypothecate client assets, what is the business purpose of such rehypothecation? Does the State trust company profit or otherwise receive economic value? Does the client receive a benefit, and if so, what is it? Do any other clients of the State trust company receive a benefit? Are there any contexts outside of lending to clients in which a State trust company would rehypothecate client assets?

164. To the extent that any State trust companies are rehypothecating client assets pursuant to their applicable regulatory regime, should we permit regulated funds or investment advisory clients engaging these State trust companies as custodians to consent to have their assets rehypothecated? If so, under what conditions?

6. Request for Comment on Other State Trust Company Issues

In addition to the requests for comment about the individual conditions relating to custody of crypto assets by State trust companies above, we also request comment about these proposed conditions generally, including the following items:

165. Should any of the conditions included in the proposed adviser or regulated fund self-custody rules also apply for custody by a State trust company? If so, which conditions or limitations should apply and why? For example, should the proposed safeguarding expertise and systems requirements for crypto self-custody also apply for custody of crypto assets at a State trust company? Should the State trust company rules require that the adviser has a reasonable basis, after due inquiry, for believing that the State trust company elects to treat each crypto asset in its custody as a ''financial asset'' and the State trust company as a ''securities intermediary'' pursuant to applicable State law that governs the custodial agreement (similar to the proposed financial asset election requirement under the proposed adviser self-custody rule)?

166. Should the proposed State trust company rules include any additional conditions? For example, should the proposed rules require that the adviser or regulated fund confirms or has a reasonable basis for believing that the State trust company maintains certain minimum capital reserves, has obtained certain minimum insurance coverage, and/or that the State trust company has posted minimum sufficient collateral to the adviser or regulated fund?

167. Should an adviser or regulated fund be required to make an initial and annual determination regarding the suitability of a particular State trust company custodian for custody of crypto assets generally or on a crypto asset-by-asset basis?

168. Should the regulated fund's board of directors be required to review and approve of the reasonable basis determination and/or the engagement of the State trust company?

169. Should any different requirements apply if a client has entered into a custodial arrangement prior to the adviser having custody of the client's crypto asset? If so, what requirements should apply in that circumstance?

170. Should the required ongoing determination be on a different basis than annually? If so, how frequently should an adviser or regulated fund be required to make an ongoing determination with respect to the State trust company? Should an ongoing determination only be required to be made if client crypto assets are maintained at the State trust company custodian for the duration of the annual (or other applicable) period?

D. Decentralized Finance

The Commission's custody rules require an advisory client's funds and securities, and securities and similar investments in the accounts of regulated funds, to be maintained at a permitted custodian, and the proposed adviser self-custody rule would allow an adviser to have self-custody of client crypto assets. An adviser or a permitted custodian, however, may seek to deposit an advisory client's assets in a smart contract in connection with decentralized finance (''DeFi'') protocols and applications (collectively, ''DeFi activities''). DeFi activities may be useful for a variety of purposes integral to the functioning of a crypto asset, including for purposes of effectuating crypto asset transactions and earning value on crypto assets. For example, crypto assets may be deposited to a smart contract, which are self-executing software programs that can define how and when crypto assets may be purchased, sold, and transferred, as well as automate dividend and interest payments or other distributions.[364] Smart contracts can be used to effectuate staking arrangements that allow owners of crypto assets to earn rewards (*e.g.,* newly minted crypto assets or a percentage of transaction fees) if they commit or ''stake'' their crypto assets to the relevant network for a period of time.[365]

Participating in DeFi protocols also poses certain risks.[366] This includes the

[363] *See* Comment Letter to the Crypto Task Force from Anchorage Digital (Apr. 2025). *See also* GBBC Comment Letter; *see also* Comment Letter to the Crypto Task Force from Daniel Bruno Corvelo Costa (Jan. 12, 2026).

[364] *See* Statement of Commissioner Hester Peirce, *Getting Smart—Tokenization and the Creation of Networks for Smart Assets: Opening Remarks for Tokenization Roundtable* (May 12, 2025), *available at https://www.sec.gov/newsroom/speeches-statements/peirce-statement-rfi-022125* (describing smart contracts and their use in the context of tokenized securities including in DeFi applications).

[365] *See* Protocol Staking Statement *supra* footnote 27 (explaining ''protocol staking,'' or staking on networks that use proof-of-stake (''PoS'') as a consensus mechanism (''PoS Networks''), and how node operators in PoS Networks must stake the network's crypto asset to be selected programmatically by the network's underlying software protocol, as a ''validator,'' to validate new blocks of data to, and update the state of, the network); Liquid Staking Statement *supra* footnote 27 (explaining a specific type of protocol staking known as ''liquid staking'' whereby owners of crypto assets (''depositors'') deposit their crypto assets with a third-party protocol staking service provider (''liquid staking provider''), who then holds the deposited crypto assets, either in a smart contract or a cryptographic ''wallet'' that the liquid staking provider controls, and stakes the deposited crypto assets on behalf of the depositor for an agreed-upon fee that reduces the amount of rewards that would otherwise accrue to the deposited crypto assets).

[366] *See, e.g.,* Agostino Capponi, Garud Iyengar, Jay Sethuraman, *Decentralized Finance: Protocols,*

risk that a malicious actor could exploit vulnerabilities in the code for a smart contract or the infrastructure of a crypto system to which the crypto assets are deposited, which could result in theft of crypto assets and significant harm to investors with no meaningful recourse to recover those assets. Hacks of DeFi protocols have been on the rise and have resulted in substantial losses of crypto assets.[367] Among other risks, a third party associated with the smart contract might be able to control the deposited crypto assets—and thus to steal them—due to administrative privileges that can be used to change the code governing the smart contract's operation or to otherwise effect unauthorized transactions in the deposited crypto assets.

A regulated fund or adviser participating in DeFi activities must do so in compliance with the custody rules, which require that a regulated fund's assets and advisory client assets over which an adviser has custody be maintained by a permitted custodian, subject to certain exceptions. An adviser maintaining an advisory client's crypto assets in self-custody under the proposed adviser self-custody rule—or any other permitted custodian maintaining a regulated fund's or advisory client's assets under the custody rules—therefore would only deposit a regulated fund or advisory client's crypto assets in a smart contract in connection with DeFi activities if the asset continues to be maintained by the adviser subject to the proposed adviser self-custody rule or other permitted custodian or an exception to the requirement to maintain the crypto assets with a permitted custodian is available.

Commenters writing to the Crypto Task Force offered views on the compatibility of DeFi arrangements with regulated funds' and advisers' obligations under the custody rules. One commenter raised concern that depositing advisory client assets into a staking contract, liquid staking protocol, or DeFi smart contract could be viewed as violating the Advisers Act custody rule because the crypto assets in those arrangements are no longer held in the adviser's or the qualified custodian's wallet when they are ''locked'' in a third-party smart contract.[368] The commenter urged that the custody rules not prohibit these activities, as long as, for example, advisers are able to maintain and demonstrate effective control over the crypto assets.[369] Several commenters stated that qualities generally inherent in DeFi activities can provide important protections, such as the decentralized, automated, immutable and self-executable nature of DeFi activities where no one party in the network is able to unilaterally and impermissibly wrest possession and control of crypto assets.[370]

To inform whether Commission guidance or modifications to the custody rules would be necessary or appropriate to address DeFi activities, we request comment on the application of the custody rules to regulated funds and advisers' participation in DeFi activities. Specifically, we request comment on the circumstances in which crypto assets deployed in DeFi activities would continue to be maintained by the adviser in self-custody or a permitted custodian under the applicable custody rules, and whether we should permit (and if so, under what conditions) DeFi activities that result in the crypto assets not being maintained at a permitted custodian or the adviser holding the crypto assets in self-custody. Additionally, we request comment on whether custody rules should permit certain DeFi arrangements with certain protections, for example, where the owner of the crypto asset deposited in a smart contract receives a claim or receipt token that entitles the owner of the crypto asset to the return of the deposited crypto asset. We also request comment on how existing Commission guidance and/or modifications to existing custody rules can address crypto asset lending or other DeFi protocols. Additionally, we request comment on how we can best address crypto asset lending or other DeFi protocols, or whether these arrangements should be considered by our staff or via the exemptive application process on a case-by-case basis. Finally, we request comment on the steps advisers currently take to address custodial risks associated with DeFi activities including how advisers analyze vulnerabilities and risks associated with smart contracts and what they consider in their due diligence on a smart contract:

171. In what circumstances can crypto assets be deployed in DeFi activities (*e.g.,* crypto assets deposited into a smart contract for purposes of staking) while still being maintained by the adviser in self-custody or by a permitted custodian under the applicable custody rules? For example, Commission staff has addressed certain protocol staking arrangements, stating that when a crypto asset owner engages in self (or solo) staking, or engages in self-custodial staking directly with a third party, the crypto asset owner maintains ownership and control of its crypto asset and cryptographic private keys at all times.[371] Commission staff also stated that, in so-called ''custodial'' staking, the deposited crypto assets remain in the control of the custodian and the crypto asset owner is intended to retain ownership of the crypto assets held by the custodian. In these protocol staking arrangements, as described in more detail in the Protocol Staking Statement, should staked crypto assets be viewed as being maintained by the adviser holding the asset in self-custody or a permitted custodian engaged in custodial staking, because control and ownership of the staked crypto asset do not change? Is it sufficiently clear how regulated funds and advisers would apply this analysis to staking arrangements? What guidance, if any, should we provide on these or other staking arrangements?

172. In other DeFi contexts in addition to protocol staking, when analyzing whether a crypto asset deposited in a smart contract continues to be maintained by a permitted custodian or adviser holding the asset in self-custody, should the analysis turn on whether there has been a change in ownership and control, and if so, how should regulated funds and advisers make this assessment? Would it be

Risks, and Governance, 5 Foundations and Trends in Privacy and Security, 3 (Sept. 2023), *available at https://www.emerald.com/ftsec/article-abstract/5/3/144/1324608/Decentralized-Finance-Protocols-Risks-and.*

[367] *See* YahooFinance, April 2026 Becomes Worst Month for Crypto Hacks Since February 2025 (Apr. 20, 2026), *available at https://finance.yahoo.com/markets/crypto/articles/april-2026-becomes-worst-month-041530077.html* (reporting a roughly 68% year-over-year rise of DeFi hack incidents); The Block, DeFi Exploits, *available at https://www.theblock.co/data/decentralized-finance/exploits* (last visited July 21, 2026) (data tracking, among other things, amount of funds stolen by DeFi attackers and large DeFi exploits).

[368] *See* Comment Letter to Crypto Task Force of Sarah Helena Brennan and Jay Stolkin (Dec. 19, 2025).

[369] *See id.* (suggesting a ''reasonableness-based standard'' under the Advisers Act custody rule where an adviser would be deemed to have maintained custody of the crypto asset if it ''maintains verifiable authority to initiate, monitor, and redeem such positions, and where the transaction is executed under disclosed policies and risk parameters'').

[370] *See, e.g.,* Comment Letter to Crypto Task Force of INATBA (May 30, 2025) (stating that true DeFi protocols, when activated, are meant to reduce legal risks because they are meant to be ''automated, self-executable financial operations due to their transparency, automation and immutability''); Comment Letter to Crypto Task Force of Phantom Technologies (Apr. 17, 2025) (explaining that the ''fully transparent, auditable, and immutable nature of DeFi protocols mitigates the risks customary in the traditional centralized intermediary model'' that justify broker registration requirements under the Exchange Act).

[371] *See* Protocol Staking Statement, *supra* footnote 27.

reasonable to conclude that ownership and control are maintained if the crypto network makes it possible to reverse or correct unauthorized transfers of the deposited crypto asset? Alternatively, should the analysis turn on the extent of the associated protocol's decentralization, on the basis that a more decentralized protocol would reduce the likelihood that a single or small group of actors could abuse administrative privileges associated with a smart contract to come into control of crypto assets deposited in the smart contract? How should advisers and regulated funds analyze decentralization in this context? Is it feasible for advisers and regulated funds reliably to conclude whether a protocol is sufficiently decentralized to reduce the risk of the abuse of any administrative privileges in the smart contract? Should the analysis more generally turn on the adviser's or a regulated fund's assessment of whether and the extent to which a third party would have control of the crypto assets (that is, not be focused on or limited to analysis of decentralization)? Where an adviser or a regulated fund concludes that a smart contract as currently constituted would not involve a change in ownership and control of the deposited crypto assets, how should the adviser or a regulated fund consider the associated governance process, the possibility of any upgrades to the smart contract's code introducing vulnerabilities to smart contract exploits, and any bonding periods or other mechanism during which deposited crypto assets cannot be withdrawn? How do advisers, regulated funds, and others analyze all of these issues currently?

173. If depositing a crypto asset in a smart contract resulted in that crypto asset no longer being maintained by a permitted custodian or the adviser holding the crypto asset in self-custody, it would not be permitted because, in that case, an advisory client's or regulated fund's crypto assets would not be held by a permitted custodian. Should we permit these activities subject to conditions to address the related risks? For example, should an adviser be permitted to deposit a client's crypto assets in such a smart contract only where clients will be protected against the possibility of their crypto assets being lost or stolen due to insurance arrangements; the adviser's commitment to indemnify the client against lost assets; collateral posted to the adviser; or other arrangements put in place by the adviser or the associated DeFi protocol?

174. How should the analysis apply when the owner of a crypto asset deposited in the smart contract receives a claim or receipt token that entitles the owner of the crypto asset to the return of the deposited crypto asset? Should the custody rules permit these arrangements if the (i) claim or receipt token, rather than the deposited crypto asset, is held in a wallet exclusively controlled by the permitted custodian or adviser holding the asset in self-custody and (ii) there are no or limited restrictions on the ability to use the claim or receipt token to recover the deposited crypto asset and any restrictions that do exist are enforced by the smart contract's code and not subject to the discretion of any person or group of persons? If so, what types of restrictions on the recoverability of the deposited crypto asset would be appropriate? For example, should the smart contract's mechanisms include liquidity arrangements (for example, reserve of liquid crypto assets that allow for timely withdrawals) that mitigate the risk of the adviser being unable to withdraw the client's crypto assets without significant delays? What liquidity and insurance arrangements would help to mitigate the risk of a client being unable to recover its crypto assets from the smart contract? How do market participants currently analyze receipt or claims tokens in these circumstances? How, if at all, would the analysis differ for other kinds of crypto assets received in connection with DeFi activities, like vault tokens that entitle the holder to a share of assets held in a smart contract as opposed to the specific asset the holder deposited?

175. Regulated funds currently engage in securities lending, which implicates the Investment Company Act custody rules, consistent with staff no-action letters.[372] Are these current practices an effective way to address lending or other DeFi protocols? What guidance would be needed on how these current practices could be conducted involving crypto assets or using DeFi protocols?

176. If appropriate conditions when an advisory client's or regulated fund's crypto assets are no longer being maintained by a permitted custodian or the adviser holding the asset in self-custody would depend on the associated DeFi protocol, is it possible to address the range of associated protocols by Commission guidance or modifications to the custody rules, or should these arrangements be considered by our staff or via the exemptive application process on a case-by-case basis?

177. What steps do advisers currently take to address custodial risks associated with DeFi activities? Absent arrangements in place to mitigate the loss of client crypto assets deployed in DeFi activities, if an adviser deposits a client's crypto assets in a smart contract that results in the loss of those crypto assets because, for example, a third party abuses the administrative privileges associated with that smart contract or a third party exploits a vulnerability in the smart contract's code, what recourse should the client have against the adviser?

178. Although smart contracts are intended to be transparent, automated and immutable, their security can be compromised by a bug in the code or a malicious actor manipulating or exploiting the contract's programming.[373] Moreover, some smart contracts have designated addresses with administrative privileges to perform critical operations such as upgrading and modifying the contract's logic and parameters and to pause the contract's operations.[374] These privileges could be abused to further unauthorized actions, and faulty access controls could expose a smart contract to manipulation and hacks.[375] Vulnerabilities in smart contracts have resulted in significant financial losses. Should the presence of these risks preclude depositing the crypto assets of a regulated fund or advisory clients in smart contracts even if control and

[372] *See* U.S. Securities and Exchange Commission, Division of Investment Management, Staff Guidance on Securities Lending by U.S. Open-End and Closed-End Investment Companies (Feb. 27, 2014), *available at https://www.sec.gov/investment/divisionsinvestmentsecurities-lending-open-closed-end-investment-companieshtm* (providing guidance on certain no-action letters that funds consider when engaging in securities lending and summarizing areas those letters address).

[373] *See* Olympix, Understanding Smart Contract Exploits: How and Why They Happen, *available at https://olympix.security/blog/understanding-smart-contract-exploits-how-and-why-they-happen* (last visited Jul. 22, 2026) (stating that a ''smart contract exploit occurs when a flaw in a contract's code allows attackers to manipulate it for their own gain'' and describing common smart contract exploits).

[374] *See* Chain Score Labs, What is An Admin Role? *available at https://chainscorelabs.com/glossary/smart-contract-security-and-patterns/access-control-patterns/admin-role* (last visited Jul. 22, 2026) (describing an ''admin role'' as a ''designated address or set of addresses within a smart contract that holds special privileges to perform administrative functions, such as upgrading contract logic, pausing operations, or modifying critical parameters'').

[375] *See* Blockchain Council, Smart Contract Security Guide: Principles, Tools, and Best Practices (Jul. 18, 2026), *available at https://www.blockchain-council.org/smart-contracts/smart-contract-security-guide/* (stating that ''DeFi exploit reports from firms that track on-chain losses show recurring damage in the hundreds of millions to billions of dollars,'' and that the ''most damaging failures'' come from, among other things, ''weak access control'').

ownership are maintained? How do advisers currently analyze vulnerabilities and risks associated with DeFi activities that may implicate the Commission's custody rules? To the extent advisers deposit client crypto assets in smart contracts, what do advisers consider in conducting due diligence on the smart contract?

179. Hacks of DeFi protocols have been on the rise, resulting in substantial losses of crypto assets.[376] What changes, if any, to the Commission's custody rules should the Commission consider to address and mitigate the custodial risks associated with DeFi protocols?

180. Are there circumstances where a smart contract should be treated like a wallet, such that an adviser holding a client's assets in self-custody pursuant to the proposed adviser self-custody rule should be permitted to maintain the crypto assets in a smart contract, or use a smart contract in connection with the execution of the client's strategy, rather than using more conventional wallet technology to initiate and sign each transaction? What functionality should such a smart contract have and what steps should the adviser be required to take to ensure the smart contract does not have functionality that would allow any other person access to the deposited crypto assets?

E. Crypto Asset Trading

The Commission explored and rejected the possibility of proposing a new, stand-alone rule to permit advisers and regulated funds to maintain assets on trading platforms that are not permitted custodians (sometimes referred to as the practice of custodying assets ''on exchange'') under certain conditions. Based on our understanding of current practice, and taking into account outreach with market participants, we do not have evidence indicating there is need for such a rule at this time. Expanding the scope of permitted custodians to trading platforms—which can take a variety of forms and operate in jurisdictions around the world—could potentially increase the risk of loss, theft, misuse, or misappropriation unless such a rule included conditions designed to match the purposes of using such trading platforms as custodians with their capabilities and risks. Without evidence of any need for such a rule, we are unable to craft and propose an appropriate scope, circumstances, or conditions for any such rule.

In the course of developing this proposal, Commission staff met with crypto asset market participants to determine the extent to which the Commission's regulations should be modified to accommodate trading on platforms that do not meet the existing criteria for permitted custodians for advisers or funds. More specifically, Commission staff explored whether the trading platforms in question were—or could readily become—permitted custodians. Commission staff also examined whether crypto assets maintained by custodians need to be temporarily transferred out of custody to trade or exercise crypto-associated rights. That is, staff's outreach and research aimed to determine whether crypto asset trading generally necessitates prefunding trades in way that requires assets to leave the control of permitted custodians and be transferred to third parties or protocols that do not meet the requirements of the current and proposed custody rules.

Commission staff further sought to ascertain if certain crypto asset investment strategies require that some amount of crypto assets be maintained at trading platforms on an ongoing basis. Additionally, Commission staff examined if the custody rules present obstacles to a regulated fund's or adviser's ability to trade crypto assets or pursue particular investment strategies. In particular, staff communicated with market participants to determine if, for advisers, the limitations of the custody rules could conflict with advisers' fiduciary obligations to serve their clients' best interests.[377] These determinations were important to whether the Commission needed to develop a new, separate trading platform custody rule—or amend existing custody rules.

Outreach by Commission staff has generally shown that it is possible for advisers and funds to structure crypto asset trades without the need to maintain funds or prefund trades on platforms in ways that would violate the custody rules. For example, several crypto asset market participants indicated that it would be a risky practice (one they would not use) to keep assets on a trading platform in hot wallets, or to use similar practices to facilitate trading by leaving crypto assets on a trading platform. These participants suggested that these practices could increase the risk of loss, theft, misuse, or misappropriation. Further, one trading platform told Commission staff that its approach is generally to ensure that the majority of crypto assets are kept in cold storage with broker-dealers—and thus not held on the trading platform itself. Rather, the platform would perform a bookkeeping function after trade completion by documenting when assets changed ownership among the investor accounts with broker-dealers. Likewise, representatives of a crypto asset custodian stated that their firm keeps crypto assets in cold storage during trading, with assets moving out of cold storage later when the trades are settled. In short, all of these market participants described to Commission staff practices consistent with the existing custody rules (and which also would be consistent with the proposed rules).

In addition, Commission staff heard in outreach that some exchanges with affiliated custodians permit trading out of an omnibus wallet held at the affiliated custodian to eliminate the need to move assets in and out of custody and that market practices are generally moving in this direction. Advisers can trade client assets via smart contracts or other non-custodial trading mechanisms and thus avoid potential custodial issues that could arise from the need to prefund trades. Further, in circumstances where trades must be prefunded, some trading platforms have arranged for the assets needed for trading to be placed with a separate counterparty that is a permitted custodian under existing rules, such as a broker-dealer or futures commission merchant, which may help to address custody rule problems. Overall, staff outreach appears to indicate that industry practices are developing in ways that either limit the need to move advisory client or regulated fund crypto assets from the custody of a permitted custodian for trading or that allow the assets that must be moved for trading to be transferred to a permitted custodian in compliance with the custody rules.

For the reasons described above, the Commission is not proposing a separate, crypto asset trading platform custody rule. Notwithstanding this fact, the Commission welcomes comment on all aspects of the issue, including the following:

181. Do commenters agree that a separate, stand-alone trading platform custody rule for advisers and funds is unnecessary? How do factors such as current market practices, the current custody rules, and the proposed changes to the custody rules affect this assessment?

182. Should the Commission permit an investment adviser to place a client's

[376] *See supra* footnote 367 for reporting on DeFi hacks and exploits.

[377] For example, staff explored if there might be circumstances where an adviser could determine that it is in the client's best interest to pursue a particular crypto asset investment strategy but be prohibited from doing so by the Commission's custody rules.

crypto assets, including the crypto assets of a regulated fund, at a crypto trading platform for the purpose of trading, under certain conditions? If so, what conditions should the Commission consider? For example, would any or all of the following conditions help address risks associated with this practice?: (A) The crypto asset trading platform is subject to the jurisdiction of a Federal or State regulatory authority with the power to examine or audit the platform; (B) The investment adviser reasonably determines that placing and maintaining crypto assets at the crypto trading platform presents minimal risk of loss, theft, or misuse of those assets, and the adviser complies with the requirements of the applicable provisions of the proposed adviser self-custody rule; (C) In the case of a client that is a regulated fund, the fund's board determines that it is reasonable to rely on the fund's adviser to evaluate the crypto trading platform and otherwise perform the responsibilities required under the applicable provisions of the proposed adviser self-custody rule; (D) The assets are not maintained on the crypto asset trading platform for periods longer than 24 hours; (E) The adviser receives and reviews the crypto trading platform's policies and procedures regarding the safeguarding of crypto assets before placing client assets on a trading platform; and (F) The adviser regularly obtains and reviews internal control reports of crypto asset trading platforms and provides copies of those reports to clients. Are there other appropriate conditions for allowing advisers to maintain a client's crypto assets at a crypto trading platform for the purpose of trading?

F. Investment Company Custody Rule Modernization

We are proposing to amend the Investment Company Act custody rules to modernize the rules and correct certain errors or inconsistencies. These amendments would: (1) add BDCs to the Investment Company Act custody rules;[378] (2) remove the condition in current rule 17f–1 and make it permissible for regulated funds to custody their securities or similar investments with all broker-dealers registered under section 15(b)(1) of the Exchange Act where the broker-dealer's custody of the securities or other investments is subject to the requirements of rule 15c3–3 under the Exchange Act or such other rule that the Commission determines provides similar customer protections;[379] (3) rescind rule 17f–3; (4) update the address to access the Uniform Commercial Code in rule 17f–4;[380] and (5) clarify the definition of a ''Eligible Securities Depository'' in rule 17f–7.[381] We are also requesting comment on updates to self-custody by regulated funds in rule 17f–2 and the other Investment Company Act custody rules.

1. Business Development Companies

The Commission is proposing to add references to BDCs to certain Investment Company Act rules. Various provisions of the Investment Company Act, including section 17(f) governing custody of securities are incorporated by statute to apply to BDCs to the same extent as if the BDC was a registered closed-end investment company.[382] Under section 17(f), BDCs must place and maintain their securities and similar investments in the custody of a permitted custodian.[383] None of the Investment Company Act custody rules mention BDCs, however, and in many cases were adopted before Congress adopted the amendments to the Investment Company Act that created BDCs. We understand that industry practice has been to interpret the Investment Company Act's application of section 17(f) to BDCs to allow BDCs to rely on the Investment Company Act custody rules to the same extent as registered closed-end investment companies. Consistent with this industry practice, although BDCs may be less likely to rely on certain of these rules due to the nature of their investments, we see no reason to restrict the Investment Company Act custody rules to permit a registered closed-end fund, but not a BDC, to rely on them. The rules' conditions do not turn on the distinction of whether a fund is registered under the Investment Company Act or regulated under the Act in the case of a BDC. We therefore are proposing to add appropriate references to BDCs in the Investment Company Act custody rules to make clear that BDCs may rely on them.[384]

We request comment on the following:

183. Do BDCs currently use the Investment Company Act custody rules to comply with their custodial obligations? If not, how do they comply with section 17(f)?

184. Are there any Investment Company Act custody rules that should not be available to BDCs? Are there any situations, or any specific Investment Company Act custody rules, for which BDCs would operate differently or otherwise not be able to comply fully to the extent that regulated funds would?

2. Broker-Dealer Custody

We are proposing to amend rule 17f–1 to update and modernize the circumstances in which regulated funds may use broker-dealers as custodians. As discussed further below, due to the comprehensive modern broker-dealer regulatory regime, including the financial responsibility rules such as the customer protection rule, which the Commission adopted after the adoption of rule 17f–1 in 1940, the risks to clients that use broker-dealers for custodial services are very different than in 1940. The proposal would amend rule 17f–1 to permit regulated funds to custody securities and similar investments at a broker or dealer registered under section 15(b)(1) of the Exchange Act where the broker-dealer's custody of the securities or similar investments is subject to the requirements of rule 15c3–3 under the Exchange Act or such other rule that the Commission determines provides similar customer protections without requiring specific enumerated conditions.[385] For the reasons discussed below, permitting a fund to place and maintain its securities or similar investments with a registered broker-dealer, and not just a member of securities exchange, is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act.[386] If the Commission were to develop and adopt a rule that provides similar customer protections to rule 15c3–3 under the Exchange Act, proposed rule 17f–1 would permit regulated funds to custody its securities or similar investments with a broker-dealer subject to the requirements of that protective rule without the need to amend rule 17f–1.

Current Rule 17f–1

Rule 17f–1 permits regulated funds to custody their securities or similar investments with a broker-dealer that is a member of a national securities exchange, subject to certain

[378] Proposed amendments to rules 17f–1, 17f–2, 17f–4, 17f–5, 17f–6.

[379] 15 U.S.C. 78a *et seq.*

[380] Proposed rule 17f–4(c)(1).

[381] Proposed rule 17f–7(b)(1).

[382] 15 U.S.C. 80a–58.

[383] 15 U.S.C. 80a–17(f).

[384] *See* proposed amendments to rules 17f–1, 17f–2, 17f–4, 17f–5 and 17f–6. Amendments to rule 17f–7 are not necessary as that rule states that various defined terms, including ''fund'' have the same meaning as in rule 17f–5.

[385] Proposed rule 17f–1.

[386] *See* 15 U.S.C. 80a–6(c).

conditions.[387] This rule was adopted in 1940 to correspond to the provision in section 17(f) of the Investment Company Act permitting funds to custody their securities and similar investments with a broker-dealer that is a member of a national securities exchange and has not been substantively amended since.[388] The current rule imposes a number of protective conditions on the custody of a regulated fund's securities and similar investments with a broker-dealer that is a member of a national securities exchange and requires that these conditions be in a written contract with the custodian that is ratified by a majority of the board of directors of the investment company. The conditions this contract must require are:

- Regulated fund securities and similar investments must be physically segregated from the securities and investments of any other person and marked to clearly identify them as the property of the regulated fund (the ''segregation condition'').
- The broker-dealer shall have no power or authority to assign, hypothecate, pledge or otherwise to dispose of any regulated fund securities and investments, except pursuant to the direction of the regulated fund and only for the account of the regulated fund (the ''rehypothecation condition'').
- Regulated fund securities and investments shall be subject to no lien or charge of any kind in favor of the custodian or any persons claiming through the custodian (the ''lien condition'').
- Regulated fund securities and investments shall be verified by actual examination at the end of each annual and semi-annual fiscal period by an independent public accountant, and shall be examined by such accountant at least one other time, chosen by the accountant, during each fiscal year (the ''examination condition'').[389]
- Regulated fund securities and investments shall, at all times, be subject to inspection by the Commission through its employees or agents (the ''inspection condition'').
- The segregation condition, rehypothecation condition and lien condition shall not apply to securities and investments bought for or sold to the regulated fund by the broken-dealer custodian until the securities and similar investments have been reduced to the physical possession of the custodian and have been paid for by the regulated fund provided that the custodian take possession of such securities and similar investments at the earliest practicable time (the ''possession condition'').

National Securities Exchange Membership

When Congress passed section 17(f) of the Investment Company Act it defined the permissible custodians under that section to include members of a national securities exchange as defined in the Exchange Act.[390] At the time, members of national securities exchanges and broker-dealers making or creating markets for the purchase and sale of securities other than on a national securities exchange (over-the-counter markets or ''OTC markets'') served different functions and were subject different rules and enforcement mechanisms.

Under the Exchange Act, as adopted in 1934, regulation of the OTC market was the Commission's responsibility as there was no self-regulatory organization (''SRO'') for the OTC market.[391] At that time, section 15 of the Exchange Act provided authority for the Commission to prescribe rules for broker-dealers that make or create a market otherwise than on a national securities exchange (called over-the-counter markets (''OTC markets'')), including rules that could provide for such broker-dealers to register with the Commission.[392]

However, under the Exchange Act as adopted in 1934, the direct regulation of broker-dealer activities on national securities exchanges was to be conducted by the exchanges themselves. Brokers or dealers that solely effected securities transactions as members of a national securities exchange were subject to the rules and enforcement mechanisms established by the national securities exchanges.[393] The national securities exchanges provided significantly more oversight for exchange members, both because of the exchanges' experience, and because unlike those that effect transactions in OTC markets, members needed to maintain good standing with an exchange to conduct business through it.[394] The national securities exchanges were themselves subject to Commission registration and oversight, and had by this time existed for decades.[395] Membership with the exchange and adherence to its rules was mandatory for exchange members to transact business on the exchange.[396] The Commission could directly take action such as withdrawing the registration of an exchange, suspending trading on an exchange, or directly suspending any member of a national securities exchange.[397]

The Maloney Act of 1938 provided for the creation of national securities associations of broker-dealers, which are self- regulatory organizations (''SROs'') to govern the OTC markets, and the National Association of Securities Dealers (''NASD'') was registered as an SRO in 1939.[398] At that time,

[387] Rule 17f–1.

[388] Custody Of Securities with Members of National Securities Exchanges, 5 FR 4317 (Oct. 31, 1940) (''Rule 17f–1 Release''). *See also* section 17(f)(1)(B) of the Investment Company Act. Rule 17f–1 was amended in 1989 to require the filing of a Form N–17f–1 as a cover page for examination certificates filed by accountants under the rule. Forms for Filing by Accountants, Investment Company Act Release No. 17085 (Aug. 4, 1989) [54 FR 32048 (Aug. 4, 1989)].

[389] A certification of the accountant stating the examination has been made and describing the nature and extent of the examination of must be filed with the Commission on Form N–17f–1. *See* 17 CFR 274.219.

[390] Public Law 76–768 (1940), Sec. 17(f). The Commission adopted rule 17f–1 less than two months after the Investment Company Act was enacted and used language identical to the statute to define members of a national securities exchange as the entities that may serve as custodians under this rule. *See* Rule 17f–1 Release, *supra* footnote 388.

[391] Public Law 73–291, 48 Stat. 881, 895–96 (1934); The primary purpose of an SRO is to regulate its members. *See, e.g.,* S. Doc. No. 93–13 at 147 (1973) (describing the structure of the self-regulatory system in which SROs ''are delegated governmental power in order to enforce, at their own initiative, compliance by members of the industry with legal and ethical standards going beyond the basic requirements laid down in the Act.'').

[392] Public Law 73–291, 48 Stat. 881 (June 6, 1934); Public Law 74–621, 49 Stat. 1985 (June 29, 1936).

[393] Public Law 73–291, 48 Stat. 881 (June 6, 1934), Sec. 6(b) (''No registration [of an exchange] shall be granted or remain in force unless the rules of the exchange include provision for the expulsion, suspension, or disciplining of a member for conduct or proceeding inconsistent with just and equitable principles of trade.'').

[394] Public Law 73–291, 48 Stat. 881 (June 6, 1934), Sec. 5, 6(a), (d), 19(a)(3), (a)(4), (b). Registration with the Commission was not required for persons conducting business exclusively through an exchange until 1975. Public Law 94–29, 89 Stat. 97 (June 4, 1975).

[395] *See* Pecora Committee Final Report, S. Rep. No. 1455, 73d Cong. (1934), Ch. I, Sec. 11(a); History of the NYSE, *available at https://www.nyse.com/history-of-nyse* (Constitution adopted in 1817 provided ''detailed rules for the transaction of business and imposed fines to keep disorderly brokers in check.'').

[396] *See* SEC Special Study of Securities Markets, Ch. I–II, H.R. Doc. No 88–95, Pt. 1 (1963) (''[The] regulatory technique of the Exchange Act is reliance on supervised self-regulation. This involves control of exchange markets by requiring or permitting national securities exchanges to adopt rules governing their practices and procedures and the business conduct of their members, and in each case imposes the responsibility for enforcement of these rules on the exchanges themselves.'').

[397] Public Law 73–291, Sec. 19(a)(3). *See also* Public Law 73–291, Sec. 19(a)(1), (4).

[398] Public Law 75–719, 52 Stat. 1070 (June 25, 1938). *See also* National Association of Securities Dealers, Inc., 5 SEC 627 (1939).

membership in NASD was voluntary for those participating on OTC markets.[399]

In the decades since 1940, the registration and regulatory regime for broker-dealers has expanded considerably. Exchange Act section 15(a) generally requires brokers or dealers that effect securities transactions, or that induce or attempt to induce the purchase or sale of securities, to register with the Commission, absent an exception or exemption.[400] In addition, broker-dealers are required to become members of at least one SRO (*i.e.,* a national securities association, such as FINRA, or a national securities exchange).[401] Generally, all registered broker-dealers must become members of FINRA (which is the sole national securities association), unless they effect transactions in securities solely on an exchange of which they are a member.[402] In addition to the Commission's comprehensive rules governing all registered broker-dealers, the SROs, including FINRA, have rules that apply to their members and provide additional protections for customers of broker-dealers. In light of the changes in the regulatory landscape for registered broker-dealers since the adoption of rule 17f–1, we are proposing to amend rule 17f–1 to permit regulated funds to custody securities and similar investments at a broker or dealer registered under section 15(b)(1) of the Exchange Act (without requiring specific enumerated conditions) where the broker-dealer's custody of the securities or similar investments is subject to the requirements of rule 15c3–3 under the Exchange Act.

Broker-Dealer Financial Responsibility Rules

The Commission's current rules governing broker-dealer financial responsibility were largely adopted in response to Congressional authorizations that were not granted to the Commission until the 1970s.[403] In the decades since, the Commission has considerably expanded the rules governing broker-dealer capital, margin, segregation, recordkeeping, reporting, notification, securities count and hypothecation requirements, which are part of the broker-dealer financial responsibility rules.[404] The broker-dealer financial responsibility rules establish a comprehensive regulatory program designed to, among other things, protect customer funds and securities, ensure that broker-dealers can promptly satisfy customer claims, and maintain sufficient liquid resources to promote the prudent operation of broker-dealers.[405] In addition, generally, all registered broker-dealers that deal with the public must become members of FINRA, a registered national securities association.[406] These broker-dealers include broker-dealers that hold customer funds and securities (''carrying broker-dealers''). FINRA members must comply with FINRA rules, and submit to compliance examinations by FINRA in addition to those examinations conducted by the Commission or another SRO.[407]

The broker-dealer financial responsibility rules ''have existed for many years and have facilitated the prudent operation of broker-dealers.'' [408] For example, the Commission adopted rule 15c3–1, the uniform net capital rule that applies to all broker-dealers, in 1975.[409] Rule 15c3–1 imposes a net liquid assets test that is designed to promote liquidity within broker-dealers.[410] Rule 15c3–1 permits a broker-dealer to engage in activities that are part of conducting a securities business (*e.g.,* taking securities positions) but in a manner that leaves the firm holding at all times more than one dollar of highly liquid assets for each dollar of unsubordinated liabilities (*e.g.,* money owed to customers, counterparties, and creditors).[411] The objective of rule 15c3–1 is to require a broker-dealer to maintain sufficient liquid assets to meet all liabilities, including obligations to customers, counterparties, and other creditors and to have adequate additional resources to wind-down its business in an orderly manner without the need for a formal proceeding if the firm fails financially.[412] Rule 15c3–1's emphasis on liquidity helps to ensure that the liquidation of a firm will not result in excessive delay in repayment of the firm's obligations to customers, broker-dealers, and other creditors, and therefore assures the continued liquidity of the securities markets.[413]

In addition, the Commission adopted rule 15c3–3—the customer protection rule—in 1972 under section 15(c)(3)(A) of the Exchange Act.[414] Rule 15c3–3 is designed to give specific protection to customer funds and securities, in effect forbidding broker-dealers from using customer assets to finance any part of their businesses unrelated to servicing securities customers.[415] To meet this objective, rule 15c3–3 requires a carrying broker-dealer to take two primary steps to safeguard these assets.[416] The steps are designed to protect customers by segregating their securities and cash from the carrying broker-dealer's proprietary business activities.[417] If the carrying broker-

[399] *See* National Association of Securities Dealers, Inc., *available at https://www.finra.org/sites/default/files/Corporate/p009762.pdf.*

[400] The Exchange Act generally defines a ''broker'' as ''any person engaged in the business of effecting transactions in securities for the account of others,'' and a ''dealer'' as ''any person engaged in the business of buying and selling securities . . . for such person's own account through a broker or otherwise.'' Exchange Act section (3)(a)(4)(A) and section (3)(a)(5)(A).

[401] Exchange Act section 15(b)(8) and Exchange Act rule 15b9–1.

[402] *Id.*

[403] *See* Public Law 91–598, 84 Stat. 1635 (Dec. 30, 1970); Public Law 94–29, 89 Stat. 97 (June 4, 1975).

[404] *See* 17 CFR 240.3a40–1. See also Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers; Proposed Rule, Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25194, 25285 (May 2, 2014) (discussing financial responsibility rules).

[405] *See* Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers, Exchange Act Release No. 68071 (Oct. 18, 2012) [77 FR 70214 (Nov. 23, 2012)] (''Capital, Margin and Segregation Release'').

[406] *See* Exchange Act section 15(b)(8) and Exchange Act rule 15b9–1. FINRA is the sole national securities association registered with the SEC under section 15A of the Exchange Act. *See* 15 U.S.C. 78o(b)(1)(B) (This section provides that a broker-dealer's registration with the Commission will not be effective until such broker or dealer has become a member of a registered securities association (*i.e.,* FINRA), or a member of a national securities exchange if the broker or dealer effects transactions solely on the exchange.).

[407] *See* rule 15b9–1 under the Exchange Act. *See also* Exemption for Certain Exchange Members, Release No. 34–98202 (Aug. 23, 2023) [88 FR 61850 (Sept. 7, 2023)].

[408] *See* Capital, Margin and Segregation Release, *supra* footnote 405.

[409] *See* Adoption of Uniform Net Capital Rule and an Alternative Net Capital Requirement for Certain Brokers and Dealer, Exchange Act Release No. 11497 (June. 26, 1975) [40 FR 29795 (July 16, 1975)].

[410] *See* Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, Exchange Act Release No. 86175 (June 21, 2019) [84 FR 43872 (Aug. 22, 2019)].

[411] *See id.*

[412] *See id.*

[413] *See id.*

[414] 15 U.S.C. 78o(c)(3)(A). The amendments to section 15(c)(3) of the Exchange Act granting this rulemaking authority were adopted in section 7(d) of the Securities Investor Protection Act of 1970 (''SIPA''). Public Law 91–598, 7(d), Dec. 30, 1970, 84 Stat. 1563. Rule 15c3–3 was promulgated in the aftermath of the securities industry ''paper work crisis'' of 1967–1970. *See* Commission, *Study of Unsafe and Unsound Practices of Brokers and Dealers,* H.R. Doc. No. 231, 92d Cong., 1st Sess. 6 (1971).

[415] *See* Daily Computation of Customer and Broker-Dealer Reserve Requirements Under the Broker-Dealer Customer Protection Rule, Exchange Act Release No. 102022 (Dec. 20, 2024) [90 FR 2790 (Jan. 13, 2025)] (''Daily Computation Final Rule'').

[416] *See id.*

[417] *See id.*

dealer fails financially, the customer securities and cash should be readily available to be returned to the customers.[418] In addition, if the failed carrying broker-dealer is liquidated under SIPA, the customer securities and cash should be isolated and readily identifiable as customer property[419] and, consequently, available to be distributed to customers ahead of other creditors.[420] At a high level, in such a liquidation, SIPA would provide for the appointment of a trustee who is required to return customer name securities to customers of the debtor, distribute the fund of ''customer property'' ratably to customers, and obtain cash advances from the SIPC from the fund administered by SIPC (''SIPC Fund'') to satisfy remaining customer net equity claims, to the extent provided by SIPA.[421]

The first step required by rule 15c3–3 is that a carrying broker-dealer must maintain physical possession or control over customers' fully paid and excess margin securities.[422] The term ''fully paid securities'' means all securities carried for the account of a customer in a cash account as defined in Regulation T promulgated by the Federal Reserve Board (''Regulation T''),[423] as well as securities carried for the account of a customer in a margin account or any special account under Regulation T that have no loan value for margin purposes, and all margin equity securities in such accounts if they are fully paid: provided, however, that the term fully paid securities does not apply to any securities purchased in transactions for which the customer has not made full payment.[424] The term ''margin securities'' means those securities carried for the account of a customer in a margin account as defined in section 4 of Regulation T,[425] as well as securities carried in any other account (such accounts referred to as ''margin accounts'') other than the securities referred to in paragraph (a)(3) of rule 15c3–3 (*i.e.,* fully paid securities).[426] The term ''excess margin securities'' means those securities referred to in paragraph (a)(4) of rule 15c3–3 (*i.e.,* margin securities) carried for the account of a customer having a market value in excess of 140% of the total of the debit balances in the customer's account or accounts encompassed by paragraph (a)(4) of rule 15c3–3, which the broker-dealer identifies as not constituting margin securities.[427] Control means the carrying broker-dealer must hold these securities in one of several locations specified in rule 15c3–3 and free of liens or any other interest that could be exercised by a third-party to secure an obligation of the carrying broker-dealer.[428] Permissible locations include a clearing corporation and a ''bank,'' as defined in section 3(a)(6) of the Exchange Act. A carrying broker-dealer does not treat customer securities as its own assets. Rather, the carrying broker-dealer holds them in a custodial capacity, and the possession and control requirement is designed to ensure that the carrying broker-dealer treats them in a manner that allows for their prompt return.

The second step is that a carrying broker-dealer must maintain a reserve of funds or qualified securities in an account at a bank that is at least equal in value to the net cash owed to customers.[429] The account must be titled ''Special Reserve Bank Account for the Exclusive Benefit of Customers'' (''customer reserve bank account'').[430] The amount of net cash owed to customers is computed weekly or daily as of the close of the last business day of the week pursuant to a formula set forth in Exchange Act rule 15c3–3a (''customer reserve computation'').[431] Under the customer reserve computation, the carrying broker-dealer adds up customer credit items and then subtracts from that the amount of customer debit items.[432] The credit items include credit balances in customer accounts (*i.e.,* cash owed to customers) and funds obtained through the use of customer securities (*e.g.,* a loan from a bank collateralized with customer margin securities).[433] The debit items include money owed by customers (*e.g.,* from margin lending), securities borrowed by the carrying broker-dealer to effectuate customer short sales, and margin required and on deposit with certain clearing agencies as a consequence of customer securities transactions.[434] If credit items exceed debit items, the net amount must be on deposit in the customer reserve bank account in the form of cash and/or qualified securities.[435] The customer reserve computation permits the carrying broker-dealer to offset customer credit items only with customer debit items.[436] This means the carrying broker-dealer can use customer cash to facilitate customer transactions such as financing customer margin loans and borrowing securities to make deliveries of securities that customers have sold short.

The broker-dealer margin rules require securities customers to maintain a minimum level of equity in their securities accounts (*i.e.,* the customer's ownership interest in the account, computed by adding the current market value of long securities and the amount of any credit balance and subtracting the current market value of all short securities and the amount of any debit balance).[437] In other words, the cash and the market value of the customer's securities in the account must be sufficiently larger than the sum of the cash borrowed by the customer and market value of the securities sold short by the customer.[438] In addition to protecting the carrying broker-dealer from the consequences of a customer default, this equity serves to over-collateralize customers' obligations to the broker-dealer. This buffer protects the customers whose cash was used to facilitate the carrying broker-dealer's

[418] *See id.*

[419] *See* 15 U.S.C. *7lll(*4) (defining customer property for purposes of SIPA as cash and securities (except customer name securities delivered to the customer) at any time received, acquired, or held by or for the account of a debtor from or for the securities accounts of a customer, and the proceeds of any such property transferred by the debtor, including property unlawfully converted).

[420] *See* 15 U.S.C. 78aaa *et seq; See also* Covered Broker-Dealer Provisions Under Title II Of The Dodd-Frank Wall Street Reform And Consumer Protection Act, Release No. 89394 (July 24, 2020) [85 FR 53645 (Aug. 31, 2020)] (discussing broker-dealer liquidations under SIPA in more detail).

[421] *See* 15 U.S.C. 78fff–2(b), (c)(2); 15 U.S.C. 78fff–3(a).

[422] *See* 17 CFR 240.15c3–3(b).

[423] 12 CFR 220.1 *et seq.*

[424] 17 CFR 240.15c3–3(a)(3).

[425] 12 CFR 220.4.

[426] 17 CFR 240.15c3–3(a)(4).

[427] 17 CFR 240.15c3–3(a)(5).

[428] *See* 17 CFR 240.15c3–3(c).

[429] 17 CFR 240.15c3–3(e).

[430] *See* 17 CFR 240.15c3–3(e)(1). The purpose of giving the account this title is to alert the bank and creditors of the carrying broker-dealer that this reserve fund is to be used to meet the carrying broker-dealer's obligations to customers (and not the carrying broker-dealer's obligations to general creditors) in the event the carrying broker-dealer is liquidated in a formal proceeding.

[431] *See* 17 CFR 240.15c3–3a.

[432] *See id.*

[433] *See* 17 CFR 240.15c3–3a, Items 1–9.

[434] *See* 17 CFR 240.15c3–3a, Items 10–15.

[435] 17 CFR 240.15c3–3(e).

[436] *See* 17 CFR 240.15c3–3(e)(2); 17 CFR 240.15c3–3a.

[437] Broker-dealers are subject to margin requirements in Regulation T, in rules promulgated by the SROs they are members of (*see, e.g.,* FINRA rules 4210–4240 and Cboe Exchange, Inc. rules 10.1–10.12), and with respect to security futures, in rules jointly promulgated by the Commission and the Commodity Futures Trading Commission (''CFTC'') (17 CFR 242.400–406). Broker-dealers also may establish their own margin requirements, so long as they are as restrictive as regulatory margin requirements. These requirements are often referred to as ''house'' margin requirements. *See, e.g.,* FINRA rule 4210(d)(1) (requiring broker-dealers to establish procedures to formulate their own margin requirements). *See also* FINRA rule 4210(a)(5) (defining the term ''equity'' for purposes of FINRA margin requirements).

[438] *See* Financial Responsibility Rules for Broker-Dealers, Exchange Act Release No. 70072 (July 30, 2013) [78 FR 51824 (Aug. 21, 2013)].

financing of securities transactions of other customers (*i.e.,* margin loans and short sales).[439] For example, if the carrying broker-dealer fails, the customer debits—because they generally are over-collateralized—should be attractive assets for another broker-dealer to purchase or, if not purchased by another broker-dealer, they should be able to be liquidated to a net positive equity.[440]

Broker-dealers are also subject to extensive recordkeeping, reporting, notification, and securities count requirements under the broker-dealer financial responsibility rules.[441] For example, Exchange Act rules 17a–3 and 17a–4 require broker-dealers to create, and preserve in an accessible manner, a comprehensive record of each securities transaction they effect and of their securities business in general.[442] The broker-dealer financial reporting requirements are codified in Exchange Act rule 17a–5, and contains two main elements: (1) a requirement that broker-dealers file periodic unaudited reports containing information about their financial and operational condition on a Financial and Operational Combined Uniform Single Report or ''FOCUS Report''; and (2) a requirement that broker-dealers annually file financial statements and certain reports and a report covering the financial statements and reports prepared by an independent public accountant registered with the PCAOB (if registration is required by the Sarbanes-Oxley Act of 2002) in accordance with PCAOB standards.

The reporting program established under Exchange Act rule 17a–5 is designed, among other things, to promote compliance with rules 15c3–1 and 15c3–3 and to assist the Commission, SROs, and state securities regulators in conducting effective examinations of broker-dealers.[443] As the Commission has stated, the reporting requirements, ''together with the Commission's inspection powers, [are] an integral element in the arsenal for protection of customers against the risks involved in leaving securities with their broker-dealer.'' [444] The broker-dealer reporting requirements promote transparency of the financial and operational condition of the broker-dealer to the Commission, the firm's designated examining authority (''DEA''), and, in the case of a portion of the annual reports, to the public. In the release adopting rule 17a–5, the Commission stated its intention to periodically review the reporting requirements ''in order to continue modifying and updating the financial and operational reporting systems to keep pace with the changing securities industry''.[445] Under Exchange Act rule 17a–11, broker-dealers that are experiencing financial or operational difficulties must provide notice to the Commission, the broker-dealer's DEA, and the CFTC if the broker-dealer is registered with the CFTC as a futures commission merchant, including when, among other things, their net capital falls below 120% of the minimum required amount or below the minimum required amount, or when the firm fails to make and keep current the books and records required by Commission rules.[446] Meanwhile, Exchange Act rule 17a–13 requires that, at least once in each calendar quarter, a broker-dealer must physically count, verify, and account for securities held in its physical possession or otherwise within its control or direction.[447]

Finally, Exchange Act rules 8c-1 and 15c2–1, commonly called the ''Hypothecation Rules,'' generally prohibit a broker-dealer from using its customers' securities as collateral to finance its own trading, speculating, or underwriting transactions.[448] More specifically, the rules state three main principles: first, that a broker-dealer is prohibited from commingling the securities of different customers as collateral for a loan without the consent of each customer; second, that a broker-dealer cannot commingle its customers' securities with its own under the same pledge; and third, that a broker-dealer can only pledge its customers' securities up to the value of monies owed to the broker-dealer by its customers.[449]

Proposed Changes to Rule 17f–1 Conditions

We are proposing to remove the conditions of the current rule 17f–1 in conjunction with permitting regulated funds to custody their securities or similar investments at a registered brokers-dealer that carries customer securities accounts, where custody of such assets by the broker-dealer is subject to the requirements of rule 15c3–3 or such other rule that the Commission determines provides similar customer protections. Under the proposed rules, the securities or similar investments of a regulated fund would receive the same level of protections as other customers of the broker-dealer, while eliminating antiquated and duplicative regulatory burdens.

For example, the current rule 17f–1 segregation condition is antiquated due to the requirement to physically segregate securities and similar investments, for example by placing them in ''separate containers,'' which is inconsistent with the uncertificated nature of most current assets.[450] The lien condition also is duplicative because, as discussed above, the ''possession or control'' requirement of rule 15c3–3 already requires a broker-dealer to hold fully-paid or excess margin securities free of liens.[451] Broker-dealers are also required to make and keep current (as of the end of each business day) ledger accounts itemizing separately each cash and margin account of every customer of the broker-dealer under rule 17a–3.[452]

[439] *See id.*

[440] *See id.* The attractiveness of the over-collateralized debits facilitates the bulk transfer of customer accounts from a failing or failed carrying broker-dealer to another broker-dealer. Regulation T, SRO margin rules, and a broker-dealer's house margin rules help to ensure that the customer maintains a minimum level of equity in their account, *i.e.,* that the debit is over-collateralized. *See id.* at 51827 note 23.

[441] *See e.g.* rules 17a–3, 17a–4, 17a–5, 17a–11, and 17a–13 under the Exchange Act. These rules were promulgated by the Commission pursuant to the authority in section 17(a) of the Exchange Act, which authorizes the Commission to prescribe broker-dealer recordkeeping and reporting rules. *See* 15 U.S.C. 78q(a).

[442] These rules impose minimum recordkeeping requirements that are based on standards a prudent broker-dealer should follow in the normal course of business. The requirements are an integral part of the investor protection function of the Commission, and other securities regulators, in that the preserved records are the primary means of evaluating compliance with applicable securities laws, including antifraud provisions and financial responsibility standards. *See* Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers, Exchange Act Release No. 71958 (Apr. 17, 2014) [79 FR 25194 (May 2, 2014)].

[443] *See id.*

[444] *See id.*

[445] *See id.*

[446] *See* 17 CFR 240.17a–5. Other notice requirements relating to the Commission's financial responsibility or reporting rules are contained in rules 15c3–1, 15c3–1d, 15c3–3, 17a–5, and 17a–12. *See* 17 CFR 240.17a–5(i).

[447] *See* Financial Responsibility Rules, Exchange Act Release No. 24553 (June 4, 1987) [52 FR 22295 (June 11, 1987)].

[448] *See* OTC Derivatives Dealers, Exchange Act Release No. 39454 (Dec. 17, 1997) [62 FR 67940 (Dec. 30, 1997)].

[449] *See id.*

[450] Rule 17f–1(b)(1).

[451] Rule 15c3–3(b) and (c). Paragraph (l) of rule 15c3–3 also states that nothing stated in this section (15c3–3) shall be construed as affecting the absolute right of a customer of a broker-dealer to receive in the course of normal business operations following demand made on the broker-dealer, the physical delivery of certificates for fully-paid securities to which the customer is entitled, and, margin securities upon full payment by such customer to the broker or dealer of the customer's indebtedness to the broker-dealer.

[452] Rule 17a–3(a)(3).

As discussed above, margin securities are those securities carried for a customer in a margin account, with market value equal to (or less than) 140% of the account's debit balance, which includes the customer margin loan balance. While carrying broker-dealers are permitted to use customer margin securities to, for example, obtain bank loans to finance the funds used to lend to customers to purchase securities, the customer protection rule generally requires broker-dealers to include a credit in the customer reserve formula for funds obtained through the use of these securities.

Removing the segregation condition in rule 17f–1 generally would not affect clients' ability to recover their securities and funds held at a broker-dealer for multiple reasons. First, the customer protection rule is designed to give specific protection to customer funds and securities, in effect forbidding broker-dealers from using customer assets to finance any part of their businesses unrelated to servicing securities customers.[453] Second, the customer protection rule works in conjunction with the net capital rule to ensure not only that the broker-dealer properly segregates customer assets from the firm's proprietary assets, but also that it maintains sufficient liquid assets to meet all liabilities to its creditors, including its obligations to customers. By requiring the broker-dealer to properly segregate customer assets and maintain sufficient liquid assets to meet all liabilities to its creditors, the rule is designed to ensure that the broker-dealer has adequate additional resources to wind-down its business in an orderly manner without the need for a formal proceeding under SIPA, helping to ensure that the liquidation of a firm will not result in excessive delay in repayment of the firm's obligations to customers. Third, SIPA affords certain protections against loss of customer securities and related customer funds resulting from a broker-dealer failure, including the right to share pro rata with other customers under SIPA (''SIPA customer'') in the customer property held by the carrying broker-dealer by way of a priority claim on the customer property compared to general unsecured creditors of the carrying broker-dealer.[454] If a customer has a margin loan with a broker-dealer, this amount would be deducted in calculating the customer's net equity in the SIPA liquidation. During SIPC's fifty-five year history (as of Dec. 31, 2025), cash and securities distributed for accounts of customers totaled approximately $143 billion. Of that amount, approximately $142 billion (99.3%) came from debtors' estates and $909 million came from the SIPC Fund.[455] SIPA protections also include the ability for a SIPA customer to generally receive an advance from the SIPC Fund of up to $500,000 (of which $250,000 can be used to cover cash claims), if the amount of customer property is insufficient to satisfy the customer's claim for securities and/or cash.[456]

Similarly, where the current rule 17f–1 rehypothecation condition forbids the broker-dealer from rehypothecating any client assets except pursuant to client directions,[457] the customer protection rule requires a broker-dealer to hold fully paid and excess margin securities in its possession or control (while explicitly allowing rehypothecation of margin securities up to the 140% threshold).[458] Further, while the customer protection rule may lower financing costs for broker-dealers by allowing them to rehypothecate margin securities, it requires broker-dealers to include a credit in the customer reserve formula for funds obtained through the use of customer securities (which may increase a broker-dealer's deposit requirement into its special reserve bank account).[459] Additionally, as discussed above, the broker-dealer hypothecation rules create further restrictions on the broker-dealer's use of customers' securities.[460] In addition, as discussed above, SIPA, Regulation T, and the other broker-dealer financial responsibility rules also serve to mitigate the risk of loss to customers. The approach under the customer protection rule, while different, is comparable to the current rule 17f–1 condition, as the customer protection rule requirements discussed above provide protection for rehypothecated margin securities that did not exist when this condition of rule 17f–1 was adopted.

The current rule 17f–1 lien condition provides a general prohibition on a lien or charge of any kind in favor of the custodian.[461] The customer protection rule provides similar protections, requiring broker-dealers to maintain physical possession or control over customers' fully paid and excess margin securities.[462] If the customer chooses to purchase securities on margin, to secure that loan, a broker-dealer may have a lien on, and the possession or control requirement may not apply to, the customer's margin securities.[463] Permitting regulated funds to custody their securities with broker-dealers that may have liens on their securities in these limited circumstances, which would be only when a fund chooses to buy securities on margin, as proposed balances the risks associated with the liens in favor of custodians against the potential benefits to regulated funds to be able to obtain financing on more favorable terms.[464]

The current rule 17f–1 examination condition does not have a singular direct analog in the Exchange Act requirements for broker-dealers. However, its general purpose is collectively addressed by several different requirements found within the broker-dealer financial responsibility rules discussed above.[465] For example, rule 17a–13 under the Exchange Act requires broker-dealers quarterly to conduct examinations of securities held, account for and verify securities in transfer and record any unresolved differences on their books and records.[466] Rule 17a–5 under the Exchange Act requires broker-dealers to file periodic and annual financial reports, including FOCUS Reports and annual audited financial statements.[467] In addition to financial statements, a carrying broker-dealer is required to state in its audited annual reports, among other things, whether it has

[453] *See* Daily Computation Final Rule, *supra* footnote 415, at 2794.

[454] *See* 15 U.S.C. 78fff–2(c) and 15 U.S.C. 78fff–3(a).

[455] 2025 SIPC Annual Report, at 11, *available at https://www.sipc.org/media/annual-reports/2025-annual-report.pdf*.

[456] 15 U.S.C. 78fff–3.

[457] Rule 17f–1(b)(2).

[458] Rule 15c3–3(b)(1) (''broker or dealer shall promptly obtain and shall thereafter maintain the physical possession or control of all fully-paid securities and excess margin securities'') and rule 15c3–3(a)(5). *See also* 17 CFR 240.15c2–1 (Hypothecation of customers' securities).

[459] *See, e.g.,* 17 CFR 240.15c3–3a, Items 2 and 3. Carrying broker-dealers are permitted to use customer margin securities to, for example, obtain bank loans to finance the funds used to lend to customers to purchase the securities. The amount of the bank loan is a credit in the customer reserve computation—which is accounted for in Item 2—because this is the amount that the carrying broker-dealer would need to pay the bank to retrieve the securities. *See Daily Computation of Customer and Broker-Dealer Reserve Requirements Under the Broker-Dealer Customer Protection Rule;* Proposed Rule, Exchange Act Release No. 97877 (July 12, 2023), [88 FR 45836 (July 18, 2023)], at n.15.

[460] *See* 17 CFR 240.8c–1 and 240.15c2–1.

[461] Rule 17f–1(b)(3).

[462] *See* 17 CFR 240.15c3–3; *See also* 17 CFR 240.15c3–3(b)(1) (defining excess margin securities and fully paid securities).

[463] *Id.*

[464] Additionally, the terms on which broker-dealers can extend credit for securities transactions are governed by federal regulation and by SRO rules. *See, e.g.,* Regulation T and FINRA Rule Series 4200.

[465] Rule 17f–1(b)(4).

[466] Rule 17a–13(b) (quarterly securities account rule).

[467] Rule 17a–5(a), (d).

established and maintained ''internal control over compliance'' with a series of financial responsibility rules, including rule 17a–13, and whether the internal control over compliance of the broker-dealer was effective during the most recent fiscal year and as of the end of the most recent fiscal year.[468] These requirements, coupled with the modern regulatory regime governing broker-dealer segregation and insolvency discussed above, provide significant protections to client assets which make the rule 17f–1 requirement to conduct examinations three times a year unnecessary and unduly burdensome.

Section 17(a) of the Exchange Act requires registered broker-dealers to make and keep records required by Commission rules and to furnish copies of the records to the Commission.[469] Further, section 17(b) of the Exchange Act authorizes representatives of the Commission to conduct ''reasonable, periodic, special or other examinations'' of all records of a broker-dealer. These examinations may be conducted at any time or from time to time as the Commission ''deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the [Exchange Act.]'' Dedicated Commission staff conduct ongoing reviews of the market, credit, leverage, liquidity, legal, and operational risk management controls within broker-dealers approved to compute their net capital using risk-based models and other dedicated Commission staff engage in programs that monitor certain large broker-dealers.[470] In addition to Commission examinations, broker-dealers are subject to examinations by the SROs of which they are members, such as FINRA. These SROs are also subject to Commission oversight and examination. Similarly, the current rule 17f–1 inspection condition also has an analog in rule 17a–4 under the Exchange Act, which requires that a broker-dealer must promptly furnish records of the broker-dealer that are required to be preserved or any records of the broker-dealer subject to examination at the request of the Commission.[471]

Finally, the circumstances contemplated by the current rule 17f–1 possession condition, which provides protections for securities or similar investments during the transaction process, are no longer present.[472] Broker-dealers carrying customer securities accounts must now comply with the customer protection rule, which did not exist at the time rule 17f–1 was adopted by the Commission, including the requirement to promptly obtain and thereafter maintain the physical possession or control of all fully-paid and excess margin securities.[473] The customer protection rule also requires, among other things, certain buy-ins of short security differences, steps to take when required securities are not in possession or control, and required items in the customer reserve formula for items that are failed to receive or deliver that all provide additional protection for assets not in possession of the broker-dealer.[474]

We are also proposing to remove the requirement in rule 17f–1 to maintain a written custodial contract that is approved by the board of directors of the regulated fund, because we are proposing to remove the conditions in rule 17f–1 that are required to be effectuated pursuant to a written contract.[475] Similarly, we are also proposing to remove the requirements for the custodial contract to be transmitted to the Commission and be ratified by the board of directors of the regulated fund at least annually.[476] Nevertheless, we anticipate that as part of standard business practices, regulated funds will continue to maintain written custodial contracts with any custodian they engage, including broker-dealers engaged under rule 17f–1, based on the staff's experience that regulated funds enter into written custodial contracts with their permitted custodians.

Finally, because we are proposing to rescind the examination condition under rule 17f–1, we are also proposing to rescind Form N–17f–1.[477]

We request comment on the following:

185. To what extent do regulated funds currently custody securities or similar investments pursuant to rule 17f–1? Do regulated funds find this rule to be generally useful or functional as written? In what circumstances do regulated funds use rule 17f–1? What challenges or difficulties have regulated funds that do use rule 17f–1 observed with complying with the requirements of this rule?

186. Should we define which brokers or dealers may custody a regulated fund's securities or similar investments by reference to section 15(b)(1) as proposed or in some other way? In order to carry customer accounts, a broker-dealer must generally meet certain criteria, such as being a FINRA member, being subject to rule 15c3–3, and meeting minimum net capital requirements under rule 15c3–1. Should rule 17f–1 include any such criteria for which broker-dealers may custody a regulated fund's securities or similar investments? Is there some other standard (such as membership with a particular SRO) which should be required for brokers or dealers that may custody securities or similar investments for regulated funds?

187. Are any of the protective conditions in current rule 17f–1 still necessary or beneficial? If so, which ones? Please explain how the concerns underlying these conditions are not addressed by the existing broker-dealer regulatory regime, including the broker-dealer financial responsibility rules. If any of these conditions should be retained, to what extent, if any, should they be amended? If so, how and why? Are there any conditions not currently required by rule 17f–1 which should be added? Please explain the risks that such conditions would be intended to protect against. Should we retain the requirement that a regulated fund maintain a written custodial contract regardless of whether the conditions under rule 17f–1 are retained? Why or why not? Do you agree that it is standard business practice for regulated funds to enter into written custodial contracts with their custodians?

188. Are securities and similar investments for which the broker-dealer's custody is subject to rule 15c3–3 under the Exchange Act or such other rule that the Commission determines provides similar customer protections the proper scope for securities or similar investments eligible to be custodied by broker-dealers on behalf of regulated funds?

189. Under the proposal, due to the protections that rule 15c3–3 provides, a regulated fund would only be permitted to place or maintain securities or similar investments with a registered broker-dealer where the custody of the

[468] *See* rule 17a–5(d)(3)(i)(A). The term ''internal control over compliance'' means internal controls that have the objective of providing the broker-dealer with reasonable assurance that non-compliance with rules 15c3–1, 15c3–3(e), 17a–13, or any rule of the DEA of the broker-dealer that requires account statements to be sent to the customers of the broker-dealer, will be prevented or detected on a timely basis. *See* rule 17a–5(d)(3)(ii).

[469] 15 U.S.C 78q(a).

[470] *See* Exchange Act Release No. 49830 (June 8, 2004) [69 FR 34428 (June 21, 2004)] (Commission's adoption of Appendix E to rule 15c3–1 under the Exchange Act) and Exchange Act Release No. 30929 (July 16, 1992) [57 FR 32159 (July 21, 1992)] (Commission's adoption of rules 17h–1T and 17h–2T under the Exchange Act).

[471] Rule 17f–1(b)(5). *Cf.* 17 CFR 240.17a–4(j).

[472] Rule 17f–1(b)(6).

[473] Rule 15c3–3(b)(1).

[474] Rule 15c3–3(d), (h).

[475] Rule 17f–1(a).

[476] Rule 17f–1(c), (d).

[477] 17 CFR 274.219. *See also supra* footnote 389 (noting that Form N–17f–1 is used to file a certification of the accountant who conducted the examination with the Commission).

securities and similar investments is subject to rule 15c3–3 or such other rule that the Commission determines provides similar customer protections. Should we permit a regulated fund to place and maintain any securities or similar investments at a broker-dealer where the broker-dealer's custody of those securities or similar investments are not subject to rule 15c3–3 or such other rule that the Commission determines provides similar customer protections? If so, describe the securities or similar investments for which this should be permitted and what additional conditions would be appropriate? For example, should rule 17f–1 require a regulated fund and the broker-dealer custodian to agree in writing to treat each crypto asset in the broker-dealer's custody as a financial asset pursuant to applicable State law that governs the written agreement between the regulated fund and the broker-dealer?

3. Free Cash Accounts

We are proposing to rescind rule 17f–3, which provides for free cash accounts for investment companies with bank custodians. Specifically, the rule provides that, if a regulated fund has a bank custodian, the fund may maintain a free cash account only upon a resolution of the fund's board of directors in an amount not to exceed $500, and provided further that the petty cash account is operated under the ''imprest system'' (a system to maintain a fixed amount of money for small, routine expenses that is replenished following withdrawals) and maintained subject to adequate controls approved by the board of directors over disbursements and reimbursements including, but not limited to, fidelity bond coverage of persons having access to funds in the account. We understand that regulated funds are no longer using this rule and have not received any feedback from the industry that amendments to modernize this rule would be beneficial. Due to technological advances in banking and payment processing, we also do not perceive a need in modern markets for regulated funds to maintain free cash accounts (*i.e.,* petty cash).

We request comments on the following related questions:

190. Are there any regulated funds that currently rely on rule 17f–3 or anticipate they might rely on it? If so, for what purpose?

191. If regulated funds perceive a need to maintain free cash accounts, what amount would be appropriate and why?

192. If we maintain a free cash account rule, what, if any, protective conditions should apply? If we maintain rule 17f–3, are the current controls effective? Should we modify them in any way?

4. Other Amendments to Regulated Fund Custody Rules

We are proposing amendments to rule 17f–4 and rule 17f–7 to correct an outdated mailing address and a definitional cross-reference, respectively. Rule 17f–4 contains a reference to the UCC and provides that members of the public may inspect a copy at the Commission Library or at a website of the National Archives and Records Administration (''NARA'').[478] The Commission no longer has a publicly accessible library or a public reference room and the NARA website no longer is functioning. We are proposing to instead reference the website for the Uniform Law Commission, which produces the UCC and makes it available on its site, in rule 17f–4.[479]

Rule 17f–7 states that the term ''Eligible Securities Depository'' means a system for the central handling of securities as defined in rule 17f–4. When the Commission first adopted rule 17f–4 in 1978 the rule stated that a ''securities depository'' is a ''system for the central handling of securities where all securities of any particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of the securities.'' [480] In 2000 the Commission adopted rule 17f–7 and the current definition of an ''Eligible Securities Depository'' by reference to the definition of a ''system for the central handling of securities'' in rule 17f–4.[481] The Commission proposed amendments to rule 17f–4 in 2001 which would have maintained the original language defining ''system for the central handling of securities.'' [482] A commenter suggested that the same objective as that language could be achieved by defining a securities depository by reference to a ''clearing corporation'' under Article 8 and a ''clearing agency'' under the Securities Exchange Act and the Commission adopted this recommendation.[483] There was no discussion of the impact of this change on rule 17f–7 in that release or any indication that the Commission intended to break this cross-reference or to modify the substance of rule 17f–7 in any way. Commission staff has taken a similar view that this term should continue to be interpreted to have the same meaning as was defined in the prior version of rule 17f–4.[484] Therefore, we are proposing to amend rule 17f–7 to define the phrase ''system for the central handling of securities'' included in the defined term ''Eligible Securities Depository'' as written in the original rule 17f–4 adoption.[485]

We request comment on the following:

193. Is it necessary or beneficial for the Commission to provide where the UCC may be accessed? Is the website of the Uniform Law Commission an appropriate place to reference for such information? Is there a better source available? Should the Commission provide a location for physical review of the UCC, and if so, where?

194. Should we adopt the proposed definition of ''Eligible Securities Depository''? Should we amend this definition in any way?

195. Are there other references or provisions in the Investment Company Act custody rules that would benefit from technical corrections? If so, describe what the corrections should be.

196. Investment Company Act rule 17f–5 permits a regulated fund to place and maintain its ''foreign assets'' in the care of certain foreign custodians, subject to conditions. The rule defines foreign assets to mean any investments (including foreign currencies) for which the primary market is outside the United States, and any cash and cash equivalents that are reasonably necessary to effect the fund's transactions in those investments. Crypto assets are generated, minted, or mined on a blockchain or similar distributed ledger technology and therefore would not seem to have a ''primary market'' that is ''outside the United States.'' Should we amend rule 17f–5 or provide guidance on the rule to address crypto assets? Under what

[478] Rule 17f–4(c)(1).

[479] Proposed rule 17f–4(c)(1).

[480] Deposits of Securities in Securities Depositories, Investment Company Act Release No. 10453 (Oct. 26, 1978) [43 FR 50869 (Nov. 1, 1978)] (''1978 Securities Depository Adopting Release'').

[481] Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 24424 (Apr. 27, 2000) [65 FR 25630 (May 3, 2000)].

[482] Custody of Investment Company Assets with a Securities Depository, Investment Company Act Release No. 25266 (Nov. 15, 2001) [66 FR 58412 (Nov. 21, 2001)] (''Securities Depository Proposing Release'').

[483] Custody of Investment Company Assets with a Securities Depository, Investment Company Act Release No. 25934 (Feb. 13, 2003) [68 FR 8437 (Feb. 20, 2003)] (''Securities Depository Adopting Release'').

[484] Austraclear Ltd, Staff No-Action Letter (Apr. 28, 2004).

[485] Proposed rule 17f–7(b)(1).

circumstances, if any, would it be appropriate for regulated funds to place and maintain crypto assets with eligible foreign custodians under rule 17f–5? Should the analysis differ for traditional assets that are formatted as or represented by crypto assets, or ''tokenized,'' where the record of ownership is maintained in whole or in part on or through one or more crypto networks? Is the current definition of ''eligible foreign custodian'' appropriate for entities that provide custodial services for crypto assets outside the United States?

197. Are there parts of the Investment Company Act custody rules that should be substantively updated or amended? If so, describe any issues with or possible improvements to the current rules and how these rules should be amended.

5. Request for Comment on Other Regulated Fund Custody Issues

We are requesting comment on the experience of regulated funds in custodying their securities and similar investments under the Investment Company Act custody rules.[486] We are requesting comment to assist the Commission in evaluating whether proposing further fund custody rules, or amendments to the current Investment Company Act custody rules, to accommodate modern custodial practices may be warranted in the future.

We understand that, generally, fund assets are able to be maintained by permitted custodians in custodial arrangements that do not raise any interpretive questions. However, we understand that is not universally the case, particularly for three types of fund assets: assets maintained at custodians that are affiliated with the fund's investment adviser in certain ways, certain types of uncertificated securities (*e.g.,* regulated fund shares, privately offered securities, and loans), and collateral for certain types of cleared swap contracts. In response, some regulated funds holding these types of fund assets have sought no-action letters from Commission staff relating to certain Investment Company Act custody rules, such as rule 17f–2 and rule 17f–4, for the regulated fund to follow alternative procedures designed to achieve the same goals as the relevant Investment Company Act custody rule, including the prevention of misappropriation. In addition, we understand that regulated funds that maintain even certificated securities in the fund's own custody may have difficulty complying with some of the requirements of rule 17f–2 due to changes in custodial practices since the rule was last substantively amended in 1947.[487]

(a) Affiliated Custodians and Custody of Non-Crypto Assets With the Regulated Fund Itself

Under rule 17f–2, fund assets are considered to be in the custody of a regulated fund if such fund assets are maintained with a bank or certain other permitted custodian under any arrangement where the regulated fund's directors, officers, employees or agents are authorized or permitted to withdraw such fund assets upon their ''mere receipt.'' Due to the heightened risk of misappropriation posed by circumstances where regulated fund personnel can withdraw fund assets upon mere receipt without depositing cash or other fund assets in exchange for the investments, rule 17f–2 imposes various conditions designed to guard against misappropriation. Specifically, fund assets must be deposited in the safekeeping of, or in a vault or other depository maintained by, a bank or other permitted custodian (the ''vaulting requirement'') and physically segregated at all times from any other person's assets (the ''physical segregation requirement''). A written notation also must be created for every transaction in self-custodied fund assets and signed by authorized persons (the ''notation requirement'').

In addition, the rule requires board involvement in the approval of regulated fund personnel that can access fund assets from custody (''access requirement''). Further, the regulated fund's assets must be verified by actual examination by an independent public accountant at least three times annually, two of which must be by surprise (''exam requirement'').[488] This exam requirement is in addition to the annual audit that all regulated funds must obtain.[489]

Regulated funds sometimes choose to custody their fund assets with a bank or certain other permitted custodian that also serves as the fund's investment adviser or that is an affiliate of the regulated fund's investment adviser, instead of with an independent, unaffiliated bank or other permitted custodian. The Commission and its staff have taken the position that, where a regulated fund's investment adviser controls or is controlled by, or is under common control with, a regulated fund's custodian, sub-custodian, or depository (an ''affiliated custodian''), such arrangements may be subject to rule 17f–2.[490] According to Commission staff, inherent in these arrangements is the risk that an employee of the investment adviser would have access to a regulated fund's assets in connection with the provision of custody services, and then could have the ability to take advantage of the fund by misappropriating fund assets.[491] Commission staff has therefore interpreted such affiliated custodian arrangements as being subject to rule 17f–2, recognizing that such arrangements raise misappropriation concerns and also present the risk that the fund's assets will not be maintained in a manner subject to adequate independent scrutiny.[492] For the avoidance of doubt, rule 17f–2, rather than the proposed fund self-custody rule (proposed rule 17f–9), applies to fund crypto assets maintained at an affiliated custodian of the investment adviser. Proposed rule 17f–9 provides that a crypto asset placed and maintained with an investment adviser itself is subject to that rule in lieu of rule 17f–2.[493]

Subsequent to the adoption of rule 17f–2, the Commission transitioned to a different approach under the Advisers Act custody rule to address the risks of misappropriation present where a qualified custodian maintaining advisory clients' assets is a related person of the investment adviser—that is, a qualified custodian that is directly or indirectly controlling or controlled by, or under common control with, the adviser. In these cases, the investment adviser or its related person maintaining client funds or securities must obtain an

[486] 15 U.S.C. 80a–17(f). *See also* 15 U.S.C. 80a–58 (applying section 17(f) to business development companies as if they are a registered closed-end management company).

[487] The Commission adopted rule 17f–2 in 1941 and has only substantively revised it once, in 1947, to clarify when it applies. *See* Adoption of Rule N–17f–2, Investment Company Act Release No. 172 (July 31, 1941) [6 FR 3827 (Aug. 1, 1941)]; Custody of Investments by Registered Management Investment Company; Bonding of Officers and Employers of Registered Investment Companies, Investment Company Act Release No. 1112 (Oct. 3, 1947) [12 FR 6717 (Oct. 11, 1947)].

[488] The accountant must also complete Form N–17f–2 (17 CFR 274.220) and transmit the same to the Commission promptly after each examination. *See* rule 17f–2(f).

[489] *See* section 30(g) under the Investment Company Act for registered investment companies and section 13(a) of the Exchange Act for BDCs.

[490] *See* Securities Depository Proposing Release, *supra* footnote 482, at n.65; Maxim Series Fund, Inc., SEC Staff No-Action Letter (Jan. 15, 2004) (''Maxim NAL'') at n.5 and accompanying text. *See infra* sections II.F.5.b)(1) and II.F.5.b)(3) for further examples of circumstances in which rule 17f–2 is implicated.

[491] *See* Maxim NAL at nn.6–7 and accompanying text.

[492] *See* Maxim NAL.

[493] *See* proposed rule 17f–9(a)(1).

internal control report from an independent public accountant to guard against the risk of misappropriation, in addition to the annual surprise examination (or audit in the case of a private fund client) to which all advisers with custody generally are subject under the Advisers Act custody rule.[494] Such internal control report must contain an opinion of an independent public accountant as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of client funds and securities held by the adviser during the year.[495] The accountant must also verify that the client's funds and securities are reconciled to a custodian unaffiliated with the adviser or its related person.[496]

The requirement to obtain the internal control report is designed to address the heightened misappropriation risks posed by custody arrangements where the adviser or a related person is the custodian of client assets instead of an independent custodian.[497] In support of its decision to adopt the internal control report requirement, the Commission noted that a number of enforcement actions involved misappropriation of client assets by advisers or related persons that maintained client assets.[498] The internal control report requirement provides important additional safeguards for client assets maintained with the adviser or a related person because the internal control report requires the investment adviser to demonstrate that it, or its related person, has established appropriate custodial controls.[499] Further, the internal control report can significantly strengthen the utility of the surprise examination when the investment adviser or a related person acts as qualified custodian for client assets because it provides a basis for the independent public accountant performing the surprise examination to obtain additional comfort that the confirmations received from the related custodian are reliable. The requirement to obtain an internal control report therefore serves both to inform the surprise examination process and may itself act as a deterrent to fraud by advisers that may consider misappropriating client assets directly or through a related person.[500]

We request comment on the following aspects of regulated fund custody:

198. Under what circumstances do regulated funds currently rely on rule 17f–2 to custody fund assets at an affiliated custodian?

199. Commission staff has stated that custody arrangements where a regulated fund's investment adviser controls or is controlled by, or is under common control with, the fund's custodian, sub-custodian, or depository raise the risk of misappropriation and have interpreted such arrangements as being subject to rule 17f–2. Do commenters view these particular affiliated relationships (*i.e.,* where the custodian is a related person of the adviser) as raising misappropriation concerns? Why or why not? Are there other types of affiliation that raise heightened risks of misappropriation justifying additional safeguards? Do affiliated relationships between a regulated fund and custodian, sub-custodian or depository raise misappropriation concerns? What about where a regulated fund or the fund's adviser shares common personnel with the regulated fund's custodian or where the custodian owns, controls, or holds with the power to vote, five percent or more of the outstanding voting securities of the adviser (or vice versa)?

200. What safeguards should apply to affiliated relationships that raise misappropriation concerns? Should the rule 17f–2 exam requirement apply to such relationships? If so, should it be modified in any way? For example, is it necessary to require actual examination of the investments at least three times each year, at least two of which are chosen by the independent public accountant? Alternatively, should the Advisers Act related person internal control report requirement apply? Should regulated funds be able to choose which requirement applies—the rule 17f–2 exam requirement or the Advisers Act internal control report requirement?

201. What, if any, of rule 17f–2's other safeguards (*e.g.,* the access requirement) should apply to affiliated custodial arrangements that raise misappropriation concerns?

202. Should we propose to amend rule 17f–2 to explicitly allow regulated funds that use affiliated custodians to comply with the rule? Why or why not?

203. Rule 17f–2 currently applies where a regulated fund's directors, officers, employees, or agents are permitted or authorized to withdraw fund assets upon mere receipt. Is ''mere receipt'' the appropriate standard at which rule 17f–2 should apply?

(b) Uncertificated Securities

A substantial portion of securities—privately and publicly held—are uncertificated. Regulated funds holding uncertificated securities must custody those securities, like certificated securities, at a permitted custodian under the Investment Company Act custody rules. Although most uncertificated securities are able to be held at a permitted custodian, we understand that regulated funds have difficulty custodying uncertificated securities that cannot be placed with a securities depository under rule 17f–4 (*e.g.,* shares of regulated funds, privately offered securities, and certain types of loans).

(1) Regulated Fund Shares Held at Transfer Agents

A regulated fund (an ''acquiring fund'') that holds shares of another regulated fund (an ''acquired fund'') may not be able to technically comply with the Investment Company Act custody rules to custody the shares where such fund shares are held at a registered transfer agent of the acquired fund and no certificate is issued for the shares. As described in more detail below, this scenario presents challenges in light of certain aspects of rule 17f–4, which addresses custody of fund assets with a securities depository, and rule 17f–2, which governs a regulated fund maintaining its own fund assets.

Rule 17f–4 permits regulated funds to place and maintain financial assets with a securities depository, subject to certain conditions. A securities depository is defined under the rule as a clearing corporation that is registered with the Commission as a clearing agency, or a Federal reserve bank or other person authorized to operate the Federal book-entry system for U.S. Treasury securities. A transfer agent is not a securities depository because it is not a registered clearing agency.

[494] *See* rule 206(4)–2(a)(6); proposed rule 223–1(a)(6) (the proposed related person QC rule, which would be a redesignation of current rule 206(4)–2(a)(6), the current related person QC rule). *See infra* section II.G for further detail on the proposed modernization of the Advisers Act custody rule.

[495] *See* rule 206(4)–2(a)(6)(ii)(A); proposed rule 223–1(a)(6)(i). In the proposed rule, the opinion is as to whether controls were suitably designed and *implemented*, among other changes. *See infra* section II.G for further detail on the proposed modernization of the Advisers Act custody rule.

[496] *See* rule 206(4)–2(a)(6)(ii)(B); proposed rule 223–1(a)(6)(ii).

[497] *See* 2009 Adopting Release, *supra* footnote 7, at section II.C.1.

[498] *Id.*

[499] *Id.*

[500] *See id.,* at n.86 and accompanying text. Similarly, in a no-action letter provided to K&L Gates, Commission staff stated that they would not recommend enforcement action to the Commission against certain regulated funds if, in lieu of the rule 17f–2 exam requirement, the regulated funds used alternative procedures designed to provide the same protections. *See* K&L Gates, SEC Staff No-Action Letter (Jan. 13, 2021) (''K&L Gates NAL''). The alternative procedures are consistent with the Advisers Act approach to adviser and related person custody.

A number of acquiring funds have sought and received assurance from Commission staff that they would not recommend enforcement action under rule 17f–4 where acquired fund shares are maintained at the transfer agents of those funds and where the acquiring funds represented that certain procedures designed to comply with then-current rule 17f–4 would be implemented.[501] Some of these procedures include: the acquiring fund maintains a system that is reasonably designed to prevent unauthorized instructions and that provides for the form, content and means of giving, recording, and reviewing instructions; the acquired fund shares are maintained directly with the transfer agents of those funds in a separate account in the custodian's name, as custodian for the acquiring fund; the acquiring fund's custodian sends to the acquiring fund copies of all confirmations received from the transfer agents of any transfers to or from the account of the acquiring fund; the custodian sends the acquiring fund reports on its system of internal accounting control as the acquiring fund may reasonably request from time to time; and the acquiring fund, by resolution of its board, approves the arrangement initially and annually thereafter.

Commission staff has also issued no-action letters in connection with rule 17f–2 where an acquiring fund is engaged in self-custody or where an acquiring fund's transfer agent is an affiliated person of that fund.[502] In these instances, the acquiring funds holding uncertificated securities were unable to technically comply with rule 17f–2's requirement that fund assets be kept in a vault or other depository maintained by a bank or regulated entity, the written notation requirement for each transaction, and the requirement that an independent public accountant physically verify such fund assets three times per year.[503] The Commission staff gave assurance that they would not recommend enforcement action under rule 17f–2 subject to the acquiring funds representing that certain procedures would be implemented, including: limitations on the number of persons authorized to transmit instructions to the transfer agent; use of passwords to ensure that only properly authorized persons could transmit instructions; transmission by the transfer agents of confirmation of each transaction to persons employed by the fund's administrative agent other than those who transmit the investment instructions; and the acquiring fund's independent accountant conducting three annual examinations by reconciling the acquiring fund's book records with the account records of the acquired funds, and also independently confirming the acquiring fund's book records with the transfer agents of the acquired funds.[504]

The Commission proposed amending rule 17f–4 in 2001 to permit regulated funds to maintain custody of shares in other regulated funds with registered transfer agents.[505] The amendments were proposed in response to the growth of acquiring funds and other arrangements in which a regulated investment company invests in shares of a regulated fund.[506] The amendments were not adopted due to comments raising issues with the proposal, including those contending that a regulated fund's maintenance of its fund assets with another regulated fund's transfer agent involves self-custody issues that should be addressed in conjunction with any future amendments to rule 17f–2.[507]

Accordingly, we request comment on the following aspects of custody of uncertificated regulated fund shares with a registered transfer agent:

204. Should we propose a rule that would specifically allow transfer agents to custody shares of regulated funds? If so, what conditions, if any, should apply to transfer agents that custody shares of regulated funds? Do the procedures described in the no-action letters provide appropriate protections, or are there additional or different conditions that should be incorporated in a rule addressing transfer agents' custody of regulated fund shares? Should different or more conditions apply when the transfer agent is an affiliated person of the acquiring fund? What conditions should apply and why? Alternatively, should we allow transfer agents to custody shares of regulated funds without any additional conditions? Should we propose a rule that would specifically allow transfer agents to custody other types of uncertificated securities (in addition to shares of regulated funds), for example, uncertificated digital securities held by the issuer's transfer agent?

205. Alternatively, should we propose amendments to rule 17f–4 to add transfer agents? Should all the conditions in 17f–4 also apply to transfer agents? If not, what subset of conditions (or alternative conditions) should apply to transfer agents? Are there circumstances from rule 17f–4 no-action letters that should apply to transfer agents? Should we propose amendments to rule 17f–2 to accommodate a regulated fund that custodies its uncertificated securities at a transfer agent? Why or why not? If so, how should we propose amendments to the rule 17f–2 requirements to accommodate uncertificated securities?

(2) Privately Offered Securities

The current and proposed Advisers Act custody rules permit an adviser to custody its advisory clients' holdings of privately offered securities outside of a qualified custodian.[508] To qualify for this privately offered securities exception, securities must meet the rule's definition of ''privately offered securities.'' [509] This definition includes securities that are: (1) acquired from the issuer in a transaction or chain of transactions not involving any public offering; (2) uncertificated, and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client; and (3) transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.[510] No similar

[501] *See e.g.,* American Pension Investors Trust, SEC Staff No-Action Letter (Feb. 1, 1991) (acquiring fund custodian maintains acquired fund shares in the book-entry systems of the acquired funds' transfer agents; FundVest, SEC Staff No-Action Letter (Nov. 21, 1984). Some of the procedures described in the no-action letters were based on the 1978 version of rule 17f–4. *See* Deposits of Securities in Securities Depositories, Investment Company Act Release No. 10453 (Oct. 26, 1978) [43 FR 50869 (Nov. 1, 1978)].

[502] *See* Gardner Fund, SEC Staff No-Action Letter (Mar. 7, 1988) (''Gardner NAL''). Commission staff stated that it would not recommend enforcement action against an acquiring fund for not technically complying with the vaulting, notation, and exam requirements of rule 17f–2 and the requirements of former rule 17f–4; Franklin Investors Securities Trust (Sept. 24, 1992) (''Franklin NAL''). For the avoidance of doubt, rule 17f–2, rather than the proposed fund self-custody rule, applies to fund crypto assets maintained at an affiliated custodian of the investment adviser. Proposed rule 17f–9 provides that a fund crypto asset placed and maintained with an investment adviser itself is subject to that rule in lieu of rule 17f–2. *See* proposed rule 17f–9(a)(1).

[503] *See* Gardner NAL, *supra* footnote 502; Franklin NAL, *supra* footnote 502.

[504] *See* Gardner NAL, *supra* footnote 502; Franklin NAL, *supra* footnote 502. Some of the procedures described in the Commission staff no-action letters were based on the 1978 version of rule 17f–4. *See* 1978 Securities Depository Adopting Release, *supra* footnote 480.

[505] *See* Securities Depository Proposing Release, *supra* footnote 482, at n.30 and accompanying text.

[506] *See* Securities Depository Proposing Release, *supra* footnote 482, at section II.B.

[507] *See* Securities Depository Adopting Release, *supra* footnote 483, at n.15.

[508] *See* rule 206(4)–2(b)(2).

[509] *See* rule 206(4)–2(b)(2)(i).

[510] Notwithstanding the rule's definition of privately offered securities, this custody rule exception is available with respect to securities held for the account of a limited partnership or other type of pooled investment vehicle only if the pooled investment vehicle is audited and the audited financial statements are distributed as

provision exists under the Investment Company Act or rules thereunder to permit regulated funds to custody the fund's holdings of privately offered securities outside of a permitted custodian.

The private offering exception was adopted in recognition that maintaining these assets in accounts with qualified custodians could pose difficulties, particularly given that ownership of such assets generally is recorded only on the books of the issuer.[511] This includes, for example, investments in limited partnerships where clients receive only a copy of the partnership agreement and subscription agreement as evidence of their investment or assignment agreements for debt or equity interests in a private company. In support of its decision to adopt the exception, the Commission stated that some of the impediments to transferability of such securities provide external safeguards against the kinds of abuse that the custody rules seek to prevent, that is, loss or theft by an external third-party.[512] These characteristics reduce the need for the safeguarding protections offered by a qualified custodian.

We request comment on all aspects of regulated fund custody of privately offered securities, including:

206. What types of privately offered securities, if any, cannot be maintained at a permitted custodian or present particular challenges in maintaining them at a permitted custodian and why? What specific custodial challenges do regulated funds face in trying to custody such securities with a bank or other permitted custodian and why?

207. Should an approach like the privately offered securities exception in the Advisers Act custody rule be made available to regulated funds? Why or why not? What additional or different safeguards, if any, should be required in order to mitigate the custodial risks of holding uncertificated, privately offered securities outside of a permitted custodian? What unique custodial risks, if any, would arise if regulated funds were permitted to hold privately offered securities (*e.g.,* restricted securities, private equity, or private debt) outside of a permitted custodian, provided the regulated fund is audited as currently required?

(3) Loans

We understand that certain types of loans may be difficult for a regulated fund to custody with a permitted custodian. In a no-action letter provided to K&L Gates, the Commission staff stated that it would not recommend enforcement action against regulated funds that did not comply with rule 17f–2 as to self-custodied loan interests and instead implemented alternative procedures designed to achieve the same goals as rule 17f–2.[513] The loans had no certificate or other tangible token of ownership that could be physically ''vaulted'' under rule 17f–2, and although some regulated funds place paper loan documents with a permitted custodian to satisfy the obligation to hold the loans at a permitted custodian, many permitted custodians do not provide safekeeping services for paper loan documents.

The facts described in the K&L Gates NAL demonstrated the challenges and unique considerations associated with custodying loans. Although the regulated funds had been providing loan documents to a permitted custodian for safekeeping, the loan documents (unlike a securities certificate) could not transfer any value in the loan interests to a transferee. The loan interests could only be transferred after completion of a multi-step settlement process involving the seller of the loan interests, the purchasing regulated fund, and an unaffiliated administrative agent for the loan interests. The loan interests were reflected on the records that were maintained by the administrative agent on behalf of the borrower, for the purpose of identifying the owners of all loan interests and the principal amount of the loan attributable to each.

Instead of complying with the vaulting, access, and notation requirements under rule 17f–2, the regulated funds represented that they would implement alternative procedures to achieve the same goals as rule 17f–2, including the prevention of misappropriation or misuse by persons affiliated with the regulated funds. The alternative procedures included: only a limited number of authorized regulated fund personnel could provide instructions to the custodian and administrative agents, and passwords would be used to ensure only these personnel could transmit such instructions; each regulated fund would reconcile settled loan interests to the records of the administrative agent at least monthly and interest payments would be periodically reviewed for accuracy; and loan interests would be titled or recorded at unaffiliated administrative agents in the name of each regulated fund, not the adviser.[514]

In lieu of the exam requirement, each regulated fund subjected itself to an annual audit, during which the fund's independent public accountant confirmed each regulated fund's investments in loan interests, and reconciled the loan interests to the regulated fund's account records. In addition, each regulated fund's independent auditor relied on controls testing as reported in the Service Organization Controls Report (SOC 1) on the adviser's fund accounting system and controls around trade authorization, trade confirmation, position reconciliation, cost roll-forward, and the systematic calculation of realized gains and losses.[515]

We request comment on regulated funds' custody of loans, including:

208. What challenges, if any, do regulated funds experience in custodying loans? What are the characteristics of these loans (*e.g.,* how are the loans transferred and recorded)?

209. Are banks and other permitted custodians able to custody loans under the Investment Company Act custody rules, and if not, why not?

210. Should a specific rule be proposed to address a regulated fund custodying its own holdings of uncertificated loan interests? If so, what alternative procedures should apply instead of the rule 17f–2 vaulting, access, notation, and exam requirements? For example, in lieu of the exam requirement should a regulated fund custodying its own loan interests be subject to an audit verifying the loans combined with an internal control report, similar to the approaches in the Advisers Act custody rule for related person custody and the K&L Gates NAL? What other conditions should apply (*e.g.,* the K&L Gates NAL procedures—limiting the number of authorized fund personnel that can provide instructions to the custodian and administrative agents; using passwords for transmitting instructions; periodically reconciling settled loan interests to the records of the administrative agent and periodically

described in rule 206(4)–2(b)(4). *See* rule 206(4)–2(b)(2)(ii) (proposed to be redesignated as rule 223–1(b)(2)(ii)).

[511] *See* 2003 Adopting Release, *supra* footnote 7, at section II.B. Even if a regulated fund has paper ownership documents, many permitted custodians do not provide safekeeping services for such paper documents.

[512] *See* 2003 Adopting Release, *supra* footnote 7, at section II.B. There are certain impediments to transferability typically associated with certain privately offered securities—specifically, the need to obtain the consent of the issuer or other securities holders prior to any transfer of ownership—that make certain of these assets less susceptible to some of the risks the rule is designed to address. In particular, they would be less likely to be stolen by a third party or simply lost. *Id.*

[513] K&L Gates NAL, *supra* footnote 500.

[514] These procedures mirror those in the Gardner NAL, *supra* footnote 502.

[515] *See* K&L Gates NAL, *supra* footnote 500.

reviewing interest payments for accuracy; and recording loan interests at unaffiliated administrative agents in the name of each regulated fund, not the adviser)?

(c) Certificated Securities

Many of rule 17f–2's provisions are premised on the assumption that fund assets are certificated securities that can be locked in a physical vault, and as discussed above, this can present particular challenges in the context of uncertificated securities.[516] While most securities are now uncertificated, physical, certificated investments still exist (for example, in legacy holdings). These could include physical stock certificates from older companies, private placement shares, and physical savings bonds. We request comment below on the extent to which funds invest in these or other kinds of certificated securities and whether rule 17f–2's conditions should be amended in any way as applied to these investments.

211. Are there certificated securities in which regulated funds invest that are maintained by the regulated fund itself pursuant to rule 17f–2? What kinds of securities? Are there any particular challenges that this rule poses in the context of custodying certificated securities (*e.g.,* the access, notation and exam requirements)? If so, what are these, and what alternative processes would be preferable?

(d) Cleared Swap Collateral

Rule 17f–6 permits regulated funds to maintain their fund assets with futures commission merchants (''FCMs'') that are registered under the Commodity Exchange Act (''CEA'') in order to effect the fund's transactions in exchange-traded futures contracts and commodity options.[517] The conditions in rule 17f–6 generally require the FCM to comply with certain segregation requirements under CFTC rules; allow the FCM to place and maintain the fund's assets to effect the fund's transactions with certain other parties (*e.g.,* a derivatives clearing organization) subject to CFTC rules and require an acknowledgment from the other party that the fund assets are held on behalf of the FCM's customers; and require the FCM promptly to furnish records or other information pertaining to the fund's assets to the Commission or its staff upon their request. Rule 17f–6 also provides that any gains on the regulated fund's transactions, other than de minimis amounts, may be maintained at the FCM only until the next business day following receipt. Finally, the rule requires the withdrawal of fund assets from the FCM as soon as reasonably practicable if the regulated fund's custodial agreement no longer meets the requirements of the rule.

In 2010 Congress passed the Dodd-Frank Act, which established segregation requirements and bankruptcy treatment for swaps cleared through a derivative clearing organization and directed the CFTC to establish rules regarding the central clearing of swap transactions.[518] In response, the CFTC adopted comprehensive rules governing the treatment of cleared swaps generally and the custody of related collateral by FCMs specifically.[519]

Commission staff has subsequently issued no-action letters stating that the staff would not recommend enforcement action if regulated funds placed and maintained fund assets with certain clearing organizations and their clearing member FCMs that comply with the CFTC cleared swap rules in connection with the regulated funds' transactions in specific cleared swaps, subject to conditions comparable to those required by rule 17f–6.[520] These no-action letters are limited to the specific derivatives clearing organizations and cleared swap transactions addressed in each letter. The letters generally provide that the staff would not recommend enforcement action under these circumstances, which are based on the requirements of rule 17f–6:

- FCMs must comply with the requirements relating to the CFTC segregation rules for swap collateral under Part 22 of the CEA, specifying bankruptcy treatment of cleared over-the-counter derivatives.
- FCMs must obtain a written acknowledgement, to the extent required under CFTC rules, that fund assets are held on behalf of their customers in accordance with the provisions of the CEA.
- FCMs must promptly furnish records pertaining to the regulated fund's assets at the Commission's request.
- Any gains on the regulated fund's transactions, other than de minimis amounts, may be maintained with a FCM only until the next business day following receipt.
- The regulated fund has the ability to withdraw fund assets from the FCM as soon as reasonably practicable if the custodial arrangement no longer meets the requirements of rule 17f–6.

We request comment on FCM custody of regulated fund cleared-swap collateral, including:

212. Should we propose amendments to rule 17f–6 to allow a regulated fund to place and maintain fund assets with FCMs and the other parties specified in the rule in connection with the fund's transactions in cleared swaps, or alternatively a subset of cleared swaps (such as the cleared swap transactions for which the staff issued a no-action letter)? Should such a proposal be limited to cleared swaps as defined by rule 22.1 under the CEA? Are there types of cleared swaps that do not meet the CEA definition of cleared swaps that should be included in the amendments?

213. If we propose amendments to rule 17f–6, how should we propose to modify the rule's conditions to accommodate cleared swaps while addressing the associated custodial risks? Should we add a reference to the written acknowledgment requirement from derivatives clearing organizations to the provision of rule 17f–6 requiring written acknowledgment from depositories? How does the clearing structure for cleared swaps differ from the clearing structure for the transactions in exchange-traded futures contracts and commodity options covered by rule 17f–6, and how should these differences inform appropriate conditions?

G. Investment Adviser Custody Rule Modernization

Originally adopted in 1962 pursuant to Advisers Act section 206(4), the Advisers Act custody rule has been amended several times in response to industry developments and risks.[521] The Commission most recently amended the rule in 2009 in light of several well-publicized fraud cases against investment advisers for actions that

[516] *See supra* sections II.F.5.b)(1)–II.F.5.b)(3).

[517] *See* rule 17f–6 (''a Fund may place and maintain cash, securities, and similar investments with a Futures Commission Merchant''); *see also* Custody of Investment Company Assets with Futures Commission Merchants and Commodity Clearing Organizations, Investment Company Act Release No. 22389 (Dec. 11, 1996) [61 FR 66207 (Dec. 17, 1996)].

[518] *See* sections 723 and 724 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[519] *See* 17 CFR part 22 (Cleared Swaps); 17 CFR 22.2 (Futures Commission Merchants: Treatment of Cleared Swaps and Associated Cleared Swaps Customer Collateral); *see also* Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions [77 FR 6336 (Feb. 7, 2012)].

[520] *See* ICE Clear Credit LLC, Staff No-Action Letter (Dec. 19, 2017); Chicago Mercantile Exchange, Staff No-Action Letter (Dec. 19, 2017); LCH Limited and LCH.Clearnet LLC, Staff No-Action Letter (Dec. 19, 2017).

[521] *See* 1962 Adopting Release, *supra* footnote 7. *See also* 2003 Adopting Release *supra* footnote 7; 2009 Adopting Release, *supra* footnote 7.

included misappropriation or other misuse of client funds and securities.[522] In 2010, Congress passed the Dodd-Frank Act, adding a new section 223 titled ''Custody of Client Accounts'' to the Advisers Act, which provides the Commission with additional rulemaking authority related to the safeguarding of client assets.[523] Over time, questions about the application of certain aspects of the Advisers Act custody rule have arisen, often in response to evolving technologies and market practices.

To address certain longstanding questions relating to the application of the Advisers Act custody rule, we are proposing a number of modernizing amendments to the rule and proposing to provide guidance on certain known custody issues. These proposed modernizations include rule amendments to: (a) redesignate the Advisers Act custody rule to new rule 223–1 to align with the specific statutory authority provided in the Dodd-Frank Act relating to custody of client assets, (b) except authorized discretionary trading from the Advisers Act custody rule subject to conditions that limit executions to designated client accounts and prohibit transfers to accounts controlled by the adviser or related persons, (c) eliminate the requirements for accountants engaged to perform audit and examination services under the Advisers Act custody rule to be registered with, and subject to regular inspection by, the PCAOB, (d) modernize the audit requirements for pooled investment vehicles, (e) except advisers with respect to accounts subject to standing letters of authorization from asset verification requirements, (f) explicitly except advisers with respect to accounts of BDCs from the Advisers Act custody rule since they are subject to Investment Company Act custody requirements, (g) require an account number be included in the notice sent to the client by an adviser upon opening an account with a qualified custodian and following changes to certain information, (h) modernize rule language related to the notice an accountant must provide to the Commission upon the finding of any material discrepancies during the course of an independent verification, and (i) except advisers from the rule with respect to inadvertent custody of client funds or securities. We also outline our views related to: (a) segregation requirements for assets held at qualified custodians and client cash held at banks; and (b) disclosure related to accommodation reporting.

1. Redesignation to Section 223

We propose to redesignate the Advisers Act custody rule as new rule 223–1 under the Advisers Act. We propose to make this redesignation in the light of the additional authority that Congress provided the Commission in 2010 under the Dodd-Frank Act to prescribe investment adviser custody rules in section 223 of the Advisers Act.[524] Section 223 grants the Commission authority to adopt rules requiring registered investment advisers to take steps to safeguard client assets over which they have custody, including, without limitation, verification of such assets by an independent public accountant.

Redesignation of the current Advisers Act custody rule to section 223 would better align the rule with specific statutory authority regarding registered investment adviser custody of client accounts. Proposed rule 223–1, which would effectively replace current rule 206(4)–2 through redesignation, states that an adviser registered or required to be registered under section 203 of the Act must take certain steps to safeguard the client funds and securities of which the adviser has custody. Consistent with this redesignation, the proposed rule would no longer reference section 206(4) in its opening preamble regarding whether custody practices would be a fraudulent, deceptive, or manipulative act, practice or course of business. More specifically, to align with the statutory language of section 223, the redesignated rule replaces the lead-in language that was in 206(4)–2(a) to instead state that the adviser ''must take the following steps to safeguard client funds and securities'' of which it has custody. Redesignating the rule with the statutory provision that specifically addresses the custody of client funds and securities aligns the rule more closely with congressional intent to strengthen safeguarding requirements, including verification standards by independent public accountants, after investment adviser frauds uncovered during the financial crisis.[525]

We request comment on the redesignation of the Advisers Act custody rule to section 223:

214. Are there any practical implications for investment advisers in redesignating this rule and revising its introductory language?

2. Discretionary Trading Authority

We are proposing to amend the Advisers Act custody rule to specifically except discretionary trading authority by an adviser from the requirement to comply with the Advisers Act custody rule provided certain conditions are met. Specifically, advisers would not be required to comply with the proposed rule with respect to funds and securities over which the adviser has custody due to its authority to trade at its discretion provided that: (1) the adviser executes (and only has authority to execute) such trades only from and into designated client accounts in the client's name or the transfer is recorded in the client's name by the issuer; (2) the adviser has no authority (under the discretionary trading arrangement or otherwise) to transfer client funds or securities from the designated client account to itself or an account the adviser or its related person controls, or to any account that is not the client's unless such transfer is directed by the client in connection with such trading, nor does the adviser have the authority to have the transfer recorded by the issuer in its own name or that of a related person; and (3) the adviser complies with the Advisers Act custody rule for any other activities, rights, or authorities that otherwise cause it to have custody of such funds or securities separate from such discretionary trading authority and with the requirements of any corresponding exceptions under the Advisers Act custody rule that the adviser may exercise pursuant to such custody.[526]

In 2003, the Commission stated that an adviser's authority to issue instructions to a broker-dealer or a

[522] *See* 2009 Adopting Release, *supra* footnote 7. *See also* Judgment, ECF Doc No. 100, 4, *United States* v. *Madoff*, No. 09 Cr. 213 (S.D.N.Y. June 29, 2009) (Bernard L. Madoff pled guilty to eleven felony charges including securities fraud, investment adviser fraud, mail fraud, wire fraud, three counts of money laundering, false statements, perjury, and making false filings with the SEC); Order Granting Motion for Summary Judgment, *SEC* v. *Stanford Int'l Bank, Ltd.*, Civil Action No. 3:09–CV0298 (N.D. Tex. Apr. 25, 2013) (the SEC obtained a $5.9 billion judgment against R. Allen Stanford who was convicted in a parallel criminal case of conspiracy to commit mail and wire fraud, four counts of wire fraud, five counts of mail fraud, one count of conspiracy to obstruct an SEC investigation, one count of obstruction of an SEC proceeding, and one count of conspiracy to commit money laundering and sentenced to a total of 110 years in prison).

[523] *See* section 411 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (adding section 223 to the Advisers Act which provides ''[a]n investment adviser registered under this subchapter shall take such steps to safeguard client assets over which such adviser has custody, including, without limitation, verification of such assets by an independent public accountant, as the Commission may, by rule, prescribe.'' 15 U.S.C. 80b–18b).

[524] *See supra* footnote 523.

[525] Though we propose to redesignate the rule to 223–1 under section 223 of the Advisers Act rather than 206, an adviser's fiduciary obligations would still apply with regard to the custody and safeguarding of client funds and securities. *See* discussion at *supra* section II.A.1.a).

[526] *See* proposed rule 223–1(b)(9).

custodian to effect or to settle trades does not constitute custody.[527] The Commission went on to explain a client's custodian is generally under instruction to transfer funds (or securities) out of a client's account only upon corresponding transfer of securities (or funds) into the account.[528] The Commission further explained that such delivery versus payment (''DVP'') arrangements minimizes the risk that an investment adviser could withdraw or misappropriate funds and securities in a client's custodial account. While the discussion in the 2003 Adopting Release identifies authorized trading as outside of the Advisers Act custody rule, it only identifies its inapplicability in the context of DVP trading.

Over the years, Commission staff and members of industry have engaged in a dialogue around whether authorized trading on a non-DVP basis constitutes custody under the Advisers Act custody rule.[529] In 2017, Commission staff issued guidance regarding inadvertent custody that raised questions as to whether an adviser trading assets on a non-DVP basis would have custody.[530] Following that guidance, investment advisers and other market participants expressed concerns related to the regulatory status of investment adviser discretionary trading practices that are processed or settled on a non-DVP basis.[531] In a 2019 letter seeking further engagement on the issue, Commission staff identified certain risks related to arrangements that trade on a non-DVP basis, stating that where trading or settlement occurs through a non-DVP arrangement, there is a heightened risk that an investment adviser could misappropriate funds or securities in its client's custodial account and that the lack of a corresponding transfer of securities or client funds into the custodial account reduces the effectiveness of the custodian as an independent safeguard.[532] In response, industry groups stated that an expansion of the rule's application to such arrangements misinterprets the 2003 Adopting Release; unduly expands the application of the rule to assets that trade on a non-DVP basis including loans, derivatives, private funds, and foreign assets; ignores that many investment management agreements already prohibit advisers from having custody while also outlining guidelines for the specific assets they are authorized to trade, and overlooks that advisers typically maintain reasonably designed policies and procedures tailored to the particular circumstances of an asset's settlement system.[533]

In light of the concerns raised by industry members about the application of the Advisers Act custody rule to discretionary trading activities, we are proposing an exception related to the treatment of authorized discretionary trading under the custody rule, considering any custodial risks such activity may pose as well as potential mitigating protections. As an initial matter, when assessing the custodial risks posed by discretionary trading on both DVP and non-DVP bases, it is important to distinguish risks related to custody and risks related to the settlement of transactions executed pursuant to discretionary trading authority because the Advisers Act custody rule is not generally intended to address risks related to settlement failure. It is possible that an adviser is competent in safeguarding client funds and securities (including complying with the requirements of the Advisers Act custody rule) yet the funds or securities it trades or the entities through which it trades may be subject to settlement or related risks. For example, in a derivatives trade, an adviser's counterparty may fail to deliver variation margin, which could occur for a number of reasons including operational errors or the insolvency of a regulated entity like a broker-dealer. The prophylactic measures in the Advisers Act custody rule are not designed to mitigate settlement or investment risks highlighted in this example but are intended to prevent and discover potential misappropriation, misuse, or loss. Accordingly, if the proposed discretionary trading authority exception is adopted, we expect to rescind the discussion in the 2003 Adopting Release on trading authority.

We are proposing three conditions that, collectively, are designed to mitigate the custodial risks associated with an adviser's discretionary trading authority. Instead of focusing on the means of settlement (whether DVP or non-DVP), our proposed conditions focus on custody risks and the adviser's authority to direct client assets outside of its trading authority. Specifically, advisers would not be required to comply with the proposed Advisers Act custody rule with respect to funds and securities over which it has custody due to its authority to trade at its discretion provided that:

(1) the adviser executes (and only has authority to execute) trades only from and into designated client accounts in the client's name or the transfer is recorded in the client's name by the issuer;

(2) the adviser has no authority (under the discretionary trading arrangement or otherwise) to transfer client funds and securities from the designated client account to an account in its own name, to an account the adviser controls, to an account controlled by a related person of the adviser as defined in proposed rule 223–1(d)(15), or to any account that is not the client's unless such transfer is directed by the client in connection with such trading, nor does the adviser have the authority to have the transfer recorded by the issuer in the adviser's own name or that of a related person; and

(3) the adviser complies with the Advisers Act custody rule for any other activities, rights, or authorities that otherwise cause it to have custody separate from such discretionary trading authority and with the requirements of any corresponding exceptions under the Advisers Act custody rule that the adviser may exercise pursuant to such custody.[534]

As an initial matter, an adviser with authorized discretionary trading authority must execute (and only have authority to execute) trades only from and into a designated client account in the client's name or have the transfer recorded in the client's name by the issuer to qualify for this proposed exception from the Advisers Act custody rule.[535] The proposed rule

[527] *See* 2003 Adopting Release, *supra* footnote 7, at n.10.

[528] *Id.* In addition to n.10 of the 2003 Adopting Release, the Commission stated in n.5 that the ''definition [of custody] and other examples make it clear that the adviser has custody when it can control client funds or securities for purposes other than authorized trading.''

[529] *See* Inadvertent Custody: Advisory Contract Versus Custodial Contract Authority, Division of Investment Management Guidance Update No. 2017–01 (Feb. 2017) (''2017 Inadvertent Custody IMGU''). *See also,* Engaging on Non-DVP Custodial Practices Letter, Division of Investment Management (Mar. 12, 2019), *available at https://www.sec.gov/investment/non-dvp-and-custody-digital-assets-031219-206* (''Engaging on Non-DVP Custodial Practices Letter''), and the Securities Industry and Financial Markets Association Asset Management Group (''SIFMA AMG'') and Investment Adviser Association (''IAA'') Letter to Dalia Blass and Peter Driscoll Re: IM Guidance Update No. 2017–01 (Mar. 2018) (''SIFMA AMG and IAA Non-DVP Letter'').

[530] *See* 2017 Inadvertent Custody IMGU, *supra* footnote 529.

[531] *See* SIFMA AMG and IAA Non-DVP Letter, *supra* footnote 529.

[532] *See* Engaging on Non-DVP Custodial Practices Letter, *supra* footnote 529.

[533] *See* SIFMA AMG and IAA Non-DVP Letter and IAA, SIFMA AMG, and the Loan Syndications and Trading Association (''LSTA'') Letter to Vanessa Countryman Re: Engaging on Non-DVP Custodial Practices (May 13, 2021), *available at https://www.sec.gov/files/iaa-sifma-lsta-051321.pdf.*

[534] *See* proposed rule 223–1(b)(9).

[535] *See* proposed rule 223–1(b)(9)(i). The current Advisers Act custody rule's privately offered securities exception has a provision for securities

would require specific identification of the account in which trading can occur, which would restrict the locus of the funds and securities and limit advisers from withdrawing or accessing funds in another way that would present significant misappropriation risks.[536] The proposed rule would require only trades from and into designated accounts in the client's name to ensure the assets are clearly identifiable as those of the client. This designated client account requirement provides protections similar to some of those found in the existing Advisers Act custody rule, namely, to notify a client of the account's location and provide a means for the client to monitor the amount and transactions in their account.[537]

This proposed condition also provides that the transfer of a security may be recorded in the client's name by the issuer. We understand from engagement on this issue that certain privately offered securities and bank loans may record ownership in this manner.[538] Allowing the transfer of securities to be recorded in the client's name by the issuer would provide flexibility for these kinds of securities while still providing appropriate protections given that the issuer, its designated administrator, or custodian is generally required to perform verification procedures on the client and certain trade details.[539]

An adviser seeking to rely on this discretionary trading authority exception would not be permitted to have authority (under the discretionary trading arrangement or otherwise) to transfer client funds and securities from the designated client account to an account in its own name or an account the adviser or its related person controls, or to any account that is not the client's unless such transfer is directed by the client in connection with such trading, nor the authority to have the transfer recorded by the issuer in the adviser's name or that of a related person.[540] This proposed condition is necessary because an adviser with the authority to transfer client funds or securities to itself, its related person or to a third party absent client direction would present the misappropriation risk that the Advisers Act custody rule is designed to protect against.

To demonstrate compliance with this condition, advisers could consider amending their investment management agreements or other arrangements to expressly prohibit the adviser or its related persons from transferring client funds or securities to itself or a related person (which would allow the adviser authority to obtain actual possession of client funds or securities) or to any account that is not the client's unless such transfer is directed by the client. It is our understanding that some investment management agreements contain similar provisions expressly providing that the adviser does not have custody of client assets.[541]

The proposed condition that the adviser must not have authority to transfer client funds and securities to any account that is not the client's unless the transfer is directed by the client in connection with such trading is designed to prevent advisers from unauthorized transfers of client funds or securities from the designated client account to the account of a third party.[542] This provision would address circumstances of misappropriation where, for example, an advisory employee transfers funds or securities to a family member or other third party associated with the adviser. However, transfers where the client has directed or provided the adviser with authority to transfer assets to a counterparty in furtherance of a trade with such third party would not be prohibited under this condition of the exception. This is necessary so that advisers can complete trades with third parties consistent with the authority provided by the client.

Lastly, to qualify for this proposed exception from the Advisers Act custody rule, an adviser with custody of funds or securities arising from its discretionary trading authority must comply with the Advisers Act custody rule for any other activities, rights, or authorities that otherwise cause it to have custody of such funds or securities separate from such trading authority and with the requirements of any corresponding exceptions under the Advisers Act custody rule that such adviser may exercise pursuant to such custody.[543] Some advisers have custody for separate reasons such as fee deduction authority or broad powers of attorney and may therefore engage both in discretionary trading and have the ability to transfer funds or securities out of client accounts, for example, to pay third party administrative or operating expenses.[544] These advisers' authority to transfer funds or securities out of a client's account exposes such client funds or securities to custodial risks regardless of whether the adviser also has discretionary trading authority. For instance, an adviser with both authority to trade at its discretion, and to transfer funds out of a client account for other purposes, could use the latter authority alone to misappropriate client funds, necessitating the protections of the Advisers Act custody rule. In that case,

that are ''[u]ncertificated, and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client.'' *See* rule 206(4)–2(b)(2) and proposed rule 223–1(b)(2).

[536] As a practical matter, clients should have knowledge of the specific designated client accounts in which the adviser's discretionary trading activity will occur, as such accounts would typically be identified and agreed upon at account opening or during the course of the advisory relationship. Such client awareness would be consistent with the informed consent that underlies any discretionary trading arrangement and would help ensure that clients have notice of where such activity will occur and can monitor their assets accordingly.

[537] *See* rules 206(4)–2(a)(2) and (3).

[538] *See* Letter to Paul Cellupica from LSTA Re: Custody Rule and Trading Controls Relating to Bank Loans (July 22, 2019), *available at https://www.sec.gov/files/loan-syndications-and-trading-association-072219.pdf.* Under the current Advisers Act custody rule, the privately offered securities exception utilizes a provision (among others) to except advisers from the use of a qualified custodian where indicia of ownership are ''uncertificated, and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client.'' *See* rule 206(4)–2(b)(2)(i)(B) and proposed rule 223–1(b)(2)(i)(B).

[539] Financial institutions are typically subject to anti-money laundering requirements under the Bank Secrecy Act (''BSA''), including requirements to have a reasonably designed anti-money laundering compliance program and risk-based procedures to verify the identity of customers. Specific rule requirements, for example, include 31 CFR 1020.210 (requiring banks to have a written, board approved program that meets certain minimum requirements, including internal controls, BSA officers, training, testing, and risk-based customer due diligence); FINRA rule 3310 (setting forth the minimum standards for broker-dealer firms' written anti-money laundering compliance programs); FINRA rule 2090 (requiring broker-dealers to use reasonable diligence, in regard to the opening and maintenance of customer accounts, to know (and retain) essential facts concerning its customers and concerning the authority of each person acting on behalf of such customers). *See also* Federal Financial Institutions Examination Council, Bank Secrecy Act/Anti-Money Laundering Examination Manual, *available at https://bsaaml.ffiec.gov/manual.*

[540] *See* proposed rule 223–1(b)(9)(ii).

[541] *See* SIFMA AMG and IAA Non-DVP Letter, *supra* footnote 529.

[542] Activities unrelated to trading (*e.g.,* ''bill pay'' arrangements or other one-way payments or transfers of funds or securities) would not qualify for the proposed discretionary trading authority exception.

[543] *See* proposed rule 223–1(b)(9)(iii).

[544] *See* discussion *infra* at section II.G.5. A standing letter of authorization would serve as a separate basis of custody. We note that our staff expressed a view in a 2017 no-action letter regarding standing letters of authorization that an adviser with the power to disburse funds to one or more third parties does have access to the client's assets and therefore has custody. However, the staff stated that notwithstanding this view, they would not recommend enforcement action if the adviser does not undergo a surprise examination if it complies with certain prophylactic conditions. *See* Investment Adviser Association, SEC Staff No-Action Letter (Feb. 21, 2017) (''IAA SLOA No-Action Letter''). In addition, we note with regard to these authorities that both the current and proposed rule maintain an exception for fee deduction from the independent verification requirement. *See* rule 206(4)–2(b)(3).

the proposed discretionary trading authority exception would not be available unless the adviser complies with the Advisers Act custody rule with respect to its authority to transfer funds because the adviser has custody of funds or securities through its authority to transfer funds out of the account for purposes separate from its discretionary trading authority. This provision is designed to ensure that the authority is truly limited to executing trades and not used broadly to except wire authority or other authorities that confer custody outside of the discretionary trading context.

Additionally, this provision is designed to address circumstances where other exceptions under the Advisers Act custody rule may apply to an adviser that has custody over funds or securities for a separate reason in addition to its discretionary trading authority. In such circumstances advisers would need to comply with and independently satisfy such exceptions if they intend to rely on both of them. For example, an adviser could have two separate bases for custody: discretionary trading authority and inadvertent custody. In this situation, the adviser should evidence its satisfaction of the conditions to the exception for inadvertent custody, such as disavowing unwanted authority, while separately satisfying the three individual conditions of the discretionary trading authority exception. Based on the foregoing, an adviser that seeks to rely on this proposed exception from the Advisers Act custody rule should carefully review and monitor whether it otherwise has or acquires custody over the funds or securities it is trading on a discretionary basis to avoid becoming subject to the Advisers Act custody rule.

In practice, we understand that some advisers would likely have both discretionary trading authority and fee deduction authority over a client account. An adviser that has custody solely because it has authority to withdraw its advisory fees directly from a client's account is excepted only from the surprise examination requirement, but all other requirements of the Advisers Act custody rule, including the obligations to maintain client assets with a qualified custodian, to provide notice to clients upon account opening, and to have a reasonable basis for believing the qualified custodian sends account statements directly to clients, would continue to apply. In such circumstances where the adviser would have two separate bases for custody, the adviser would not be able to rely solely on satisfaction of the conditions of the discretionary trading authority exception to obtain relief from compliance with the entirety of rule, because the adviser would need to comply with the Advisers Act custody rule with respect to the separate basis for custody *e.g.* its fee deduction authorities. Therefore, with respect to such funds or securities that are subject to fee deduction the proposed rule would only except them from the surprise examination, but they would still be required to comply with the remainder of the rule. This outcome under the proposed rule aligns with the protective objectives of the Advisers Act custody rule because an adviser with authority to withdraw fees from a client account may transfer or withdraw funds to itself.

In addition to the specific conditions of this proposed exception from the Advisers Act custody rule, an adviser would need express authority in writing from a client to trade such client's funds or securities on a discretionary basis. Investment management agreements and provisions authorizing discretionary trading typically have express discretionary authority in writing from the client to issue instructions to execute such trades. Agreements that specify the extent of an adviser's authority help ensure that the client has consented to the arrangement before the adviser begins trading on a discretionary basis. Such agreements also provide the client with an opportunity to scope the adviser's trading activities appropriately to the investment strategy and asset types they trade. For example, a client could only authorize an adviser to trade a particular type of asset on a discretionary basis following a particular process, or with certain counterparties. A client could also authorize an adviser to trade a wide set of assets on a discretionary basis, but with specific parameters or a particular investment objective. Taken together, the facts and circumstances of the arrangement and specific written agreements outlining the client's authorization of discretionary trading are important in mitigating custody risk related to providing advisers with such authority. Broadly written grants of authority may prevent an adviser from qualifying for the proposed discretionary trading authority exception as they may instead constitute a more general power of attorney or arrangement authorizing the withdrawal of client funds or securities that otherwise would be ''custody'' under proposed rule 223–1(d)(6). We thus encourage advisers to review their contractual grants of authority.

Rule 206(4)–7 under the Advisers Act requires registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules.[545] Accordingly, an adviser that is seeking to rely on the proposed rule's discretionary trading authority exception should adopt written policies and procedures that are reasonably designed to ensure that the adviser's discretionary trading practices meet the conditions required under the rule.[546] For example, the adviser should consider adopting policies and procedures to provide how the adviser: monitors whether it has custody of client funds or securities for reasons other than its discretionary trading authority; has authority to and executes trades only from and into a designated account in the client's name or the transfer is recorded in the client's name by the issuer; confirms that the adviser has no authority to transfer client funds and securities from the designated client account to an account in its own name or an account the adviser or its related person controls, or to any account that is not the client's unless such transfer is directed by the client in connection with such trading, nor the authority to have the transfer recorded by the issuer in the adviser's own name or its related person; and monitor transactions to detect whether any such transfer has occurred.[547]

We also understand that adviser compliance programs may currently set forth other procedures regarding trading activities including, but not limited to: requiring the authorization of more than one employee before the movement of assets within, and withdrawals or transfers from, a client's account, as well as before changes to account ownership information; limiting the number of employees who are permitted to interact with custodians and administrators with respect to client assets and rotating them on a periodic basis; and segregating the duties of its advisory and third party personnel to make it difficult for any one person to misuse client assets without being

[545] *See* rule 206(4)–7 and Compliance Program Adopting Release *supra* footnote 120. *See also* discussion in the 2009 Adopting Release, *supra* footnote 7, at section II.G. (providing guidance regarding the maintenance of strong policies and procedures ''relating to safekeeping of client assets that advisers should consider including in their compliance programs'').

[546] *See* proposed rule 223–1(b)(9).

[547] Though discretionary trading authority is excepted from the compliance requirements of the proposed rule, we note that advisers would still have recordkeeping obligations with regard to their custody of such assets. *See* rule 204–2(a)(8) and (9) and 204–2(b). *See also* discussion of the proposed recordkeeping amendments at *infra* section II.H.1.

detected. Advisers, therefore, should consider focusing on such controls in the adviser's compliance program including by developing procedures by which the chief compliance officer periodically tests the effectiveness of the firm's controls over the trading of funds and securities on a discretionary basis. We have provided the guidance set out above primarily in the form of examples rather than proposing a one-size-fits-all approach and expect that advisers would tailor their discretionary trading policies and procedures to fit the asset types and particular risks involved. The Commission requests comment on our proposed amendments to the Advisers Act custody rule to except discretionary trading authority from the definition of custody:

215. Should we amend the Advisers Act custody rule to provide the proposed exception for discretionary trading authority from the custody rule? Are there any significant issues related to discretionary trading authority that the proposed amendments have not addressed? Should we provide more specific rule text or guidance for certain settlement or asset types such as DVP, non-DVP, loans, collateralized loan obligations, derivatives, private fund interests, or any other assets? Should we also consider amendments to the privately offered securities exception to accommodate such assets? [548]

216. Should the proposed exception require the use of a qualified custodian or require a qualified custodian to perform any particular services for the adviser to avail itself of the exception? Should we require or not require a qualified custodian for certain asset types? Should the proposed exception be available to crypto assets?

217. Instead of providing an exception from the Advisers Act custody rule should we instead amend the definition of custody to exclude discretionary trading authority from the definition of custody? If we amended the definition of custody to exclude such trading activities, should we still require conditions comparable to those we provide in the proposed exception?

218. Should an adviser be able to utilize the exception if it has custody for reasons other than its discretionary trading authority? Under the exception should the adviser have to comply with the Advisers Act custody rule for any other activities, rights, or authorities that otherwise cause it to have custody of such funds or securities separate or in addition to such trading authority? For example, should advisers have to independently comply with other exceptions related to a separate basis of custody including exceptions for fee deduction, SLOAs, and inadvertent custody among others?

219. Should we exclude or include any different conditions for this proposed exception? Do advisers with discretionary authority over a client's funds or securities (regardless of settlement method) currently have safeguards in place that effectively limit the risks to clients of loss, misuse, theft, or misappropriation? Do these safeguards differ depending on whether the arrangement involves a qualified custodian or the asset type? Should we modify any of the conditions?

220. Should we define designated client account? If so, should it be sufficiently broad to accommodate certain types of trading practices? Should the proposed limitation on transfers from the designated client account to an account in the adviser's name or one it controls allow for certain exceptions? Should it not apply to cross or principal trades involving related parties if the adviser (i) seeks and obtains written approval by the client for the specific trade and (ii) effectuates the trade in compliance with the adviser's policies and procedures for such trades? Should the proposed exception specifically address custody imputed from signatory authority, related party accounts, or family accounts?

221. Should we prohibit transfers to any account that is not the client's unless such transfer is directed by the client? Does this provision address circumstances of misappropriation where an advisory employee transfers funds or securities to a family member or other third party associated with the adviser? Does the provision allowing transactions where the client has directed or provided the adviser with authority to transfer assets to such third party provide appropriate flexibility so that advisers can complete trades with third parties? Should we require that the authorization or direction for transfers to any account that is not the client's be in writing? Could this provision be abused in certain circumstances for unauthorized transfers?

222. Should we change the proposed designated client account requirement so that an adviser cannot open accounts in the client's name or change the beneficiary of those accounts without providing notice and/or receiving client consent to do so? Are there any fund structuring or account opening details that may conflict with the proposed designated client account condition and the condition limiting transfers from the designated client account to an account in the adviser's name an account it controls, or any account that is not the client's unless such transfer is directed by the client in connection with such trading? As a practical matter, would clients likely have knowledge of the specific designated client accounts in which the adviser's discretionary trading activity will occur? Are such accounts typically identified and agreed upon at account opening or during the course of the advisory relationship?

223. Would advisers to private funds or separately managed accounts be able to comply with the proposed conditions to the exception? Are there unique circumstances or trading practices that would make complying with such conditions difficult?

224. Should the rule provide a definition for discretionary trading authority? If so, what should it be? Or is this term reasonably understood and applicable to the investment strategies that advisers provide to their clients? Should we conform the definition of discretionary trading authority with the Form ADV definition of ''Discretionary Authority'' or ''Discretionary Basis'' (''your firm has discretionary authority or manages assets on a discretionary basis if it has the authority to decide which securities to purchase and sell for the client'' and ''[y]our firm also has discretionary authority if it has the authority to decide which investment advisers to retain on behalf of the client''). Should we distinguish discretionary trading authority in the exception from the Form ADV definition because the proposed exception does not include having the authority to decide which investment advisers to retain on behalf of a client? Should we require written policies and procedures specific to the proposed discretionary trading authority exception, or rely on existing compliance rule obligations under rule 206(4)–7? If we require specific policies and procedures or internal controls, what should those be? In addition to the rule should we provide guidance with regard to compliance programs for authorized discretionary trading activities?

225. Would the proposed amendments require clients, advisers, and custodians to reconsider relevant investment management agreements, custodial contracts, or other arrangements? Or are many of the proposed conditions already met in existing agreements? What would the relative costs or compliance burdens with the exception be? Would the

[548] *See* current rule 206(4)–2(b)(2), which would be redesignated as rule 223–1(b)(2) under this proposal; *supra* footnote 124 and accompanying text.

proposed rule cause advisers to re-consider providing discretionary trading services to clients?

226. In addition to existing recordkeeping obligations under the Advisers Act, should there be specific corresponding recordkeeping obligations related to use of the proposed discretionary trading authority exception? Do advisers already maintain evidence of an adviser's trading authority pursuant to the existing recordkeeping rule? [549]

3. PCAOB-Registered Accountant Requirement

We are proposing amendments to the Advisers Act custody rule to remove the requirements that accountants and auditors must be registered with, and subject to regular inspection by, the PCAOB. The auditor performing the audit of a pooled investment vehicle's annual financial statements pursuant to the rule's audit provision, as well as the accountant performing the surprise examination or preparing the internal control report would continue to be required to be an independent public accountant.[550] Additionally, we are proposing conforming amendments to the description of the internal control report under current rule 206(4)–2(a)(6) (proposed to be redesignated as rule 223–1(a)(6)) to align the description of the internal control report with updates to the language in attestation standards.[551] These changes are not intended to change the substance of the internal control report requirement.

Under the current audit provision, a pooled investment vehicle's annual audited financial statements must be prepared by a PCAOB-registered and -inspected independent public accountant for the adviser to such vehicle to be deemed to satisfy the surprise examination requirement and be excepted from the client notice and account statement delivery requirements.[552] Additionally, under the Advisers Act custody rule, if an adviser or a related person of the adviser maintains client funds or securities as a qualified custodian, an independent public accountant that is registered with, and subject to regular inspection by, the PCAOB must perform the required surprise examination and prepare the required internal control report.[553]

The PCAOB was established by the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley Act'') to oversee the audit of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports.[554] The requirement for independent public accountants to be registered with, and subject to regular inspection by, the PCAOB was added in the 2009 amendments to the Advisers Act custody rule.[555] The PCAOB registration and inspection requirements were intended to serve as a measure of quality of the audits and examinations required to be performed under the Advisers Act custody rule and the accountants performing these required audit and examination services. However, as the Commission acknowledged in the 2009 Adopting Release, PCAOB inspection is focused on public company audits, and the PCAOB does not inspect the engagements that are required solely because of the Advisers Act custody rule.[556] The Commission at that time stated that the PCAOB requirements could provide indirect benefits for purposes of the Advisers Act custody rule regarding the quality of the accountant's or auditor's other engagements.[557]

In light of the Commission's experience since the 2009 amendments, we now believe that any indirect benefits of the Advisers Act custody rule's PCAOB registration requirements may not justify the incremental cost of engaging a PCAOB-registered firm. A firm's PCAOB registration status does not indicate whether the firm is subject to PCAOB oversight or inspection nor whether its professional services are within the PCAOB's limited scope of oversight authority.[558] Although there has been some positive correlation between PCAOB-registered firms subject to inspection and the quality of audit services,[559] as the PCAOB has previously stated, PCAOB oversight status does not itself provide assurance of the quality of a firm's professional services.[560] As discussed above, the PCAOB's oversight authority does not cover the services that are required to be performed under the Advisers Act custody rule. Because the PCAOB does not currently examine or inspect accountants with respect to the services required under the Advisers Act custody rule, the PCAOB registration and inspection requirements are not an appropriate proxy for the quality of the audit and examination services required under the rule.

We also understand that the PCAOB requirement generally increases the

[549] For example, the existing Advisers Act recordkeeping rule addresses discretionary power (rule 204–2(a)(8)), powers of attorney (rule 204–2(a)(9)), and written agreements (rule 204–2(a)(10)).

[550] *See* rule 206(4)–2(a)(4) (proposed to be redesignated as rule 223–1(a)(4)), rule 206(4)–2(a)(6) (proposed to be redesignated as 223–1(a)(6)), and rule 206(4)–2(b)(4) (proposed to be redesignated as 223–1(b)(4)). (Current rule 206(4)–2(a)(4) does not require (nor would proposed rule 223–1(a)(4) require) that the independent public accountant performing the surprise examination be registered with, and subject to regular inspection, by the PCAOB, when neither the adviser nor its related person maintains custody as a qualified custodian.)

[551] Specifically, the amendments would replace ''The internal control report must include an opinion of an independent public accountant as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and securities held by either you or a related person on behalf of your advisory clients, during the year,'' with ''The internal control report must include an opinion of an independent public accountant as to whether controls were suitably designed and implemented and operating effectively throughout the period to achieve control objectives relating to custodial services, including the safeguarding of funds and securities held by either you or a related person on behalf of your advisory clients.'' *See* proposed rule 223–1(a)(6). *See also* AICPA Attestation Standards (Clarified), Glossary of Terms, *available at https://www.aicpa-cima.com/resources/download/aicpa-ssaes-currently-effective* (''AICPA Attestation Standards (Clarified)'').

[552] *See* rule 206(4)–2(b)(4).

[553] *See* rule 206(4)–2(a)(6)(i)–(ii).

[554] *See* section 101(a) of the Sarbanes-Oxley Act of 2002, Public Law 107–204, 116 Stat. 745 (2002).

[555] *See* 2009 Adopting Release, *supra* footnote 7, at section II.C.3.

[556] *See id.* In 2010, the Dodd-Frank Act amended the Sarbanes-Oxley Act to provide the PCAOB with oversight of auditors of broker-dealers that are registered with the Commission. *See* section 982 of the Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010).

[557] *See* 2009 Adopting Release, *supra* footnote 7, at section II.C.3.

[558] The scope of the PCAOB's authority includes the audits of issuers, brokers, and dealers. See 15 U.S.C.7212 (requiring registration of public accounting firms that ''prepare or issue, or participate in the preparation or issuance of, any audit report with respect to any issuer, broker, or dealer''); 15 U.S.C. 7214(a)(1) (setting forth the PCAOB's inspection authority over registered public accounting firms and associated persons ''in connection with [the] performance of audits, issuance of audit reports, and related matters involving issuers''); 15 U.S.C. 7214(a)(2) (providing that the PCAOB may, by rule, conduct inspections ''on a basis to be determined by the Board, of registered public accounting firms that provide one or more audit reports for a broker or dealer'').

[559] *See, e.g.,* Philip T. Lamoreaux, *Does PCAOB Inspection Access Improve Audit Quality? An Examination of Foreign Firms Listed in the United States,* 61 J. Acct. & Econ. 313 (2016); and Simon Yu Kit Fung et al., *Does the PCAOB International Inspection Program Improve Audit Quality for Non-US Listed Foreign Clients?,* 64 J. Acct. & Econ. 15 (2017).

[560] *See, e.g.,* PCAOB, Proposals Regarding False or Misleading Statements Concerning PCAOB Registration and Oversight and Constructive Requests to Withdraw from Registration, PCAOB Release No. 2024–001 (Feb. 27, 2024) (discussing impact on user perception of nature and value of the services resulting from ''misperceiving that they are obtaining a level of assurance provided by a PCAOB-registered firm that is providing PCAOB-regulated services, when in fact . . . the service is not subject to PCAOB oversight'').

costs of audit and examination services.[561] Firms that register with the PCAOB are subject to annual registration fees, which vary depending on the size of the firm.[562] Further, firms that identify and market themselves as PCAOB-registered have generally been found to have charged higher fees after becoming PCAOB-registered than they previously charged.[563] Because, as discussed above, the audit and examination services under the Advisers Act custody rule are not within the scope of PCAOB's authority, this increased cost may not be offset by a commensurate benefit to investors in these circumstances.

Removing the PCAOB requirements would increase the supply of independent public accountants that are available to perform the required audit and examination services under the Advisers Act custody rule, which would increase competition for the provision of the required audit and examination services under the rule. This increased competition could ultimately reduce costs to advisers of complying with the rule.

We request comment on all aspects of the proposed amendments to remove the requirements in the Advisers Act custody rule for independent public accountants to be registered with, and subject to regular inspection by, the PCAOB, including the following items:

227. Should we, instead of the proposed rule, continue to require that the accountants performing surprise examinations or preparing internal control reports for an adviser (or its related person) that acts as a qualified custodian for client funds or securities and/or that perform annual audits of limited partnerships or other pooled investment vehicles be registered with, and subject to regular inspection by, the PCAOB? Is the current PCAOB requirement a meaningful measurement of quality for the types of audits and examinations that are required to be performed by independent public accountants under the Advisers Act custody rule?

228. Should the Advisers Act custody rule require that accountants and auditors performing audit and examination services pursuant to the rule be subject to an alternative registration and inspection standard? If so, describe these alternative requirements. For example, should the rule require that independent public accountants be enrolled in the American Institute of CPAs (''AICPA'') peer review program and have received a rating of 'pass' in the most recently reviewed period? How would such a qualification requirement affect the number of available qualified independent public accountants? Do such accountants generally charge higher fees than other independent public accountants?

229. We note that accountants generally use Statements on Standards for Attestation Engagements (''SSAEs'') for attestation engagements in the U.S., may apply dual standards when a report will also be used internationally, and may use International Standards on Assurance Engagements (''ISAEs'') when serving non-U.S. clients. In light of this, should accountants performing examination services pursuant to the Advisers Act custody rule be explicitly permitted to conduct examinations pursuant to other attestation standards, such as ISAEs? If so, when? Would permitting the use of alternative attestation standards affect the number of independent public accountants offering examination services required under the Advisers Act custody rule? How would this affect the cost of such examination services?

230. Do the proposed conforming amendments to the description of the internal control report under proposed rule 223–1(a)(6)) align with the AICPA Attestation Standards (Clarified) [564]? Do commenters agree that these proposed conforming amendments would not change the substance of the internal control report?

231. Should we amend any references in the Advisers Act custody rule to independent public accountants? For example, should the definition of ''independent public accountant'' under the Advisers Act custody rule be amended so that it is defined as a public accountant that meets the standards of independence described in rule 2–01 of Regulation S–X (17 CFR 210.2–01) (as opposed to rule 2–01(b) and (c) of Regulation S–X (17 CFR 210.2–01(b) and (c)), as proposed and in the current Advisers Act custody rule)? Why or why not?

4. Audit Provision

Under the audit provision of the Advisers Act custody rule, an adviser to a limited partnership, limited liability company, or other pooled investment vehicle is excepted from the client notice and account statement delivery requirements and is deemed to have complied with the rule's surprise examination requirement, provided that, among other things, audited financial statements are delivered to the investors in the pooled investment vehicle on an annual basis.[565]

We are proposing several amendments to the audit provision of the Advisers Act custody rule. First, we propose to amend the audit provision to specify that the reference to audited financial statements prepared in accordance with ''generally accepted accounting principles'' refers to U.S. Generally Accepted Accounting Principles (U.S. GAAP) or, for non-U.S.-based pooled investment vehicles, in accordance with accounting principles other than U.S. GAAP, provided that the financial statements contain information substantially similar to the information contained in financial statements prepared in accordance with U.S. GAAP, including a reconciliation to U.S. GAAP for material differences, and such reconciliation is delivered to the pooled investment vehicle's U.S. investors. Second, we propose to extend the audited financial statement distribution deadlines applicable to a fund of funds and fund of funds of funds to 180 days and 260 days, respectively, after fiscal year end. We also outline our view that the failure to distribute audited financial statements by the applicable deadline due to reasonably unforeseeable circumstances generally would not be considered a violation of the audit provision, provided that the audited financial statements are promptly delivered upon resolution of the reasonably unforeseeable circumstances. Third, we propose to modify the delivery requirements for audited financial statements for pooled investment vehicles that are formed within the 90-day period prior to the vehicle's fiscal year end to provide that the requirement would be deemed satisfied if financial statements (which may be unaudited) covering the first fiscal year are distributed within 90 days after the end of the first fiscal year and audited financial statements covering the first fiscal year and second fiscal year are delivered after the end of the second fiscal year. In connection with these proposed amendments, we are also

[561] *See, e.g.,* Partha S. Mohapatra, Hamilton Elkins, et al., *The Impact of PCAOB International Registration on Audit Quality and Audit Fees,* J. Account. Public Policy 41 (2022), *available at https://www.sciencedirect.com/science/article/pii/S0278425422000102* (finding that PCAOB-registered firms charge higher audit fees after PCAOB-registration than before becoming PCAOB-registered).

[562] *See* PCAOB, Annual Fee, *available at https://pcaobus.org/oversight/registration/annual-fee.*

[563] *See supra* footnote 561.

[564] *See supra* footnote 551.

[565] *See* current rule 206(4)–2(b)(4), which would be redesignated as rule 223–1(b)(4) under this proposal. For purposes of this section, references to a pooled investment vehicle refer to each of a ''limited partnership, limited liability company, or other pooled investment vehicle,'' as referenced in the audit provision.

proposing to modify the distribution requirements of the audit provision to provide that the financial statements may be distributed to an independent representative of the investor.[566] These proposed amendments to the Advisers Act custody rule's audit provision would facilitate compliance with the audit provision, better address industry practices, and reduce burdens.

(a) Use of U.S. GAAP and Reconciliation to U.S. GAAP for Foreign Pooled Investment Vehicles

We are proposing amendments to the audit provision to specify that a pooled investment vehicle's audited financial statements must be prepared in accordance with U.S. GAAP, except for financial statements of pooled investment vehicles organized under non-U.S. law or that have a general partner or other manager with a principal place of business outside the United States (''foreign PIVs'').[567] We propose to allow financial statements of foreign PIVs to be prepared in accordance with accounting principles other than U.S. GAAP, provided that the financial statements contain information substantially similar to the information contained in financial statements prepared in accordance with U.S. GAAP, including a reconciliation to U.S. GAAP for material differences, and such reconciliation is delivered to the pooled investment vehicle's U.S. investors, along with the required audited financial statements.[568]

Under the current audit provision, financial statements must be prepared in accordance with ''generally accepted accounting principles,'' but the rule does not require that financial statements must be prepared in accordance with U.S. GAAP specifically.[569] Nonetheless, it has been the Commission's longstanding view that, except in the limited circumstances discussed below, audited financial statements would need to be prepared in accordance with U.S. GAAP.[570] We continue to believe that U.S. GAAP is the proper accounting framework. As a primary matter, U.S. GAAP is well understood by U.S. investors. U.S. GAAP also incorporates important industry-specific accounting and disclosure principles for common types of pooled investment vehicles, including private funds. For example, for pooled investment vehicles within the scope of the FASB ASC Topic 946, U.S. GAAP requires presentation of a schedule of investments and financial highlights and the measurement of trades on the trade date (as opposed to the settlement date) that may not be required under other accounting principles.[571] These features of U.S. GAAP are familiar to U.S. investors and, in turn, allow these investors to better understand and compare pooled investment vehicles.

We recognize, however, that foreign PIVs often have their financial statements prepared in accordance with accounting principles related to their local jurisdictions rather than U.S. GAAP. The proposed amendments would require that the financial statements must contain information substantially similar to the information contained in financial statements prepared in accordance with U.S. GAAP, including a reconciliation to U.S. GAAP for material differences.[572] This proposed requirement, along with the proposed requirement to deliver the audited financial statements including any reconciliations to U.S. GAAP to the pooled investment vehicle's U.S. investors, would promote consistency and comparability of audited financial statements, allowing U.S. investors to be better able to assess and monitor the vehicle's investments, particularly over multiple periods.

We request comment on all aspects of the proposed amendments to the audit provision to require U.S. GAAP and to permit foreign PIVs to use an accounting framework other than U.S. GAAP, subject to certain conditions, including the following items:

232. Should the rule require the audited financial statements be prepared in accordance with U.S. GAAP, as proposed?

233. We propose to define U.S. GAAP to mean accounting principles promulgated, or recognized by the Commission as generally accepted, in accordance with section 19 of the Securities Act of 1933 (15 U.S.C. 77s). Do commenters agree with this proposed definition? Is there a different definition we should use?

234. Should the requirement to deliver U.S. GAAP reconciliation to investors apply only to U.S. investors, as proposed? Alternatively, should the rule require that the reconciliation to U.S. GAAP be delivered to both U.S. and non-U.S. investors?

235. Should the proposed rule specify that the U.S. GAAP reconciliation must be included within the audited financial statements that are delivered pursuant to the audit provision? Alternatively, should the U.S. GAAP reconciliation be permitted to be included in a separate statement that accompanies the audited financial statements? If so, should an additional books and records requirement be added for such separate reconciliations in the Advisers Act recordkeeping rule?

236. Is the requirement that information be 'substantially similar' to information contained in financial statements prepared in accordance with U.S. GAAP currently well-understood and consistently applied? Would it be helpful to clarify how foreign PIVs using an accounting standard other than U.S. GAAP provide information substantially similar to information contained in financial statements prepared in accordance with U.S. GAAP? What specific guidance would be most helpful?

237. Given the prevalence, for tax and other reasons, of private funds and other pooled investment vehicles being organized outside of the U.S. (even

[566] *See* proposed rule 223–1(b)(4). In connection with these proposed amendments, we are proposing a corresponding amendment to rule 206(4)–2(a)(7) (proposed to be redesignated as rule 223–1(a)(7)) to add a cross-reference to proposed rule 223–1(b)(4).

[567] *See* proposed rule 223–1(b)(4)(i)(B). In connection with this proposed change, we are also proposing to add a new defined term for U.S. GAAP, which we propose to define as accounting principles promulgated, or recognized by the Commission as generally accepted, in accordance with section 19 of the Securities Act of 1933 (15 U.S.C. 77s). *See* proposed rule 223–1(d)(19).

[568] *See* proposed rules 223–1(b)(4)(i)(B) and (C). The pooled investment vehicle's audited financial statements, along with any reconciliations to U.S. GAAP, are required to be delivered to U.S. investors in the pooled investment vehicle pursuant to the audit provision. *See* rule 206(4)–2(b)(4)(i) (proposed to be redesignated rule 223–1(b)(4)(i)(B)). An adviser would be required to make and keep a record of the reconciliation to U.S. GAAP under the Advisers Act recordkeeping rule. *See* rule 204–2(a)(6).

[569] *See* rules 206(4)–2(b)(4)(i) and (iii).

[570] *See* 2003 Adopting Release, *supra* footnote 7, at n.41 (''We are aware that a small percentage of advisers subject to the rule advise foreign pooled investment vehicles that prepare their financial statements in accordance with International Accounting Standards or some comprehensive body of accounting standards other than U.S. Generally Accepted Accounting Principles ('U.S. GAAP'). An adviser may use such financial statements to qualify for this exception with respect to pools that have a place of organization outside the U.S. or a general partner or other manager with a principal place of business outside the U.S., if such financial statements contain information that is substantially similar to financial statements prepared in accordance with U.S. GAAP and contain a footnote reconciling any material variations between such comprehensive body of accounting standards and U.S. GAAP.'').

[571] *See* Financial Accounting Standards Board (''FASB'') Accounting Standards Codification (''ASC'') Topic 946, *Financial Services—Investment Companies*.

[572] Commission staff has also previously taken a similar view regarding advisers to foreign PIVs delivering audited financial statements that were prepared in accordance with accounting principles other than U.S. GAAP in certain circumstances. *See* SEC, Staff Responses to Questions About the Custody Rule (last updated Feb. 21, 2017), *available at https://www.sec.gov/rules-regulations/staff-guidance/division-investment-management-frequently-asked-questions/staff-responses-questions-about-custody-rule* (''Custody Rule FAQs''), Question VI.5.

when a substantial portion or majority of the invested assets come from U.S. investors), should we distinguish between foreign PIVs that have non-U.S. investment advisers and foreign PIVs that have a primary adviser with a principal office and place of business in the U.S.?

238. Similarly, should any ability to utilize non-U.S. GAAP in preparing and presenting financial statements be linked to a foreign PIV having a given threshold of non-U.S. investment (*e.g.,* a requirement that a majority of the invested capital be traced to clients that are not U.S. Persons)?

239. Should any different requirements apply for foreign PIVs that are also registered as a commodity pool with the CFTC and prepare financial statements in accordance with accounting principles or standards in accordance with applicable CFTC regulations?

(b) Distribution of Audited Financial Statements

We are proposing several amendments to the Advisers Act custody rule related to the distribution requirement under the audit provision. First, we propose to extend the current 120-day delivery deadline for annual audited financial statements to 180 days for funds of funds and 260 days for funds of funds of funds.[573] Second, we propose to amend the audit provision to permit an adviser to satisfy the distribution requirement by distributing the audited financial statements to a designated independent representative of an investor. We are also setting forth our view that a failure to distribute audited financial statements before the delivery deadline due to reasonably unforeseeable circumstances generally would not be considered to be a violation of the audit provision, provided that the audited financial statements are promptly delivered upon resolution of the reasonably unforeseeable circumstances.

Currently, annual audited financial statements are required to be delivered to all limited partners, members, or other beneficial owners of a pooled investment vehicle within 120 days of the end of its fiscal year and promptly upon completion of the audit at liquidation.[574] However, auditors performing the audit for a fund of funds may be unable to complete their work until the audited financial statements for the underlying funds are available, which may not be until 120 days or later after the pooled investment vehicle's fiscal year end. Similarly, for a fund of funds of funds, the auditors may be unable to complete their work until the audited financial statements for the underlying funds of funds are available.

To be able to prepare accurate audited financial statements for funds of funds and funds of funds of funds, auditors generally need more than 120 days after fiscal year end. Based on our experience, we believe that a 180-day deadline is appropriate for a fund of funds to allow for adequate time for the underlying audit to be completed and a 260-day deadline is appropriate for a fund of funds of funds to allow for adequate time for the underlying fund and fund of funds audits to be completed.[575] These proposed deadlines are designed to accommodate the timeframe for completion of the underlying audits for both funds of funds and funds of funds of funds, while continuing to ensure that investors in these vehicles receive audited financial statements reflecting their custodied assets in a timely manner.

In addition, we propose to amend the audit provision's delivery requirement to provide that the audited financial statements may be delivered to an independent representative of an investor.[576] The current Advisers Act custody rule allows a client to designate an independent representative to receive, on the client's behalf, the notices and account statements required under the rule.[577] Similarly, we understand that some pooled investment vehicle investors would also prefer to have an independent representative receive the distributed audited financial statements. This proposed amendment is designed to help facilitate investors' review of the audited financial statements by distributing them in accordance with the investor's preference. In connection with this proposed amendment, we are also proposing to modify the Advisers Act custody rule's provision related to independent representatives to add a cross-reference to the audit provision.[578]

We also acknowledge that there may be instances when an adviser reasonably believes that a pooled investment vehicle's audited financial statements will be distributed within the appropriate timeframe but are not distributed within that timeframe due to reasonably unforeseeable circumstances. For example, an adviser might experience unexpected technology issues or a force majeure event that delays the distribution of audited financial statements slightly past the deadline. To accommodate these instances or other similar short duration delays, in the Commission's view, an adviser's failure to distribute audited financial statements within the applicable timelines generally would not be considered a violation of the rule, provided that the adviser reasonably believed that the pooled investment vehicle's audited financial statements would be distributed within 120 days of fiscal year end (or the proposed 180-day or 260-day deadlines from fiscal year end for funds of funds or funds of funds of funds, as applicable) but failed to have them distributed in time due to reasonably unforeseeable circumstances. The adviser would be responsible for ensuring that the pooled investment vehicle's audited financial statements are promptly delivered upon resolution of the reasonably unforeseeable circumstances.[579]

We request comment on all aspects of the proposed rule's requirements for distributing audited financial statements, including the following items:

240. Are funds of funds currently unable to prepare and distribute financial statements within the current rule's 120-day requirement? Would the proposed 180-day or 260-day deadlines be an appropriate deadline for delivery of audited financial statements for funds of funds or funds of funds of funds, respectively? Would a longer or shorter period be more appropriate?

241. Are there any other types of entities or vehicles other than a fund of funds or fund of funds of funds that should be permitted additional time for delivery? If so, what entities or vehicles, why, and what should the applicable deadlines be?

242. Should the Commission amend the audit provision as proposed to permit delivery of the audited financial statements to the independent representative of the investor? Would this proposed amendment increase burdens for advisers?

243. Should the Commission provide any guidance on the circumstances

[573] *See* proposed rule 223–1(b)(4)(i)(C).

[574] *See* rule 206(4)–2(b)(4)(i) through (iii).

[575] *See, e.g.,* ABA Subcommittee on Private Investment Entities, SEC Staff Letter (Aug. 10, 2006), *available at https://www.sec.gov/divisions/investment/noaction/aba081006.pdf* (discussing the practical difficulties faced by advisers to funds of funds in obtaining completion of audits prior to completion of the audits for the underlying funds in which the fund of funds invests).

[576] *See* proposed rule 223–1(b)(4).

[577] Under the proposed adviser self-custody rule, the account statements required to be delivered to clients may also be delivered to an independent representative of the client. *See supra* section II.A.7.

[578] *See* proposed rule 223–1(a)(7).

[579] Commission staff has taken a similar view. *See* Custody Rule FAQs, *supra* footnote 572, Questions VI.7 and VI.9.

under which failure to timely distribute audited financial statements is reasonably unforeseeable?

244. Should the Commission provide any guidance on the timing that the audited financial statements must be delivered following the resolution of any reasonably unforeseeable circumstances?

(c) Audit and Delivery Requirement for Newly-Formed Pooled Investment Vehicles

The Commission is proposing amendments to the audit provision to modify the annual audited financial statements delivery requirement for pooled investment vehicles that are formed within the last 90 days of their fiscal year.[580] For such vehicles, the requirement to deliver audited financial statements within 120 days of fiscal year end would be deemed to be satisfied if (a) financial statements (which may be unaudited) covering the last 90 days of the first fiscal year are distributed to investors within 90 days of the end of the first fiscal year, and (b) audited financial statements are distributed to investors that cover the first fiscal year (*i.e.,* the last 90 days of the first fiscal year, if previously unaudited) and the entire second fiscal year after the end of the second fiscal year.

Newly-formed pooled investment vehicles may have limited assets and few investment activities or other transactions during their first fiscal quarter in existence. Based on our experience, the cost of obtaining audited financial statements for a single fiscal quarter may not be significantly less than the cost of obtaining audited financial statements for a full fiscal year, despite covering a much shorter period, in part because of certain fixed administrative costs associated with obtaining and delivering audited financial statements regardless of the period covered. However, there may be efficiencies gained when completing the audit work for both fiscal years at the same time, rather than through separate engagements in the first and second fiscal year.

For pooled investment vehicles formed during the fourth quarter of their fiscal year, the benefits of providing audited financial statements to investors may not justify the costs. Instead of requiring pooled investment vehicles to obtain audited financial statements after 90 days and then again 12 months later, it would be sufficient for these pooled investment vehicles to provide financial statements (which may be unaudited) after 90 days and then, after the end of their second fiscal year, audited financial statements covering the first fiscal year and second fiscal year of the vehicle's existence.[581] Investors would receive relevant information about these pooled investment vehicles from the initial financial statements (which may be unaudited), and would continue to receive audited financial statements annually for the pooled investment vehicles' remaining life. At the same time, these pooled investment vehicles would be able to reduce unnecessary costs (which may otherwise be passed on to investors) during an initial period when assets and activity of the vehicle may be minimal.

We believe 90 days is an appropriate amount of time after the end of the first fiscal year for these pooled investment vehicles to provide financial statements (which may be unaudited) to investors. Preparing unaudited financial statements is both less expensive and less time-intensive than preparing audited financial statements, and investors would benefit from receiving financial statements (which may be unaudited) by the beginning of the pooled investment vehicle's second fiscal quarter. Even though these financial statements would need to be delivered on a shorter time frame than the annual audited financial statements required under the audit provision, we expect the associated burdens to be small and to be justified by the benefits to investors.

We request comment on all aspects of the proposed amendment of the audit provision to provide relief for newly-formed entities, including the following items:

245. As proposed, should the rule permit advisers to satisfy the audit provision for pooled investment vehicles formed during the last 90 days of their fiscal year by distributing financial statements (which may be unaudited) after the first fiscal year and then audited financial statements after the second fiscal year covering the first fiscal year and second fiscal year of such pooled investment vehicles' existence?

246. Should the rule require that the first fiscal year financial statements (which may be unaudited) be reviewed by an independent public accountant? How would this differ with respect to burden and cost from requiring that the first fiscal year financial statements be audited by an independent public accountant?

247. Do commenters agree with our view that the cost of obtaining audited financial statements for a single fiscal quarter would not be significantly less than the cost of obtaining audited financial statements for a full fiscal year?

248. What effect, if any, would the proposed amendment that would defer the existing requirement under the audit provision to obtain audited financial statements for the initial fiscal year to the following fiscal year have on the overall costs and burdens of obtaining annual audited financial statements?

249. Is 90 days the appropriate amount of time to allow such pooled investment vehicles to distribute the financial statements (which may be unaudited)? Is there a different amount of time that would be more appropriate? For example, should the proposed rule require that the financial statements (which may be unaudited) be delivered within 60 days of fiscal year end? Should the financial statements (which may be unaudited) be required to be delivered within 120 days of fiscal year end, consistent with the delivery requirement for audited financial statements under the existing audit provision?

250. Should the proposed amendment be modified to extend the delivery deadline for the initial financial statements (which may be unaudited) for funds of funds or funds of funds of funds? For example, should the proposed rule require that the financial statements (which may be unaudited) for the first fiscal year of a newly-formed fund of funds (formed within the last 90 days of the fiscal year) be delivered within 180 days or 260 days for a newly-formed fund of funds of funds (formed with the last 90 days of the fiscal year), instead of, as proposed, within 90 days of fiscal year end?

251. Should we provide similar relief for pooled investment vehicles that are formed during the last 180 days of their fiscal year? I.e., should we modify the requirement to deliver audited financial statements for pooled investment vehicles that are formed during the last 180 days of their fiscal year to, in lieu of requiring the delivery of audited financial statements within 120 days of fiscal year end, permit them to instead distribute (a) financial statements (which may be unaudited) covering the last 180 days of the first fiscal year within 90 days of the end of the first fiscal year, and (b) audited financial statements that cover the first fiscal year

[580] *See* proposed rule 223–1(b)(4)(ii).

[581] This requirement could be satisfied by the adviser obtaining and delivering a single set of audited financial statements covering the first and second fiscal years separately on a comparative basis or two separate sets of audited financial statements, one set of audited financial statements covering the first fiscal year and the other set covering the second fiscal year, at the end of the second fiscal year.

(*i.e.,* the last 180 days of the first fiscal year, if previously unaudited) and the entire second fiscal year after the end of the second fiscal year?

252. Are there unique risks to investors associated with newly-formed pooled investment vehicles in particular that the proposed amendments would not adequately address? If so, describe the risks and how the rule should be modified to address such risks.

5. Standing Letters of Authorization

We are proposing an exception from the independent verification requirement for client funds and securities if the adviser has custody of those funds and securities solely because of an arrangement between the adviser, the client, and the client's qualified custodian in which the adviser is authorized, in writing, to direct the qualified custodian to transfer funds and securities to a third-party recipient on a specified schedule or from time to time (a ''standing letter of authorization'' or ''SLOA'') subject to certain conditions.[582]

Clients commonly grant their advisers limited powers to disburse funds or securities from their accounts to one or more specifically designated third-party recipients in a manner that limits the adviser's ability to redirect the funds or securities. For example, a client may grant its adviser this authority pursuant to a one-time or standing letter of instruction or other similar asset transfer authorization arrangement that the client establishes with qualified custodians. In granting such authority the client may authorize the adviser to perform transfers or disbursements via automated clearing house (*i.e.,* ACH) transfers, wires, checks, or other methods. Such authorizations can be for one-time wires out of the account or standing authorization where an adviser is given ongoing authority by the client to execute certain asset movements out of a client's account.

Advisers who receive transfer authority for normal client-directed disbursements may trigger the Advisers Act custody rule even in cases where such transfer authority is client-initiated and subject to restrictions that limit the adviser's ability to generally transfer client funds and securities.[583] However, where the arrangement is structured so that the client authorizes the adviser to act merely as its agent when disbursing the client's funds or securities, the adviser's role in effecting any change in beneficial ownership is circumscribed and ministerial, and there is little risk to clients of loss, misuse, misappropriation, or theft. In such circumstances a qualified custodian would be best positioned to ensure that the required authorizations and instructions are properly and verifiably issued by the client (*e.g.,* the client's signature is verifiable), provided the custodian is not the adviser or a related person of the adviser to reduce the incentive and opportunity to collude in such an arrangement.[584] In this context, the current rule's independent verification requirement would not be meaningfully additive to protect a client's funds or securities.[585]

Accordingly, we are proposing an exception from the independent verification requirement for SLOAs subject to certain conditions found in the proposed definition of SLOA. The SLOA is defined as an arrangement among the adviser, the client, and the client's qualified custodian in which the adviser is authorized, in writing, to direct the qualified custodian to transfer funds and securities to a third-party recipient on a specified schedule or from time to time and is subject to certain conditions.[586] In 2017, the staff took a similar position to the proposed rule change in a staff no-action letter that set forth considerations focused on client control, custodial safeguards, and the transparency of transactions made pursuant to such terms. As a first condition, the client's qualified custodian cannot be the adviser or the adviser's related person.[587] Second, the SLOA must include the client's signature, the third-party recipient's name, and either the third party recipient's address or account number at a custodian to which the transfer should be directed.[588] Third, the standing letter of authorization must provide that the investment adviser has no ability or authority to designate or change any information about the third party recipient, including name, address, and account number.[589] The client, as the party establishing the standing letter of authorization, would have the ultimate ability to terminate or change the instruction with the qualified custodian. Collectively, these conditions decrease misappropriation risk and decrease the utility of a surprise examination because they impose safeguards that curtail an adviser's role in effecting any change in beneficial ownership while ensuring a qualified custodian plays a role in verifying the instruction and authorization and conducting a signature review.

The required signature on the authorization would ensure that the instructions and authorizations are verifiably from the client. We believe qualified custodians generally are required by their primary functional regulator or otherwise to perform procedures to verify the instruction and authorization, through a signature review and, if determined to be necessary, based on the facts and circumstances, another method of verification.[590] The required information identifying the recipient's name and address or account number could help ensure that the instructions to the qualified custodian provide relevant information about the recipient. The written instructions for the standing letter of authorization could include a specified schedule for transfers, or they could include a more general instruction for the adviser to direct transfers to the recipient under certain conditions.

We request comment on all aspects of the proposed rule's standing letter of authorization exception, including the following items:

253. Do commenters agree that an adviser should be exempt from the independent verification requirements if it has custody solely because of a standing letter of authorization where the client grants its adviser the limited power for disbursements to third parties specifically designated by the client and the adviser complies with the

[582] *See* proposed rule 223–1(b)(8). *See also* proposed rule 223–1(d)(17) (defining standing letter of authorization).

[583] We understand these transactions are typically routine client-authorized disbursements. Examples of such transactions include bill payment, transfers to family members (or other designated individuals), charitable donations, funding the client's external accounts at other financial institutions, or tax payments.

[584] Qualified custodians are generally subject to anti-money laundering and know your customer requirements that require the financial institution to verify signatures. *See supra* footnote 539.

[585] An adviser would be required to report to the Commission on Form ADV if it is relying on this exception. *See* proposed Form ADV amendment to Item 9 (Safeguarding). *See also infra* section II.J.1. In addition, we are proposing corresponding amendments to the books and records rule. Proposed rule 204–2(b)(6) would require advisers to retain true, accurate, and current copies of, and records relating to, any standing letter of authorization issued by a client to the adviser. Proposed rule 204–2(b)(6). *See also infra* section II.H.1.c).

[586] *See* proposed rule 223–1(d)(17). *See* IAA SLOA No-Action Letter, *supra* footnote 544 (indicating the staff would not recommend enforcement action to the Commission if advisers exercise limited authority pursuant to a SLOA without undergoing an annual surprise examination, if the SLOA arrangement meets certain specified items).

[587] Proposed rule 223–1(d)(17)(i). The term ''related person'' would have the same meaning as in the current rule. *See rule* 206(4)–2(d)(7) and proposed rule 223–1(d)(15).

[588] Proposed rule 223–1(d)(17)(ii).

[589] Proposed rule 223–1(d)(17)(iii).

[590] *See* discussion of custodial obligations in *supra* footnote 584.

conditions of the proposed exception? Are there other protections we should require? If so, what protections?

254. Should this exception be available when the client's funds or securities are not maintained with a qualified custodian? Does a qualified custodian better protect client funds or securities subject to limited powers of attorney (such as by performing signature verification procedures under anti-money laundering and know-your-customer requirements that require the financial institution to verify signatures)?

255. Should this exception be unavailable when the client's funds or securities are at a related qualified custodian, as proposed? If not, what specific conditions would safeguard client funds or securities from the risks of loss, theft, misuse, or misappropriation in these circumstances?

256. Should the instructions and authorization for a standing letter of authorization include the name and either the address or the account number of the recipient to whom a transfer of funds or securities should be directed? Should the instructions and authorization include different, or additional, information, and if so, what? Should the rule specifically require the SLOA to be provided to the adviser on the same form the client delivers to its qualified custodian, or that it be provided separately, but it must be delivered to both parties?

257. Are qualified custodians required to verify SLOA or other limited power of attorney instructions under their governing regulations, such as a signature review or other method? If not, should we require the adviser to confirm or contract with the qualified custodian so that it takes these steps?

6. Treatment of Business Development Companies

We are proposing changes to the Advisers Act custody rule to extend the rule's exception for the accounts of a registered investment company to BDCs.[591] Relatedly, we propose to define the term ''business development company'' in the rule to mean an entity that has elected to be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act and has not withdrawn the election.[592] We understand currently that market participants are already treating BDCs as registered closed-end investment companies for purposes of the Advisers Act custody rule. These changes would help filers understand that the rule's exception would apply to BDC accounts because they elect to be regulated as investment companies and would therefore be subject to the Investment Company Act's custody rules.[593]

This proposed amendment would ensure that such advisers and entities are not subject to duplicative or conflicting custody regulations. We are also proposing certain corresponding changes to Form ADV Item 9 to instruct advisers that the item excludes clients that are investment companies registered pursuant to the Investment Company Act of 1940 or BDCs that have elected to be regulated or are regulated as BDCs pursuant to section 54 of the Investment Company Act when reporting under Items 9A.–9.E.[594]

We request comment on the proposed amendment to extend the rule's exception for the accounts of a registered investment company to also cover certain BDCs:

258. Should we propose changes to the rule to indicate that the rule's exception for registered investment companies also extends to BDCs that have elected to be regulated or are regulated as business development companies under the Investment Company Act and have not withdrawn their elections? Would this help filers understand that the rule would not apply to BDCs because they elect to be regulated as investment companies and would therefore be subject to the Investment Company Act's custody rules?

7. Account Number in Notice to Clients

We are proposing amendments to the Advisers Act custody rule to require that a client's account number must be included in the notice sent by an adviser upon opening an account with a qualified custodian on behalf of such client.[595] Under the current rule, an adviser is required to notify a client in writing of the qualified custodian's name, address, and a description of the manner in which the funds or securities are maintained, upon opening an account with a qualified custodian on the client's behalf and following any changes to this information.[596] This notice provision is designed to alert investors to where their funds or securities are held so that they may monitor their accounts at the qualified custodian that will provide account statements and it provides clients with a tool for reference in any communications with the qualified custodian. However, advisers are not currently required to include the client's account number in this notice. By requiring the identification of the account number, the proposed amendment would enhance the specificity of custodial account information made available to clients as set forth in the proposed rule, thereby allowing them to more effectively oversee their accounts for theft, misuse, or misappropriation.

We request comment on the proposed amendment to require account numbers in the notice to clients:

259. Should we propose amendments requiring that the notice sent by an adviser upon opening an account with a qualified custodian on behalf of a client include the client's account number? What are the relative costs and benefits of including the account number in the notice? Do advisers already provide the account number in notices they currently send?

260. Should we require other types of information to be included in the notice? If so, what information, and why? Should we eliminate any of the required information from the notice?

261. Should we require advisers to provide notice to clients on account opening when funds and securities are not held at a qualified custodian? If yes, what form should these notices take? Should they be provided on a one-off or periodic basis?

8. Notice to the Commission of Material Discrepancies

We are proposing to amend the Advisers Act custody rule language related to the notice an accountant must provide upon the finding of any material discrepancies during the course of an independent verification to state that the accountant must send the notice by electronic means to the Division of Examinations.[597] This modified language replaces the current rule's

[591] *See* proposed rule 223–1(b)(5).

[592] *See* proposed rule 223–1(d)(1).

[593] Section 59 of the Investment Company Act applies section 17(f) of the Act to business development companies notwithstanding their exclusion from registration under section 6(f). *See* 15 U.S.C. 80a–58. We note, however, that the self-custody provisions of the proposed adviser self-custody rule would nonetheless apply with respect to BDCs, meaning that if adopted, the adviser would need to comply with the adviser self-custody rule and the BDC, as a regulated fund, would need to engage its board of directors in oversight of the custody arrangement as required under proposed rule 17f–9, the fund self-custody rule. *See* discussion *supra* at section II.B.

[594] *See* proposed Form ADV Part 1, Items 9A.–9.E. Regulated funds, including BDCs, would need to be included in Item 9.F. reporting regarding self-custody of crypto assets. *See infra* section II.J.1 for further discussion of the proposed changes to Form ADV, Part 1.

[595] *See* proposed rule 223–1(a)(2).

[596] *See* proposed rule 223–1(a)(2); rule 206(4)–2(a)(2).

[597] *See* proposed rule 223–1(a)(4)(ii).

requirement to send such notice by means of a facsimile transmission or electronic mail, followed by first class mail to the Director of the Office of Compliance Inspections and Examinations.[598] This proposed amendment is designed to modernize this requirement by: (i) replacing the references to facsimile transmission and first class mail with a reference to electronic means and (ii) update the outdated reference to the Office of Compliance Inspections and Examinations.

We request comment on the notice to the Commission of material discrepancies:

262. Are these proposed changes related to the notice an accountant must provide upon the finding of any material discrepancies during the course of an independent verification appropriate? Why or why not? Should we make any other changes to this requirement?

263. Is the expected revision to the definition of a material discrepancy in updates to the 2009 Guidance for Accountants discussed below clear or should it be revised further? If so, how? Under the expected revision to the definition, is there a risk that an accountant would not report non-compliance that could lead to theft, loss, misuse, or misappropriation? Why or why not?

9. Inadvertent Custody

The Commission is proposing an exception from the Advisers Act custody rule with respect to funds and securities over which an adviser has custody arising solely from custodial agreements that the adviser has no knowledge or reason to know confers custody upon it provided that the adviser did not recommend the qualified custodian.[599] The Commission is also proposing to require that an adviser who gains knowledge of such custody promptly notify the client and qualified custodian in writing of such unwanted authority and repudiate such authority to the client and qualified custodian and request that such authority be removed from the custodial agreement or be superseded by a new agreement.

In certain circumstances, an adviser may inadvertently receive the authority to obtain possession of client funds or securities or withdraw them upon instruction to the custodian and thereby have custody under the Advisers Act custody rule. These circumstances can occur, for example, when a custodial agreement between a client and custodian grants an adviser broader access to client funds or securities than is contemplated by the adviser's own agreement with the client, and the adviser does not intend to have such access to client funds or securities.[600] Inadvertent custody often arises because a custodial agreement grants an adviser expansive authority to transact in or transfer funds and securities held in its client custodial accounts (*e.g.,* the ability to initiate wire transfers) that are often superfluous to the advisory services being provided.

Nonetheless, inadvertent custody can put client funds and securities at risk. When a client's agreement with its qualified custodian grants an adviser broad authority to possess or withdraw a client's funds and securities, without the implementation of further controls or actions, the adviser has the ability to effect a change in beneficial ownership of the funds and securities. In these circumstances, from the qualified custodian's perspective, the client has authorized the adviser to withdraw the client's funds and securities, and—though there may be constraints contained in the advisory agreement between the adviser and a client—the custodian may not be aware of these constraints or may be unwilling or unable to treat the terms of the advisory agreement as controlling. In this scenario, believing the adviser to have authority over the client's funds and securities, the custodian could accept the adviser's instructions to direct their disposition. This possibility puts client funds and securities at risk, because, for instance, a rogue advisory employee may misuse the authority to misappropriate a client's funds and securities held at the custodian.

However, advisers are rarely a party to these agreements between clients and their custodians and thus have a limited ability to discover or, if discovered, repudiate this unwanted authority. We understand that, where discovered, advisers have had little success in modifying or eliminating this unwanted authority either because a custodian will not accept an adviser's request to modify the custodian's agreement with its client, or because the client may lack the bargaining power to negotiate for modifications to the custodian's standard forms.

Although inadvertent custody can create an opportunity for adviser misappropriation, misuse or loss of client funds or securities, the relative risk to client funds or securities can be substantially mitigated if the adviser meets certain conditions and takes certain steps upon the discovery of inadvertent custody. Accordingly, we are proposing to except from compliance with the Advisers Act custody rule advisers with custody of client funds and securities pursuant to a custodial agreement under which:

(1) the adviser did not recommend, request, or require that the client select the qualified custodian maintaining such funds and securities; and

(2) either (A) the adviser does not have a copy of the client's custodial agreement, nor actual knowledge or reason to know that any custodial agreement between the client and such qualified custodian confers custody upon the adviser; or (B) if the adviser knows or has reason to know that a custodial agreement confers custody on the adviser, such adviser promptly notifies the client and qualified custodian in writing of such unwanted authority and repudiates such authority to the client and qualified custodian and requests in writing that such authority be removed from the custodial agreement or be superseded by a new agreement, consented to by both the client and the qualified custodian, that does not confer custody on the adviser.[601]

The first condition identified above is designed to ensure that the adviser did not have a hand in selecting the custodian as this could indicate that custody may not be truly inadvertent. An adviser that chooses a custodian for its client may have the ability to review custodial terms and ascertain whether such terms exceed the authorities necessary to execute the client's investment strategy. The second condition is bifurcated between two possibilities. The first possibility occurs when the adviser does not have a copy of the agreement, nor actual knowledge or reason to know that a custodial agreement between the client and the qualified custodian confers custody on the adviser. This possibility within the condition reflects the lower risk that an adviser without knowledge of its inadvertent custody would exercise such authority while also acknowledging the difficulty to advisers of ensuring that all of an adviser's client's agreements do not provide it with inadvertent custody. The second possibility, however, provides that if the adviser discovers that a custodial agreement gives it custody, it must take steps to repudiate and disavow such

[598] *See* current rule 206(4)–2(a)(4)(ii).

[599] *See* proposed rule 223–1(b)(10).

[600] *See* IM Guidance Update, Inadvertent Custody: Advisory Contract Versus Custodial Contract Authority, No. 2017–01 (Feb. 2017), *available at https://www.sec.gov/investment/im-guidance-2017-01.pdf* (the ''2017 IM Guidance'').

[601] *See* proposed rule 223–1(b)(10).

authority by requesting in writing that such authority be removed from the agreement or the superseding of it with a new agreement. This discovery provision is intended to address the relative risks to client assets posed by inadvertent custody by requiring an adviser to take appropriate steps to mitigate the agreement that gives it custody. Although the client and custodians involved may not implement or consent to such remediation requests in all cases, these steps represent practical actions that the adviser can take to attempt to mitigate inadvertent custody risks when discovered and put the client and custodian on notice of such risks.

We are not requiring advisers to review every custodial contract their clients may have entered into to comply with this exception. However, advisers that are seeking to rely on this exception should have reasonably designed policies and procedures in place under the Advisers Act compliance rule to address circumstances where they become aware they have custody inadvertently from a custodial agreement.[602] Advisers that would like to rely on this proposed exception should also have policies and procedures as part of their compliance programs that review whether client custodial agreements to which they have access or knowledge of grant them unwanted authority, provide for the disavowing of unwanted authority, and provide for requesting amendments to agreements as applicable. As different controls may be appropriate for different advisers in designing effective compliance programs, we are not suggesting a single set of policies and procedures with regard to the inadvertent custody exception.

The Commission requests comment on our proposed exception regarding inadvertent custody under the Advisers Act custody rule.

264. Should we provide the proposed exception for inadvertent custody? Does the Commission's exception and its underlying conditions provide the safeguards necessary to counter the potential risk of inadvertent custody? Should we require that advisers take reasonable steps to notify the client and qualified custodian in writing of such unwanted authority and either request that such authority be removed from the custodial agreement or be superseded by a new document? Instead of providing an exception to the Advisers Act custody rule, should we provide an exception from the definition of custody for inadvertent custody? Instead of amending the rule, should we provide guidance on steps to mitigate unwanted custody conferred by custodial agreements?

265. Should we include as a condition that the adviser did not recommend, request, or require that the client select the qualified custodian maintaining the client's funds and securities? Why or why not? Should we instead allow an adviser to recommend a custodian provided the adviser does not know or have reason to know that a custodial agreement confers custody on the adviser? Are there circumstances in which this condition may prevent an adviser from recommending the best available custodian for their client?

266. Should we require that advisers have reasonably designed policies and procedures in place to address inadvertent custody and prevent the adviser or its supervised persons from acting on inadvertent authority? What policies, procedures, or actions have helped advisers address issues of inadvertent custody?

267. Are there any potential compliance complications with how this exception may interact with exceptions related to a separate basis of custody including exceptions for fee deduction, discretionary trading authority, and SLOAs?

268. Is it difficult for advisers that may have inadvertent custody, pursuant to a client's custodial agreement with a qualified custodian, to reduce or eliminate their authority over the client's custodial account? Would the proposed exception make it easier for advisers to reduce or repudiate this authority? Do qualified custodians often reject an adviser's request to modify its agreement with its client to reduce or eliminate the adviser's authority once discovered?

10. Segregation

(a) Segregation From Adviser and Qualified Custodian Proprietary Assets

We expect to provide our views with respect to how the Advisers Act custody rule's asset segregation requirement applies to both the segregation of client funds and securities from the proprietary assets of the adviser (and its related persons), as well as from those of the qualified custodian. Additionally, we expect to provide our view that the Advisers Act custody rule does not preclude qualified custodian banks from maintaining funds such that cash balances are held as general deposits and reflected on the custody bank's balance sheet as a liability to the client and, accordingly, are not segregated from the bank's own cash.

Asset segregation has been one of the foundational principles of the Advisers Act custody rule since its inception and is important for investor protection because it guards client funds and securities from loss, misuse, theft, and misappropriation as well as financial reverses, including insolvency.[603] The original Advisers Act custody rule, adopted in 1962, established the obligation to segregate client funds and securities from the assets of the adviser. That rule required that advisers that have custody of: (i) client funds, to hold those client funds in bank accounts containing only client funds and (ii) client securities, to segregate those client securities and hold them in a reasonably safe place.[604] In 2003, the Advisers Act custody rule was amended to require, for advisers with custody of client funds and securities, that a qualified custodian maintain those client funds and securities in a separate account for each client under that client's name or in accounts that contain only clients' funds and securities under the adviser's name as agent or trustee for its clients.[605] Along with banks, broker-dealers, and futures commission merchants, the 2003 amendments included foreign financial institutions (''FFIs'') as qualified custodians, provided that the FFI keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

We are aware that some advisers have experienced challenges applying the asset segregation requirement in certain contexts today. Although the Advisers Act custody rule generally requires that, for advisers with custody of client funds and securities, a qualified custodian maintains those funds and securities in a separate account for the client or in a separate account for the benefit of the client, it does not explicitly state that the funds and securities must be segregated from proprietary assets of the adviser or a qualified custodian. However, the application of the current rule has the effect of requiring that such client funds and securities be segregated from the proprietary assets of the adviser and qualified custodian.[606] Current rule 206(4)–2(a)(1) and proposed rule 223–1(a)(1) state that a

[602] *See* rule 206(4)–7 and Compliance Program Adopting Release, *supra* footnote 120. *See also,* discussion in the 2009 Adopting Release, *supra* footnote 7, at section II.G. (providing guidance regarding the maintenance of strong policies and procedures ''relating to safekeeping of client assets that advisers should consider including in their compliance programs'').

[603] *See* 1962 Adopting Release, *supra* footnote 7, and 2003 Adopting Release, *supra* footnote 7.

[604] *See* 1962 Adopting Release, *supra* footnote 7.

[605] *See* 2003 Adopting Release, *supra* footnote 7.

[606] *See* rule 206(4)–2(a)(1).

qualified custodian must maintain client funds and securities ''[i]n a separate account for each client under that client's name'' or ''[i]n accounts that contain only [the adviser's] clients' funds and securities, under [the adviser's] name as agent or trustee for the clients.'' Under the first option, the client's funds and securities must be separated from the funds and securities of all other persons, including the adviser and qualified custodian itself. Similarly, under the second option, the accounts may not contain any non-client funds and securities, including the adviser's and qualified custodian's accounts.

Requiring that a client's funds and securities be separated from the funds and securities of all other persons, including the adviser and qualified custodian itself, is consistent with existing custodial practices, as well as applicable laws and regulations covering certain categories of qualified custodians. For example, under applicable banking law, national banks and Federal savings associations are required to segregate all assets held in a fiduciary capacity from their general assets.[607] Similarly, under applicable rules, broker-dealers and futures commission merchants are generally required to segregate customer assets from their own assets.[608] We continue to believe that asset segregation is a fundamental protection of the Advisers Act custody rule and that segregation from the proprietary assets of the adviser (and its related persons), as well as the qualified custodian, remains important for investor protection.

We are also aware of some challenges regarding the application of the asset segregation requirement to cash depository accounts. In particular, some industry members have questioned whether the asset segregation requirement for client funds should be read to preclude cash balances at a custody bank from being held as general deposits and reflected on the custody bank's balance sheet as a liability to the client, and accordingly are not segregated from the bank's own cash. The Commission expects to provide its view that client bank deposits do not violate the Advisers Act custody rule's requirement that funds and securities be maintained in separate accounts or accounts that contain only clients' funds and securities because, once cash is deposited into a deposit account at a bank, the client has a separate liability of the bank to the client, recorded in that client's name in that client's bank account.[609]

(b) Treatment of Certain Escrow Accounts

The Commission also expects to provide our views on the use of certain escrow accounts in connection with the sale of portfolio companies owned by one or more pooled investment vehicle clients (each, a ''Seller Escrow Account''). More specifically, we expect to provide our view that an adviser may maintain client funds in a Seller Escrow Account commingled with other client and non-client funds if certain conditions are met.

When one or more pooled investment vehicle clients (typically private equity funds) and other non-clients sell a jointly-owned portfolio company, they typically hold a portion of sale proceeds in a Seller Escrow Account following the closing of the sale or merger. The purpose of this escrow account is to hold a percentage of sale proceeds in the event of indemnification or an adjustment to the sale price of a portfolio company as included in the terms of the purchase or merger agreement between the sellers and buyer. A Seller Escrow Account typically exists for a limited period of time, and the funds remaining after such time are distributed on a predetermined formula to the sellers, including to the adviser's pooled investment vehicle client(s). The sellers also typically appoint a ''sellers' representative'' to act on their behalf with respect to the Seller Escrow Account; and the Commission understands that this sellers' representative is often the investment adviser or an affiliate and the escrow is typically held in the name of the sellers' representative. When a pooled investment vehicle client sells a portfolio company together with non-clients, a Seller Escrow Account would generally necessitate commingling the pooled investment vehicle client's funds—in the form of sale proceeds—with the funds of sellers who are third parties.

Advisers have stated that the protections of Seller Escrow Accounts for pooled investment vehicle clients are similar in material respects to separate segregated escrows with only client funds. For example, we understand that the portion of the Seller Escrow Account attributable to a pooled investment vehicle client is typically included in such client's financial statements and within the scope of its audit. Seller Escrow Accounts also typically have a limited duration, exist for a narrow purpose, and hold only a small percentage of sale proceeds. We also understand that there would be a significant cost to establish and maintain several separate escrow accounts in the names of various pooled investment vehicle clients and unrelated investors to fully comply with the Advisers Act custody rule segregation requirements, and that such cost would likely be borne, at least partially, by pooled investment vehicle investors.[610]

The Commission expects to provide its view that an adviser may maintain client funds in a Seller Escrow Account commingled with other client and non-client assets if: (1) the client is a pooled investment vehicle for which the adviser relies on the audit provision and the portion of the Seller Escrow Account attributable to the pooled investment vehicle is included in its financial statements; (2) the Seller Escrow Account is in connection with the sale or merger of a portfolio company owned by the client (*i.e.,* for indemnification or to adjust the purchase price); (3) the Seller Escrow Account contains an amount of money that is agreed upon as part of a bona fide negotiation between the buyer and the sellers; (4) the Seller Escrow Account exists for a period of time that is agreed upon as part of a bona fide negotiation between the buyer and the sellers; (5) the Seller Escrow Account is maintained at a qualified custodian; and (6) the sellers' representative is contractually obligated to promptly distribute the funds remaining in the Seller Escrow Account at the end of the escrow period on a predetermined formula to the sellers, including the pooled investment vehicle client.[611]

11. Accommodation Reporting Guidance

The Commission expects to provide its view on the disclosure that should accompany a client account statement that covers funds or securities on an accommodation basis. More specifically, we expect to share our view that any adviser who requests accommodation reporting on a client account statement

[607] *See* 12 U.S.C. 92a(c) and 12 U.S.C. 1464(n)(2).

[608] *See* 17 CFR 240.15c3–3 and Financial Responsibility Rules of Broker-Dealers, Exchange Act Release No. 70072 (July 30, 2013) [78 FR 51824 (Aug. 21, 2013)]; see also 17 CFR 1.20 under the CEA.

[609] We understand this treatment of client cash deposits is a well-established, legally recognized, and regulated feature specific to banking.

[610] *See* IM Guidance Update, Private Funds and the Application of the Custody Rule to Special Purpose Vehicles and Escrows, No. 2014–07, *available at https://www.sec.gov/investment/im-guidance-2014-07.pdf.*

[611] The Commission anticipates that this contractual obligation will be referenced in the escrow agreement. The IM staff took a similar view. *See id.*

should generally ensure that such statement clearly discloses that the custodian does not hold or have authority to obtain such funds or securities, among other disclosures.

Custodians engage in accommodation reporting when they list funds or securities on a client's account statement but do not accept custodial liability for them (*i.e.,* on an ''accommodation basis''). In such cases, the custodian does not attest to the holdings of or transactions in those funds or securities or take steps to ensure that the funds or securities are safeguarded appropriately; instead, the custodian only identifies the holdings or transactions as reported to it by the adviser. Advisers may request that qualified custodians include particular holdings and transactions on a custodial account statement on an ''accommodation basis'' for a variety of reasons, including to facilitate a client's monitoring of such funds or securities, or if custodians are unwilling or unable to take custody of certain kinds of private investments. In some instances, an adviser may request that a qualified custodian include particular funds or securities on a custodial account statement on an ''accommodation basis'' in an attempt to demonstrate that the funds and securities are ''held'' with a qualified custodian in compliance with the custody rule.

The Advisers Act custody rule requires advisers to have a reasonable basis, after due inquiry, for believing that a qualified custodian sends an account statement, at least quarterly, to each of its clients for which an adviser maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period.[612] The account statement provision is a key prophylactic protection of the rule because it helps ensure that qualified custodians are preparing and sending account statements to facilitate client monitoring of their accounts for potential misappropriation or misuse, including through comparison of custodial account statements to account statements provided by an adviser.[613]

The Commission expects to provide its view that an adviser could not have a ''reasonable basis, after due inquiry, for believing'' that a qualified custodian sends the required account statements under rule 206(4)-2(a)(3) or proposed rule 223–1(a)(3) if it sends a misleading account statement that undermines the protections this provision is intended to provide. To satisfy the account statement delivery requirement under the Advisers Act custody rule, an adviser should have a reasonable basis, after due inquiry, for believing that the account statement is generally clear and accurate. Accordingly, an adviser who requests that funds or securities be included on a client account statement on an accommodation basis should also have a reasonable basis, after due inquiry, for believing that such account statement clearly discloses that the custodian does not hold or have authority to obtain any funds or securities included on an accommodation basis.[614] Clear disclosure that the qualified custodian does not maintain any funds or securities included in an account statement on an accommodation basis will alert clients that such funds or securities are not subject to safeguarding by that entity. Such disclosure also conveys to the client that information contained in the account statement regarding those funds or securities is not the responsibility of the qualified custodian and therefore the client should treat such information with appropriate caution under the circumstances.

In most cases, such disclosure of accommodation reporting should be done in the form of a disclaimer included in the account statement. To prevent misleading statements, such a disclaimer should generally indicate that such funds or securities are included on the statement at the request of the adviser; disclose that information (including valuation) for such externally held funds or securities included on the statement is derived from the adviser or other external source for which the custodian is not responsible; and identify that such externally held funds or securities may not be subject to certain protections typically available at such qualified custodians. In the example above, clearly disclosing that the qualified custodian does not maintain these funds or securities would alert clients that such funds or securities are not subject to safeguarding by that entity. Additionally, it would indicate that for such securities the custodian may only be providing figures on the account statements that the adviser or a third-party provided to it and the qualified custodian does not independently verify or stand behind them. Advisers should consider whether such disclaimer should generally disclose that funds and securities may not be subject to certain protections typical of other custody arrangements (*e.g.,* FDIC protections for banks or SIPC protections for broker-dealers) to outline to clients the relative risks to funds and securities that appear on the statement on an accommodation basis versus those held and safeguarded by the custodian. Such disclosures would remind clients that certain assets may not be subject to the same level of protections that may traditionally be expected to coincide with such qualified custodian entities and their respective regulatory regimes.

H. Recordkeeping Requirements

1. Adviser Recordkeeping

We are proposing several amendments to the Advisers Act recordkeeping rule, which requires registered investment advisers (and advisers required to be registered) to make and keep true, accurate, and current certain books and records.[615] First, we are proposing new recordkeeping requirements that would require advisers that have self-custody of client crypto assets to make and keep certain records related to the proposed self-custody rules discussed above.[616] Second, we are proposing new recordkeeping requirements for advisers with custody of client crypto assets that are maintained at a State trust company under the proposed State trust company rules discussed above.[617] Third, in connection with the proposed amendments to the Advisers Act custody rule related to the exception to the surprise examination requirement due to an adviser having custody solely as a result of a SLOA, as discussed further above in section II.G.5, we are proposing to add an associated recordkeeping requirement for advisers that rely on the proposed SLOA

[612] *See* rule 206(4)–2(a)(3) and proposed rule 223–1(a)(3).

[613] In addition to the account statement provision, the current Advisers Act custody rule's notice to client provision requires advisers that send account statements to a client to which they provide the notice, to include in the notification and in any subsequent account statement they send to that client a statement urging the client to compare the account statements from the custodian with those from the adviser. *See* rule 206(4)–2(a)(2); *see also* proposed rule 223–1(a)(2).

[614] We note that FINRA rule 2231 Customer Account Statements outlines similar requirements regarding broker-dealer customer account statements for assets externally held.

[615] *See* rule 204–2 (the ''Advisers Act recordkeeping rule''). For purposes of this section, references to advisers refer to both SEC-registered investment advisers and investment advisers that are required to be SEC-registered.

[616] *See* proposed rule 204–2(a)(26). As discussed further below in section II.H.2, similar recordkeeping requirements would also apply for regulated funds related to crypto asset self-custody.

[617] *See* proposed rule 204–2(a)(27). As discussed further below in section II.H.2, similar recordkeeping requirements would also apply for regulated funds that maintain fund crypto assets at a State trust company custodian.

exception to maintain and preserve any SLOAs and related records in connection with the adviser's reliance on the exception.[618]

All of these proposed new records would be required to be maintained and preserved in the same manner, and for the same period, as other books and records required to be maintained under the Advisers Act recordkeeping rule. That is, the adviser would generally be required to maintain and preserve these records in an easily accessible place for five years from the end of the fiscal year during which the last entry was made on such record, the first two years of which must be in an appropriate office of the adviser.[619] In addition, we are proposing conforming amendments to the Advisers Act recordkeeping rule to update references to rule 206(4)–2 to reflect the proposed redesignation of the Advisers Act custody rule to rule 223–1.[620]

We are also proposing to amend the existing provision that states that records made and kept for any required record for one requirement under paragraph (a) of the Advisers Act recordkeeping rule that contains all of the information required under any other provision of paragraph (a) need not be made in duplicate for purposes of the rule. We propose to amend this provision to also apply to any record required to be maintained under paragraph (b) of the rule, which applies to the records required to be maintained if the adviser has custody or possession of client securities or funds.[621] This proposed amendment is designed to facilitate the proposed amendments to add additional recordkeeping requirements related to crypto asset custody, as discussed above, to avoid imposing any potential duplicate recordkeeping obligations with respect to records required under the existing Advisers Act recordkeeping rule related to an adviser's custody or possession of client securities or funds, and to minimize burdens associated with duplicate requirements. Finally, we are proposing amendments to the Advisers Act recordkeeping rule to provide that records related to crypto assets that are required to be maintained and preserved under the rule may be maintained and preserved on a crypto network, provided that the adviser provides, promptly upon request by the Commission, such records to the Commission (including its examiners and other representatives) in a human-readable and reasonably usable electronic format.[622]

(a) Records Related to the Proposed Adviser Self-Custody Rule

We propose to amend the Advisers Act recordkeeping rule to add new recordkeeping requirements related to the proposed adviser self-custody of crypto assets. The proposed crypto asset self-custody recordkeeping requirements are designed to help ensure compliance with the proposed adviser self-custody rule and to support Commission staff's examination and inspection functions related to the proposed adviser self-custody rule. These proposed requirements would also benefit investors by giving Commission staff records to examine that could show potential theft, loss, misuse, or misappropriation of client crypto assets, thereby reducing the risk of harm to investors. The proposed recordkeeping requirements could also deter against adviser misconduct and result in better safeguarding practices by advisers by helping to identify potential areas of weakness or vulnerability in their self-custody practices, which would help support the investor protections of the proposed adviser self-custody rule requirements.

First, an adviser would be required to maintain a memorandum describing the basis for its required QC determination related to self-custody of client crypto assets.[623] Second, an adviser would be required to maintain a memorandum describing the basis upon which it has made the determination as to its safeguarding expertise for crypto assets as required under the proposed adviser self-custody rule.[624] Third, an adviser would be required to maintain records identifying the persons that have been designated persons with access to the crypto asset private key material pursuant to the proposed adviser self-custody rule.[625] Fourth, an adviser would be required to maintain a copy of any written assessment of cybersecurity risks as required under the proposed adviser self-custody rule.[626] Fifth, an adviser would be required to maintain a copy of the internal control reports required to be obtained pursuant to the proposed adviser self-custody rule.[627] Sixth, an adviser would be required to maintain records documenting its required annual review of its safeguarding systems and cybersecurity controls implemented in connection with self-custody.[628] Seventh, an adviser would be required to maintain copies of the account statements provided to clients and records of any transmissions and notices sent to clients as required under the proposed adviser self-custody rule.[629] Eighth, the adviser would be required to maintain a copy of any financial asset elections made pursuant to the proposed adviser self-custody rule.[630] Ninth, for each client for whom the adviser self-custodies crypto assets under the proposed adviser self-custody rule, an adviser would be required to maintain records that include such information as may be reasonably necessary to reconstruct all financial positions and transactions related to the client crypto assets that the adviser maintains including, at a minimum, client names, client account numbers, crypto asset addresses, transaction amounts, transaction destinations, transaction authorizations, and relevant metadata.[631] Finally, the adviser would continue to be required to maintain the records that are otherwise prescribed under the Advisers Act recordkeeping rule for an adviser

[618] *See* proposed rule 204–2(b)(6).

[619] *See* current and proposed rule 204–2(e)(1). As discussed below, for the proposed records related to SLOAs, the adviser would be required to retain such records for any SLOA that is in effect, or at any time within the past five years was, in effect. *See* proposed rule 204–2(b)(6). *See infra* section II.H.1.c) for discussion of the proposed recordkeeping requirement related to SLOAs.

[620] *See* proposed rules 204–2(a)(17)(iii) and 204–2(b)(5).

[621] *See* proposed rule 204–2(h)(2).

[622] *See* proposed rules 204–2(g)(1)(iii) and 204–2(g)(4). We are also proposing a similar amendment to the Investment Company Act recordkeeping rules for regulated funds. *See infra* section II.H.2. We would interpret promptly to mean generally within 24 hours in this context. *See, e.g.* Electronic Recordkeeping by Investment Companies and Investment Advisers, Advisers Act Release No. 1945 (May 24, 2001) [66 FR 29224 (May 30, 2001)] (''While the 'promptly' standard imposes no specific time limit, we expect that a fund or adviser would be permitted to delay furnishing electronically stored records for more than 24 hours only in unusual circumstances. At the same time, we believe that in many cases funds and advisers could, and therefore will be required to, furnish records immediately or within a few hours of request.'').

[623] *See* proposed rule 204–2(a)(26)(i). *See supra* section II.A.2 for discussion of the proposed QC determination requirement.

[624] *See* proposed rule 204–2(a)(26)(ii). *See supra* section II.A.3.a) for discussion of the proposed safeguarding expertise requirement.

[625] *See* proposed rule 204–2(a)(26)(iii). *See supra* section II.A.3.b)(1) for discussion of the proposed requirements related to private key management.

[626] *See* proposed rule 204–2(a)(26)(iv). *See supra* section II.A.4 for discussion of the proposed cybersecurity requirement.

[627] *See* proposed rule 204–2(a)(26)(v). *See supra* section II.A.6 for discussion of the proposed internal control report requirement.

[628] *See* proposed rule 204–2(a)(26)(vi). *See supra* section II.A.5 for discussion of the proposed annual review requirement.

[629] *See* proposed rule 204–2(a)(26)(vii). *See supra* section II.A.7 for discussion of the proposed self-custody account statement requirement.

[630] *See* proposed rule 204–2(a)(26)(viii). *See supra* section II.A.8 for discussion of the proposed financial asset election requirement.

[631] *See* proposed rule 204–2(a)(26)(ix).

that has custody or possession of securities or funds of any clients, and this provision would apply to any records that the adviser makes and keeps pursuant to the proposed adviser self-custody rule, including with respect to regulated fund clients, provided that references to securities would also include any crypto assets of a regulated fund that the adviser self-custodies.[632]

The proposed recordkeeping requirements are designed to help support the proposed adviser self-custody rule by allowing Commission staff to examine such records and be able to determine whether the adviser has complied with the required safeguards. This would enhance investor protection by improving the Commission's ability to assess compliance with the proposed protective conditions. These proposed recordkeeping requirements would also help facilitate the adviser's identification of any potential weaknesses in its safeguarding practices (and remedy any issues, if needed), which would help reduce risks of harm to the applicable clients. The proposed recordkeeping requirement for the adviser's QC determination would allow our staff to understand the basis of the adviser's QC determination. Similarly, the proposed recordkeeping requirement for the adviser's determination as to whether it has the requisite safeguarding expertise to self-custody client crypto assets would allow our staff to assess whether the adviser has evaluated its safeguarding expertise for crypto assets and appropriately determined that it meets the adviser self-custody rule's expertise requirement. The proposed requirement to maintain records of the written assessment of cybersecurity risks would help facilitate the adviser's identification of any cybersecurity risks related to the adviser's self-custody of crypto assets and, if applicable, address such risks, which would help reduce risks of harm to clients. The proposed requirement would also help facilitate our staff's understanding of any cybersecurity risks related to the adviser's self-custody of crypto assets, which would help facilitate the staff's examination of the adviser's safeguarding practices related to cybersecurity (which supports investor protection efforts). The proposed requirement to maintain records related to the designated persons with access to the private key material would help ensure that the adviser is appropriately documenting who has access to clients' private key material and allow our staff to assess whether the adviser is appropriately managing access to the private key material. Maintaining copies of internal control reports would give our staff access to the findings of the independent public accountant(s) that assess the effectiveness of the adviser's safeguarding practices and perform procedures to verify the crypto assets maintained in the adviser's self-custody are reconciled to the crypto network. It would also allow Commission staff to understand any potential weaknesses in the adviser's safeguarding controls that the accountant may identify in the internal control report. Similarly, the proposed requirement to maintain records of the adviser's annual review of its safeguarding system and cybersecurity controls would allow the Commission's examination staff to identify potential weaknesses in an adviser's safeguarding system and cybersecurity controls and whether the adviser's systems and controls have addressed the core minimum elements under the proposed adviser self-custody rule. The proposed requirement to maintain copies of the account statements, transmissions and any required notices to clients would allow the Commission to confirm that the account statements were sent to the clients and help serve as a record of the crypto asset address information and related activities that were disclosed to clients. Quarterly account statements would also provide transparency and verifiability of records, facilitating easier comparison between records from advisers and data from independent sources, such as onchain records. Finally, the proposed requirement to maintain records of any financial asset election made pursuant to the proposed adviser self-custody rule would help the Commission staff understand how the crypto assets that the adviser self-custodies are attributed to a particular client, which would help facilitate an examination of the adviser and support investor protection efforts.

The proposed requirement to maintain records of positions and transaction activities for each client for which the adviser self-custodies crypto assets is designed to provide our examination staff with transparency into the activities and movement of client crypto assets that the adviser has in self-custody and can provide important information about the operation and effectiveness of the adviser's safeguarding controls. Commission staff can also use these records to compare against the account statements and other transmissions that are required to be provided to clients to be able to reconcile the wallet activities against the account information disclosed to clients.

The proposed requirement to maintain records of the information reasonably necessary to reconstruct all financial positions and transactions related to client crypto assets is designed to allow the Commission staff to be able to track the movement of client crypto assets and reconcile transactions, which would help provide insight into how the crypto assets are being safeguarded. This requirement would also help to ensure the adviser is aware of the movements and location of client crypto assets and provide transparency to the client of any activities related to its crypto assets. The adviser would be required to maintain, at a minimum, the client name, client account number, crypto asset address, transaction amount, transaction destination, transaction authorization, and relevant metadata to allow the Commission staff to be able to recreate any movements of the crypto asset. In addition to the information that the records of operations and transaction activities would be required to specifically include under the proposed amendments, the adviser should also consider whether any additional information may need to be included in the related records to adequately reconstruct all financial positions and transactions. Such additional information may include information about the wallet configuration and wallet access rights and may need to be supplemented by offchain records. This provides advisers with the flexibility to determine what additional information may be necessary to fully reconstruct transactions of client crypto assets that move crypto assets in or out of the wallet. Additional information may need to be retained to be able to adequately reconstruct DeFi activities, such as information related to the DeFi protocol and its operations. For example, if the client's crypto assets are staked, the adviser should maintain records of relevant information, including the crypto asset staking contract address, as well as information regarding the crypto asset's designation as being staked during the applicable staking period. Without these types of records, our staff would have limited visibility into the adviser's compliance with the adviser self-custody rule and its own safeguarding practices. Finally, consistent with the scope of the proposed adviser self-custody rule, which would apply to regulated funds and crypto asset securities and similar

[632] *See* proposed rule 204–2(a)(26)(x); *see also* current rule 204–2(b).

investments in their accounts, the proposed rule would specify that advisers' other custodial records that are required to be maintained pursuant to the current Advisers Act recordkeeping rule would include any applicable records pertaining to crypto assets held in the adviser's self-custody on behalf of regulated funds.[633] The proposed amendment is designed to align the scope of the Advisers Act recordkeeping rule with the proposed adviser self-custody rule and to help ensure that advisers retain the required custodial records for crypto assets of regulated funds that the adviser self-custodies. True and accurate custodial records related to crypto assets that the adviser self-custodies can help reduce the risk of theft, loss, misappropriation, or misuse of client assets by the adviser. These custodial records would also facilitate effective regulatory oversight by allowing our staff to request from advisers the information necessary to identify potential fraud that could impact investors in regulated funds. We request comment on all aspects of the proposed amendments to the Advisers Act recordkeeping rule related to the proposed Advisers Act custody rule amendments to permit adviser self-custody of crypto assets, including the following items:

269. Should the Commission amend the Advisers Act recordkeeping rule as proposed? Are there any other records that an adviser should be required to maintain related to the proposed rulemaking relating to adviser self-custody of crypto assets? If so, what records and why?

270. The proposed recordkeeping rule amendments related to adviser self-custody of crypto assets would require the adviser to maintain a memorandum describing the basis for its required QC determination related to self-custody of client crypto assets. Is the proposed requirement clear as to the records advisers would be required to maintain? Should we specify certain elements that must be included in the written record of the QC determination? If so, what should those elements be?

271. The proposed amendments would require advisers to maintain custodial records relating to crypto assets the adviser has in self-custody for regulated funds. Should advisers be required to maintain these records? Why or why not?

272. Should the Advisers Act recordkeeping rule be amended, as proposed, to require an adviser that has self-custody of crypto assets to maintain records that include such information as may be reasonably necessary to reconstruct all financial positions and transactions related to client crypto assets that the adviser maintains, including, at minimum, client name, client account number, crypto asset address, transaction amount, transaction destination, transaction authorization, and relevant metadata? Should any of this information not be required to be maintained? Why or why not? Should any additional information be required to be maintained in such a record? If so, what information and why?

(b) Records Related to the Proposed State Trust Company Rule

To complement the proposed amendments to add State trust companies as a category of qualified custodian under the Advisers Act custody rule, we propose several related amendments to the Advisers Act recordkeeping rule.[634] An adviser that maintains client crypto assets with a State trust company as a qualified custodian would be required to make and keep the following records related to the proposed State trust company rule: (1) a memorandum describing the basis upon which the adviser made its required initial and annual determinations with respect to the State trust company as a qualified custodian, (2) records of the State trust company's audited financial statements obtained or received as required under the proposed State trust company rule, and (3) a copy of the State trust company's internal control reports obtained or received pursuant to the proposed State trust company rule.[635]

These proposed amendments to the Advisers Act recordkeeping rule would help facilitate the Commission's examination and enforcement functions, including determination of the adviser's compliance with the proposed State trust company qualified custodian requirements. These proposed amendments would also enhance investor protection by improving the Commission's ability to assess compliance with the proposed protective conditions. The proposed recordkeeping requirements would also help facilitate the adviser's identification of any potential weaknesses in the State trust company's policies and procedures, financial position, and internal controls, or other vulnerabilities that may impact its ability to safeguard crypto assets, which would help reduce risks of harm to the clients whose crypto assets are maintained at the State trust company. In particular, the proposed requirement to maintain a memorandum describing the basis for the adviser's initial and annual determination would enable our staff to better understand the adviser's basis for these determinations and help ensure that advisers are periodically reevaluating whether the State trust company continues to be an appropriate custodian for the client's crypto assets, which would help enhance investor protection. Finally, requiring the adviser to maintain records of the State trust company's audited financial statements and internal control reports would help enable our staff to understand the independent public accountant's assessments of the State trust company's financial statements and internal controls, which are relevant to the adviser's assessment of the State trust company's ability to appropriately safeguard crypto assets and would help enhance investor protection.

We request comment on all aspects of the proposed amendments to the Advisers Act recordkeeping rule related to the proposed State trust company rule, including the following items:

273. The proposed recordkeeping rule amendment would require the adviser to maintain a memorandum describing the basis for its required determinations with respect to the State trust company. Should the rule specify certain elements that must be included in the memorandum? If yes, what should those elements be?

274. Should advisers be required to maintain records of the State trust company's audited financial statements and internal control reports as records, as proposed? Are there any alternatives that we should consider? For example, should an adviser instead be permitted to maintain records of a certification or other evidence from the State trust company related to its audited financial statements and internal control reports? Alternatively, should the recordkeeping requirement be limited to the memorandum proposed to be required describing the adviser's basis for its determination?

275. The proposed recordkeeping rule for adviser self-custody of crypto assets would require that an adviser that has self-custody of crypto assets maintains records that include such information as

[633] *See* proposed rule 204–2(a)(26)(x); *see also* current rule 204–2(b), which imposes additional recordkeeping obligations on advisers that have custody or possession of securities or funds of any client. *See also supra* section II.A for a detailed discussion of the proposed adviser self-custody rule, including its scope.

[634] *See supra* section II.C for discussion of the proposed State trust company rule.

[635] *See* proposed rule 204–2(a)(27). In addition, the adviser would continue to be required to maintain the records that are otherwise required to be maintained by an adviser that has custody or possession of securities or funds of any client. *See* rule 204–2(b).

may be reasonably necessary to reconstruct all financial positions and transactions related to client crypto assets that the adviser has in self-custody. Should the Advisers Act recordkeeping rule be amended to likewise require the adviser to make and keep similar records related to the crypto assets that are maintained at a qualified custodian (including a State trust company pursuant to the proposed State trust company rules)? Why or why not? Would the adviser have access or be able to obtain access to the information necessary to make and keep such records? Would it be significantly burdensome for the adviser to obtain the necessary information to be able to make and keep such records?

(c) Records Related to Standing Letters of Authorization

We are also proposing to add a recordkeeping requirement related to the proposed amendment to the Advisers Act custody rule that provides an exception from the custody rule's surprise examination requirement if an adviser has custody of client assets solely because of a SLOA, as discussed further above in section II.G.5.[636] The adviser would be required to make and keep a record of any SLOA that the adviser has with a client and any related records pursuant to which the adviser relies on the proposed exception to the Advisers Act custody rule's surprise examination requirement.[637] The adviser would be required to retain such records for a SLOA that is in effect, or at any time within the past five years was, in effect. The proposed retention period is designed to be consistent with other retention periods required under the Advisers Act recordkeeping rule, which require that certain records be retained for five years from the fiscal year of the last entry. The adviser would also be required to retain any other related records that demonstrate its compliance with the conditions of the proposed exception. The proposed recordkeeping requirements related to SLOAs are designed to support compliance with the proposed exception and allow the Commission's staff to be able to verify whether the adviser has satisfied the conditions to avail itself of the proposed SLOA exception. As discussed further above in section II.G.5, the Commission is proposing the SLOA exception to the Advisers Act custody rule's surprise examination requirement on the basis that, although a SLOA establishes that the adviser has custody of client funds or securities, the limitations set forth in the proposed SLOA exception to the surprise examination requirement are designed to restrict the adviser's ability to transfer client funds or securities to third parties without the client's authorization. The proposed recordkeeping requirement is important for the Commission's examination and oversight function, particularly with respect to determining whether the protective conditions of the SLOA exception are in place. Further, the proposed SLOA recordkeeping requirement would also support investor protection by giving Commission staff records to examine that could show any compliance issues related to the SLOA, including those that may lead to any potential theft, loss, misappropriation, or misuse of client funds or securities related to SLOAs, and may serve as a deterrence against adviser misconduct related to SLOAs.

We request comment on the proposed requirement to make and keep records related to any SLOAs between the adviser and a client, as well as any related records, including the following items:

276. Is it clear what ''related records'' the adviser would be required to maintain? Should the rule be modified to require that the adviser maintain any specific related records? For example, should the rule be modified to require that the adviser maintain records evidencing that the client's qualified custodian is not a related person of the adviser?

277. Should any additional records be required with respect to the proposed amendments to the Advisers Act custody rule related to SLOAs? If so, what records and why? Are there alternatives to the proposed amendments to the Advisers Act recordkeeping rule that would minimize burdens and costs that we should consider? If so, what are they?

278. Should we amend the Advisers Act recordkeeping rule in any other respects related to this proposed rulemaking? If so, what amendments should be made and why?

2. Regulated Fund Recordkeeping

We are proposing amendments to rule 31a–2 under the Investment Company Act (''fund retention rule'') to add new recordkeeping requirements that would require records related to the proposed rules addressing regulated fund self-custody of crypto assets discussed above.[638] In addition, we are also proposing amendments to the fund retention rule to add new recordkeeping requirements for regulated funds that maintain their crypto assets at a State trust company under the proposed State trust company rules discussed above.[639] Finally, we are proposing amendments to the fund retention rule and rule 31a–1 under the Investment Company Act (together, the ''regulated fund recordkeeping rules'') to specify the applicability of these rules to BDCs.[640]

The proposed self-custody related amendments would require a regulated fund to maintain, for each crypto asset of the fund held in custody under the proposed rule for fund self-custody of crypto assets, any report or other information provided to the fund's board in connection with the board oversight requirements.[641] As discussed above, such information would include the quarterly written report documenting the basis for the investment adviser's QC determination, as well as the adviser's annual written report regarding its expertise and systems, the most recent annual review of the adviser's safeguarding systems and cybersecurity controls if available, the most recent internal written control report if available, and any other information reasonably necessary for the board to evaluate the fund's custody arrangement.[642] The regulated fund would be required to maintain such reports and other information for at least six years, the first two years in an easily accessible place.[643] By having past documents available, a regulated fund's board could be better able to make the required annual determination as to whether the crypto assets maintained with the adviser would continue to be subject to reasonable care. The proposed amendments are also designed to promote effective regulatory oversight by the Commission and its staff, which provides investors with important protections.

For each crypto asset held in self-custody, the proposed self-custody rule under the Advisers Act and the current regulated fund recordkeeping rules would require a regulated fund to maintain records of resolutions regarding the board's designation of

[636] *See supra* section II.G.5 for discussion of the proposed amendments related to the surprise examination requirement for advisers that custody client assets solely pursuant to a standing letter of authorization; *see also* proposed rule 223–1(b)(8).

[637] *See* proposed rule 204–2(b)(6).

[638] *See* proposed rule 31a–2(a)(10).

[639] *See* proposed rule 31a–2(a)(9).

[640] *See* paragraphs (a)–(g) of rule 31a–1 and paragraphs (a)–(e), (g) of rule 31a–2.

[641] *See* proposed rule 31a–2(a)(10); proposed rule 17f–9(b)(1).

[642] *See* supra section II.B; proposed rule 17f–9(b)(1).

[643] *See* proposed rule 31a–2(a)(10). This timing is consistent with the timing that is generally required by the fund retention rule.

supervised persons with access to key materials permanently, the first two years in an easily accessible place. This requirement is based on the proposed adviser self-custody rule limiting access to fund crypto asset key materials to those persons designated by resolution of the board to have such access and the current recordkeeping requirements.[644] This recordkeeping requirement is designed to promote both board oversight of key access materials and effective regulatory oversight by the Commission and its staff, which provides investors with important protections.

The proposed amendments related to State trust company custody would require a regulated fund that maintains client crypto assets and related cash and/or cash equivalents with a State trust company as a permitted custodian to make and keep the following records: (1) a memorandum describing the basis upon which the fund made its required initial and annual determinations with respect to the State trust company as a permitted custodian, (2) records of the State trust company's audited financial statements obtained or received as required under the proposed rules, and (3) a copy of the State trust company's internal control reports obtained or received pursuant to the proposed crypto custody rules.[645] The regulated fund would be required to maintain these records for at least six years, the first two years in an easily accessible place.[646] Similar to the parallel proposed amendments to the Advisers Act discussed above, the proposed amendments related to State trust company custody would help facilitate the Commission's examination and enforcement functions, including determination of the fund's compliance with the proposed State trust company rules.[647]

Finally, we are proposing amendments to the regulated fund recordkeeping rules to specify the applicability of these rules to BDCs.[648] Section 31 under the Investment Company Act, prescribing recordkeeping requirements, is incorporated by statute to apply to BDCs to the same extent as if the BDC were a registered closed-end investment company.[649] Compliance with the rules thereunder is mandatory for all registered investment companies, and BDCs are similarly subject to these requirements under the statutory incorporation.[650] The proposed amendments update the rule text to reflect their applicability to BDCs.

We request comment on all aspects of the proposed Investment Company Act recordkeeping rules, including the following items:

279. Should a regulated fund be required to maintain, for each crypto asset of the fund held in custody under the proposed rule for fund self-custody of crypto assets, the information provided to the fund's board in connection with the board oversight requirements? Is there any additional documentation relating to the board's oversight of the custody arrangement that the fund should maintain?

280. The proposed fund self-custody recordkeeping requirements would require the fund to maintain information provided to the fund's board in connection with the board oversight requirements for six years. Should regulated funds be required to maintain these records for a shorter or longer period? If so, what time period, and why?

281. Would the proposed fund self-custody recordkeeping requirements be overly burdensome for regulated funds? Why or why not? What alternatives to the proposed requirements would minimize recordkeeping burdens and the associated costs while promoting the goals of facilitating compliance with the proposed fund self-custody rule and effective regulatory oversight by the Commission and its staff? How would such alternatives minimize burdens while promoting compliance and regulatory oversight?

282. The proposed self-custody rule under the Advisers Act and the current regulated fund recordkeeping rules would require a regulated fund to maintain records of resolutions regarding the board's designation of supervised persons with access to key materials permanently, the first two years in an easily accessible place. Alternatively, should regulated funds be required to maintain these records for a shorter period? If so, what time period, and why?

283. The proposed State trust company recordkeeping requirements would require a regulated fund to maintain records for at least six years, the first two years in an easily accessible place. Should regulated funds be required to maintain these records for a shorter or longer period? If so, what time period, and why?

284. The proposed State trust company recordkeeping requirements would require the regulated fund to maintain a memorandum describing the basis for its required determinations with respect to the State trust company. Should the rule specify certain elements that must be included in the memorandum? If yes, what should those elements be?

285. Should regulated funds be required to maintain records of the State trust company's audited financial statements and internal control reports as records, as proposed? Are there any alternatives that we should consider? For example, should a fund instead be permitted to maintain records of a certification or other evidence from the State trust company related to its audited financial statements and internal control reports? Alternatively, should the recordkeeping requirement be limited to the memorandum proposed to be required describing the fund's basis for its determination?

286. Are the proposed amendments to the regulated fund recordkeeping rules specifying the applicability of these rules to BDCs appropriate? Why or why not?

3. Records Related to Crypto Assets From a Crypto Network

We are proposing amendments to the Advisers Act and Investment Company Act recordkeeping rules to provide that records related to crypto assets that are required to be maintained and preserved under the applicable recordkeeping rule may be maintained and preserved on a crypto network.[651] Advisers and

[644] The proposed adviser self-custody rule, in order to protect key materials against loss and unauthorized access, requires that access to regulated fund crypto asset key materials be limited to those supervised persons designated by resolution of the board to have such access. *See* proposed rule 223–1(b)(7)(ii)(A). The current recordkeeping rules require minute books of board meetings, among other things, to be preserved permanently, the first two years in an easily accessible place. *See* rule 31a–1(b)(4); rule 31a–2(a)(1). We understand board resolutions, including those related to the board's designation of access persons, are included in the relevant board meeting's minute books. Accordingly, such resolutions would be maintained in the same manner and for the same duration as the minute books.

[645] *See* proposed rule 31a–2(a)(9).

[646] *See id.*

[647] *See supra* section II.H.1.b).

[648] *See* paragraphs (a)–(g) of rule 31a–1 and paragraphs (a)–(e),(g) of rule 31a–2.

[649] 15 U.S.C. 80a–63(a) (''section 80a–30 of this title shall apply to a business development company to the same extent as if it were a registered closed-end investment company'').

[650] *See* rule 31a–1; *see also supra* footnote 649 (addressing 15 U.S.C. 80a–63(a)).

[651] For regulated funds, see proposed rule 31a–1(b)(14). For advisers, we propose to add crypto networks as an additional format that advisers can use to maintain their records. *See* proposed rule 204–2(g)(1)(iii). For the avoidance of doubt, we are proposing crypto network records as a separate category and proposing conditions specific to crypto network records. *See* proposed rule 204–2(g)(4). In connection with this proposed amendment, we are also proposing conforming amendments to rule 204–2(g)(2) and (g)(3) to

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regulated funds [652] would be required to provide such records in a human-readable and reasonably usable electronic format promptly upon request by the Commission (including its examiners and other representatives) and continue to provide access for the same period that other books and records are required to be maintained and preserved under the Advisers Act and Investment Company Act recordkeeping rules.[653] The adviser or regulated fund may be required to maintain supplemental backup onchain or offchain records to ensure that records maintained on the crypto network remain accessible during the entire applicable retention period.[654] These proposed amendments would apply to any record required to be maintained and preserved under the Advisers Act and Investment Company Act recordkeeping rules related to crypto assets, including the proposed amendments related to crypto custody.

The development of crypto networks may afford advisers and regulated funds the opportunity to leverage the recordkeeping capabilities of crypto networks to support the recordkeeping obligations under the Advisers Act and Investment Company Act recordkeeping rules and provide information and records related to crypto asset transactions.[655] Permitting reference to a crypto network as a source for recordkeeping related to crypto assets would reduce burdens by eliminating the need for separate records when records are available via a crypto network. For example, recordkeeping rules under the Advisers Act and Investment Company Act require an adviser or regulated fund, respectively, to maintain a separate ledger account for each client showing purchases and sales of securities as well as the date and price of each such purchase and sale (among other information).[656] Allowing advisers and regulated funds to use onchain records would reduce costs of separate duplicate offchain recordkeeping, which could ultimately result in reduced costs for investors. These proposed requirements would also benefit investors by giving Commission staff records to examine that could show any compliance issues, including those that could lead to theft, loss, misuse, or misappropriation related to crypto assets, by being able to access and view the crypto network, which may have greater accuracy than offchain copies of onchain records and information, thereby reducing the risk of harm to investors.

Under the proposed amendments, an adviser or regulated fund may satisfy this requirement with respect to crypto assets by maintaining such ledger accounts on a crypto network, provided that the onchain record contains a true, accurate, and current record of the information required to be retained under the relevant provision of the applicable recordkeeping rule.

Under the proposed rules, the adviser or regulated fund would remain obligated to comply with the substantive provisions of the recordkeeping rules and provide the same information required under the current rules. This would require the adviser or regulated fund to supplement information available on the crypto network with offchain records for any required information that is not available onchain.[657] For example, because crypto asset ownership is designated by private keys, transaction information that is publicly available on a crypto network may need to be supplemented by the adviser's offchain records to identify the beneficial ownership of a crypto asset and attribute a particular public address to the corresponding client or regulated fund. Similarly, other personal information, like the client's name, investor ID, contact information, and other identifying or non-public information, may need to be maintained as offchain records because such information may not be available on the crypto network. While these proposed rule amendments are designed to provide advisers and regulated funds the flexibility to tailor their recordkeeping practices by permitting the use of onchain records, an adviser and regulated fund would be required to continue to ensure that its recordkeeping practices enable compliance with its obligations under the Advisers Act and Investment Company Act recordkeeping rules, including by considering whether offchain records are needed to supplement information available via onchain records to help ensure that the records available to the Commission reflect a true, accurate, and current record.

The adviser or regulated fund would also be required to provide records on the crypto network in a human-readable and reasonably usable electronic format promptly upon request by the Commission (including its examiners and other representatives) and continue to be able to provide access during the applicable record retention period. This requirement is designed to help ensure that Commission staff has access to consistent information across asset classes and is able to continue to review and analyze records reflecting the same underlying information to which the Commission staff currently has access.

Blockchain explorers are generally used to navigate a crypto network and view information available on the crypto network, including transaction information. Blockchain explorers may not be available for all crypto networks. For example, a nascent crypto asset may be transacted on a novel crypto network, which is not supported by a widely available blockchain explorer. The proposed requirement that onchain records provided to the Commission are in a human-readable and reasonably usable electronic format and can be made available to the Commission during the applicable record retention period is intended to ensure that the Commission is able to have the same access to onchain records that it currently has for offchain records and to help support the Commission's examination and oversight functions, notwithstanding whether those onchain

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exclude the application of these paragraphs to records maintained on a crypto network. The Commission believes that these proposed amendments are consistent with its interpretation of the Electronic Signatures in Global and National Commercial Act. *See* Electronic Recordkeeping by Investment Companies and Investment Advisers, Advisers Act Release No. 2945 (May 24, 2001) [66 FR 29224 (May 30, 2001)].

[652] For purposes of this section II.H.3 of this release, the term ''regulated fund'' includes all registered investment companies and BDCs, including UITs and FACCs. *See supra* footnote 3 and accompanying text. While the proposed amendments are generally applicable only to management investment companies and BDCs, all registered funds and BDCs are subject to recordkeeping requirements. *See* 15 U.S.C. 80a–30.

[653] For advisers, rule 204–2(e) sets forth the applicable record retention requirements. Most records are required under the rule to be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser. *See* rule 204–2(e)(1) of the Advisers Act. For regulated funds, the fund retention rule generally requires funds to preserve records for a period of six years, the first two years in an easily accessible place. *See* rule 31a–2 of the Investment Company Act.

[654] *See infra* footnote 1212 and accompanying text for discussion of circumstances under which onchain records may be temporarily unavailable or difficult to obtain.

[655] *See, e.g.,* AIMA Comment Letter, *supra* footnote 210; Blockchain Association Comment Letter II, *supra* footnote 200; Comment Letter to Crypto Task Force of Digital Asset Holdings LLC (Feb. 25, 2025) (''Digital Asset Holdings Comment Letter'').

[656] *See* rule 204–2(b)(2) under the Advisers Act and rule 31a–1(b)(2) under the Investment Company Act.

[657] *See, e.g.,* Tokenization Statement, *supra* footnote 126 (stating Commission staff's observations that ''[a]s part of this recordkeeping system, the issuer (or its agent) [of tokenized securities] uses onchain database records *alongside offchain database records* and associates the onchain information.'') (emphasis added).

records can be viewed through a blockchain explorer. We request comment on the proposed amendment, including the following items:

287. As proposed, should the amendment be limited to records related to crypto assets? Do advisers and regulated funds currently make use of crypto networks with respect to any recordkeeping functions that are unrelated to crypto assets? If so, what recordkeeping functions?

288. The proposed amendments related to records for information available on a crypto network would apply for all records required under the Advisers Act and Investment Company Act recordkeeping rules relating to a crypto asset. Alternatively, should the proposed amendment be limited to particular records required under the Advisers Act and Investment Company Act recordkeeping rules? If so, which recordkeeping requirements should advisers and regulated funds be permitted to satisfy by reference to a crypto network and why?

289. Would the proposed requirements that the adviser or regulated funds comply with the substantive provisions of the recordkeeping rules and provide the same information required under the current rules inhibit the adviser or regulated fund's ability to maintain records on a crypto network that is a private or permissioned network that is not controlled by the adviser or a related person of the adviser? How would an adviser or regulated fund determine that such a private or permissioned crypto network that is not controlled by the adviser or a related person of the adviser is able to generate a true, accurate, and current record for a crypto network? How would an adviser or regulated fund determine that the adviser or regulated fund would be able to have access to the crypto network for the full record retention period? Should any different or additional requirements apply in the case of records that are maintained on a private or permissioned crypto network? For example, should the adviser or regulated fund be required to confirm that the network governance prevents unilateral control, allows independent verification of records, and/or limits the ability of a single administrator to alter or reverse transactions recorded on the private or permissioned crypto network?

290. The proposed Advisers Act recordkeeping rule for self-custody of crypto assets would require an adviser that has self-custody of crypto assets to maintain records that include such information as may be reasonably necessary to reconstruct all financial positions and transactions related to client or regulated fund crypto assets that the adviser self-custodies. Should the proposed amendment also require that advisers maintain backups for onchain records? Why or why not? Would the adviser have access or be able to obtain access to the information necessary to make and keep such records? Would it be significantly burdensome for the adviser to obtain the necessary information to be able to make and keep such records?

291. Is the requirement for the adviser or regulated fund to provide access to the crypto network to Commission staff clear? Why or why not? If not, what alternative requirements should we consider? For example, should the adviser be required to produce a copy or an offchain record evidencing the information that is available on the crypto network to Commission staff?

292. Should we consider other requirements to apply to the use of or reference to crypto networks for recordkeeping purposes? For example, should an adviser or regulated fund be required to perform due diligence of the applicable crypto network to determine whether the crypto network is a reliable and trustworthy source of information? Have any best practices developed regarding ascertaining the reliability or trustworthiness of a particular crypto network for recordkeeping purposes?

293. What are best practices that commenters have developed or are aware of with respect to recordkeeping practices for crypto assets or, alternatively, are there any recordkeeping practices with respect to crypto assets that commenters have found to be ineffective or relatively less effective?

294. Should we consider amending the existing Advisers Act or Investment Company Act recordkeeping rules in any other respects to accommodate records maintained on a crypto network under the rule? For example, should we amend the Advisers Act recordkeeping rule to address the application of the requirement to maintain books and records at an appropriate office of the investment adviser for the first two years for records that are maintained on a crypto network? Similarly, should we amend the Investment Company Act recordkeeping rules to address the application of the requirement to maintain books and records ''in an easily accessible place'' for the first two years for records that are maintained on a crypto network?

295. Should guidance be provided regarding an adviser's or regulated fund's compliance with the proposed provision in the event the crypto network is temporarily or permanently inaccessible? Should the rule require that an adviser or regulated fund maintaining records on a crypto network also be required to maintain backups and/or analogous offchain records?

I. Guidance for Accountants Updates

The Commission expects to revise certain aspects of the guidance for accountants set forth in the 2009 Guidance for Accountants to address auditing and attestation standards for crypto assets and other industry developments since its publication.[658] The Advisers Act custody rule requires that an adviser (or its related person) that maintains client funds or securities as a qualified custodian obtain an internal control report related to its custody services at least annually.[659] The examination conducted by the independent public accountant to support the internal control report assesses whether the controls of the adviser or its related person (in its capacity as a qualified custodian) have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives related to custody of funds and securities during the period specified.[660] The 2009 Guidance for Accountants sets forth the Commission's position on several control objectives that should be included.

In connection with the proposed changes to the Advisers Act custody rule, we expect to make certain revisions to the 2009 Guidance for Accountants. We also expect to make certain modifications to improve the 2009 Guidance for Accountants based on our experience with its implementation by industry members. Both sets of changes relate to the following and are described in greater detail below:

- Revising the definition of a material discrepancy;
- Adding control objectives related to information technology;
- Adding control objectives specific to the custody of crypto assets;
- Revising the verification procedures for an internal control report;
- Updating references to reflect proposed changes in the Advisers Act custody rule; and

[658] *See* 2009 Guidance for Accountants, *supra* footnote 89.

[659] *See* current rule 206(4)–2(a)(6).

[660] *See* 2009 Guidance for Accountants, *supra* footnote 89. For an explanation of proposed conforming amendments to the description of the internal control report under current rule 206(4)–2(a)(6) (proposed to be redesignated as rule 223–1(a)(6)), *see supra* footnote 551.

• Specifying the AICPA professional standards governing internal control reports and surprise examinations performed pursuant to the Advisers Act custody rule.

1. Revisions for Independent Verification

The Commission expects to revise the 2009 Guidance for Accountants to specify that a material discrepancy would be a variance, irregularity, or omission identified during an accountant's examination that, individually or in the aggregate, (1) results in the material misstatement of funds or securities; (2) creates a reasonable possibility of a material misstatement of funds or securities; (3) indicates actual or potential loss, theft, misuse, or misappropriation of funds or securities; or (4) indicates a failure by the adviser to maintain books and records in a manner that allows for the verification of funds or securities. This revision is intended to better align the definition of a material discrepancy with matters that the accountant's examination are designed to identify.

2. Revisions for Internal Control Report

The Commission also expects to provide guidance regarding how an adviser or its related person (in its capacity as a qualified custodian) who is required to obtain an internal control report for both crypto assets and funds and securities that are not crypto assets (''non-crypto funds and securities'') can satisfy these requirements. In determining whether one internal control report can satisfy the internal control report requirements for both crypto assets and non-crypto funds and securities, the parties engaging the independent public accountant to perform the engagement should consider which parties are responsible for which controls. When one party is responsible for controls related to both non-crypto funds and securities and crypto assets, determining if a single report is sufficient requires ensuring the report addresses all relevant control objectives for all relevant assets. To the extent the party responsible for controls related to non-crypto funds and securities is different than the party responsible for controls related to crypto assets, there should be two internal control reports—one satisfying the requirement for non-crypto funds and securities and one satisfying the requirement for crypto assets.

(a) Non-Crypto Funds and Securities

The internal control report related to the custodial services, including the safeguarding of non-crypto funds and securities, should address the following control objectives and associated controls related to the following areas: (1) client account setup and maintenance; (2) authorization and processing of client transactions; (3) security maintenance and setup; (4) processing of income and corporate action transactions; (5) reconciliation of funds and securities to depositories; (6) client reporting; and (7) information technology.

The control objectives in the 2009 Guidance for Accountants already address each of these areas, with the exception of control objectives addressing information technology, which are relevant when automated controls or reliance on computer-generated information is important to the achievement of other control objectives, and will be added as part of our revisions. The control objectives to address these areas include the following:

• Documentation for opening and modifying client accounts is received, authenticated, and established completely, accurately, and timely on the applicable system.

• Client transactions, including contributions and withdrawals, are authorized and processed in a complete, accurate, and timely manner.

• Trades are properly authorized, settled, and recorded completely, accurately, and timely in the client account.

• New securities and changes to securities are authorized and established in a complete, accurate, and timely manner.

• Securities income and corporate action transactions are processed to client accounts in a complete, accurate, and timely manner.

• Physical securities are safeguarded from loss or misappropriation.

• Cash and security positions are reconciled completely, accurately, and on a timely basis between the custodian and depositories.

• Account statements reflecting cash and security positions are provided to clients in a complete, accurate, and timely manner.

• Logical access to programs, data, and computer resources is restricted to authorized and appropriate users and such users are restricted to performing authorized and appropriate actions.

• Physical access to computer and other resources is restricted to authorized and appropriate personnel.

• Changes to application programs and related data management systems are authorized, tested, documented, approved, and implemented to result in the complete, accurate, and timely processing and reporting of transactions and balances.

• Network infrastructure is configured as authorized to support the effective functioning of application controls to result in valid, complete, accurate, and timely processing and reporting of transactions and balances and to protect data from unauthorized changes.

• Application and system processing are authorized and executed in a complete, accurate, and timely manner, and deviations, problems, and errors are identified, tracked, recorded, and resolved in a complete, accurate, and timely manner.

• Data transmissions are from authorized sources and are complete, accurate, secure, and timely.

In addition, the 2009 Guidance for Accountants states the independent public accountant should directly confirm, on a test basis, with unaffiliated custodians to verify that the data used in reconciliations performed by the qualified custodian is obtained from unaffiliated custodians and is unaltered. We expect to revise the 2009 Guidance for Accountants to specify that the independent public accountant, instead of performing substantive testing as part of the control report procedures, should observe, inspect, and/or reperform a sample of reconciliations as part of testing the reconciliation control objective to verify that the data used in such reconciliations is obtained from unaffiliated custodians (*e.g.,* Depository Trust Corporation) and is unaltered. The Commission believes this revision would eliminate duplication of efforts, as we understand that independent public accountants are typically already performing tests of controls over these reconciliations, and would provide assurance throughout the period, rather than at a specific point in time.

(b) Crypto Assets

The internal control report related to the custodial services, including the safeguarding of crypto assets,[661] should address the following control objectives and associated controls related to the following areas: (1) client account setup and maintenance; (2) authorization and processing of client transactions; (3)

[661] An internal control report related to crypto assets of a regulated fund maintained in self-custody by the adviser under proposed rule 223–1(b)(7) would be required to cover the regulated fund's securities and similar investments. *See* proposed rule 223–1(b)(5) (providing that an adviser is required to comply with the Advisers Act custody rule with respect to the regulated fund's crypto assets that are securities or similar investments of the fund and held in self-custody by the adviser).

crypto asset maintenance and setup; (4) processing of onchain events; (5) reconciliation of crypto assets to crypto networks; (6) client reporting; and (7) information technology.

The control objectives that address these areas for crypto assets are the same as for non-crypto funds and securities and include the following:

- Documentation for opening and modifying client accounts is received, authenticated, and established completely, accurately, and timely on the applicable system.
- Client transactions, including contributions and withdrawals, are authorized and processed in a complete, accurate, and timely manner.
- Trades are properly authorized, settled, and recorded completely, accurately, and timely in the client account.
- Logical access to programs, data, and computer resources is restricted to authorized and appropriate users and such users are restricted to performing authorized and appropriate actions.
- Physical access to computer and other resources is restricted to authorized and appropriate personnel.
- Changes to application programs and related data management systems are authorized, tested, documented, approved, and implemented to result in the complete, accurate, and timely processing and reporting of transactions and balances.
- Network infrastructure is configured as authorized to support the effective functioning of application controls to result in valid, complete, accurate, and timely processing and reporting of transactions and balances and to protect data from unauthorized changes.
- Application and system processing are authorized and executed in a complete, accurate, and timely manner, and deviations, problems, and errors are identified, tracked, recorded, and resolved in a complete, accurate, and timely manner.
- Data transmissions are from authorized sources and are complete, accurate, secure, and timely.

Based on how ownership is proven and transactions are finalized for crypto assets, the control objectives addressing these areas specifically for crypto assets include the following:

- New crypto assets and changes to crypto assets are authorized and established in a complete, accurate, and timely manner.
- Onchain events for crypto assets are processed to client accounts in a complete, accurate, and timely manner.
- Private keys are safeguarded from loss or misappropriation and are generated, stored, distributed, and managed throughout their lifecycle.
- Crypto asset positions are reconciled completely, accurately, and on a timely basis between the custodian and crypto networks.[662]
- Account statements reflecting crypto asset positions are provided to clients in a complete, accurate, and timely manner.

As part of testing the reconciliation control objective, the independent public accountant should observe, inspect, and/or reperform a sample of reconciliations to verify that the data used in such reconciliations is obtained from crypto networks and is unaltered.

3. Other Revisions

Changes to the 2009 Guidance for Accountants to reflect the proposed changes in the Advisers Act custody rule are expected to include: (1) the redesignation of the current Advisers Act custody rule to rule 223–1; (2) the removal of the requirement for independent public accountants to be registered with, and subject to regular inspection by, the PCAOB; and (3) the updates regarding the notice to the Commission of material discrepancies, as discussed above.

We also expect to revise the 2009 Guidance for Accountants to reflect changes in technical references since 2009, as the AICPA professional standards referenced throughout the 2009 Guidance for Accountants have been superseded with new AICPA professional standards. For the internal control reports, three types of reports issued under the AICPA professional standards will be sufficient to satisfy the requirements—(1) SOC 1 Type 2 report conducted in accordance with AT–C section 320, Reporting on an Examination of Controls at a Service Organization Relevant to User Entities' Internal Control Over Financial Reporting (''AT–C 320''); (2) AT–C section 315, Compliance Attestation (''AT–C 315''); or (3) AT–C section 205, Assertion-Based Examination Engagements (''AT–C 205''). Additionally, a surprise examination will be a compliance examination conducted in accordance with AT–C 315.

We request comment on whether there are additional areas we should cover in updates to the 2009 Guidance for Accountants.

[662] For internal control reports prepared pursuant to proposed rule 223–1(b)(7)(iv), ''custodian'' would mean the adviser holding client crypto assets in self-custody.

J. Disclosure and Reporting Requirements

1. Amendments to Form ADV

The Commission is proposing several amendments to Form ADV, including Part 1A, Form ADV General Instructions and Glossary of Terms, Form ADV–E, and Part 2A of Form ADV. In particular, the Commission is proposing to amend Form ADV to (1) add new questions in Part 1A and Schedule D related to the proposed crypto asset self-custody rule, as discussed above in section II; (2) add new questions to Item 9 that address an adviser's reliance on certain exceptions under the Advisers Act custody rule as well as an adviser's use of State trust companies as qualified custodians, and other amendments to Item 9 to promote more consistent reporting of an adviser's and a related person's custody; (3) add new questions to Schedule D of Form ADV regarding tokenized private funds; and (4) make certain conforming amendments to reflect the proposed amendments to the Advisers Act custody rule.[663]

The proposed amendments related to adviser self-custody of crypto assets and the use of State trust companies as qualified custodians are designed to provide the Commission and investors with important identifying information about the adviser's crypto asset custodial practices, in light of the novel risks associated with adviser self-custody and safeguarding crypto assets. The remaining proposed amendments are designed to provide the Commission staff with more accurate and consistent information about adviser custodial practices and streamline reporting for advisers. Because Form ADV data is publicly available, these proposed amendments will also enhance the information available to investors and support investor protection by providing better information about adviser custodial practices.

(a) Amendments Related to Crypto Asset Self-Custody

We propose changes to Form ADV, Part 1A, to add several new questions related to the proposed amendments to the Advisers Act custody rule that would permit advisers to self-custody client crypto assets.[664] The proposed changes include amendments to: (1) Item 9 to add several new questions

[663] Because Form ADV, Part 1A is submitted in a structured, XML-based data language specific to that Form, the information in the amended Form ADV, Part 1A, would continue to be structured (*i.e.,* machine readable) as well.

[664] *See supra* section II.A for discussion of the proposed amendments to permit adviser self-custody of client crypto assets.

related to advisers' crypto asset self-custody practices under the proposed adviser self-custody rule; and (2) Item 5.K. and Section 7.B. of Schedule D to add questions about crypto assets self-custodied on behalf of separately managed account clients (''SMA clients'') and private funds. Relatedly, we propose to add the terms ''crypto asset,'' ''crypto asset address,'' and ''self-custody,'' which are referenced in the proposed Form ADV, Part 1A questions on adviser self-custody, to the Form ADV Glossary of Terms.[665] These proposed new questions are designed to provide the Commission and investors with important information about the custodial practices of advisers engaging in self-custody of crypto assets. As discussed further above in section II, while adviser self-custody of crypto assets may be appropriate subject to certain protective conditions, self-custody may present unique risks given the nature of crypto assets and the potential conflicts of interest associated with adviser self-custody. For this reason, we believe that additional Form ADV disclosure on adviser self-custody of crypto assets is appropriate and would serve investor protection.

First, we propose to revise Item 9 to instruct advisers to exclude regulated funds from ''clients'' reported under Items 9.A through 9.E (custody questions that are not related to self-custody of crypto assets), but to include regulated funds in ''clients'' when responding to questions related to crypto self-custody under proposed Item 9.F.[666] This instruction aligns the scope of self-custody reporting under proposed Item 9.F. with the scope of the proposed adviser self-custody rule, which would apply to crypto assets held in an adviser's self-custody for all advisory clients including regulated fund clients.[667]

We also propose to add new questions under proposed Item 9.F. related to advisers' crypto asset self-custody practices under the requirements of the proposed adviser self-custody rule. The proposed questions would require advisers to report whether the adviser has self-custody of client crypto assets, and if so, the approximate amount (in U.S. dollars), total number of clients for which the adviser has self-custody of crypto assets as well as the total number of crypto asset addresses that hold clients' crypto assets in the adviser's self-custody.[668] These questions would benefit investors by providing a view into the complexity and risk exposure of an adviser's crypto self-custody activities.[669]

We also propose to add new questions requiring advisers to report whether an independent public accountant prepares an internal control report with respect to custodial services in connection with the adviser having self-custody of client crypto assets and to report identifying information about any accountant(s) engaged to perform an internal control report.[670] We are also proposing to ask advisers that self-custody client crypto assets to report whether account statements are sent at least quarterly to the adviser's clients, or whether, in lieu of sending a consolidated account statement, the adviser transmits, or arranges for the transmission of, the information required in an account statement, to clients at least quarterly in a human-readable and reasonably usable electronic format.[671] Finally, for advisers that self-custody client crypto assets on behalf of pooled investment vehicles other than regulated funds, we propose to add new questions requiring such advisers to report whether an independent public accountant audits annually such pooled investment vehicles and whether audited financial statements are distributed to the investors in such pools as well as identifying information about the accountants engaged to perform the audit.[672] These additional questions will allow clients and investors to better discern how advisers safeguard the crypto assets in their self-custody and the methods used to do so as well as which accounting firms advisers engage for purposes of independent checks on their self-custody practices. These new required Form ADV disclosures would also enhance the Commission's investor protection efforts by providing the Commission with important information related to advisers' self-custody practices. It would also help our examination staff assess advisers' risk profiles and identify specific areas in need of outreach and examination.

We also propose to add new questions to Item 5.K. and Section 7.B. of Schedule D to request information about the crypto assets that an adviser self-custodies on behalf of SMA clients and private funds. Item 5.K. currently requires advisers to disclose certain information about SMA clients that they advise, including transactions that they engage in on behalf of SMA clients[673] and custodians that account for at least ten percent of separately managed account regulatory assets under management.[674] Section 7.B. of Schedule D requires information on

[665] Under this proposal, Form ADV Glossary of Terms would define ''crypto asset,'' ''crypto asset address,'' and ''self-custody'' as having the same meaning as those terms in rule 223–1 under the Advisers Act. We also propose to revise the definition of ''custody'' in the Form ADV, Glossary of Terms, to cross-reference to the definition of custody in the Advisers Act custody rule to ensure that the term ''custody'' as referenced throughout Form ADV aligns with the definition for custody in the Advisers Act custody rule. This proposal would also make a correction edit to the definition of ''custody'' to add a reference to Schedule D in the list of Form ADV Items where the term ''custody'' is currently used.

[666] This proposal also includes the removal of current Item 9.E., which asks advisers filing an annual updating amendment and that were subject to a surprise examination by an independent public accountant in the last fiscal year to provide the date on which the examination commenced. This information is not necessary to our examination staff's risk assessment efforts and, in many instances, is provided with the accountant's report filed with the Form ADV–E. With the removal of current Item 9.E., current Item 9.F. would be redesignated as Item 9.E.

[667] All proposed changes to Item 9, if adopted, would affect advisers registering with the SEC as well as ERAs that are registering with a State securities authority. *See supra* footnote 90, which discusses Form ADV reporting obligations of ERAs and registered investment advisers.

[668] *See* proposed Form ADV, Part 1A, Item 9.F.(1) and Item 9.F.(2)(a). Consistent with the scope of assets subject to the proposed adviser self-custody rule, Item 9.F. would specify that ''crypto asset'' for purposes of Item 9.F. means crypto assets that are funds or securities, or with respect to the account of a regulated fund, securities or similar investments. Updates to Item 9.F.(2)(a) would not require a prompt other-than-annual amendment. *See* proposed General Instruction 4 for Form ADV, which instructs advisers on when to file an other-than-annual amendment to the Form ADV.

[669] Item 9.F. would also instruct advisers to not check ''yes'' in response to Item 9.F.(1) if the adviser or its related person maintains crypto assets as qualified custodians. This is because crypto assets maintained at an adviser or its related person acting in its capacity as a qualified custodian would not be subject to the proposed adviser self-custody rule but instead would be governed by the related person QC rule. *See supra* section II.A. for a more detailed discussion on the scope of activities subject to the proposed adviser self-custody rule.

[670] See proposed Form ADV, Part 1A, Item 9.F.(2)(b). Relatedly, we propose changes to Section 9.C. of Schedule D to require advisers to indicate whether the independent public accountant is engaged to prepare an internal control report in connection with the adviser or its related persons acting as qualified custodians, and/or because the adviser has self-custody of client crypto assets. *See* proposed Section 9.C. of Schedule D of Form ADV, Part 1A.

[671] *See* proposed Form ADV, Part 1A, Item 9.F.(2)(c).

[672] *See* proposed Form ADV, Part 1A, Item 9.F.(2)(d) and Item 9.F.(2)(e); proposed Section 9.C. of Schedule D of Form ADV, Part 1A. Consistent with the instructions for current Item 9.C.(2), which requests whether an independent public accountant audits annually the pooled investment vehicles managed by the adviser, proposed Item 9.F.(2)(e) would state that an adviser does not have to list auditor information in Section 9.C. of Schedule D if the adviser already provided this information with respect to private funds it advises in Section 7.B.(1) of Schedule D.

[673] *See* Form ADV, Part 1A, Item 5.K.(2) which asks the adviser whether it engages in borrowing transactions on behalf of any of the SMA clients that it advises, and Item 5.K.(3) which asks whether the adviser engages in derivative transactions on behalf of any SMA clients that it advises.

[674] *See* Form ADV, Part 1A, Item 5.K.(4) and Section 5.K.(3) of Schedule D.

private funds managed by the adviser including custodians used by the private funds to hold their assets. We propose to add a new Item 5.K.(5)(a), which would require the adviser to indicate whether it has self-custody of crypto assets on behalf of SMA clients, and a new Item 5.K.(5)(b) that would require the adviser to provide the approximate amount of such self-custodied crypto assets in U.S. dollars, the number of SMA clients for which the adviser self-custodies crypto assets, and the number of crypto asset addresses that store client crypto assets in the adviser's self-custody.[675] Similarly, we propose to add a new question 25(h)(1) in Section 7.B. of Schedule D that would require the adviser to indicate whether it self-custodies crypto assets for a private fund, and a new question 25(h)(2) that would require the adviser to provide the approximate amount of such self-custodied crypto assets in U.S. dollars for the private fund and the total number of crypto asset addresses that store the crypto assets of which the adviser has self-custody for the private fund.[676] Although Item 9.F. under this proposal would request similar information on an aggregated basis, these additional questions would provide us with a more fulsome picture of advisers' self-custody practices for SMA clients and private funds, which present different risk profiles and operational structures. A breakout of this data for SMAs and private funds would not only benefit investors with specific disclosures about the scale and nature of crypto assets for an adviser's SMA and private fund clients, but it would also enhance the Commission staff's risk assessment efforts by allowing them to assess the size, client profile, and operational complexity of crypto assets of which advisers have self-custody.

We request comment on all aspects of the proposed amendments to Form ADV, Part 1A, relating to adviser self-custody of crypto assets, including the following items.

296. Is there any additional information that an adviser should be required to report in Form ADV, Part 1A, regarding its custodial practices for self-custody of client crypto assets? If so, what additional information should advisers that engage in self-custody of client crypto assets be required to report?

297. This proposal would add questions to Form ADV, Part 1A, that would require advisers to disclose in proposed Item 9.F. whether the adviser has self-custody of client crypto assets, and if so, the approximate amount (in U.S. dollars), total number of clients for which the adviser has self-custody of crypto assets as well as the total number of crypto asset addresses that hold clients' crypto assets in the adviser's self-custody. We also propose to add similar questions in Item 5.K. and Schedule D that would require advisers to report the specific amount of self-custodied crypto assets on behalf of SMA clients and private funds, the number of crypto asset addresses that store self-custodied crypto assets for SMAs and private funds, and the number of SMA clients for which advisers maintain crypto assets in self-custody. Should advisers be required to report this information? Why or why not? Would this information be meaningful? Why or why not? Should we require reporting of only a subset of this information? If so, which particular questions? Would public disclosure of all or a subset of this information expose advisers to increased risk of cybersecurity breaches and physical attacks? Should all or a subset of this information be filed with the Commission confidentially, and would doing so meaningfully reduce the risks of cybersecurity and physical attacks?

298. Should advisers be required to report in Item 9 whether any client crypto assets are maintained at a State trust company qualified custodian? Should all advisers be required to report identifying information about the State trust company qualified custodian? If so, what information should be required? Should advisers be required to report the approximate amount of client crypto assets that are maintained at a State trust company as a qualified custodian?

299. Should the Commission consider any additional amendments to Item 9 in connection with the proposed rulemaking? If so, what changes should be made?

(b) Custody: Item 9

We propose a number of other changes to Item 9 that do not relate to self-custody of crypto assets. Item 9 of Form ADV currently requires advisers to disclose whether the adviser or a related person of the adviser has custody of client assets and to provide information about the adviser's custodial practices, including the dollar amount and total number of clients for which the adviser (or its related person) has custody. Item 9 also includes questions about the use of qualified custodians and independent public accountants. We are proposing several modifications to Item 9 to conform to proposed changes to the Advisers Act custody rule as well as to more closely align certain questions with the rule, to add new questions that would address an adviser's reliance on certain exceptions (including new exceptions we are proposing as part of this rulemaking) under the Advisers Act custody rule, and to improve clarity and promote more consistent reporting of an adviser's and its related persons' custody.

(1) Item 9 Instructions

We propose to amend Item 9 to instruct advisers to exclude both registered investment companies and BDCs when reporting under Items 9A. through 9.E. (*i.e.,* custody questions that do not relate to adviser self-custody of crypto assets; as noted above, regulated funds would need to be included in Item 9.F. reporting regarding self-custody of crypto assets). Currently, the instructions to Item 9 refer to an adviser (or its related person) having custody of client assets, other than clients that are investment companies registered under the Investment Company Act. The proposed modification described above is intended to align with the proposed amendment to the Advisers Act custody rule discussed further above in section II.G.6 to extend the rule's exception for registered investment companies to BDCs.

We also propose to modify the existing reference to client ''assets'' in the instructions to Item 9 to instead refer to ''funds or securities.'' This proposed modification is designed to better align the instructions with the requirements of the Advisers Act custody rule and the required responses to the applicable questions in Item 9, which (except for Item 9.F.) only apply

[675] Proposed Item 5.K.(5)(a) would provide that crypto assets for purposes of Item 5.K. means crypto assets that are funds or securities. Item 5.K.(5)(a) would also instruct advisers to not check ''yes'' if the adviser or its related persons maintain crypto assets solely as a qualified custodian(s), consistent with the scope of the proposed definition of ''self-custody'' in the proposed custody rule that would not include an adviser or a related person's possession of key materials associated with a crypto asset solely in its capacity as a qualified custodian. Relatedly, we are revising the definition of ''Related Person'' in the proposed Form ADV, Glossary of Terms, to add Item 5 in the list of Items where this term is used. Although unrelated to this proposal, we are also making a correction edit to this definition to add Item 1 to the list of Items where the term ''Related Person'' is used, because related person is referenced in current Item 1.J.(2).

[676] Because ERAs are not subject to the Advisers Act custody rule, proposed question 25(h) would state that an ERA is not required to respond to this question. Similar to proposed Item 5.K.(5)(a), proposed question 25(h)(1) would provide that crypto assets for purposes of this question means crypto assets that are funds or securities, and would also instruct advisers to not check ''yes'' if the adviser or its related persons maintain crypto assets solely as a qualified custodian(s).

to an adviser's custody of client funds and securities.

(2) Item 9.A.(1)

We propose amendments to Form ADV, Item 9.A.(1)(a), to modify the reference in this item to ''cash or bank accounts'' to instead refer to ''funds (*e.g.,* cash or bank accounts)''.[677] Currently, Item 9.A.(1) requires an adviser to disclose whether it has custody of any advisory clients' cash or bank accounts, or securities.[678] However, the Advisers Act custody rule applies to an adviser that has custody of client funds or securities and does not specifically refer to an adviser having custody of client cash or bank accounts.[679] This proposed amendment is designed to be more consistent and better align this Form ADV question with the Advisers Act custody rule.

We are also proposing to amend the instructions to Item 9.A.(1) to help ensure that advisers more accurately and consistently disclose in this item whether the adviser has custody of any advisory funds or securities. Currently, the instructions to Item 9.A.(1) provide that an adviser should answer ''no'' if the adviser has custody solely because it deducts advisory fees or a related person that is operationally independent has custody. The proposed amended instruction would provide instead that an adviser should not complete the remainder of Item 9.A. if it answers ''no'' to having custody under Item 9.A.(1)(a) and (b). Further, the amended instruction would state that an adviser should answer ''yes'' to Item 9.A.(1) if the adviser or its related person has custody of client funds or securities, notwithstanding whether the adviser meets any of the exceptions listed under proposed Item 9.A.2.

In the Commission's experience, advisers currently report inconsistently because the instructions to Item 9.A.(1) provide that an adviser should answer ''no'' to Item 9.A.(1), despite the adviser having custody under the Advisers Act custody rule. The current Advisers Act rule exempts an adviser from the independent verification requirement of the custody rule if such adviser has custody solely because it deducts advisory fees or an operationally independent related person has custody, but it does not exempt such adviser from the custody rule more broadly.[680] The current Item 9.A.(1) instructions can thus result in inaccurate or incomplete reporting in the remainder of Item 9. Further, the current instructions may result in an adviser erroneously believing that it is not subject to the Advisers Act custody rule if the adviser has custody solely as a result of deducting advisory fees or having an operationally independent related person with custody. The proposed instructions are intended to reduce instances of this erroneous interpretation among advisers that they do not have custody because they meet an exception under the Advisers Act custody rule, which can result in incomplete reporting under Item 9. This would help improve consistency and accuracy of reporting on Form ADV.

(3) Item 9.A.(2): Custody Rule Exceptions

We also propose to add new questions under proposed Item 9.A.(2) to address an adviser's reliance on certain exceptions under the Advisers Act custody rule. Proposed Item 9.A.(2)(a) would require an adviser to disclose whether it relies on any of the following exceptions under the Advisers Act custody rule: (i) exception for privately offered securities under rule 223–1(b)(2) (which would be redesignated from current rule 206(4)–2(b)(2)); (ii) exception for fee deduction authority under rule 223–1(b)(3) (which would be redesignated from current rule 206(4)–2(b)(3)) (''fee deduction authority exception''); (iii) exception under rule 223–1(b)(6) (which would be redesignated from current rule 206(4)–2(b)(6)) for custody arising solely from an operationally independent related person having custody of client funds or securities in connection with advisory services the adviser provides to clients (''operationally independent related person exception''); (iv) exception for standing letters of authorization under proposed rule 223–1(b)(8) (''SLOA exception''); (v) exception for discretionary trading authority under proposed rule 223–1(b)(9) (''discretionary trading authority exception''); and (vi) exception for inadvertent custody under proposed rule 223–1(b)(10) and where the adviser knows, or has reason to know, that a custodial agreement confers custody on the adviser, and the adviser has taken the steps described in proposed rule 223–1(b)(10)(ii)(B) to repudiate such unwanted authority (''inadvertent custody exception'').[681] Furthermore, proposed Item 9.A.(2)(b) would require an adviser to indicate whether it has custody of client funds or securities solely as a result of discretionary trading authority and/or due to inadvertent custody (*i.e.,* the adviser does not have custody of any client funds or securities for any other reason, including fee deduction), and would instruct the adviser to disregard the remainder of Item 9 if it responds ''yes'' to this question.

These questions address an adviser's reliance on exceptions under the Advisers Act custody rule that would relieve it of certain obligations under the custody rule such as obtaining a surprise examination, maintaining client funds or securities at a qualified custodian, and, in the case of custody arising solely as a result of discretionary trading authority or inadvertent custody, complying with the custody rule altogether. These questions are intended to benefit investors by informing them of the extent to which an adviser is excepted from certain or all provisions of the Advisers Act custody rule. Moreover, the proposed questions would enhance our examination staff's ability to effectively carry out the Commission's risk-based examination program by facilitating more targeted assessments of material custody risks and allowing our staff to more readily identify an adviser's basis for custody and evaluate its compliance with the custody rule.

(4) Custody Reporting Under Items 9.A.(3) and 9.B.(2)

We also propose to modify the instructions for Item 9.A.(3) (which would be redesignated from current Item 9.A.(2)) and Item 9.B.(2) for reporting the amount of client funds and securities and the number of clients for which an adviser and its related persons have custody to improve clarity and facilitate more consistent reporting by advisers in response to these questions.[682] Specifically, proposed Item 9.A.(3) would instruct advisers to report thereunder the approximate amount of client funds and securities and the number of clients for which the adviser and its related persons have custody. Advisers would be required to exclude from this reporting the amount

[677] For similar reasons, we are also proposing conforming amendments to Item 9.B.(1)(a), which requires an adviser to disclose whether its related persons maintain advisory clients' cash or bank accounts, or securities. *See* Form ADV Item 9.B.(1)(a).

[678] *See* Form ADV Item 9.A.(1).

[679] *See* rule 206(4)–2(a) (proposed to be redesignated as rule 223–1(a)).

[680] *See* current rule 206(4)–2(b)(3) and current rule 206(4)–2(b)(6).

[681] *See supra* section II.G for a detailed discussion of the proposed exceptions for standing letters of authorization, discretionary trading authority, and inadvertent custody.

[682] Under this proposal, General Instruction 4 for Part 1A would also be amended to reflect the proposed changes to Item 9. Specifically, General Instruction 4 would be amended to redesignate Item 9.A.(2) as Item 9.A.(3) and Item 9.F. as Item 9.E.

of client funds and securities and the number of clients for which it has custody solely as a result of custodial arrangements described in certain exceptions under the custody rule. Revised Item 9.B.(2) would, in contrast, instruct advisers to report the amount of client funds and securities and the number of clients for which they have custody only because their related persons have custody.[683]

Currently, Item 9.A.(2) instructs an adviser to report the approximate amount of client funds and securities and the total number of clients for which the adviser itself has custody (''direct custody''). Current Item 9.A.(2) also instructs the adviser to exclude from this reporting the amount of client assets and the number of clients that relate to custody arising solely because the adviser deducts advisory fees directly from the clients' accounts. If the adviser's related person has custody of client assets in connection with the advisory services an adviser provides to clients (''indirect custody''), the adviser is required to exclude the amount of those assets and the number of those clients in the adviser's response to Item 9.A.(2). The adviser is instead required to report that information in Item 9.B.(2) where the adviser provides the amount of client funds and securities and total number of clients for which its related person has custody. Instructions with respect to reporting direct and indirect custody under current Items 9.A.(2) and 9.B.(2) have resulted in interpretive challenges and inconsistent reporting across advisers, especially among advisers with custodial arrangements that involve custodial authorities that are integrated between the adviser and its related persons or otherwise where the parameters of those custodial authorities between the adviser and its related persons are less than clear.

Proposed Item 9.A.(3) would instruct an adviser to report the approximate amount of client funds and securities and the total number of clients for which the adviser has custody and to include in its response any amounts and number of clients for which its related persons have custody. Proposed Item 9.B.(2), in contrast, would require reporting the approximate amount of client funds and securities and the total number of clients for which the adviser has custody only because an adviser's related persons have custody; Item 9.B.(2) would instruct the adviser to exclude from its response the amount of any client funds and securities and the number of clients for which the adviser has custody directly, which should instead be provided under Item 9.A.(3). Proposed Item 9.A.(3) and Item 9.B.(2) are intended to alleviate interpretive uncertainties regarding where the amount of custodied assets and associated number of clients in custodial arrangements that involve both the adviser and its related persons need to be reported. This would help promote more consistent reporting of direct and indirect custody by advisers and their related persons.

An adviser would also need to exclude from its responses to proposed Item 9.A.(3) the amount of client funds and securities and the number of clients for which the adviser has custody solely as a result of the custodial arrangements described in the exceptions listed under proposed Items 9.A.(2)(ii) through 9.A.(2)(vi).[684] It is appropriate to exclude the amount of custodied assets and number of associated clients relating to custody arising solely as a result of custodial arrangements described in proposed Items 9.A.(2)(ii) through (vi) from this reporting because material custodial risks are mitigated in these arrangements. These instructions would benefit investors and help our examination staff by allowing them to more accurately assess the degree of client exposure to material custodial risks, and enhance our examination staff's ability to focus their examination efforts on material custodial exposures.

The Commission requests comment on all aspects of the proposed amendments to Item 9, including the following items.

300. Is the existing instruction to Item 9 unclear with respect to advisers with BDC clients? If so, would the proposed modification to the Item 9 instructions, which would instruct advisers to exclude BDCs and registered investment companies in ''clients'' when reporting under Items 9.A. through 9.E., but to include them in the reporting for Item 9.F., address this issue?

301. Does the existing reference in Item 9.A.(1) and Item 9.B.(1) to advisory clients' ''cash or bank accounts'' cause confusion and reduce accuracy and consistency in reporting? Would the proposed amendments to Item 9.A.(1) and Item 9.B.(1) to revise this reference to ''funds (*e.g.,* cash or bank accounts)'' better align with the requirements of the Advisers Act custody rule and improve consistency and accuracy in reporting? Why or why not?

302. Does the existing instruction in Item 9.A.(1) that provides that an adviser should answer 'no' to whether the adviser has custody solely because it deducts advisory fees or a related person that is operationally independent has custody, cause confusion and reduce accuracy and consistency in reporting? Would the proposed amendments to the instructions to Item 9.A.(1) make it easier for advisers to complete Item 9 accurately and reduce confusion caused by the current instructions?

303. Are the instructions for proposed Item 9.A.(2) sufficiently clear? Why or why not? What modifications, if any, should we adopt to the instructions for Item 9.A.(2) to improve clarity and promote consistent reporting of custody rule exceptions that advisers rely on?

304. Are the proposed changes to the Item 9.A.(3) and Item 9.B.(2) instructions on reporting the amount of client funds and securities and the number of clients for which advisers and their related persons have custody sufficiently clear? Why or why not? Would the proposed modifications facilitate more consistent reporting of direct and indirect custody? Why or why not? What, if any, other modifications should we adopt to these instructions to improve clarity and promote consistent reporting of direct and indirect custody?

305. Are the proposed instructions for Item 9.A.(3) requiring advisers to exclude from Item 9.A.(3) reporting the amount of client funds and securities and the number of clients for which they have custody solely as a result of the custodial arrangements described in the exceptions listed under proposed Items 9.A.(2)(a)(ii) through (vi), sufficiently clear? Why or why not? What, if any, other modifications should we adopt to these instructions to improve clarity and promote consistent reporting?

306. Should we adopt any additional modifications to the instructions to Item 9? If so, what changes could be made to the instructions?

(5) Item 9.C.(5): State Trust Companies

We also propose to amend Item 9.C to require an adviser to disclose whether a State trust company (as defined in proposed rule 223–1(d)(18)) maintains client funds or securities in accordance with proposed rule 223–1(d)(13)(v), the State trust company rule under the Advisers Act that would allow advisers to use State trust companies as qualified custodians to maintain clients' crypto

[683] We are also proposing a conforming amendment to remove from Item 9.B.(1) the instruction, ''You are required to answer this item regardless of how you answered Item 9.A.(1)(a) or (b).''

[684] These exceptions are the fee deduction authority exception; operationally independent related person exception; SLOA exception; discretionary trading authority exception; and inadvertent custody exception under proposed rule 223–1.

assets.[685] This proposed question is intended to benefit investors by providing a view into an adviser's use of State trust companies as qualified custodians and to assist the Commission's oversight activities and assessment of the use of State trust companies as qualified custodians for client crypto assets. Because State trust companies are subject to State regulations that can vary from State to State and in light of the novel risks associated with safeguarding crypto assets, proposed Item 9.C.(5) would assist investors in making informed decisions with respect to advisers that maintain client crypto assets at a State trust company as well as help the Commission staff assess emerging practices and inform policy in this area.

We request comment on all aspects of the proposed amendments to Form ADV, Part 1A, relating to proposed Item 9.C.(5), including the following items.

307. Is there any additional information that an adviser should be required to report regarding its use of State trust companies in Form ADV, Part 1A? If so, what additional information should advisers who engage State trust companies as qualified custodians be required to report?

308. Should advisers be required to report identifying information (*e.g.,* name and office location of the State trust company) about the State trust companies that maintain their clients' funds and securities? Why or why not? Would this information be meaningful? Why or why not?

309. Should advisers be required to identify the crypto asset(s) and/or report the amounts of crypto assets that are maintained by State trust companies? Why or why not? Would this information be meaningful? Why or why not?

(c) Questions on Tokenized Private Funds

Section 7.B.(1) of Schedule D of Form ADV requests certain information about each of the private funds managed by an adviser. We propose to add a new question 29 to this section that would require an adviser to indicate whether the private fund reported thereunder (or series or class thereof) is a tokenized fund. ERAs must complete Item 7 and any related items under Section 7.B.(1) of Schedule D and therefore would be required to respond to proposed question 29 in addition to registered investment advisers.[686] To the extent only certain series or classes of the private fund shares are tokenized, the adviser would be required to indicate the series or class involved. The adviser would also be required to identify all applicable crypto networks where the ownership of the private fund's interests are recorded. Relatedly, we propose to add to the Form ADV, Glossary of Terms, the term ''tokenized fund,'' which would be defined as a pooled investment vehicle or any series thereof that has issued shares in the format of a crypto asset, where the record of ownership is maintained in whole or in part on or through one or more crypto networks; and the term ''crypto network,'' which would have the same meaning as in rule 223–1 under the Advisers Act.

The proposed questions are intended to benefit investors by providing a view into an adviser's tokenization practices with respect to private funds and to assist the Commission's oversight activities and assessment of a novel and growing trend in the tokenization of pooled investment vehicles including private funds. Information regarding where ownership of private fund shares is recorded and maintained (for example, public blockchains versus private, permissioned blockchains) is important to assess the private fund's overall operations and transparency as well as the security and speed of its transactions. The proposed questions would assist investors in making informed decisions with respect to advisers that tokenize private fund shares as well as helping the Commission staff assess emerging practices and inform policy in this area.

We request comment on all aspects of the proposed amendments to Form ADV, Part 1A, relating to tokenized funds, including the following items.

310. Is there any additional information that an adviser should be required to report regarding its tokenization practices in Form ADV, Part 1A? For example, should an adviser be required to report tokenization of client assets on behalf of any advisory client, not just private funds as proposed? If so, what additional information should advisers who engage in tokenization be required to report?

311. Should advisers be required to report the specific series or class of the private fund that is tokenized, as proposed? Why or why not? Would this information be meaningful? Why or why not?

312. Should advisers be required to report the applicable blockchain or crypto networks where the ownership of the private fund's interests are recorded, as proposed? Why or why not? Would this information be meaningful? Why or why not?

313. Is the proposed term ''tokenized fund'' and its definition in Form ADV, Glossary of Terms, clear? Why or why not? Does it accurately reflect the current technology for tokenized funds and is it flexible enough to accommodate technological developments in the future? Is there a better definition we should use?

314. Proposed question 29(c) of Section 7.B.(1) of Schedule D would allow advisers to provide a freeform response identifying the applicable crypto networks used to record ownership of the private fund.

(d) Other Conforming Amendments to Form ADV

The Commission is proposing several other conforming amendments to Form ADV to correspond with the changes that are proposed to be made to the Advisers Act custody rule.

First, in connection with the proposed redesignation from rule 206(4)–2 to proposed new rule 223–1, we are proposing conforming amendments to Form ADV to update existing references to rule 206(4)–2 to proposed new rule 223–1.[687] In particular, we are proposing conforming amendments to Items 7.A. and 9 and Schedule D.[688] We are also proposing a similar conforming amendment to update the reference to rule 206(4)–2 in the General Instructions, Item 18, for Part 2A of Form ADV (the client brochure). Overall, these proposed conforming amendments would not substantively modify any information required to be reported on Form ADV.[689]

Second, in connection with the proposed removal of the requirement for independent public accountants to be

[685] *See* proposed Form ADV Item 9.C.(5). *See supra* section II.C for further discussion of the proposed State trust company rules under the Advisers Act and the Investment Company Act. The Commission is also proposing rule 17f–8 under the Investment Company Act, the State trust company rule that would apply to regulated funds.

[686] *See supra* footnote 90, which discusses Form ADV reporting obligations of ERAs and registered investment advisers.

[687] *See supra* section II.G.1 for discussion of the proposed redesignation of the Advisers Act custody rule to proposed rule 223–1.

[688] Proposed changes to Item 7 and any corresponding sections in Schedule D (Section 7.A. and Section 7.B.(1)), if adopted, would impact ERAs as well as registered investment advisers. *See supra* footnote 90, which discusses reporting obligations of ERAs.

[689] We also propose to remove from Item 1.I and Section 1.I. of Schedule D a parenthetical that lists examples of social media platforms (''Twitter, Facebook, and LinkedIn'') so that these questions on websites and social media accounts held by the adviser adapt to developments over time. ERAs must complete Item 1 and therefore this change would impact ERAs as well as registered investment advisers.

registered with, and subject to regular inspection by, the PCAOB, we are proposing to remove Sections 9.C.(3) and 9.C.(4) of Schedule D as well as questions 23(e) and 23(f) from Section 7.B.(1) of Schedule D.[690] Sections 9.C.(3) and 9.C.(4) of Schedule D ask the adviser to report if the independent public accountant that performs a surprise examination, audit of a pooled investment vehicle that the adviser manages, or prepares an internal control report is registered with, and subject to regular inspection by, the PCAOB. Questions 23(e) and 23(f) of Section 7.B.(1) of Schedule D ask whether the firm engaged to conduct an audit of the private fund's financial statements is registered with the PCAOB and subject to regular inspection by the PCAOB. These questions would no longer be applicable under the proposed amendments to the Advisers Act custody rule.[691] As discussed further above in section II.G.4.(a), the Commission now believes that any indirect benefits of the PCAOB registration requirement may not justify the incremental costs for purposes of the internal control reports and audits required to be performed under the Advisers Act custody rule and therefore does not believe that PCAOB registration is a meaningful disclosure requirement in Schedule D of Form ADV. Advisers would continue to be required to report the name and location of the independent public accountant, indicate what services the accountant was engaged to perform, and report whether all internal control reports or audits contain unqualified opinions.[692]

Finally, under this proposal, we are making a technical change to replace the term ''unqualified opinion'' with ''unmodified opinion'' throughout Form ADV Part 1A to reflect that AU–C 700.10 uses the term ''unmodified opinion.''[693] This amendment does not change the substance of the questions affected in Form ADV Part 1A, which are Section 9.C.(6) (which would be redesignated as Section 9.C.(4) under this proposal) and question 23(h) (which would be redesignated as question 23(f) under this proposal) of Section 7.B.(1) of Schedule D of Form ADV.[694]

2. Amendments to Custody Reporting on Form N–CEN

The Commission is proposing amendments to Form N–CEN to require reporting of (1) the use of crypto asset regulated fund self-custody or of a State trust company to custody a certain regulated fund's assets and (2) whether the regulated fund (or Series or Class thereof) is a tokenized fund.[695] Currently, Form N–CEN requires regulated funds to disclose information in a structured data format about entities that provided custodial services to them, including checking a box corresponding to the different types of permitted custodians for regulated funds under applicable rules and statutes.[696] We are proposing to add additional checkboxes, corresponding to the proposed crypto asset self-custody and State trust company rules as well as redesignate checkboxes corresponding to the ''Other'' option in the current Form N–CEN.[697] These reporting requirements would provide comparable information for these new classes of custodians as exist for current custodians and assist the Commission and data users in assessing custodial risk and identifying areas of concern. We are also proposing to amend the title of the checkboxes for custody under rule 17f–1 from ''Member national securities exchange'' to ''brokers or dealers'' to correspond to the proposed title and scope of rule 17f–1.[698]

We are proposing to add a new Item to Form N–CEN where regulated funds would be required to report whether they (or a series or class thereof) are a tokenized fund and to provide a definition for the term ''tokenized fund'' for Form N–CEN.[699] Regulated funds would additionally be required to provide the series and/or class identification number(s) (if any) of the tokenized fund or class(es) thereof, if applicable, as well as the names of any crypto networks used to record ownership of the fund or class or series of the regulated fund.[700] As discussed above in the context of private funds, this proposed reporting would similarly assist investors in making informed investment decisions and provide the Commission with information for oversight of tokenized regulated funds.[701]

We request comment on the following:

315. Should we require specific reporting of crypto asset self-custody or of State trust company in Form N–CEN? If not, why? Should we instead just provide guidance that regulated funds should fill out the ''Other'' custodian checkbox and corresponding description to correspond to these types of custody? Is there somewhere other than Form N–CEN that this reporting should be required?

316. Is there additional information we should require regulated funds to report regarding the use of crypto asset self-custody or of State trust company custodians? If so, what? Should we require regulated funds to report that they have received airdrops or similar distributions of crypto assets?

317. Should we require custodian reporting by BDCs? If so, where would such reporting be made?

318. Is there any additional information that we should require

[690] *See supra* section II.G.3 for a detailed discussion of the proposal to remove the PCAOB requirement. Proposed changes to Item 7 and any corresponding sections in Schedule D (Section 7.A. and Section 7.B.(1)), if adopted, would impact ERAs as well as registered investment advisers. *See supra* footnote 90, which discusses reporting obligations of ERAs.

[691] *See* Form ADV, Schedule D Sections 9.C.(3) and (4).

[692] *See* Form ADV, Schedule D Sections 9.C.(1), (2), (5), and (6). We propose to renumber current Sections 9.C.(5) and (6) to Sections 9.C.(3) and (4), respectively, in connection with the proposed removal of current Sections 9.C.(3) and (4) from Schedule D of Form ADV. We also propose to renumber current questions 23(g) and 23(h) in Section 7.B.(1) of Schedule D to questions 23(e) and 23(f) respectively, in connection with the proposed removal of current questions 23(e) and 23(f) from Section 7.B.(1) of Schedule D. Relatedly, this renumbering would result in the amendment of the following instruction under question 23(a), ''If the answer to question 23.(a)(1) is ''yes,'' respond to questions (b) through (h) below. If the *private fund* uses more than one auditing firm, you must complete questions (b) through (f) separately for each auditing firm,'' as follows: ''If the answer to question 23.(a)(1) is ''yes,'' respond to questions (b) through (f) below. If the *private fund* uses more than one auditing firm, you must complete questions (b) through (d) separately for each auditing firm.''

[693] *See* AICPA Auditing Standards, AU–C Section 700.10, and AICPA Attestation Standards (Clarified), *supra* footnote 551.

[694] Proposed changes to Item 7 and any corresponding sections in Schedule D (Section 7.A. and Section 7.B.(1)), if adopted, would impact ERAs as well as registered investment advisers. *See supra* footnote 90, which discusses reporting obligations of ERAs.

[695] Proposed Form N–CEN, Items B.24, C.12.a.vii.9 through 10, D.14.a.vii.9 through 10. Form N–CEN is currently submitted using a structured, XML-based data language that is specific to that Form.

[696] *See* Form N–CEN, Item C.12.a.vii. Item C must be filled out by ''management investment companies'' which does not include regulated funds which are BDCs. *See also* Form N–CEN, Item D.14.a.vii (an identical custodian reporting requirement for small business investment companies).

[697] *See* proposed rule 17f–8; proposed rule 17f–9. *See also* Form N–CEN, Items C.12.a.vii.9 and D.14.a.vii.9.

[698] *See* proposed Form N–CEN, Items C.12.a.vii.2 and D.14.a.vii.2; *see also supra* section II.F.2; proposed rule 17f–1.

[699] *See* proposed Form N–CEN, Item B.24 (''purpose of this item, a ''tokenized fund'' is an investment company or series thereof registered under the Act that has issued shares in the format of a crypto asset, where the record of ownership is maintained in whole or in part on or through one or more crypto networks''). The staff has taken a similar view regarding the definition of the term ''tokenized''. *See* Tokenization Statement, *supra* footnote 126.

[700] *See* proposed Form N–CEN, Item B.24.a.

[701] *See supra* section II.J.1.c).

regulated funds that self-custody assets to disclose? Should regulated funds be required to disclose the date on which they took self-custody of the asset or, if self-custody of the asset ceased during the period, when that happened?

319. Should we require reporting on the tokenization of regulated funds? Should we require reporting on blockchain network(s) used to record ownership? Is the proposed definition of ''tokenized fund'' appropriate, and if not, how should this term be defined? Is there other information that we should require reporting on regarding the tokenization of regulated funds?

3. Adviser and Regulated Fund Risk Disclosure Requirements

Advisers are required to deliver to prospective and current clients a narrative brochure that discloses information about the adviser's business, conflicts of interest, and investment strategies, among other required information.[702] The instructions to Form ADV Part 2 establish the minimum disclosure items required to be made in the brochure. For example, Item 4 (Advisory Business) of the brochure requires, among other things, an adviser to describe its advisory firm, including the types of advisory services offered, whether it holds itself out as specializing in a particular type of advisory service, and the amount of client assets that it manages on each of a discretionary and non-discretionary basis. Additionally, Item 8 (Methods of Analysis, Investment Strategies, and Risk of Loss) requires, among other things, an adviser to describe the methods of analysis and investment strategies the adviser uses in formulating investment advice and managing assets and, for each significant investment strategy, requires an explanation of the material risks involved, including detailed disclosure if the investment strategy involves significant or unusual risks. These items are salient to the disclosure of the material risks and potential conflicts of interest discussed below as they relate to investing in crypto assets and holding crypto assets in self-custody. In addition, an adviser's fiduciary duty obligates the adviser to make full and fair disclosure to its clients of all material facts relating to the advisory relationship and all conflicts of interest which might incline an adviser to render advice which is not disinterested. This may require additional disclosure beyond what is specifically instructed to be disclosed on Form ADV Part 2.[703] Such additional disclosure can be made in the Form ADV Part 2 brochure or by separate disclosure.[704]

Similarly, regulated funds currently are required to disclose risks of investing in the fund to their current and prospective shareholders in their registration statements. Open-end funds are required to disclose principal risks in their prospectuses—that is, those risks that are reasonably likely to adversely affect the fund's net asset value, yield, and total return.[705] An open-end fund must disclose all of the principal risks associated with the fund's principal investments strategies. Closed-end funds are similarly required to describe principal risks in their prospectuses.[706] Additionally, open-end funds are required to disclose non-principal strategies and the risks of those strategies in the Statement of Additional Information (''SAI'') section of the registration statement; closed-end fund are similarly required to disclose investment policies not deemed fundamental and the risks associated with such policies in the SAI.[707] Regulated funds are also required to update their prospectuses so that they do not contain an untrue statement of material fact (or omit a material fact necessary to make the disclosure not misleading).[708]

In addition to prospectus disclosure, open-end funds are required to disclose in their shareholder reports the key factors that materially affected the fund's performance during the reporting period, including any investment strategies and techniques used by the regulated fund's adviser.[709] Regulated fund shareholder reports must also include disclosure of any material changes to the fund's principal investment strategies and risks, among other issues, that occurred during the reporting period.[710]

Accordingly, where a regulated fund invests in crypto assets, or an adviser invests its clients' assets in crypto assets, the adviser or regulated fund will be required to disclose the associated material risks in response to these requirements. This generally would include custodial risks because custodial risks are particularly acute for crypto assets, given that anyone with access to a crypto asset's private key can misappropriate the assets and for certain types of crypto assets, such transactions are generally irreversible. These attributes of crypto assets increase the risk of loss or misappropriation and also increase the risk that assets will be targeted or stolen in cyberattacks. The custodial risk of crypto assets are further heightened if an adviser holds client crypto assets in self-custody, which increases the risk of misappropriation of the assets and resulting risk of irreversible loss, particularly in the absence of backstops such as deposit insurance or SIPA protections available for assets held with traditional custodians. We discuss below the matters regulated funds and advisers would be required to disclose to adequately disclose the material risks when a fund or adviser invests in crypto assets, and particularly if the adviser were holding the crypto assets in self-custody.

(a) Self-Custody Risks

(1) Loss, Misappropriation and Conflicts of Interest Risks

If the proposed self-custody rules are adopted, an adviser or regulated fund would need to disclose whether crypto assets are held in the adviser's self-custody as well as the potentially heightened risk of loss or misappropriation of self-custodied crypto assets and measures put in place to address these risks. Additionally, advisers that self-custody client crypto assets, including assets of regulated funds, would need to disclose any

[702] *See* CFR 275.204–3; *see also* Amendments to Form ADV, Advisers Act Release No. 3060 (July 28, 2010) [75 FR 155 (Aug. 12, 2010)].

[703] *See* Standard of Conduct Release, supra footnote 120, at section II.C; *see also* General Instruction 3 for Part 2 of Form ADV.

[704] *See* General Instruction 3 for Part 2 of Form ADV.

[705] *See* Items 4(b)(1)(i) and 9(c) of Form N–1A; *see also* Improving Principal Risks Disclosure, ADI 2019–08 (Aug. 2019); Registration Form Used by Open-End Management Investment Companies, Investment Company Act Release No. 23064 (Mar. 13, 1998) [63 FR 13916 (Mar. 23, 1998)] (noting that the information contained in the risk/return summary about a fund's investment objectives and principal strategies is intended to meet the needs of an average or typical fund investor).

[706] *See* Item 8.3 of Form N–2 (''Discuss the principal risk factors associated with investment in the Registrant specifically as well as those factors generally associated with investment in a company with investment objectives, investment policies, capital structure, or trading markets similar to the Registrant's''). BDCs similarly provide risk disclosure on Form N–2, as well as in annual report on Form 10–K [17 CFR 249.310].

[707] *See* Item 16(b) of Form N–1A; Item 17.3 of Form N–2.

[708] *See* generally 17 CFR 230.497; section 12(a)(2) of the Securities Act (providing a civil remedy if a prospectus includes an untrue statement of a material fact or omits to state a fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading); 17 CFR 230.408 (requiring registrants to include, in addition to the information expressly required to be included in a registration statement, such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading).

[709] *See* Item 27A(d) of Form N–1A.

[710] *See* Item 27A(g) of Form N–1A; *see also* 17 CFR 270.8b–16(b)(2) and (4).

conflicts of interest arising from their self-custody arrangements that could incline an adviser to render advice that is not disinterested.[711] For example, advisers may need to disclose whether they or their related persons receive compensation or fees that are charged to the client in connection with their self-custody services, as these affiliated arrangements may influence the adviser's decision, consciously or unconsciously, as to whether it should pursue investments in crypto assets that must be self-custodied as well as the adviser's selection of self-custody services. Additionally, advisers and regulated funds would need to disclose risks associated with the unique technological challenges and bearer-asset features of the crypto investments their clients or the regulated fund holds. Given the highly technological nature of crypto assets, when an adviser has self-custody of client crypto assets, including the crypto assets of a regulated fund, disclosure regarding the adviser's technological competence, experience and resources related to the custody of crypto assets would be necessary to understand the risks posed by the self-custodial arrangement.

(2) Cybersecurity Risk and Risks Associated With Decentralized Finance Activities

If the proposed self-custody rules are adopted, the adviser or regulated fund would need to disclose the heightened cybersecurity risk associated with specific crypto assets that the adviser self-custodies and the adviser's self-custody practices. For example, it would be relevant for advisory clients and investors in regulated funds to know, among other things, what storage method the adviser uses to maintain key materials (cold wallets vs. hot wallets), and, if an adviser uses hot wallets to store self-custodied crypto assets, that hot wallets typically carry a greater risk of cybersecurity attacks relative to cold wallets due to their interconnectedness to the network.

Moreover, advisers and regulated funds should consider disclosing that access to the self-custodied crypto assets could be impacted by operational vulnerabilities and weaknesses in the crypto assets' crypto network and the limitations, if any, in the advisers' ability to recover those crypto assets in the event of a disruption to the crypto network.

Further, advisers and regulated funds that elect to engage client crypto assets in DeFi activities such as staking would need to disclose and describe these activities, including whether staked crypto assets would remain in the adviser's self-custody or with the applicable permitted custodian and any material risks involved, such as, for example, the risk of third parties impermissibly gaining access to those crypto assets through a vulnerability in the protocols governing the DeFi activity, staking and validator risks (for example, the risk of slashing and governance concentration), and liquidity risks arising from unbonding periods when staked crypto assets cannot be moved.

Finally, if a significant cybersecurity event occurs that materially raises the risk of harm to clients, or materially impacts a regulated fund's financial performance or otherwise renders the disclosure in the fund's registration statement false or misleading, such an event would need to be disclosed. Advisers, as fiduciaries, may also need to consider whether separate or additional disclosures to clients are appropriate. Similarly, for regulated funds, any events that materially affected the fund's performance would need to be disclosed in the fund's shareholder report for the relevant reporting period.

(3) Recourse if Crypto Assets Are Lost or Stolen

If the proposed self-custody rules are adopted, the adviser or regulated fund would need to disclose the heightened risk of loss if a crypto asset is lost or stolen. This heightened risk is relevant given that transactions in crypto assets generally are irreversible, advisers' primary business is providing advisory and not custodial services, and crypto assets held in self-custody by the adviser may be subject to different legal protections than crypto assets custodied with permitted custodians, such as not being federally insured like deposits at federally insured banks or lacking protections against loss and claims provided under regulations that govern liquidations of certain traditional custodians such as broker-dealers.[712] To adequately disclose these risks, the adviser or regulated fund should disclose that these kinds of backstops are not available and disclose what recourse an advisory client or a regulated fund investor, would have to the adviser if the advisory client's crypto assets, including those of a regulated fund, are misappropriated by advisory personnel, or lost by the adviser or stolen by third parties. This could include, for example, whether the adviser maintains insurance arrangements to make whole advisory clients, including regulated funds, in these circumstances and any limitations of such insurance arrangements; whether the adviser maintains insurance arrangements protecting itself from claims in connection with its self-custodial services; or other arrangements. To address the heightened risks associated with adviser self-custody, the adviser or regulated fund also should disclose steps taken by the adviser to protect client crypto assets, including regulated fund assets, from becoming part of the adviser's bankruptcy estate if the adviser were to enter bankruptcy proceedings, and the associated risks if the crypto assets were treated as part of the adviser's bankruptcy estate in these circumstances.[713]

(b) Custodial Risks of State Trust Companies

The proposed amendments to permit custody of client crypto assets, including the assets of regulated funds, with a State trust company as a qualified custodian may also require specific disclosure. In addition to disclosures regarding crypto asset investment strategies and risks associated with investing in crypto assets, an adviser or regulated fund should disclose any material risks associated with the use of a State trust company as a custodian that are appropriate. Since State trust companies are State- and not federally-regulated, such relevant considerations may include the lack of Federal oversight or regulation of State trust companies, the variability of State law regulatory regimes, and any relevant risks associated with any applicable State law regulatory framework.

The Commission requests comment on all aspects of adviser and regulated fund disclosure related to crypto assets, including the following items:

320. Are there other risks associated with an adviser holding a client's assets in self-custody on which we should

[711] *See* Standard of Conduct Release, supra footnote 120, at section II.C. Similarly, regulated funds should disclose these conflicts of interests in Forms N–1A and N–2, as applicable.

[712] *See supra* section II.F.2 for a discussion of the regulatory regime for broker-dealers, including SIPA's governance of broker-dealer liquidation and customer assets through the SIPC.

[713] The treatment of client crypto assets held in an adviser's self-custody during the adviser's bankruptcy proceeding and their status relative to the adviser's bankruptcy estate may depend on, among other things, the particular facts and circumstances (such as contractual terms setting forth the rights to the assets) and, to the extent adopted by the relevant State, applicable provisions under the UCC such as Articles 8, 9 and 12 of the UCC.

provide guidance? The discussion above focuses on custodial risks associated with crypto assets, including where an adviser is maintaining the crypto asset in self-custody. Should we provide guidance on other risks related to crypto assets? Are modifications needed to regulated fund registration forms or disclosure requirements or Form ADV to more effectively elicit disclosure related to crypto assets' custodial risks or risks associated with crypto assets more generally?

321. Are we correct in our understanding that the most significant risks of engaging in self-custody that should be disclosed to advisory clients and regulated fund investors are the risk of: (i) loss, misappropriation and conflicts of interests, (ii) cybersecurity risks and risks associated with decentralized finance activities; and (iii) recourse if crypto assets are lost or stolen? Why or why not? Are there other risks associated with self-custody that should be highlighted for advisory clients and regulated fund investors?

322. Are there material custodial risks associated with using State trust companies as custodians for crypto assets that should be disclosed? Why are why not?

323. Item 15 (Custody) of Form ADV Part 2A states that if an adviser has custody of client funds or securities and a qualified custodian sends quarterly, or more frequent, account statements directly to its clients, the adviser must explain that clients will receive account statements from the qualified custodian and that clients should carefully review those statements. Although we state above that advisers that self-custody crypto assets should disclose such arrangements in their brochures, should the instructions under Item 15 be modified to expressly require advisers to disclose whether they self-custody client crypto assets, to explain that account statements, or alternatively transmissions, are sent to clients about their self-custodied crypto assets' activities on the crypto network, and to urge clients to carefully review any transactions onchain against any statements, or alternatively transmissions, they receive from the adviser?

324. Should any additional specific disclosure be required on Form ADV Part 2 for advisers that self-custody client crypto assets or use State trust companies as custodians for client crypto assets?

325. Although this proposal would not require advisers or regulated funds to report the loss of self-custodied client crypto assets with the Commission, should advisers or regulated funds be required to confidentially report to the Commission the loss of self-custodied client crypto assets as part of Form ADV, Form N–RN, or in another manner? How soon after the loss of self-custodied client crypto assets should advisers or regulated funds be required to report the event to the Commission (for example, should the adviser or regulated fund report ''promptly,'' ''as soon as practicable,'' or a specific number of business days (*e.g.,* 3 or 5 business days) after the loss of those crypto assets)?

326. How should any fees that an adviser charges a regulated fund to self-custody crypto assets be disclosed? Should such fees be disclosed in a prospectus fee table and if so, would they be more appropriately classified as ''Management Fees'' or ''Other Expenses''? Is there any additional disclosure that should be provided regarding fees charged by an adviser for crypto asset self-custody?

327. Item 6 of Form ADV, Part 1, requires an adviser to indicate whether it actively engages in the business of any of the enumerated financial industry entity types and, if the adviser engages in other business using a different name, to identify under Section 6.A. of Schedule D the type of financial industry entity that is the adviser's other business. Similarly, Item 7.A. of Form ADV, Part 1, requires an adviser to identify whether its related person is any of the enumerated financial industry entity types listed thereunder and to provide in Section 7.A. of Schedule D additional information about each related person listed in Item 7.A., including indicating in question 5 the type of financial industry entity that the related person is. In all of these questions, ''trust company'' is enumerated as one of the financial industry entity types. Should the State trust company rule be adopted, do commenters anticipate any interpretive challenges to responding to these questions? If adopted, would the State trust company rule necessitate any modifications to these questions or clarification as to whether a State trust company would count as a ''trust company''? Is it appropriate to characterize a State trust company as a ''trust company''? Why or why not?

4. Conforming Amendments to Form ADV–E

In connection with the Commission's proposal to redesignate the Advisers Act custody rule as rule 223–1, as discussed in section II.G. above, we are proposing conforming amendments to Form ADV–E to update existing references from current rule 206(4)–2 to proposed new rule 223–1. The proposed conforming amendments would not substantively modify Form ADV–E.

We request comment on the proposed amendments to Form ADV–E, including the following:

328. Should the Commission amend Form ADV–E in any other respects in connection with this proposed rulemaking? If so, what amendments should be made and why?

K. Existing Staff No-Action Letters and Other Staff Statements

We are aware that staff have previously expressed views on topics covered by the proposed rule. For the avoidance of doubt, to the extent the proposed rule is adopted, the Commission's views on such topics would control and any inconsistent staff views would be superseded.

Letters and statements identified as expressing staff views on topics addressed by the proposed rule are listed below. Such list may or may not be exhaustive. Commenters may name any additional staff letters or statements they identify as addressing topics covered by the proposed rule in their comment letters, particularly to the extent such letters or statements express views inconsistent with the rule as proposed.

- 2025 State Trust Company NAL (Sept. 30, 2025) (*see supra* footnote 51)
- Rule 17f–1
  - Franklin Templeton, Staff No-Action Letter (June 19, 2009)
  - IM Chief Accountant, Dear CFO Letter (Dec. 30, 1999)
  - Gintel Fund, Incorporated, Staff No-Action Letter (Feb. 13, 1984)
  - Kramer, Levin, Nessen, Kamin & Frankel, Staff No-Action Letter (June 27, 1983)
  - Emerging Securities Fund, Staff No-Action Letter (Jan. 14, 1974)
- Rule 17f–3
  - Baker, Fentress & Co., Staff No-Action Letter (July 21, 1972)
- Rule 206(4)–2
  - Private Funds and the Application of the Custody Rule to SPVs and Escrows, IMGU 2014–07 (June 2014) (''Escrow Accounts'' only)
  - Inadvertent Custody, IMGU 2017–01 (February 2017)
  - Investment Adviser Association, Staff No-Action Letter (February 21, 2017)

L. Compliance Date

We are proposing that regulated funds and investment advisers would be able to rely on their respective rules regarding self-custody of crypto assets or the use of State trust company custodians as of the effective date of those rules as soon as the regulated fund

or investment adviser could comply with the rules' conditions and applicable recordkeeping requirements.

Certain proposed reporting requirements would require Commission staff to update Forms ADV, ADV–E, and N–CEN:

- Regulated funds and investment advisers would be permitted to rely on the proposed rules pending the availability of these form updates so long as they submit filings subject to any applicable filing deadlines or requirements to file amendments in each form's instructions once the forms are updated by staff and the IARD or EDGAR system, as applicable, is capable of accepting filings containing the newly required information.
- Commission staff would issue a notice to the public when the updated forms are available for filing.
- Regulated funds and investment advisers would be required to continue to comply with all applicable rules and instructions regarding risk disclosure to their clients and current or prospective shareholders, including with regard to self-custody of crypto assets.

We are proposing that compliance with the Investment Company Act custody rules amendments to rules 17f–1, 17f–3, 17f–4, 17f–5, 17f–6, and 17f–7, and recordkeeping amendments to rule 31a–1 and rule 31a–2 will be required as of the effective date of those rules.

We are also proposing that compliance with the proposed Advisers Act custody rule amendments discussed in section II.G of this release, as well as the related Advisers Act recordkeeping rule amendment related to SLOAs discussed in section II.H.1.c) (collectively, ''Advisers Act custody rule modernization amendments''), will be required as of the effective date of those rules. This includes compliance related to:

- Authorized discretionary trading authority [Proposed rule 223–1(b)(9)]
- Elimination of the PCAOB-registered accountant requirement [Proposed rules 223–1(a)(6) and 223–1(b)(4)]
- Audit provision [Proposed rule 223–1(b)(4)]
- Standing letters of authorization [Proposed rule 223–1(b)(8)]
- Treatment of BDCs [Proposed rule 223–1(b)(5)]
- Account numbers in the notice requirement [Proposed rule 223–1(a)(2)]
- Notice to Commission of material discrepancy [Proposed rule 223–1(a)(4)(ii)]
- Inadvertent custody [Proposed rule 223–1(b)(10)]
- Recordkeeping for standing letters of authorization [Proposed rule 204–2(b)(6)]

We request comment on this compliance period.

329. Should entities be permitted to rely on the proposed self-custody rules regarding self-custody as of the effective date of the rule? Are there investment advisers that currently have or may come into possession of portions of key material that would inadvertently have custody of these assets as a result of the proposed rule? Would such advisers need additional time to come into compliance with the proposed rule or to remove the key material from their possession? How much time would be needed?

330. Should Commission staff delay rescinding the State Trust Company NAL, as discussed in section II.K *supra,* following any adoption of final rules to provide additional time for a regulated fund or adviser using a State trust company as a custodian to come into compliance with any final rules related to State trust companies? How much time would be needed?

331. Should we provide additional time for advisers to come into compliance with the proposed Advisers Act custody rule modernization amendments? Do the proposed Advisers Act custody rule modernization amendments that are exemptive in nature require additional time to come into compliance? If so, how much additional time should be provided: six months, one year, or a different period of time? Should there be different compliance periods for different requirements or exceptions? Should there be different compliance periods for small advisers versus larger advisers? What specific operational, technological or contractual challenges would entities face in complying with these proposed rules? Please describe them.

332. Should we provide additional time for regulated funds to come into compliance with the proposed amendments to rules 17f–1 or 17f–3 and the Form N–CEN tokenized fund reporting? If so, why? Are there any challenges regulated funds would face complying with the proposed amendments to 17f–1? For example, are there any regulated funds that use broker-dealers to custody regulated fund assets that are not subject to rule 15c3–3 under the Exchange Act that would need time to find different custodians for those assets if the proposed amendments to rule 17f–1 were adopted? Are there any regulated funds relying on rule 17f–3 to maintain free cash accounts that would need time to dispose of the cash if that rule was rescinded? Would regulated funds need additional time between the effective date of this proposal and their annual filing of Form N–CEN to comply with the proposed tokenized fund reporting requirement?

333. General Instruction 4 of Form ADV requires an adviser to promptly file an other-than-annual amendment to its Part 1A if information provided in response to certain questions in Item 9 becomes inaccurate in any way. Because of the proposed addition of new questions and the proposed revision of certain existing questions under Item 9, General Instruction 4 of Form ADV may require advisers to promptly file an other-than-annual amendment to their Part 1A once the proposed amended Form ADV becomes available. Should advisers be required to file promptly an other-than-annual-amendment to their Form ADV Part 1A pursuant to General Instruction 4 of Form ADV when the proposed amended Form ADV becomes available for filing due to the proposed addition of new questions and the proposed revision of certain existing questions under Item 9? Would many advisers anticipate needing to promptly file an other-than-annual amendment to their Form ADV Part 1A as a result? If so, would such advisers expect such other-than-annual amendments to their Form ADV Part 1A to entail significant burdens? Should an adviser instead be required to update promptly only some of the questions under proposed Item 9, and if so, which questions under proposed Item 9, and why?

III. General Request for Comment

We request and encourage any interested person to submit comments regarding the proposed rules and forms, specific issues discussed in this release, and other matters that may have an effect on the proposed rules and forms. With regard to any comments, we note that such comments are of particular assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

IV. Economic Analysis

A. Introduction

The SEC is mindful of the economic effects, including the costs and benefits, of the proposed rules and amendments. Section 202(c) of the Advisers Act and section 2(c) of the Investment Company Act provide that when the Commission is engaging in rulemaking under the Advisers Act or Investment Company Act and is required to consider or

determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider whether the action will promote efficiency, competition, and capital formation, in addition to the protection of investors.[714] The analysis below addresses the likely economic effects of the proposed rules and amendments, including the anticipated and estimated benefits and costs of the amendments and their likely effects on efficiency, competition, and capital formation. The Commission also discusses the potential economic effects of certain alternatives to the approaches taken in this proposal.

We are proposing rules that would permit investment advisers to self-custody clients' crypto assets, including those of regulated funds, and would permit advisers and regulated funds to use State trust companies as custodians for such assets. The current market for crypto custody is constrained by high fixed costs associated with developing and maintaining crypto-specific safeguarding infrastructure, including those related to obtaining or developing highly specialized technical knowledge and abilities, which create barriers to entry that limit the number of permitted custodians able to support certain crypto assets.[715] As a result, some advisers and regulated funds cannot find custodians capable of supporting their clients' or their own investment strategies or to participate in certain crypto-native activities such as staking. At the same time, the highly specialized technical knowledge required to safeguard crypto assets also exacerbates information asymmetries that make it difficult for advisers, regulated funds, and their clients and investors to evaluate and monitor custodial arrangements effectively. These information asymmetries may exacerbate principal-agent problems, where custodians may have incentives to provide safeguarding that is less effective than anticipated.

The proposed crypto custody rules are designed to address these challenges, which may inhibit advisers' ability to provide investment advice and limit regulated funds' ability to invest in a broad range of crypto assets or pursue certain related investment strategies. The proposal also includes a series of protective conditions designed to mitigate the risks inherent in crypto asset custody and the inherent conflicts of interest associated with adviser self-custody,[716] and to help ensure that advisers and regulated funds use crypto asset custodians that provide secure, reliable, and effective services and that only advisers that are well-suited and have the capabilities to safeguard crypto assets take on self-custody of client crypto assets.

We are also proposing several amendments to the custody rules to modernize their requirements, to better address current industry practices and industry feedback, and to implement certain conforming amendments. We are also proposing amendments to the recordkeeping rules under the Advisers Act and Investment Company Act and to Forms ADV and N–CEN.[717] Finally, we outline our views on several aspects of the Advisers Act custody rule and on disclosures related to the proposed custody rules on Forms ADV (for advisers) and N–1A and N–2 (for regulated funds), and we expect to make revisions to the 2009 Guidance for Accountants.

Where possible, the Commission quantifies the likely economic effects of its proposed rules and amendments. However, the Commission is unable to quantify certain economic effects because it lacks the information necessary to provide estimates or ranges of costs. Additionally, in some cases, quantification would require numerous assumptions to forecast how affected parties would respond to the proposed rules and amendments, and how those responses would in turn affect the broader markets in which they operate. Furthermore, many factors determining the economic effects of the proposed rules and amendments would vary significantly among investment advisers and regulated funds. For example, whether an investment adviser is able to exercise self-custody of crypto assets, and the costs associated with doing so, would significantly depend on the adviser's existing practices and technological expertise. In addition, the cost of obtaining an internal control report may vary considerably among entities due to various factors, including the number and type of crypto assets that it can custody and the complexity of its safeguarding systems. This variance makes it practically difficult to quantify economic effects. Even if it were possible to calculate a range of potential quantitative estimates, that range could be so wide as not to be informative about the magnitude of the benefits or costs associated with the proposed rule. Many parts of the discussion below are, therefore, qualitative in nature. As described more fully below, the Commission is providing a qualitative assessment and, where practicable, a quantified estimate of the economic effects. The Commission seeks comments on all aspects of the economic analysis, especially any data or information that would enable a quantification of the proposal's economic effects.

B. Economic Baseline

The Commission assesses the economic effects of the proposed rules and amendments relative to the baseline that consists of existing regulations and market practices as they relate to the custody of assets by investment advisers and regulated funds. The economic analysis appropriately considers existing regulatory requirements, including recently adopted Commission rules as well as State and Federal laws and regulations as part of the economic baseline against which the economic effects of the proposed rules are measured.[718]

1. Crypto Assets and Market Overview

A crypto asset is any digital representation of value that is recorded on a cryptographically secured distributed ledger.[719] Crypto assets are generated, issued, and transferred using a blockchain or similar distributed ledger technology.[720] A distributed ledger is a technology through which data is shared across a network that creates a digital ledger of verified transactions or information among

[714] 15 U.S.C. 80a–2(c), 80b–2(c).

[715] *See infra* footnote 906 for a discussion of regulatory requirements as an additional barrier to entry in this market.

[716] *See infra* section IV.C.2.

[717] We are also proposing conforming amendments to Form ADV–E related to the proposed redesignation of the Advisers Act custody rule to rule 223–1.

[718] *See, e.g., Nasdaq* v. *SEC,* 34 F.4th 1105, 1111–14 (D.C. Cir. 2022). This approach also follows SEC staff guidance on economic analysis for rulemaking. *See* SEC Staff, Current Guidance on Economic Analysis in SEC Rulemaking (Mar. 16, 2012), *available at https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf* (''The economic consequences of proposed rules (potential costs and benefits including effects on efficiency, competition, and capital formation) should be measured against a baseline, which is the best assessment of how the world would look in the absence of the proposed action.''); id. at 7 (''The baseline includes both the economic attributes of the relevant market and the existing regulatory structure.'').

[719] *See supra* footnote 24 and accompanying text.

[720] Many prominent crypto networks use blockchain as their underlying distributed ledger technology for transfer and exchange of their crypto assets. Each block contains a set of transactions, and the network must reach a distributed consensus on the validity of the transactions before the block can be added to the chain and incorporated into the permanent record. Distributed ledgers that are not blockchains use different structures. *See, e.g.,* Ahmad J. Alkhodair et al., Consensus Algorithms of Distributed Ledger Technology—A Comprehensive Analysis (preprint Sept. 26, 2023). *available at https://arxiv.org/pdf/2309.13498* (Alkhodair et al. (2025)).

network participants and in which cryptography is used to link the data to maintain the integrity of the digital ledger and execute other functions.[721] It provides a transparent environment for records to be created and maintained through a consensus mechanism, thereby enabling direct peer-to-peer transactions without a need for a central counterparty.[722]

Crypto networks use different types of consensus mechanisms. For example, proof-of-work requires miners to compete on solving cryptographic puzzles in order to earn the right to propose the next block, after which other nodes validate the block according to the protocol's rules. Block proposers receive rewards, which are generally crypto assets. Another consensus mechanism is proof-of-stake, where participants are able to validate blocks based on their ''stake'' in the network. This ''stake'' (*e.g.,* the quantity of crypto assets participants commit to the network for a period of time) acts as collateral to help ensure honest behavior by the validators. Distributed ledgers that are not blockchains typically use different types of consensus mechanisms.[723]

Ownership of a crypto asset is recorded on a crypto network, and access to the asset is controlled by a private key. A private key is a long alphanumeric string that a user who wishes to transfer assets to another user uses to authorize cryptocurrency transactions. A public key, derived from the private key, is visible to anyone and used to facilitate transactions by encrypting messages and verifying digital signatures. Hence, anyone who has access to the private key can control the crypto assets.

A private key is generally stored in a ''wallet.'' [724] There are two main types of wallets: software-based ''hot'' wallets and device-based ''cold'' wallets. ''Hot'' wallets are connected to the internet and enable faster and automated transactions. In contrast, ''cold'' wallets, such as paper wallets and hardware wallets, remain offline and require the private key to be accessed manually to authorize a transaction.[725] Cryptographic wallets can also be categorized as self-custodial wallets,[726] where users retain control of the private keys, and hosted wallets (also referred to as custodial wallets), where a third-party manages the private keys.[727]

There are many types of crypto assets encompassing a broad range of instruments with varying characteristics, uses, and functions, including digital commodities, digital collectibles, digital tools, stablecoins, and digital securities.[728] Many of these assets carry certain rights such as staking, yield farming, and exercising governance rights, which can be essential to the security and functionality of crypto networks and DeFi protocols. Some of these rights also provide benefits to the users. For example, when staking or yield farming, users can earn rewards, fees, or interest.[729]

Crypto assets can be traded directly between users or through intermediaries such as centralized platforms. Centralized platforms typically use a central limit order book, similar to those used by securities exchanges, as a matching system for buy and sell orders. Using a centralized platform may require users to transfer their funds or crypto assets before the transaction is completed (*i.e.,* the transaction may need to be ''prefunded'').[730] Most crypto trading activities taking place on a centralized platform are not recorded on the network ledgers; rather, only transactions involving crypto assets being moved in or out of the platform are recorded onchain.[731] Crypto assets can also be traded via smart contracts or other non-custodial trading mechanisms that do not involve prefunding. For example, decentralized platforms are a set of smart contracts that function as peer-to-peer marketplaces where transactions occur directly between users without an intermediary being involved,[732] which typically allows users to maintain control over their crypto assets during the trading process.[733] Certain crypto asset transactions can also occur off the main crypto networks for faster and more cost-efficient execution.[734]

[721] *See supra* footnote 26 and accompanying text.

[722] Some crypto networks are permissionless, which means that anyone is able to see, join, and participate in the network's activities. In comparison, a permissioned network is accessible only to nodes (or users) that have been granted access by the administrator, adding a layer of security and privacy. In addition, *see supra* footnote 100 and accompanying text.

[723] *See, e.g.,* Rainer Alt & Max Gräser, Distributed Ledger Technology, 35 Elec. Mkts. 53 (2025) *available at https://doi.org/10.1007/s12525-025-00784-w* (Alt & Gräser (2025)); Alkhodair et al. (2025).

[724] *See supra* footnote 151 and accompanying text. A wallet typically contains the public and private keys as well as a public receiving address. A wallet address, mathematically derived from the wallet's public key, is a unique identifier used to identify a destination for digital asset transactions. The wallet address can be used to view the corresponding crypto asset's balances and transactions on the crypto network on which the crypto asset's transfers and ownership are recorded.

[725] Some wallets, known as ''warm'' wallets, offer characteristics of both hot and cold wallets.

[726] *See supra* footnote 154 and accompanying text.

[727] For example, third-party service providers such as centralized crypto exchanges can hold clients' crypto assets in a hosted wallet, where a user accesses her assets through an account interface but a custodian authorizes the blockchain transactions on behalf of the client.

[728] *See* SEC, *Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, available at https://www.sec.gov/rules-regulations/2026/03/s7-2026-09.* Real world assets (including financial assets such as securities) can be formatted as or represented by a crypto asset.

[729] *See supra* paragraph preceding footnote 723 for a description of staking. While staking rewards vary, they can be significant. *See, e.g.,* Lin William Cong et al., *The Tokenomics of Staking* (Nat'l Bureau of Econ. Rsch., Working Paper No. 33640, 2025) *available at https://www.nber.org/system/files/working_papers/w33640/w33640.pdf,* finding staking rewards as low as 0.02% and as high as 75.39%, with an average of 14.86%. Yield farming is a strategy in which users provide liquidity, for example in liquidity pools, in exchange for rewards. See, *e.g.,* T.N. Li et al., *Yield Farming for Liquidity Provision* (working paper June 14, 2023), *available at https://dauphine.psl.eu/fileadmin/mediatheque/chaires/fintech/articles/Yield_Farming_14_06_2023.pdf.pdf*; see also infra footnote 733.

[730] Historically, users were typically required to deposit assets (fiat currency or crypto assets) into their accounts before being able to trade on a centralized platform, thereby ceding control of the assets to the platform. However, industry members have pointed out that more recently, new practices that either limit the need for prefunding or allow assets that are required to be moved before trading to be transferred to a custodian that is permitted under the current custody rules have been developed. Outreach by Commission staff has shown that some centralized trading platforms permit trading without requiring assets or control of the assets to be moved to entities that are not permitted custodians. *See supra* section II.E. In addition, some crypto asset securities are traded on Alternative Trading Systems that do not require prefunding of trades.

[731] Transactions taking place on a centralized platform do not typically involve the access to the assets being moved to a different wallet until users take their assets outside of their accounts on the platform and regain direct control of the assets.

[732] Smart contracts are computer programs that trigger actions (such as the transfer of ownership of crypto assets) based upon the occurrence of pre-defined events. *See, e.g.,* Alt & Gräser (2025).

[733] Unlike centralized platforms, decentralized platforms typically do not facilitate transactions between fiat currency and crypto assets. Some decentralized platforms use an order book model and smart contracts to match buy and sell orders and execute trades automatically. Other decentralized platforms rely on automated market makers that use algorithms to price assets through liquidity pools. On these platforms, trades occur when a user swaps one digital asset for another in the liquidity pool and the transaction is subsequently validated and recorded on the ledger.

[734] For example, Layer-2 networks are built on top of other public distributed ledger technology (Layer-1 networks) and enable transactions operating independently from the associate Layer-1 network. Most transactions on Layer-2 networks are ultimately recorded on the main blockchain. *See, e.g., The Impact of Distributed Ledger Technology in Capital Markets Ready for Adoption, Time to Act,* Glob. Fin. Mkts. Ass'n., *available at https://www.gfma.org/wp-content/uploads/2025/08/2.-exec-sum-impact-of-dlt-in-cap-mkts-final.pdf* (last visited May 26, 2026). Certain transactions may also be effectuated through private and anonymous offchain liquidity venues (*i.e.,* dark pools). For example, brokers may source liquidity

Continued

The market for crypto assets has grown substantially since the advent of Bitcoin in 2008,[735] especially during the last few years. The global market capitalization for crypto assets grew from approximately $4.3 billion in January 2015 to $4.0 trillion in September 2025, before declining to approximately $2.5 trillion in March 2026.[736] The market capitalization is heavily concentrated, with the 10 crypto assets with the highest market capitalization comprising approximately 89 percent of the global market capitalization.[737] The average 24-hour global trading volume also increased, from approximately $149.6 million in January 2015 to $103.1 billion in March 2026.[738] Figure 1 plots the historical daily values of global market capitalization and 24-hour trading volume.

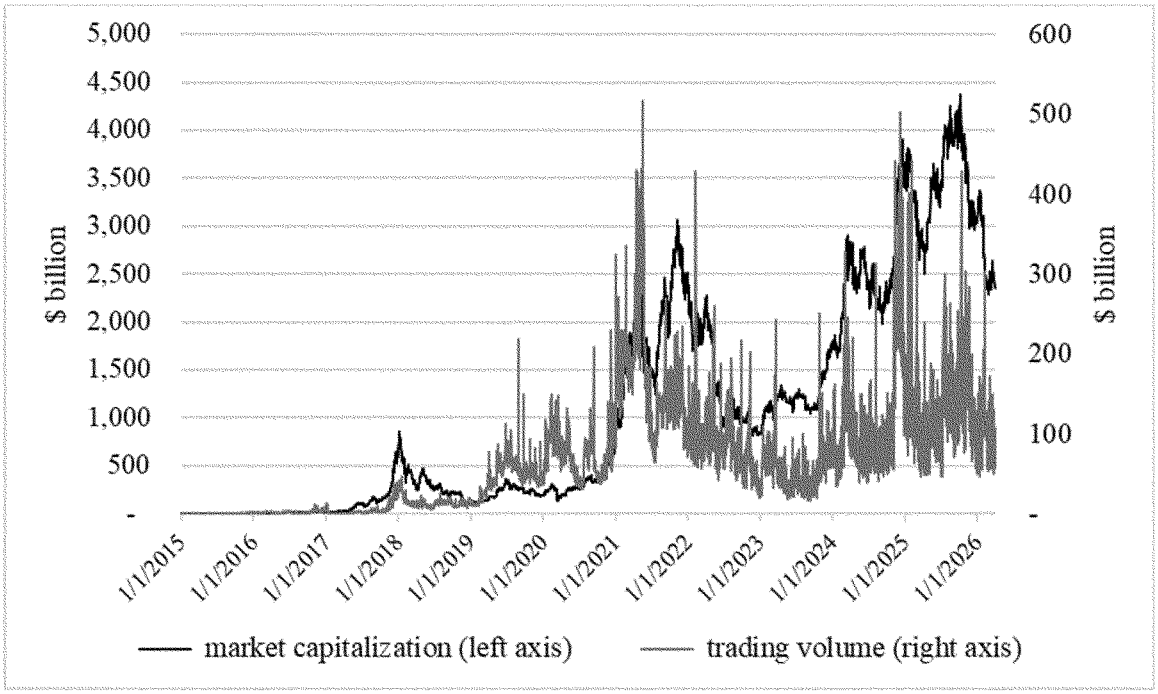


Figure 1: Market capitalization and 24-hour trading volume of global crypto markets. Data source: CoinGecko (April 2026).

Figure 1: Market capitalization and 24-hour trading volume of global crypto markets. Data source: CoinGecko (April 2026).

The trading of crypto assets has also evolved substantially over time. As of April 2026, there were approximately 5,628 crypto assets traded on 814 venues globally.[739] This includes approximately 3,032 crypto assets traded on 175 centralized platforms and approximately 4,934 assets traded on 639 decentralized platforms.[740] Although the majority of spot crypto trading occurs on centralized platforms, the proportion of trading activity on decentralized platforms has increased over time. In March 2026, the average 24-hour trading volume on decentralized platforms accounted for 4.7 percent of the global trading volume, up from 2.3 percent in December 2023.[741]

directly from wholesalers, where transactions are netted before being recorded onchain. *See* Thomas Ernst, et al., *Dark Crypto* (Mar. 20, 2025) *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5186551* (retrieved from SSRN Elsevier database).

[735] *See supra* footnote 31 and accompanying text.

[736] The market capitalization is calculated as the monthly average of the daily market capitalization. The highest daily market capitalization was reached on Oct. 7, 2025, at $4.4 trillion. Based on data from CoinGecko. *See https://www.coingecko.com/en/methodology* for a description of the methodology used by CoinGecko.

[737] Based on Commission staff analysis of CoinGecko data as of Apr. 24, 2026.

[738] The 24-hour trading volume is calculated as the monthly average of the daily 24-hour global trading volume. The highest daily 24-hour trading volume was reached on May 20, 2021, at $516 billion. Based on data from CoinGecko. See *https://www.coingecko.com/en/methodology* for a description of the methodology used by CoinGecko.

[739] Based on CoinGecko data as of Apr. 24, 2026. The analysis only includes crypto assets with a market capitalization of at least $100,000. The numbers discussed in this paragraph and in the previous paragraph should be viewed as approximations as CoinGecko includes or excludes assets and exchanges in its statistics according to its own methodology and criteria. See *https://www.coingecko.com/en/methodology*.

[740] The 639 decentralized platforms operate on 97 crypto networks and are deployed by 388 projects, with some projects enabling trading on multiple networks. Analysis of the same data reveals that 15 centralized platforms account for more than 50% of spot transactions.

[741] Based on Commission staff analysis of CoinGecko data. The average 24-hour trading volume on decentralized platforms accounted for 3.2% global trading volume in Dec. 2024, and 5.3% in Dec. 2025.

According to a report by the Office of Investor Research within the Commission's Office of the Investor Advocate, approximately 9.2 percent of U.S. adults held crypto assets as of 2025.[742] Similarly, a survey by the Federal Reserve Board found that in 2025, approximately 10 percent of adults bought or held cryptocurrencies for investment, up from approximately 7 percent in 2024.[743] According to a 2025 industry report, 22 percent of U.S. surveyed respondents owned crypto assets as of 2025, up from 14 percent in 2021.[744] In addition, according to a survey of institutional investors,[745] of the respondents that invested in digital or crypto assets,[746] 66 percent held spot crypto exchange-traded funds (''ETFs'') or exchange-traded products (''ETPs'') and 36 percent held spot crypto assets directly. Sixty-six percent of the institutional investors invested in digital or crypto assets also reported increases or significant increases in their digital asset holdings year-over-year between 2024 and 2025 and 73 percent expected to increase their allocations in 2026.[747]

According to a global report,[748] 55 percent of traditional hedge funds surveyed in 2025 had exposure to crypto assets, up from 47 percent in 2024 and 29 percent in 2023.[749] This report also indicates that family offices and high-net-worth individuals are the largest investor categories in crypto hedge funds, followed by funds of funds. In addition, the report finds that 39 percent of crypto hedge funds generate yield from custodial staking.

2. Regulatory Baseline

The custody rules govern the custodial practices of investment advisers and regulated funds to ensure the safekeeping of investors' funds, securities, and similar investments.[750] Advisers are subject to the requirements under the Advisers Act custody rule with respect to the ''funds and securities'' of clients that are not regulated funds.[751] Regulated funds are subject to the Investment Company Act custody rules, which govern the custody of the funds' ''securities and similar investments.'' Advisers of regulated funds are typically responsible for ensuring that the funds they manage comply with these regulations. The custody rules generally require, among other things, the use of a permitted custodian for the safekeeping of the applicable assets. While the rules cover a broad range of assets, they were designed to address the custody and safekeeping of traditional assets.[752]

In addition to the custody rules specifying which entities are permitted custodians and what other conditions relate to the use of such custodians, there are other requirements pertaining to the custody of assets. With certain exceptions, advisers are required to report information about custodial practices on Form ADV, and registered investment companies are required to disclose information about their custodians on Form N–CEN. In addition, rules 31a–1 and 31a–2 under the Investment Company Act and rule 204–2 under the Advisers Act regulate recordkeeping practices and require, among other things, that advisers and regulated funds keep records of all accounts, contracts, and transactions. Rule 38a–1 under the Investment Company Act requires the adoption, implementation, and annual review of policies and procedures reasonably designed to prevent violation of the Federal securities laws. Similarly, rule 206(4)–7 under the Advisers Act requires the adoption, implementation, and annual review of policies and procedures reasonably designed to prevent violation of the Advisers Act and of the rules that the Commission has adopted thereunder.

(a) Advisers Act Custody Rule

The regulatory framework regarding the custody of advisory clients' funds and securities is set forth in the Advisers Act custody rule.[753] As defined by Advisers Act rule 206(4)–2, ''custody'' means that the adviser, or its related persons, holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them.[754] Crypto assets that are funds or securities are in the scope of the current rule, and the Commission has recently published statements on the security status of certain crypto assets.[755] The Advisers Act custody rule applies to any investment adviser registered or required to be registered with the Commission under section 203 of the Advisers Act.[756]

The current rule requires advisers with custody of client funds and securities to maintain these funds and securities with a qualified custodian in a separate account for each client under that client's name or in accounts containing only the funds and securities of such adviser's clients and under the adviser's name as agent or trustee, subject to certain exceptions.[757] Qualified custodians generally include

[742] *See supra* footnote 33.

[743] *See* Bd. Governors Fed. Rsrv. Sys, Economic Well-Being of U.S. Households in 2025 (May 2026), *available at https://www.federalreserve.gov/publications/files/2025-report-economic-well-being-us-households-202605.pdf. See also* Bd. Governors Fed. Rsrv. Sys, Economic Well-Being of U.S. Households in 2024 (May 2025), *available at https://www.federalreserve.gov/publications/files/2024-report-economic-well-being-us-households-202505.pdf*.

[744] *See* Gemini Global State of Crypto 2025, *supra* footnote 35, and Gemini Global State of Crypto 2021, *supra* footnote 35.

[745] *See* Coinbase & EY Parthenon, 2026 Institutional Investor Digital Assets Survey (Mar. 2026), at 14, *available at https://www.ey.com/content/dam/ey-unified-site/ey-com/en-us/campaigns/financial-services/documents/ey-volatility-drives-discipline-not-retreat.pdf* (the ''Coinbase & EY 2026 Crypto Report'').

[746] This includes respondents that invest in companies that are exposed to crypto assets, such as investments in digital asset companies and investments in mutual funds, ETFs, or ETPs focused on exposure to crypto or blockchain companies. *See* Coinbase & EY Crypto 2026 Report, *supra* footnote 745, at 10.

[747] *See* Coinbase & EY Crypto 2026 Report, *supra* footnote 745, at 14.

[748] *See* AIMA, 7th Annual Global Crypto Hedge Fund Report (Oct. 2025), *available at https://www.aima.org/compass/insights/digital-assets/7th-annual-global-crypto-hedge-fund-report.html.*

[749] In this report, crypto hedge fund managers are defined as managers investing more than 50% of their total assets under management in crypto assets. Traditional hedge fund managers are hedge fund managers that are not crypto hedge fund managers.

[750] *See supra* section I.A.

[751] Advisers are currently not required to comply with the Advisers Act custody rule with respect to the accounts of registered investment companies. *See* rule 206(4)–2(b)(5). In addition, BDCs are subject to section 17(f) the Investment Company Act. Industry practice has been to interpret the Investment Company Act's application of section 17(f) to BDCs to allow BDCs to rely on the Investment Company Act custody rules to the same extent as registered closed-end investment companies. *See* 15 U.S.C. 80a–58; *supra* section II.F.1. It is our understanding that industry members have interpreted the exception in the Advisers Act custody rule to also apply to the accounts of BDCs.

[752] *See supra* section I.A.

[753] As fiduciaries subject to a duty of care, advisers must consider their clients' preferences regarding investment strategies and asset classes, consider their clients' risk profiles, and act in the best interests of their clients when providing investment advice, including when managing clients' portfolios. *See supra* section II.A.1; Standard of Conduct Release, *supra* footnote 120.

[754] *See* rule 206(4)–2(d)(2). The Commission stated in 2003, however, that ''custodians are generally under instructions to transfer funds (or securities) out of a client's account only upon corresponding transfer of securities (or funds) into the account.'' Because this ''delivery versus payment'' arrangement minimizes the risk of client loss, an adviser's authority to issue instructions to a broker-dealer or another custodian to effect or to settle trades does not constitute ''custody'' under the current rule. *See* 2003 Adopting Release, *supra* footnote 7, at n. 10. *See* also rule 206(4)–2(d)(7), defining ''related person'' as ''any person, directly or indirectly, controlling or controlled by [the adviser], and any person that is under common control with [the adviser].''

[755] *See* Commission Security Status Interpretation, *supra* footnote 24. Whether a particular crypto asset is a security is an asset-specific inquiry, depending on the facts and circumstances of the particular crypto asset.

[756] *See* rule 206(4)–2(a).

[757] *See* rules 206(4)–2(a)(1) and 206(4)–2(b).

banks and savings associations,[758] broker-dealers registered with the Commission,[759] FCMs registered with the CFTC,[760] and certain foreign financial institutions,[761] all of which are financial institutions that are currently subject to regular government oversight and periodic inspection and examination.[762] With respect to shares of a mutual fund, investment advisers may also use the mutual fund's transfer agent in lieu of a qualified custodian.[763] The current Advisers Act custody rule also generally requires an adviser with custody of client funds or securities to obtain an annual surprise examination from an independent public accountant to verify client funds and securities independently.[764]

The current Advisers Act custody rule also requires advisers to make certain communications to clients. An adviser is required to provide its clients notice if the adviser establishes an account with a qualified custodian on a client's behalf.[765] Advisers must also have a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each of the adviser's applicable clients.[766] When an adviser has custody of funds and securities belonging to a client that is a pooled investment vehicle, these account statements must be sent to each limited partner, member, or other beneficial owner if the adviser or its related person is a general partner of a limited partnership, managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle.[767]

Under the Advisers Act custody rule, an adviser is not required to comply with the notice and account statement delivery requirements of the rule and shall be deemed to comply with the surprise examination requirement with respect to the account of a limited partnership or other pooled investment vehicle that is subject to annual audit, provided certain conditions are satisfied.[768] To rely on this audit provision, the pool's financial statements must, among other things, be prepared in accordance with generally accepted accounting principles and distributed to all limited partners (or members or other beneficial owners) within 120 days of the end of the pool's fiscal year. The audit provision also requires the pool's financial statements to be audited by an independent public accountant that is registered with, and subject to regular inspection by, the PCAOB.

In situations where the adviser or a related person acts as a qualified custodian, the current Advisers Act custody rule requires that the adviser obtain, or receive from its related person, an annual internal control report with respect to the adviser's or its related person's custody controls.[769] The internal control report must be prepared by an independent public accountant that is registered with, and subject to regular inspection by, the PCAOB. When the adviser is required to comply with the internal control report requirement, the independent public accountants performing surprise examinations must also be registered with, and subject to regular inspection by, the PCAOB.

While the current Advisers Act custody rule addresses certain kinds of self-custody arrangements, namely, where the adviser maintains funds and securities itself or with a related person,[770] in all cases the funds and securities must be maintained at a qualified custodian.[771] Hence, this rule does not allow for arrangements where an adviser seeks to maintain client funds and securities as a custodian when the adviser or its related person does not meet the definition of qualified custodian.

(b) Investment Company Act Custody Rules

The Advisers Act custody rule does not apply to advisers with respect to accounts of regulated funds.[772] Instead, the Investment Company Act custody rules govern the custody practices of regulated funds.[773] While the Advisers Act custody rule applies to clients' funds and securities, the Investment Company Act custody rules apply to a fund's securities and other similar investments.

The Investment Company Act custody rules require that regulated funds' securities and similar investments be maintained with certain permitted custodians.[774] These permitted custodians include banks,[775] members of national securities exchanges,[776]

[758] Under rule 206(4)–2(d)(6), a qualified custodian includes a ''bank,'' *i.e.,* a ''bank'' as defined in section 202(a)(2) of the Advisers Act or a savings association that meets certain requirements. The definition of ''bank'' includes (i) any banking institution organized under the laws of the United States, (ii) any member bank of the Federal Reserve System, and (iii) any other banking institution or trust company, ''whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency,'' which is ''supervised and examined by State or Federal authority'' having supervision over banks, and which is ''not operated for the purpose of evading the provisions'' of the Advisers Act.

[759] Under the Advisers Act custody rule, qualified custodians include broker-dealers registered under section 15(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(1)) and that are holding the client assets in customer accounts. *See* rule 206(4)–2(d)(6).

[760] Under the Advisers Act custody rule, qualified custodians include futures commission merchants registered under section 4f(a) of the CEA (7 U.S.C. 6f(a)) but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon. *See* rule 206(4)–2(d)(6).

[761] *See* rule 206(4)–2(d)(6).

[762] *See infra* section IV.B.2.d).

[763] *See* rule 206(4)–2(b)(1).

[764] *See* rule 206(4)–2(a)(4). *See* also rule 206(4)–2(b)(3) for an exception from independent examinations for advisers that have custody solely because they have authority to deduct fee from client accounts and rule 206(4)–2(b)(6) for an exception from independent examinations for advisers that have custody solely because a related person holds the adviser's client assets and the related person is operationally independent of the adviser.

[765] *See* rule 206(4)–2(a)(2).

[766] *See* rule 206(4)–2(a)(3).

[767] *See* rule 206(4)–2(a)(5).

[768] *See* rule 206(4)–2(b)(4).

[769] *See* rule 206(4)–2(a)(6).

[770] *See* rule 206(4)–2(a)(6).

[771] For example, an adviser that is dually-registered as a broker-dealer would meet the definition of qualified custodian.

[772] *See* rule 206(4)–2(b)(5); *supra* footnote 751. While the Advisers Act custody rule does not apply with respect to accounts of regulated funds, the Advisers Act requires the adviser to exercise fiduciary duty within the scope of its relationship with the regulated fund. The scope of an adviser's services to the fund—and the limitations on the adviser's authority—are typically set forth with substantial specificity in its agreement with the fund. The adviser has a duty of care in performing any responsibilities set forth in the agreement related to the selection and oversight of a permitted custodian. *See* Standard of Conduct Release, *supra* footnote 120.

[773] Various provisions of the Investment Company Act, including section 17(f), are incorporated by statute to apply to BDCs to the same extent as if the BDC was a registered closed-end investment company. *See* 15 U.S.C. 80a–58.

[774] *See* section 17(f)(1) of the Investment Company Act; rules 17f–1 to 17f–7.

[775] Under section 17(f)(1) of the Investment Company Act, a permitted custodian includes a ''bank'' as defined in section 2(a)(5) of the Act that meets the qualification requirements of section 26(a)(1) of the Act. The definition of ''bank'' includes (i) any depository institution (as defined in section 1813 of title 12) or any branch or agency of a foreign bank (as such terms are defined in section 3101 of title 12), (ii) any member bank of the Federal Reserve System, and (iii) any other banking institution or trust company, ''whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency,'' which is ''supervised and examined by State or Federal authority'' having supervision over banks, and which is ''not operated for the purpose of evading the provisions'' of the Investment Company Act.

[776] Under section 17(f)(1)(B) of the Investment Company Act (15 U.S.C. 80a–17(f)(1)(B)) and rule 17f–1 thereunder, broker-dealers that are members

securities depositories,[777] FCMs and commodity clearing organizations (''CCOs''),[778] FFIs,[779] and foreign securities depositories.[780] Depending on the type of custodian used, regulated funds must meet certain requirements that are designed to help ensure the safety of their securities and similar investments. For example, when regulated funds use a member of a national securities exchange as their custodian, they must have a contract that requires segregation of fund assets from those of any other person and that includes a provision that prohibits the custodian from having authority to assign, hypothecate, pledge, or otherwise dispose of the fund's assets, except pursuant to the direction of the fund.[781] In addition, regulated funds' securities and similar investments custodied in this manner must be verified by examination at the end of each annual and semi-annual fiscal period by an independent public accountant and at least one other time, chosen by the accountant, during each fiscal year.[782]

Regulated funds may engage in self-custody under certain conditions. Specifically, securities and similar investments can be deposited in the safekeeping of, or in a vault or other depository maintained by, a bank or other company whose functions and physical facilities are supervised by Federal or State authorities.[783] The current rule requires that such investments be physically segregated at all times from those of any other person. The securities and similar investments must be verified by examination by an independent public accountant retained by the regulated fund at least three times during each fiscal year, at least two of which must be chosen by the accountant without prior notice to the regulated fund.

In addition to the requirements under the Investment Company Act custody rules, annual reports of regulated funds must include audited financial statements accompanied by a certificate of an independent public accountant.[784] The financial statements (including the regulated fund's schedule of portfolio investments) must provide data regarding the values of the regulated fund's portfolio investments as of the end of the reporting period.

(c) Recordkeeping

Advisers and regulated funds are subject to certain recordkeeping requirements regarding their custodial practices to help ensure that they make and keep current certain books and records.

The Advisers Act recordkeeping rule outlines recordkeeping requirements that apply to any registered investment adviser (or any adviser required to be registered). Advisers having custody of securities or funds of any client are required to maintain certain records relating to such client accounts.[785] For example, the Advisers Act recordkeeping rule requires, among other things, an adviser to make and keep records regarding all purchases, sales, receipts, and deliveries of securities for such accounts and all other debits and credits to such accounts, separate ledgers for such accounts, copies of confirmations of all effected transactions, a record for each security in which any such client has a position, and a memorandum describing the basis upon which the adviser has determined that the presumption that any related person is not operationally independent has been overcome.[786]

The recordkeeping requirements for regulated funds are set forth in the Investment Company Act recordkeeping rules.[787] These rules specify, among other things, what records a regulated fund must maintain and keep current and the retention periods for such records. For example, the Investment Company Act recordkeeping rules require that regulated funds maintain, among other things, a record of all purchases and sales of securities and of all receipts and deliveries of securities.[788]

(d) Custodians

While the custody rules govern what entities are permitted custodians and set forth the requirements to which advisers and regulated funds are subject when using these entities as custodians, other regulations also outline these entities' responsibilities as custodians.

Banks, whether chartered at the Federal or State level, are regulated by Federal agencies.[789] State-chartered banks that are members of the Federal Reserve System are regulated by the Federal Reserve Board. State-chartered banks that are not members of the Federal Reserve System are regulated by the FDIC. National banks and Federal savings associations are subject to OCC regulations, including when providing custody services in a fiduciary capacity.[790] In addition, the OCC has provided guidance with respect to the provision of custody services by national banks and Federal savings association.[791] For example, a custodian's accounting records and internal controls should ensure that assets of each custody account are kept separate from the assets of the custodian.[792] The OCC guidance also provides that the custodian's management has the responsibility to assess its control environment and ensure an appropriate system of internal controls, including separation of duties, and accounting controls to monitor and measure transactional workflows and their accuracy.[793] Furthermore, the OCC guidance provides specific guidelines for securities lending programs, as endorsed by the Federal Financial Institutions Examination Council. Securities under custody should not be subject to lending transactions without a written agreement between the custodian and the client.[794] Banking organizations are also required, in certain circumstances, to notify their prudential regulator no later than 36 hours after learning of a ''computer-security incident,'' which is defined as ''an occurrence that results in actual harm to the confidentiality, integrity, or

of a national securities exchange are permitted custodians under certain conditions. *See* rule 17f–1.

[777] A ''securities depository'' is a clearing corporation that is registered with the Commission as a clearing agency, or a Federal reserve bank or other person authorized to operate the Federal book-entry system for U.S. Treasury securities. Under the Investment Company Act custody rules, securities depositories may custody regulated funds' assets under certain conditions. *See* rule 17f–4.

[778] Under the Investment Company Act custody rules, futures commission merchants are permitted custodians under certain conditions and only as necessary to effect a fund's transactions in exchange-traded futures contracts and commodity options. *See* rule 17f–6.

[779] *See* rule 17f–5.

[780] *See* rule 17f–7.

[781] *See* rule 17f–1(b).

[782] *Id.*

[783] *See* rule 17f–2.

[784] *See* sections 30(a), 30(e), 30(g), and 32(a) of the Investment Company Act, section 13(a)(2) of the Securities Exchange Act, and rule 13a–1 under the Securities Exchange Act.

[785] *See* rule 204–2(b).

[786] *Id.*

[787] *See* rules 31a–1 and 31a–2. 15 U.S.C. 80a–63 subjects BDCs to the Investment Company Act recordkeeping rules.

[788] *See* rule 31a–1(b)(1).

[789] State-chartered banks are also regulated at the State level. *See infra* section IV.B.2.e).

[790] *See* 12 CFR 9.1 *et seq.* (rules governing fiduciary powers of national banks); 12 CFR 150.10 *et seq.* (rules governing fiduciary powers of Federal savings associations).

[791] OCC, *Custody Services, Comptrollers Handbook* (Jan. 2002) available at *https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/custody-services/index-custody-services.html.* While this guidance is not part of OCC regulations, we believe that entities subject to OCC regulations observe this guidance as best practice.

[792] *Id.* at 15.

[793] *Id.* at 6–7.

[794] *Id.* at 12, 29–31.

availability of an information system or the information that the system processes, stores, or transmits.'' [795]

Among other things, broker-dealers registered with the Commission under section 15(b)(1) of the Exchange Act are subject to Commission regulations. Among other rules, broker-dealers are subject to the broker-dealer financial responsibility rules, which establish a regulatory program designed to, among other things, protect customer funds and securities, ensure that broker-dealers can promptly satisfy customer claims, and maintain sufficient liquid resources to promote the prudent operation of broker-dealers.[796] For example, Exchange Act rule 15c3–1 imposes net capital requirements on broker-dealers.[797] Also, under Exchange Act rule 15c3–3, the customer protection rule, among other things, customers' assets must be segregated from the broker-dealer's proprietary assets.[798] Exchange Act rule 17a–13 requires broker-dealers to physically count, verify, and account for securities held in their physical possession or otherwise within their control or direction at least once in each calendar quarter.[799] Exchange Act rules 8c–1 and 15c2–1 generally prohibit broker-dealers from using customers' securities as collateral to finance their own trading, speculating, or underwriting transactions.

Section 17(a) of the Exchange Act requires registered broker-dealers to make and keep records, as required by Commission rules, and to furnish copies of the records to the Commission.[800] Further, section 17(b) of the Exchange Act authorizes representatives of the Commission to conduct ''reasonable, periodic, special or other examinations'' of ''[a]ll records'' of a broker-dealer. These examinations may be conducted at any time or from time to time as the Commission ''deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the [Exchange Act.]'' Exchange Act rules 17a–3 and 17a–4 require broker-dealers to make and keep, in an accessible manner, comprehensive records detailing, among other things, securities transactions, money balances, and securities positions.[801] Under Exchange Act rule 17a–11, a broker-dealer that fails to make and keep current the records required by rule 17a–3 must give notice to the Commission, to its DEA, and, if applicable, to the CFTC of this fact on the same day and, thereafter, within 48 hours transmit a report stating what the broker-dealer has done or is doing to correct the situation.[802] The rule also requires broker-dealers to provide notices and reports if they are experiencing specified financial or operational difficulties, including when, among other things, their net capital falls below 120 percent of the minimum required amount or below the minimum required amount.[803] Under rule 17a–4, the Commission may examine the books and records of any registered broker-dealer directly.[804] In addition, Exchange Act rule 17a–5 codifies broker-dealers' financial reporting requirements. It requires broker-dealers to file periodic unaudited reports containing information about their financial and operational conditions (FOCUS reports), and to annually file financial statements and certain reports, and a report covering the financial statements and reports prepared by an independent public accountant registered with the PCAOB (if registration is required by the Sarbanes-Oxley Act of 2002) in accordance with PCAOB standards.[805]

Broker-dealers are also subject to other Federal regulations. For example, broker-dealers must comply with the broker-dealer margin rules in Regulation T, which require securities customers to maintain a minimum level of equity in their securities accounts (*i.e.,* the customer's ownership interest in the account, computed by adding the current market value of long securities and the amount of any credit balance and subtracting the current market value of all short securities and the amount of any debit balance).[806]

Additionally, for broker-dealers that are members of FINRA, FINRA rules may set additional requirements designed to protect investors. In addition to the margin requirements in Regulation T, FINRA rule 4210 requires members to establish procedures to formulate their own margin requirements.[807] FINRA rule 3110(a) requires a member to have a system in place to supervise its activities so that it is in compliance with applicable rules and regulations.[808] FINRA rule 3120(a) requires a member to test and verify that its supervisory procedures are reasonably designed with respect to the activities of the member and its associated persons, as well as to achieve compliance with applicable securities laws and regulations and with applicable FINRA rules.[809] FINRA rule 3130(b) likewise requires that the member has in place processes to establish, maintain, review, test, and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable rules and Federal securities laws and regulations.[810] FINRA rule 4370(a)

[795] *See* 12 CFR 53.1 through 53.4 (OCC); 12 CFR 225.300 through 225.303 (Federal Reserve Board); 12 CFR 304.21 through 24 (FDIC).

[796] *See* 17 CFR 240.3a40–1; *supra* text accompanying footnote 405.

[797] *See supra* footnote 410 and accompanying text.

[798] *See* 17 CFR 240.15c3–3. Specifically, *see* rules 15c3–3(b)(1) (requirement for a carrying broker-dealer to promptly obtain and maintain the physical possession or control of all fully-paid securities and excess margin securities carried for the account of customers); 15c3–3(c) (securities must be held in one of several locations specified in the rule and free of liens or any other interest that could be exercised by a third-party to secure an obligation of the carrying broker-dealer); 15c3–3(e) (requiring a carrying broker-dealer to maintain a reserve of funds or securities in an account at a bank that is at least equal in value to the net cash owed to customers, where the amount of net cash owed to customers is computed weekly or daily as of the close of the last business day of the week pursuant to the formula set forth in rule 15c3–3a); and 15c3–3(f) (requiring written notification that the bank was informed that cash or securities are being held for the exclusive benefit of the broker-dealer's customers and account holders, separate from the broker-dealer's other accounts; and that the broker-dealer must have a written contract with the bank providing that the cash or securities will not be used as security for a loan to the broker-dealer by the bank, and will not be subject to any right, charge, security interest, lien, or claim in favor of the bank or any person claiming through the bank).

[799] *See* 17 CFR 240.17a–13.

[800] 15 U.S.C 78q(a).

[801] *See* 17 CFR 240.17a–3, 240.17a–4.

[802] *See* 17 CFR 240.17a–11(c).

[803] *See* 17 CFR 240.17a–11, rule 17a–11(a) (same-day notice of insolvency or deficiency in meeting net capital requirements); 17a–11(b) (prompt notice, within no later than 24 hours, of certain net capital events); 17a–11(d) (notice within 24 hours after discovery of—or after notification by an independent public accountant of—a material inadequacy or material weakness, and a corrective action report within 48 hours thereafter); 17a–11(f) (immediate notice of failure to make a required deposit in a special reserve account for the exclusive benefit of security-based swap customers).

[804] *See* 17 CFR 240.17a–4(j).

[805] *See* 17 CFR 240.17a–5. Rule 17a–5(f)(1) provides that the independent public accountant ''must be registered with the Public Company Accounting Oversight Board if required by the Sarbanes-Oxley Act of 2002.''

[806] *See* 12 CFR 220.1 *et seq.*

[807] *See* FINRA rule 4210(d). Rule 4210 prescribes initial margin requirements for non-equity securities that Regulation T does not address and specifies maintenance requirements for margin accounts. *See Overview of Margin Requirements*, FINRA, *https://www.finra.org/rules-guidance/key-topics/margin-accounts* (last visited May 8, 2026).

[808] *See* FINRA rule 3110(a).

[809] *See* FINRA rule 3120(a)(1). In addition, a broker-dealer member must create additional supervisory procedures or amend existing supervisory procedures when a need is identified by testing and verification. *See* FINRA rule 3120(a)(2). Designated individual(s) must submit to the broker-dealer member's senior management no less than annually, a report detailing each member's system of supervisory controls, the summary of the test results and significant identified exceptions, and any additional or amended supervisory procedures created in response to the test results.

[810] *See* FINRA rule 3130(b).

requires each member to create and maintain a written business continuity plan identifying procedures relating to an emergency or significant business disruption, reasonably designed to enable the member to meet its existing obligations to customers.[811] Finally, FINRA rule 4530(b) states that each member shall report to FINRA promptly, but not later than 30 calendar days after the member has concluded or reasonably should have concluded, that an associated person of the member or the member itself has violated applicable laws, rules, regulations, or standards of conduct.[812] FINRA rule 2231 requires members to send statements of assets to customers no less frequently than quarterly.

Finally, broker-dealers that are members of a national securities exchange must comply with the exchange's rules of conduct.[813] These include rules to protect customers by requiring members to certify their written policies and procedures reasonably designed to comply with the securities laws and regulations,[814] requiring members to meet net capital requirements in addition to those in Exchange Act rule 15c3–1,[815] and requiring members to have business continuity plans reasonably designed meet their obligations toward customers during emergencies and business disruptions.[816] They may also include rules incorporating, as the exchange's own rules, FINRA rules discussed above.[817]

FCMs are subject to sections 4d(a)(2) and 4d(b) of the CEA and regulations issued thereunder, which require segregation of client funds from the entities' funds and impose related accounting and recordkeeping requirements.[818] In addition, the NFA examines FCMs for compliance with NFA Interpretive Notice 9070, which establishes general requirements for NFA members relating to their information systems security programs (''ISSPs''). The notice requires members to adopt and enforce written ISSPs that are reasonably designed to provide safeguards to protect against security threats or hazards to their technology systems.[819]

Securities depositories must be registered with the Commission as clearing agencies under section 17A of the Exchange Act; or a Federal Reserve Bank or other person authorized to operate the Federal book entry system described in the regulations of the Department of Treasury codified at 31 CFR 357, Subpart B, or book-entry systems operated pursuant to comparable regulations of other Federal agencies.[820]

Foreign custodians are regulated in their local jurisdictions and subject to laws and regulations established by their national jurisdictions. Requirements for the custody of assets, including of crypto assets, can vary by country and may differ from those applicable to U.S. permitted custodians.

Finally, foreign securities depositories are regulated by a foreign financial regulatory authority as defined under the Investment Company Act.[821]

(e) Effect of State Law

The relationship between clients and permitted custodians is also governed by the common law of agency and contracts, and—to the extent adopted under State law—corresponding articles of the UCC. Thus, under sections 8–504 and 8–509 of the UCC, unless otherwise agreed to, and unless duties are specified otherwise by statute, regulation, or rule, a custodian ''may not grant security interests in a financial asset it is obligated to maintain'' for the client and must exercise ''due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.'' [822]

Several States have established legal frameworks to oversee and regulate State trust companies and other State-regulated entities that provide custody services, including, in some cases, specifically for the custody of crypto assets. New York has a licensing scheme for companies that conduct a virtual currency business without exercising fiduciary powers (BitLicenses), which expressly exempts fiduciary entities that are chartered under New York banking law and approved to engage in virtual currency activity: *e.g.,* New York State banks and New York limited purpose trust companies.[823] Limited purpose trust companies are chartered under the bank and trust company provisions of the New York Banking Law; while they may be authorized to engage in virtual currency activity, they do not have the general power to accept deposits or to make loans.[824]

Wyoming law and regulations establish conditions for banks to provide custodial services for digital assets,[825] which also apply to supervised trust companies that are chartered in Wyoming.[826] South Dakota law authorizes State charters for nondepository public trust companies,[827] and banks performing digital asset services have obtained charters under this authority.[828]

3. Affected Parties and Industry Statistics

The proposed rules would affect registered investment advisers (and those required to be registered),[829] registered investment companies, BDCs, as well as the current and prospective clients or investors of these entities. The proposed rules would also affect entities that are or could become permitted custodians for advisers or regulated funds under the proposed rules and independent public accountants that may provide services to these entities, advisers, or regulated funds. In addition, the proposed rules could also affect crypto asset related service providers that facilitate custodial solutions.

[811] *See* FINRA rule 4370(a). Under rule 4370(b), each member must update its plan in the event of any material change to its operations, structure, business or location, and must conduct an annual review to determine whether any modifications are necessary in light of changes. Rule 4370(c) specifies the elements that comprise a business continuity plan, including, inter alia, all mission-critical systems.

[812] *See* FINRA rule 4530(b).

[813] Rule 17f–1 under the Investment Company Act permits funds to custody their securities and other similar investments with a broker-dealer that is a member of a national securities exchange.

[814] *See, e.g.,* NYSE rule 3130(b).

[815] *See, e.g.,* NYSE rule 4110(a).

[816] *See, e.g.,* NYSE rule 4370(a).

[817] *See, e.g.,* Nasdaq General 9 section 20 (incorporating FINRA rule 3110); Nasdaq General 9 section 21 (incorporating FINRA rule 3120).

[818] *See* 7 U.S.C. 6d(a)(2), 6d(6); 17 CFR 1.20–1.30, 1.32, 1.36.

[819] *See* NFA Interpretive Notice 9070.

[820] *See* rule 17f–4.

[821] *See* 15 U.S.C. 80a–2(a)(50).

[822] U.C.C. 8–504(b), (c), 8–509(a) (Am. L. Inst. & Unif. L. Comm'n 2021).

[823] *See* N.Y. Comp. Codes R. & Regs. tit. 23, § 200.3(c)(1); *see also Virtual Currency Business Licensing,* NNYDFS, *https://www.dfs.ny.gov/virtual_currency_businesses#bitlicense-faqs* (last visited Apr. 22, 2026).

[824] *See* NYDFS Organization of a Limited Purpose Trust Company, *available at https://www.dfs.ny.gov/apps_and_licensing/banks_and_trusts/procedure_certificate_merit_trust_comp* (last visited June 23, 2026); *see generally* N.Y. Banking Law Art. XV; N.Y. Comp. Codes R. & Regs. tit. 3, Sup. Pol. CB 1.3 (Limited Purpose Organizations).

[825] *See* Wyo. Stat. Ann. § 34–29–104(a); 021.002.19 Wyo. Code R. §§ 1–12.

[826] *See* Wyo. Stat. Ann. § 34–29–104(q).

[827] *See* S.D. Codified Laws ch. 51A–6A.

[828] *See* Comment Letter of BitGo Holdings, Inc. (May 8, 2023). (BitGo Trust Company Inc. subsequently obtained a national trust bank charter; *see infra* footnote 843.)

[829] ERAs would also be affected by some of the proposed amendments to Form ADV. *See infra* footnote 830.

(a) Registered Investment Advisers and Their Clients

As of December 2025, there were 16,442 investment advisers registered with the Commission.[830] These advisers reported $177.0 trillion in total regulatory assets under management (''RAUM'').[831] Average RAUM among advisers was $11.0 billion and the median was $477.0 million. In addition, 9.8 percent of advisers reported under $100 million, 57.3 percent reported between $100 million and $1 billion, 20.1 percent reported between $1 billion and $5 billion, 11.2 percent reported between $5 billion and $100 billion, and 1.6 percent reported $100 billion or more in RAUM.[832]

Form ADV requires investment advisers to indicate the approximate number of advisory clients and the amount of total RAUM attributable to various client types.[833] Table 1 provides information on the number of client accounts, total RAUM, and the number of advisers by client type. For example, a total of approximately 23,100 investment company clients, with a combined $67.63 trillion in attributable RAUM, were reported across 1,670 investment advisers.

Table 1: Investment Adviser Clients

Client Type	Number of Clients (thousands)	Total RAUM (trillions)	Number of Registered Investment Advisers
Investment Companies	23.1	$67.63	1,670
Pooled investment vehicles – Other	114.8	$46.26	6,271
High net worth individuals	9,846.7	$18.54	10,075
Pension Plans	727.2	$8.31	5,407
Insurance Companies	14.8	$8.69	1,332
Non-high net worth individuals	51,268.8	$8.89	9,380
State/Municipal Entities	30.7	$4.37	1,513
Corporations	406.2	$3.57	5,952
Foreign Institutions	2.6	$2.07	713
Charities	188.6	$2.14	5,757
Other Advisers	1,480.7	$2.16	1,249
Banking Institutions	11.9	$0.81	742
BDCs	0.2	$0.57	133
Source: Form ADV, Item 5D.			

As reported in Table 1, RIAs have numerous clients categorized under the ''Pooled Investment Vehicles—Other'' group, which mostly comprises private

[830] Form ADV data for the reporting period ending December 2025 with filings received through March 31, 2026. In addition, there were 5,921 ERAs, which would be affected by some of the proposed amendments to Form ADV. *See supra* section II.J.1.c); *infra* footnotes 1222 and 1221. Four of those ERAs are registered with a state securities authorities and would be affected by all the proposed amendments to Form ADV. *See infra* footnote 1220.

[831] *See supra* footnote 830. The term ''regulatory assets under management'' refers to an adviser's assets under management as reported in response to Item 5.F. of Part 1A of Form ADV. *See* Form ADV, Item 5.F. of Part 1A.

[832] *See supra* footnote 830. The total may not add to 100% due to rounding.

[833] If a client fits into more than one category, Form ADV requires an adviser to select one category that most accurately represents the client (to avoid double counting clients and assets).

funds.[834] Individuals eligible to invest in private funds are predominantly accredited investors, who must satisfy specific wealth, income, or financial sophistication criteria.[835] Consistent with this investor profile, a private fund adviser generally has broad discretion to make investment decisions on behalf of the fund.

Table 2 presents, for each type of private funds, the total number of funds, the total gross asset value of these funds, and the number of advisers reporting the funds. For example, as of December 2025, 5,912 registered investment advisers reported advising 62,637 private funds, which held $27.4 trillion in gross asset value.

Table 2: Private Funds Advised by Registered Investment Advisers

Private Fund Type	Number of Funds	Total Gross Asset Value (trillions)	Number of Registered Investment Advisers
Hedge Funds	11,925	$12.9	2,850
Liquidity Funds	81	$0.4	49
Private Equity Funds	29,052	$8.7	2,523
Real Estate Funds	5,549	$1.2	693
Securitized Asset Funds	3,431	$1.3	254
Venture Capital Funds	4,343	$0.6	481
Other Private Funds	8,256	$2.3	1,564
Total	62,637	$27.4	5,912

Source: Form ADV section 7.B(1).

(b) Investment Companies and Their Investors

Investment companies invest money they receive from investors on a collective basis, and each investor shares in the profits and losses in proportion to that investor's interest in the investment company. Regulated funds subject to the proposed rules and amendments include registered management investment companies, which include open-end funds, closed-end funds, and management company separate account (''MCSAs''), and BDCs.[836]

Table 3 summarizes the investment company universe that would be subject to the proposed rules and amendments. Many of the investment companies that would be subject to proposed rules are part of a ''family'' of investment companies that often share infrastructure for operations (*e.g.,* accounting, auditing, custody, legal) and potentially marketing and distribution. For each type of fund, this table also presents estimates of the number of investment company families and distinct entities. For example, as of December 2025, there are 14,297 investment companies, 303 families, and 1,129 distinct entities in total.

[834] This category may also include other pooled investment vehicles such as collective investment trusts.

[835] Private funds are not required to be registered or regulated as investment companies under the Federal securities laws. *See* sections 3(c)(1) and 3(c)(7) of the Investment Company Act.

[836] UITs and FACCs are currently eligible to use rules 17f–4 and 17f–6, which would be amended under the proposal, and rule 17f–3, which would be rescinded under the proposal. However, UITs and FACCs would not be able to rely on proposed rules 17f–8 (Custody of Crypto Assets by State Trust Companies) and 17f–9 (Custody of Crypto Assets by Registered Investment Companies and Business Development Companies). *See supra* footnote 3; section II.F. In addition, UITs and FACCs are subject to recordkeeping requirements and would be subject to proposed rule 31a–1(b)(14). *See supra* footnote 652.

Table 3: Summary Statistics for Investment Companies

Fund Type	# Inv. Companies	# Families[1]	# Unaffiliated[2]	# Entities[3]
Open-end[4]	12,710	215	247	462
Closed-end[5]	707	105	179	284
MCSA[6]	15	1	1	2
BDC[7]	171	-	-	-
UIT[8]	693	51	227	278
FACC[9]	2	-	-	-
Total[10]	14,297	303	654	1,129

Source: Form N-CEN filings for the period ending December 2025, with filings received through March 31, 2026; Form 10-K filings and related amendments for the year 2025 for BDCs and FACCs.

Notes:

1. Number of families calculated from affiliation reported by registrants on Item B.5 of form N-CEN. The total number of families represent the number of distinct families; summing over the number of families across different fund types would double count some fund families.
2. Number of registrants reporting no family affiliation.
3. Number of distinct entities, *i.e.*, the sum of distinct families (# Families) and unaffiliated registrants (# Unaffiliated). The grand total is the sum of distinct families (303), total unaffiliated registrants (654), FACCs (1), and BDCs (171).
4. Form N-1A filers; includes all open-end funds, including ETF registered on Form N-1A.
5. Form N-2 filers not classified as BDCs.
6. Separate accounts offering variable annuity contracts on Form N-3.
7. Form N-2 filers classified as BDCs.
8. UITs are comprised of Form N-4, N-6, N-8B-2, and S-6 filers.
9. Number of FACCs is based on Form 10-K filings (and related amendments) for calendar year 2025.
10. Cells do not sum to totals as investment company families may span multiple investment company types.

As of December 2025, the total net assets of regulated funds were approximately $43.9 trillion. This included 8,212 mutual funds (excluding money market funds and mutual funds that offer at least one ETF share class), which held about $22.3 trillion in total net assets; 4,194 ETFs organized as open-end funds or share classes of open-end funds, holding approximately $13.0 trillion; 306 money market funds, holding approximately $7.7 trillion; 707 registered closed-end funds, holding approximately $427.7 billion; 15 MCSAs, holding approximately $279.0 billion in total net assets,[837] and 171 BDCs, holding approximately $235.3 billion in total net assets.[838] Separately,

[837] Net assets for mutual funds, ETFs, closed-end funds, MCSAs, and money market funds are reported in Item C.19 of Form N–CEN. Total net assets reflect the sum of monthly average net assets for mutual funds and ETFs, daily average net assets for money market funds, and total assets for UITs. ETF counts include mutual funds offering at least one ETF share class, and ETF net assets include the assets of those mutual funds. Among the ETFs reported, three are money market ETFs.

[838] BDC counts and net asset value information were obtained from Form 10–K filings for 2025.

693 UITs held approximately $3.1 trillion in total assets.[839] An industry group estimated that at the end of 2025, 54 percent of U.S. households owned mutual funds, 15 percent owned exchange-traded funds, and 3 percent owned closed-end funds.[840]

(c) Custodians

Currently permitted custodians generally include banks and savings associations, broker-dealers, futures commission merchants or commodity clearing organizations, securities depositories, and certain foreign financial institutions and foreign securities depositories.[841] We estimate that there are approximately 728 national banks,[842] 65 national trust banks,[843] 219 Federal savings associations,[844] and 3,392 State-chartered banks and savings associations that may serve as a custodian under the custody rules.[845] We also estimate that there are approximately 484 State-chartered trust companies,[846] 269 SEC-registered transfer agents, and 55 bank-registered transfer agents.[847]

As of the end of the fourth quarter of 2025, there are 3,262 broker-dealers registered with the Commission, with 153 of them classified as carrying broker-dealers.[848] We estimate that 369 broker-dealers are members of a national securities exchange.[849] We also estimate that there are 69 futures commission merchants,[850] and 7 active clearing corporations registered with the Commission.[851] We do not have data on the number of foreign financial institutions or foreign securities depositories that are permitted custodians under the custody rules.

(d) Public Accountants

The Advisers Act custody rule generally requires an adviser with custody of client funds or securities to obtain an annual surprise examination from an independent public accountant or to rely on the rule's audit provision (for pooled investment vehicles).[852] In some cases, the independent public accountant must be registered with and subject to regular inspection by the PCAOB. First, if an adviser or its related person acts as a qualified custodian, the examination must be performed by an independent public accountant that is registered with, and subject to regular inspection by, the PCAOB. Second, the adviser that acts as qualified custodian must obtain, or receive from its related person that acts as qualified custodian, an internal control report prepared by an independent public accountant that is registered with, and subject to regular inspection by, the PCAOB. Finally, under the rule's audit provision, an adviser is deemed in compliance with the surprise examination provision with respect to the account of a pooled investment vehicle if the pooled investment vehicle undergoes a financial statement audit performed by an independent public accountant that is registered with, and subject to regular inspection by, the PCAOB, provided certain conditions are met.

The Investment Company Act custody rules require examinations by an independent public accountant when securities and similar investments are custodied with a broker-dealer, or in self-custody and maintained with a bank.[853] Regardless of the custodial practices, regulated funds must have their financial statements audited by an independent public accountant.[854] Accountants must audit the financial statements of issuers in accordance with the standards of the PCAOB for the purpose of expressing an opinion thereon.[855] Hence, regulated funds that meet the definition of ''issuer'' must have their financial statements audited by an independent public accountant that is registered with the PCAOB.[856]

As of December 2025, 11.9 percent of registered investment advisers (1,952 advisers) reported obtaining a surprise examination by an independent public accountant.[857] In addition, 33.5 percent

[839] Total asset value for UITs was obtained from Item F.11 of Form N–CEN and, for the funds for which Item F.11 was not available, from Item F.14 of Form N–CEN. FACCs issue face-amount certificates rather than fund shares and do not maintain a net asset value comparable to other registered fund types; therefore, no total net asset figure is reported for FACCs.

[840] *See* Investment Company Institute (''ICI''), 2026 Investment Company Fact Book, available at *https://www.ici.org/system/files/2026-04/2026-factbook.pdf*. In addition, the Federal Reserve's Survey of Consumer Finance for 2022 found that 11.5% of U.S. families owned pooled investment funds directly and that 54.5% owned retirement accounts, which could be invested in pooled investment funds. In the survey, pooled investment funds include stock funds, tax-free bond funds, government bond funds, and other bond funds but exclude money market funds. *See* Bd. Governors Fed. Rsrv. Sys., *Changes in U.S. Family Finances from 2019 to 2022, Evidence From the Survey of Consumer Finances* (Oct. 2023), *available at https://www.federalreserve.gov/publications/files/scf23.pdf*.

[841] *See supra* sections IV.B.2.a) and IV.B.2.b). With respect to shares of a mutual funds, investment advisers may also custody funds and securities with the fund's transfer agent, instead of with a permitted custodian. *See* rule 206(4)–2(b)(1).

[842] Active as of March 31, 2026. *See* OCC, Financial Institution Lists, *https://www.occ.treas.gov/topics/charters-and-licensing/financial-institution-lists/index-financial-institution-lists.html*.

[843] *Id.* Active as of March 31, 2026. We understand that four of the national trust banks are organized to provide digital asset services. These include Anchorage Digital N.A., BitGo Bank & Trust N.A., Fidelity Digital Assets N.A., and Paxos Trust Company N.A. *See* OCC News Release 2021–6, OCC Conditionally Approves Conversion of Anchorage Digital Bank (Jan. 13, 2021), *https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-6.html* and OCC News Release 2025–125, OCC Announces Conditional Approvals for Five National Trust Bank Charter Applications (Dec. 12, 2025), *https://www.occ.gov/news-issuances/news-releases/2025/nr-occ-2025-125.html*.

[844] Active as of March 31, 2026. *See* OCC, Financial Institution Lists, *https://www.occ.treas.gov/topics/charters-and-licensing/financial-institution-lists/index-financial-institution-lists.html*.

[845] This number is as of April 2026. This number was obtained by pulling all active banks from the FDIC BankFind Suite tool, keeping only the institutions chartered at the State level, and removing those institutions chartered in U.S. territories that are not states of or the District of Columbia (*i.e.,* Federated States of Micronesia, Guam, Puerto Rico, U.S. Virgin Islands). *See BankFind Suite: Find Insured Banks,* FDIC, *https://banks.data.fdic.gov/bankfind-suite/bankfind* (last updated June 19, 2026).

[846] This includes limited-purpose trust companies. This number was obtained from the State banking regulators' websites. It is possible that some State trust companies are chartered in more than one state and therefore that the same entity is counted more than once in our estimates. This analysis was performed in April 2026. State trust companies must meet the definition of bank under the custody rules to serve as permitted custodians. Their eligibility may require a case-by-case analysis. *See supra* section I.A.2. Hence, this number should be considered as an upper bound on the number of State-chartered trust companies that are currently permitted custodians. Under the proposed State trust company rules, State trust companies would be permitted custodians under certain conditions. *See* proposed rules 223–1(d)(13)(v) and 17f–8.

[847] As of Dec. 31, 2025. *See* SEC, *Statistics & Data Visualizations,* Transfer Agents, *available at https://www.sec.gov/data-research/statistics-data-visualizations/transfer-agents*.

[848] These numbers are based on FOCUS filings as of the end of the fourth quarter of 2025. Per EDGAR Form Custody: A ''carrying broker-dealer'' is a broker-dealer that carries customer or broker or dealer accounts and receives or holds funds or securities for those customers.

[849] *See* Consolidated Audit Trail (''CAT''), Reference Data, *available at https://www.catnmsplan.com/reference-data*.

[850] This number is as of February 28, 2026. *See* CFTC, *Financial Data for FCMs, available at https://www.cftc.gov/MarketReports/financialfcmdata/index.htm*.

[851] *See* SEC, *Clearing Agencies, https://www.sec.gov/about/divisions-offices/division-trading-markets/clearing-agencies*.

[852] *See* rules 206(4)–2(a)(4); 206(4)–2(b)(4). An SEC staff no-action letter indicates that the staff would not recommend enforcement action to the Commission if advisers exercise limited authority pursuant to a SLOA without undergoing an annual surprise examination, if the SLOA arrangement meets certain specified conditions. *See* IAA SLOA No-Action Letter, *supra* footnote 544.

[853] *See* rules 17f–1(b)(4), 17f–2(f).

[854] *See* sections 30(e), 30(g), and 32(a) of the Investment Company Act and rules 13a–1 and 13a–2 under the Securities Exchange Act.

[855] *See* rule 1–02(d) of Regulation S–X.

[856] *See* section 2(a)(7) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7201(a)(7), for the definition of ''issuer.''

[857] Based on advisers' responses to Item 9.C.(3) of Part 1A of Form ADV. Form ADV data for the

Continued

of advisers (5,509 advisers) reported that an independent public accountant audits annually the pooled investment vehicle(s) that they manage and that the audited financial statements are distributed to the investors in the pools.[858] Finally, as of December 2025, 2.2 percent of registered investment advisers (368 advisers) reported that an independent public accountant prepared an internal control report with respect to custodial services when the adviser or its related persons were qualified custodians for client funds and securities.[859]

As of May 2026, there are 1,430 accounting firms registered with the PCAOB.[860] Of those, approximately 632 are subject to regular inspection by the PCAOB.[861] Although there are no requirements to use a PCAOB-registered and inspected independent public accountant when the adviser or its related person does not act as a qualified custodian, 84.7 percent of accountants retained by advisers solely for conducting surprise examinations were reported by advisers as being registered with and regularly inspected by the PCAOB.[862] We also estimate that there are approximately 400 accounting firms reported on Form ADV as being used by advisers as independent public accountants. The 10 firms performing the highest number of reported engagements collectively account for 80 percent of engagements. We understand that auditing pooled investment vehicles may require significant investment in technology and operations and regulatory knowledge. Therefore, accounting firms conducting audits required by the Advisers Act custody rule may have capabilities to engage in additional business activities that also require PCAOB registration and inspection such as financial statement audits of public companies and broker-dealers.

(e) Crypto Service Providers

The proposed rules and amendments could also affect the providers of services related to the custody of crypto assets. For example, entities providing services related to private key creation and management, including wallet providers, as well as cybersecurity providers could be affected by the proposed rules and amendments.[863]

4. Market Practice

(a) Advisers' and Regulated Funds' Custody Practices

Registered investment advisers are required to report certain information about their custodial practices on Form ADV. As of December 2025, we observe that 9,883 advisers (60.1 percent of the total number of advisers) reported on Form ADV that they or their related persons, in aggregate, had custody of $60.8 trillion (30.1 percent of aggregate RAUM) of client assets.[864] Advisers reported having direct custody of approximately $29.5 trillion of assets and having indirect custody (through a related person) of $31.3 trillion in assets. As of December 2025, approximately 0.5 percent of all registered investment advisers (6.4 percent of aggregate RAUM) acted as a qualified custodian for their clients. Approximately 2.0 percent of all registered investment advisers (23.7 percent of aggregate RAUM) had a related person acting as a qualified custodian. We also observe that 1,446 advisers (8.8 percent of the total number of advisers) reported having a qualified custodian send quarterly statements to investors in pooled investment vehicles.

Regulated funds that are not BDCs are required to report information about their custodians on Form N–CEN. For example, 814 funds (7 percent of the total number of funds) reported having a custodian that is an affiliated person of the fund or its investment adviser.[865] In Table 4, we provide information on the number of funds reporting using each type of permitted custodian and the total net assets maintained by these custodians as of December 2025. For example, this table documents that banks hold the largest market share, both in terms of the number of fund clients (12,721) and the total net assets under their custody ($40,031 billion).[866]

reporting period ending December 2025 with filings received through March 31, 2026.

[858] Based on advisers' responses to Item 9.C.(2) of Part 1A of Form ADV.

[859] Based on advisers' responses to Item 9.C.(4) of Part 1A of Form ADV. Many advisers do not report using the services of independent public accountants in their compliance with the Advisers Act custody rule. This can be because they do not have custody of client assets, because they only advise regulated funds and are therefore not subject to the Advisers Act custody rule, or because they rely on another exception to the surprise examination requirement (*see* rules 206(4)–2(b)(3) and 206(4)–2(b)(6)).

[860] *See* Registered Firms, PCAOB, *https://pcaobus.org/oversight/registration/registered-firms* (last visited June 23, 2026).

[861] The frequency of inspection depends on the number of issuers for which a registered public accounting firm has issued audit reports during specified time periods. *See* PCAOB rules 4003(a), (b). A percentage of registered public accounting firms are also subject to regular inspection based on having played a substantial role in the preparation or furnishing of an audit report with respect to an issuer, without having issued an audit report with respect to an issuer during a specified reporting period. *See* PCAOB rule 4003(h). On an interim basis, under PCAOB rule 4020T, the Board also conducts a program of inspection to assess the policies, practices, and procedures of any registered public accounting firm related to the performance of audits, or the issuance of audit reports, for brokers and dealers. *See* Robert Van Grover Esq., Seward & Kissel LLP, SEC Staff No-Act. Letter (Dec. 11, 2019), *available at https://www.sec.gov/investment/grover-seward-kissel-121119-rule206* (investment adviser's engagement of a public accounting firm in connection with the adviser's custody of client funds and securities, when the accounting firm is registered with the Board, engaged to audit broker-dealer financial statements, and subject to the Board's interim program of inspection). We include as subject to regular inspection by the PCAOB firms that reported the following audit report activities in their three most recent annual reports: issued an audit report for at least one broker-dealer; issued an audit report for at least one issuer; did not issue an audit report for a broker-dealer, but played a substantial role in an audit of at least one broker-dealer; did not issue an audit report for an issuer, but played a substantial role in an audit of at least one issuer. *See* PCAOB, Registered Firms, *available at https://pcaobus.org/oversight/registration/registered-firms*.

[862] Based on advisers' responses to section 9.C.(3), section 9.C.(4), and section 9.C.(5) of Schedule D of Form ADV. Form ADV data for the reporting period ending December 2025 with filings received through March 31, 2026.

[863] We are also requesting comment on the types of services providers that could be affected by the proposed rules and amendments. *See infra* section IV.F.

[864] This analysis is based on advisers' responses to Items 9.A. and 9.B. of Part 1A of Form ADV from data for the reporting period ending December 2025 and received through March 31, 2026. The instructions to Item 9.A. of Part 1A of Form ADV provide that an adviser that has custody solely because (i) it deducts advisory fees directly from client accounts, or (ii) an operationally independent related person has custody of client assets in connection with advisory services provided to clients, should answer ''No'' in response to Item 9.A.(1), which asks whether the adviser has custody of client assets. Hence, the actual number of advisers with custody of client assets is likely larger.

[865] Form N–CEN filings for the period ending December 2025, with filings received through March 31, 2026.

[866] While regulated funds can ''self-custody'' their assets under certain conditions, these conditions include references to ''physical facilities.'' Hence, we do not expect any of the assets currently in self-custody at regulated funds to be crypto assets. *See* rule 17f–2; *supra* text accompanying footnote 783.

Table 4: Custodians of Registered Investment Companies		
Type of custodian	**Number of investment companies**	**Total net assets ($ billion)**
Bank	12,721	40,031
Member of national securities exchange	18	1.0
Self	722	3,895
Securities depository	363	389
Foreign custodian	5,383	22,218
FCM/CCO	1,261	5,487
Foreign securities depository	3,758	17,182
Insurance company sponsor	0	0
Other	40	35.0
Source: Form N-CEN Item C.12.		

Various no-action letters, interpretive letters, and other staff statements (some of which are enumerated in section II.K), while not part of Federal regulation, relate to the custody rules and may play a role in how advisers and regulated funds comply with these rules.[867]

Furthermore, the 2009 Guidance for Accountants provides guidance on the surprise examinations and internal control reports required under the Advisers Act custody rule. For example, it sets forth several control objectives for internal control reports.

(b) Advisers' and Regulated Funds' Crypto Activity

Commission staff identified entities that are reported as custodians by registered advisers and that may specialize in crypto assets (''identified crypto custodians'').[868] We analyzed Form ADV filings for the reporting period ending in December 2025, with filings received through March 31, 2026, and identified 136 registered advisers that reported using these identified crypto custodians.[869] This suggests that at least 136 registered advisers currently have custody of crypto assets.[870]

To supplement this analysis, we also examined Form ADV Part 2A brochures. Based on an AI-assisted review of these disclosures, we identified 1,498 advisers that appear to give or plan to give investment advice related to crypto assets.[871] The set of advisers identified

[867] Commission staff has also issued responses to 70 FAQs on a wide range of topics about the Advisers Act custody rule. *See* Custody Rule FAQs, *supra* footnote 572.

[868] This list is likely not exhaustive but reflects Commission staff's experience based on examinations of and engagement with advisers. In addition, this list does not include custodians that do not specialize in crypto assets but that may nevertheless provide custodial services for crypto assets.

[869] Advisers are required to report on Form ADV information, such as name, for each custodian that holds 10% or more of the adviser's aggregate separately managed account RAUM. *See* Form ADV Item 5.K.(4) and section 5.K.(3) of Schedule D. In addition, advisers are required to report information for each custodian holding assets of a private fund advised by the adviser. *See* Form ADV section 7.B.(1)B of Schedule D. Because of the 10% threshold for separately managed accounts and because of the limitations of our list of crypto custodians (*see supra* footnote 868), the list of advisers that we identify is unlikely to include all advisers with custody of crypto assets. Advisers do not have to report custodian information for the registered investment companies that they advise. This information is instead collected on Form N–CEN. *See supra* section IV.B.2.

[870] However, these assets may not be client ''funds or securities'' and may therefore not be covered by the Advisers Act custody rule. *See supra* footnote 754 and accompanying text. In addition, we analyze below the type of custodians that are used by these advisers. *See infra* section IV.B.4.c).

[871] We analyzed advisers' most recent Form ADV Part 2A filing, taking into account filings received between January 1, 2025 and June 30, 2026. Our analysis covered 15,964 registered advisers, or 97% of the 16,442 registered advisers and 86% of the total RAUM of registered advisers. *See supra* section IV.B.3.a). The remaining advisers were not included because they are exempt from the requirement to file Part 2A for Form ADV (337 advisers) or for other reasons (141 advisers). We asked a large language model (''LLM'', Anthropic Sonnet 5) to determine whether the adviser is giving or planning to give investment advice related to crypto assets. The LLM model used does not give users control of the temperature setting. The model does not have access to the internet, and the internet cut-off date was January 2026 (*see How Up-to-Date is Claude's Training Data?* Claude Support, *https://support.claude.com/en/articles/8114494-how-up-to-date-is-claude-s-training-data* (last visited July 24, 2026)). We first converted the Form ADV Part 2A filings from PDF to text, then uploaded each filing to the LLM and queried the LLM about the filing with the following prompt: ''You are reading one adviser's Form ADV brochure: either Part 2A (firm brochure) or Part 2A Appendix 1 (wrap fee). | Definition: ''crypto assets'', also known as digital assets, include, but are not limited to, digital commodities (*e.g.,* Bitcoin, Ether, Solana), digital collectibles, digital tools, stablecoins (including payment stablecoins), tokenized deposits, and digital securities (including tokenized securities). | Task: Answer YES if the brochure indicates the adviser provides OR plans to provide advice involving crypto assets, based on client facing signals (*e.g.,* services/strategies offered to clients, portfolio level exposure, program features, custody/brokerage handling for client accounts, or portfolio manager selection); otherwise answer NO. Prioritize the items listed below, but consider the entire document provided. | Prioritized headings verbatim): | Part 2A: (firm brochure) | • Item 4—Advisory Business | • Item 8—Methods of Analysis, Investment Strategies, and Risk of Loss | • Item 15—Custody | • Item 16—Investment Discretion | Appendix 1 (wrap fee) | • Item 4—Services, Fees and Compensation | • Item 6—Portfolio Manager Selection and Evaluation | Inference rule (to reduce false positives): | • Count as YES only if crypto assets are tied to client accounts, portfolios, strategies, program participation, manager

Continued

by this analysis is larger than the set of advisers that report using identified crypto custodians.[872] This is likely because i) advisers providing or planning to provide advice with respect to crypto assets may not necessarily have custody of those assets, ii) advisers that do have custody of the crypto assets may use a custodian that does not specialize in providing crypto custody services or that does not appear in our list of identified crypto custodians for other reasons, and iii) some advisers may provide exposure to crypto assets indirectly, such as through derivatives or exchange-traded products that are not themselves crypto assets.

In addition, we estimate that, as of April 20, 2026, there are 10 crypto asset mutual funds with a total of approximately $432.5 million in net assets, 122 crypto asset ETFs with a total of approximately $8.7 billion in net assets and 72 crypto asset ETPs with a total of approximately $117.7 billion in net assets.[873]

We used Form N–CEN filings for the reporting period ending in December 2025, with filings received through March 31, 2026 to analyze the use of identified crypto custodians by regulated funds. We have identified only one regulated fund that reported using an identified crypto custodian.[874]

(c) Custodians for Crypto Assets

We understand that different types of entities currently offer custodial services for crypto assets. The OCC has issued three Interpretive Letters reaffirming that crypto-asset custody activities are permissible for national banks and Federal savings associations, and that these entities may buy and sell crypto assets held in custody at the customer's direction and are permitted to outsource bank-permissible crypto-asset activities, including custody and execution services, to third parties, subject to appropriate third-party risk management practices.[875] In July 2025, Federal bank regulatory agencies issued a joint statement on crypto-asset safekeeping.[876] The statement discusses existing risk-management principles that apply to crypto-asset safekeeping and reminds banks that provide or are considering providing safekeeping of such assets that they must do so in a safe and sound manner and in compliance with applicable laws and regulations. In addition, on December 12, 2025, the OCC announced conditional approvals for five national trust bank charter applications.[877] It has conditionally approved additional charters since then,[878] and multiple applications are still pending.[879] It is our understanding that many of the entities applying for these charters provide custodial services for crypto assets. Some of these entities currently are or previously were, or have related entities that are, State trust companies.[880]

selection/evaluation, or custody/brokerage policies for clients. | • Do NOT count as YES if mentions are limited to: employee or ''Code of Ethics'' personal trading restrictions; personnel biographies, credentials, or certifications; general affiliations or activities of related/third party entities without a clear link to services provided to clients; generic market commentary or research monitoring with no client service linkage. | • If both client facing and non client mentions appear, base the decision on the client facing evidence. | Output (exactly): YES or NO | Then 1–2 exact verbatim quotes (≤200 chars each) that your answer is based on, each labeled with the Item heading and page/section if available.'' The main text reports the number of advisers with ''yes'' answers obtained from this prompt. If an adviser submitted more than one brochure, the adviser is counted as ''yes'' if the LLM returned a ''yes'' answer for at least one of the adviser's brochures. We note that a large language model analysis can result in both false positives and false negatives, and that this analysis is stochastic in nature. Hence, re-running the same algorithm could yield different results. To assess and improve the accuracy of the results, we performed two additional steps. First, we ran an additional analysis of the results by using the explanation provided by the LLM as input for a second analysis and by querying the same LLM with the following prompt: ''You are a strict binary classifier. Given a response to the question represented by the prompt, decide if the answer is yes or no. Return only one word: yes or no.'' This process identified one false negative and 334 false positives. Second, we manually reviewed the LLM's ''yes'' responses (reflecting the corrections made as a result of the first additional step) to confirm that the explanation provided by the LLM was consistent with the ''yes'' answer given. When a discrepancy was observed, we analyzed the adviser's brochure manually. This process found a false positive rate below 3%. The results reported in the main text reflect corrections made following these two additional steps. According to the analysis, 14,466 advisers neither currently provide nor plan to provide advice involving crypto assets. However, some of these advisers may have been incorrectly categorized; therefore, the reported figure may represent a lower bound for the number of advisers providing or planning to provide investment advice related to crypto assets. For additional robustness, we compared the set of advisers identified with this analysis to the set of 136 advisers that we identified as using one or more of the identified crypto custodians (*see supra* footnote 869). We found that, of the 136 advisers that reported using one or more identified crypto custodians, 13 were not identified by our analysis as providing or planning to provide crypto-related services. A manual review of these 13 advisers' brochures concluded that the brochures of 11 advisers do not indicate that the advisers are providing or planning to provide crypto-related services. The manual review of the remaining two advisers' brochures concluded that the brochures indicate that the advisers are providing or planning to provide crypto-related services.

[872] *See supra* footnote 869 and accompanying text.

[873] Based on staff analysis of data from Morningstar Direct. In our analysis, we include all funds in the Morningstar category ''Digital Asset Funds.'' Morningstar describe ''Digital Asset Funds'' as those that ''invest the majority of their assets into one or more broadly classified areas including Decentralized Finance (DeFi) assets, stable coins, currency assets, smart contracts platforms, exchange assets, privacy assets, yield farming, and nonfungible tokens (NFTs) among others. Portfolios may gain access to digital assets through physical or derivative exposures and incorporate both long only investments and other hedging techniques. To qualify for inclusion, funds in this category must have a material portion of risk coming from digital assets.'' *See Digital Asset Funds, Morningstar, https://www.morningstar.com/best-investments/digital-asset-funds* (last visited May 26, 2026). Mutual funds and ETFs refer to funds that are registered as open-end investment companies and are subject to the Investment Company Act. Advisers of such funds are required to be registered investment advisers and are subject to the Advisers Act. In this release, ETPs refer to those commodity-based trusts that are not registered investment companies, and thus are not subject to the Investment Company Act, and whose shares are instead registered under the Securities Act of 1933. While ETPs typically provide crypto exposure by holding spot crypto assets, ETFs and mutual funds generally provide crypto exposure by tracking the price of futures contracts on underlying crypto assets. However, ETFs holding spot crypto assets are also listed and available for trading.

[874] There are different reasons why the regulated funds identified as crypto asset funds in the analysis above may not use one of the identified crypto custodians. First, these funds may provide exposure to crypto assets without directly holding them (for example, by holding crypto asset futures). *See supra* footnote 873. Second, they may be using as custodian an entity that does not specialize in crypto assets but still provides crypto custody services. Third, they could be using an entity that specializes in crypto assets but that is not included in our list of identified crypto custodians. *See supra* footnote 868.

[875] *See* OCC Interpretative Letter 1183, *supra* footnote 44; OCC Interpretive Letter No. 1184, *supra* footnote 44, Clarification of Bank Authority Regarding Crypto-Asset Custody Services (2025), *available at https://www.occ.treas.gov/topics/charters-and-licensing/interpretations-and-decisions/2025/int1184.pdf;* OCC, Interpretive Letter No. 1170, Authority of a National Bank to Provide Cryptocurrency Custody Services for Customers (2020), *available at https://www.occ.gov/topics/charters-and-licensing/interpretations-and-decisions/2020/int1170.pdf.*

[876] *See* Federal Reserve Board, FDIC, and OCC, Crypto-Asset Safekeeping by Banking Organizations (2025), *available at https://www.fdic.gov/news/press-releases/2025/agencies-issue-joint-statement-risk-management-considerations-crypto-asset* (''Interagency Crypto Statement'').

[877] *See OCC, OCC Announces Conditional Approvals for Five National Trust Bank Charter Applications* (Dec. 12, 2025), *available at https://www.occ.gov/news-issuances/news-releases/2025/nr-occ-2025-125.html.*

[878] *See, e.g.,* OCC Corporate Decision 1370 (Apr. 2, 2026), *available at https://www.occ.treas.gov/topics/charters-and-licensing/interpretations-and-decisions/2026/cd1370.pdf* and OCC Corporate Decision 1367 (Feb. 20, 2026), *available at https://www.occ.treas.gov/topics/charters-and-licensing/interpretations-and-decisions/2026/cd1367.pdf.*

[879] As of April 15, 2026, there are 10 pending applications to the OCC for new national bank charters (including national trust bank charters) or conversions to national banks submitted by entities planning to offer digital asset products or services, including crypto-assets. *See https://www.occ.gov/topics/charters-and-licensing/digital-assets-licensing-applications/index-digital-assets-licensing-applications.html.*

[880] *See, e.g.,* OCC Letter, Re: Application by BitGo Trust Company, Inc., Sioux Falls, South Dakota to Convert to a National Bank and Operate with Full Trust Powers (Dec. 12, 2025) (''BitGo Trust Co. Dec. 12, 2025''), *available at https://www.occ.gov/news-*

We estimate that approximately 19 State trust companies currently specialize in crypto asset custody services.[881] Under the current custody rules, a State trust company can serve as a permitted custodian (including for crypto assets) only if it meets the definition of ''bank,'' the determination of which typically requires a case-by-case analysis.[882]

In December 2025, the staff of the Division of Trading and Markets issued a statement on broker-dealers' obligation under rule 15c3–3(b)(1) to promptly obtain and thereafter maintain physical possession or control of all fully paid and excess margin securities it carries for the account of customers.[883] The statement provides that if the broker-dealer[884] undertakes five specified measures, the staff will not object to a broker-dealer deeming itself to have possession of a crypto asset security in accordance with the rule.[885]

Finally, crypto trading platforms and other digital native custody providers often serve as custodians for crypto assets.[886] These entities are not permitted custodians under the current custody rules.[887]

The Commission identified 136 registered advisers that reported using an identified crypto custodian.[888] These 136 advisers each reported between one and six identified crypto custodians, with an average of two identified crypto custodians per adviser.[889] Approximately half of them reported using more than one identified crypto custodian. Figure 2 provides additional information on the distribution of the number of identified crypto custodians reported per adviser as well as the average RAUM of advisers reporting different numbers of identified crypto custodians.

issuances/news-releases/2025/nr-occ-2025-125c.pdf and OCC Letter, Re: Applications to (1) Convert Fidelity Digital Asset Services, LLC, New York, New York to an Uninsured National Trust Bank Fidelity Digital Assets, National Association, New York, New York (2) Charter Fidelity Digital Assets Temporary Bank, National Association, Boston, Massachusetts and (3) Merge Fidelity Digital Assets, National Association with and into Fidelity Digital Assets Temporary Bank, National Association and Request to Waive Residency Requirements (collectively, Application), *available at https://occ.gov/news-issuances/news-releases/2025/nr-occ-2025-125d.pdf*.

[881] This estimate was obtained by analyzing the website of the 484 trust companies we identified, with some exceptions. (For some State trust companies, we were unable to find an associated website. In some of these cases, we relied on alternative sources such as regulatory filings. For other cases, we could not find any reliable source and classified the State trust company as not specializing in crypto asset services.) This analysis was performed in May 2026. While this analysis allowed us to identify the State trust companies that appear to offer services mainly related to crypto assets, it is possible that these entities also offer custodial services for traditional assets or that other State trust companies offer crypto asset custody services.

[882] *See supra* sections I.A.2 and II.C.1. In addition, on September 30, 2025, IM staff issued a no-action letter regarding the use of State trust companies as crypto asset custodians for purposes of the custody rules. The letter stated that IM staff would not recommend enforcement action to the Commission against an adviser or regulated fund if they elect to treat a State trust company as a bank for purposes of the custody rules for the placement and maintenance of advisory or regulated fund crypto assets and related cash and/or cash equivalents, subject to certain considerations designed to address whether the State trust company is capable of protecting crypto assets from loss, theft, misuse, and misappropriation. *See supra* footnote 50 and accompanying text. Like all staff statements, this letter has no legal force or effect and does not alter or amend applicable law.

[883] *See* BD Crypto Custody Statement, *supra* footnote 191.

[884] This statement includes broker-dealers that conduct a traditional securities business.

[885] *See* BD Crypto Custody Statement, *supra* footnote 191. The measures relate to the broker-dealer's access to the crypto asset security and ability to transfer it; the broker-dealer's reasonably designed policies and procedures for evaluating the distributed ledger technology and related network for significant weaknesses or operational issues; the broker-dealer's awareness of any material security or operational problems or weaknesses; the broker-dealer's reasonably designed policies and procedures for protecting private keys against theft, loss, misuse, or accidental use; and the broker-dealer's reasonably designed policies and procedures for safekeeping and accessing crypto asset securities in the event of disruption, wind-down, or liquidation.

[886] *See supra* section IV.B.1.

[887] Some crypto trading platforms may be affiliated with business entities, such as State trust companies or broker-dealers, which could be permitted custodians under the current custody rules. *See supra* section IV.B.1. This would allow such trading platforms to provide custodial services to advisers and regulated funds consistent with the custody rules.

[888] *See supra* footnote 869 and accompanying text. We have identified only one regulated fund using an identified crypto custodian. See supra section IV.B.4.b). Hence, this analysis focuses on advisers.

[889] Almost all of these 136 advisers reported using an identified crypto custodian for one or more of the private funds that they manage. Only 13 advisers, with a combined RAUM of $7.84 billion, reported using an identified crypto custodian for separately managed accounts only.

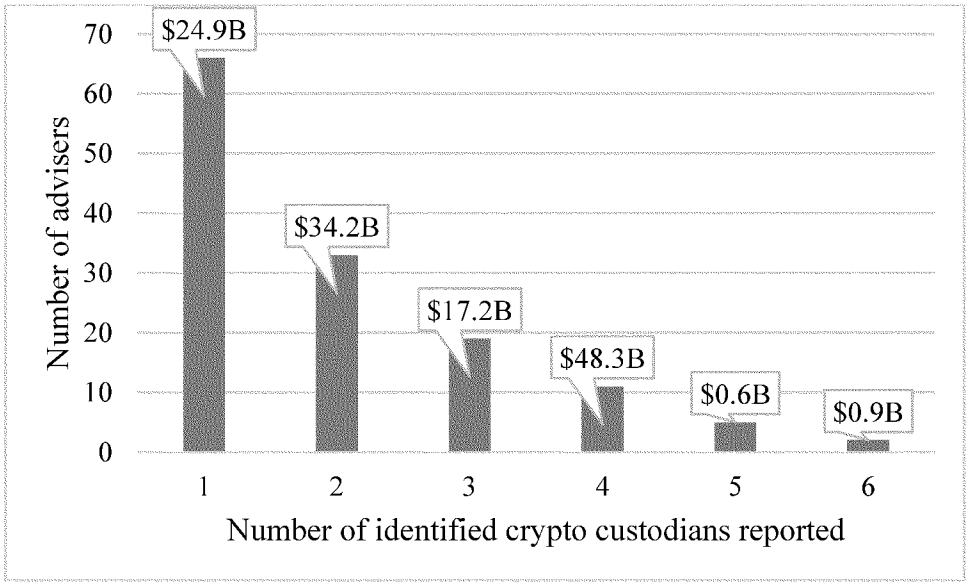


Figure 2: Number of identified crypto custodians reported by advisers and average RAUM of advisers reporting different numbers of crypto custodians. Source: Form ADV, Item F, section 5.k.(3), and section 7.B.(1)B.

Overall, advisers reported using 39 identified crypto custodians.[890] We classified these reported identified crypto custodians into four types.[891] Table 5 contains a breakdown of the different types of identified crypto custodians reported as well as the total number of advisers (and their total RAUM) who reported using them. The market for the custody of crypto assets for advisers counts a few large actors, with one custodian being reported by 76 advisers and another custodian being reported by 62 advisers. On the other hand, 22 of the 39 identified crypto custodians are reported by only one adviser. Figure 3 provides additional information on the distribution of the number of custodians being reported by different numbers of advisers.

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[890] Different advisers may report the same custodian under different names. We have grouped together custodian names that refer to the same legal entity and custodian type to the best of our abilities. Where related entities are custodians of different types, such as when there is a national trust bank and a foreign institution operated by a related entity, or another custodian type, we have counted those separately in each corresponding custodian type.

[891] Some of these custodians may not be qualified custodians. Advisers are required to report on Form ADV custodian information for all assets, as applicable, not only client ''funds and securities.'' Assets that are not client ''funds and securities'' are not covered by the Advisers Act custody rule, both current and as proposed, and therefore are not required to be maintained at a qualified custodian.

Table 5: Classification of identified crypto custodians reported by advisers

Custodian type	Number of custodians	Number of advisers[1]	Total RAUM ($ billion)
National trust bank	1	62	$1,798
State trust company	9[2]	102	$2,699
Foreign institution	14	23	$212
Other	15	39	$1,396

Source: Form ADV, Item F, section 5.k.(3), and section 7.B.(1)B.

Notes:

1. The total number of advisers is greater than 136 because some advisers report more than one identified crypto custodian. *See supra* Figure 2.
2. Of these nine State trust companies, four are no longer operating as State trust companies. Three have obtained a national trust charter, and one has been sold to a different entity. *See supra* footnote 828 and accompanying text; *see also* https://www.sec.gov/Archives/edgar/data/1820302/000162828025013861/a2025-0317xbkktxq424earnin.htm.

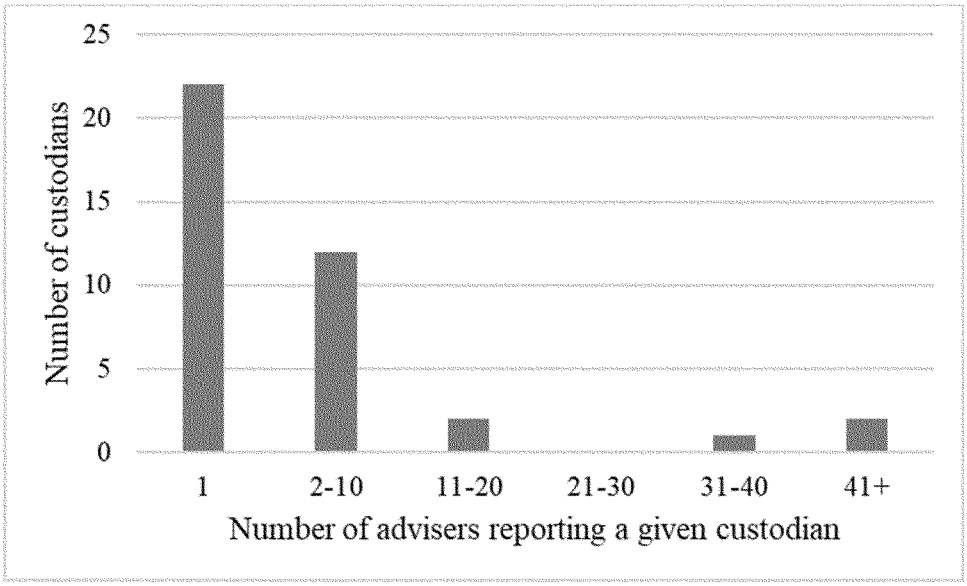


Figure 3: Distribution of the number of identified crypto custodians reported by different numbers of advisers. Source: Form ADV, Item F, section 5.k.(3), and section 7.B.(1)B.

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Using the same data, we also identified the private funds for which advisers reported using one or more of the identified crypto custodians on Form ADV. We found that 535 private funds (with a total gross asset value of $1,481.6 billion) use one or more identified crypto custodians, indicating that at least some of their holdings are crypto assets.[892] Of those private funds, the average and median gross asset values are $2.8 billion and $80.9 million, respectively. Table 6 below details these private funds by type and includes, for each type, the total number of funds, the total gross asset value of

[892] We do not have data on the holdings of these private funds and therefore do not know whether these crypto assets are ''funds or securities,'' which would make them subject to the Advisers Act custody rule, or what proportion of their holdings is in crypto assets. *See infra* section IV.F.

these funds, and the number of advisers reporting the funds.[893]

Table 6: Private funds using identified crypto custodians

Private Fund Type	Number of Funds	Total Gross Asset Value (billions)	Number of Registered Investment Advisers
Hedge Funds	139	$1,269.6	75
Private Equity Funds	138	$56.6	34
Securitized Asset Funds	2	$0.1	1
Venture Capital Funds	212	$128.7	46
Other Private Funds	44	$26.6	19
Total	535	$1,481.6	138[1]

Source: Section 7.B(1) of Schedule D of Form ADV.

Notes:

1. The total number of advisers is not equal to the sum of advisers per fund type because some advisers advise more than one type of fund.

C. Benefits and Costs

1. General Economic Considerations

(a) Permitted Custodians

An adviser's fiduciary duty requires the investment adviser to act in the best interests of its client at all times and to not subordinate its client's interest to its own.[894] This fiduciary duty extends to the entire relationship between the adviser and the client. Accordingly, when providing investment advice, including when managing clients' portfolios (including the portfolios of clients that are regulated funds), advisers' duty of care under the Advisers Act requires them to consider their clients' preferences regarding investment strategies and asset classes, to consider their clients' risk profiles, and to act in the best interests of their clients.

When implementing their clients' investment strategies, advisers can have custody of their clients' funds and securities and, when advisers have such custody,[895] they are generally required to maintain these funds and securities with qualified custodians for their clients that are not regulated funds.[896] Hence, when taking custody of such client assets, including crypto assets, advisers must be able to maintain those assets with custodians that have the ability to appropriately safeguard these assets, while enabling the adviser to act in the client's best interests. Similarly, the Investment Company Act custody rules generally require regulated funds to maintain their securities and similar investments with certain specified custodians.[897] While the adviser's fiduciary duty applies differently when the adviser's client is a regulated fund, an adviser performing activities related to the selection and oversight of a permitted custodian as part of its services to the regulated fund is required to act in the regulated fund's best interests, consistent with the regulated fund's investment objectives.[898]

One of the primary objectives associated with the custody of assets is to mitigate the different types of risks to which the assets are exposed, including (1) the misuse or misappropriation of the assets, (2) the loss of the assets due to the custodian's insolvency, and (3) the loss or theft of the assets resulting from the custodian's operational errors or deficiencies. Such incidents can result in significant costs for advisers and regulated funds as well as for their clients and investors.[899]

While the current custody rules apply to both traditional assets and crypto assets, custodial practices for these assets differ. Crypto assets are generated, issued, and transferred using a crypto network, on which ownership is also recorded.[900] Because of these features, crypto assets are subject to risks, including cybersecurity threats, that are different in nature or in magnitude from the risks to which

[893] We did not identify any liquidity funds or real estate funds using an identified crypto custodian.

[894] *See supra* sections II.A.1 and footnote 753.

[895] Not all advisers take custody of client assets. An investment adviser has custody of client funds and securities when the adviser, or its related person, holds, directly or indirectly, the client funds or securities, or has any authority to obtain possession of them. *See* rule 206(4)–2(d)(2); *supra* sections IV.B.2 and IV.B.4.a).

[896] *See* rules 206(4)–2(a) and 206(4)–2(b)(5); *supra* section IV.B.2.

[897] *See* Investment Company Act section 17(f); rules 17f–1 to 17f–7; *supra* section IV.B.2. The custody rules apply to funds and securities with respect to the Advisers Act and to securities and similar investments with respect to the Investment Company Act.

[898] *See supra* footnote 772.

[899] The effect on clients and investors depends on the extent to which custodians, advisers, and regulated funds compensate them for the assets that were stolen, lost, misused, or misappropriated.

[900] *See supra* sections I.A.1 and IV.B.1.

traditional assets are subject.[901] As a result, safeguarding crypto assets requires highly specialized technical knowledge, abilities, and infrastructure, including proficiency in cybersecurity practices.[902] Thus, offering robust crypto asset custodial services requires substantial resources and investments. In addition, certain technology and infrastructure required to safeguard crypto assets may be network- or asset-specific, limiting the degree to which economies of scale can offset the costs of providing crypto custodial services across different types of crypto assets.[903]

A firm looking to provide custodial services for crypto assets is therefore likely to face high fixed costs, including in the form of acquiring technical knowledge about the specific asset and the technology underlying it. High fixed costs often represent a barrier to entry into a market and can result in a relatively small number of suppliers.[904] Hence, even though, under the current custody rules, advisers and regulated funds can obtain custodial services from permitted custodians for traditional and crypto assets, the number of permitted custodians actually offering crypto asset custodial services remains generally small and we understand it to be zero for certain crypto assets.[905]

While barriers to entry are not necessarily a sign of market failure—and a small number of suppliers may be optimal in some contexts—the barriers described above may not result in the efficiencies that could justify a concentrated market. Because the technology and expertise required may be asset- or network-specific, a custodian's scale in one crypto asset may not materially reduce its cost of supporting the next, so concentration in this market may not yield meaningful efficiencies associated with economies of scale. The result is not only higher prices for custodial services but, potentially for certain crypto assets, no supply at any price. More competition in the market for crypto asset custodial services may therefore result in a wider variety of options, higher quality, and lower prices,[906] and could reduce the concentration risk that arises when a small number of custodians serve a large share of advisers and regulated funds.[907]

In addition, high barriers to entry can also make it difficult for advisers and regulated funds to find an appropriate custodian that fits their needs. For example, the available custodians may only support crypto assets with significant perceived demand,[908] or they may be unable or unwilling to provide custodial services that allow for the investor's or regulated fund's participation in certain rights or in certain crypto-native activities (*e.g.,* receiving airdropped assets).[909] This could prevent advisers from offering crypto-related services for which there would be demand, or from implementing their investment advice in the best interests of their clients, consistent with the client's investment objectives.[910] It could also prevent regulated funds from investing in crypto assets or from participating in associated rights or activities that would otherwise align with their investment strategy.

One of the ways in which the market has responded to these challenges is with the emergence of certain alternative custodians, including some State trust companies.[911] It is our understanding that some advisers, and possibly some regulated funds, have used or are currently using State trust companies as custodians because those State trust companies meet the definition of bank under the applicable current custody rules.[912] However, determining whether a State trust company is a bank for purposes of the custody rules requires additional legal and factual analysis from advisers and regulated funds, and the outcome of such analysis may not be clear.[913] In light of this, several crypto custodians, some of which are or previously were State trust companies, have recently applied for and, in some cases, obtained a national trust bank charter,[914] facilitating their use as custodians under the current custody rules by advisers and regulated funds. However, this outcome may not be economically optimal because applying for a national trust bank charter and operating an entity as a national trust bank, including complying with the applicable regulations, involves significant costs, which could be passed on to advisers,

[901] For example, the bearer nature of the private keys used to transfer crypto assets leads to heightened challenges of recovering many types of crypto assets when lost or stolen as opposed to legal and beneficial ownership structures in traditional assets.

[902] For example, custodial practices for crypto assets typically include secure key governance and management (*i.e.,* choosing the appropriate type of wallet) and interaction with distributed ledger technology networks. Additionally, crypto asset custodians often implement safety protocols such as multi-signature or multi-party computation to bolster the security of clients' assets. *See supra* section IV.B.1. *See also* the FRB Statement, *supra* footnote 196, for a discussion of certain risk-management considerations for banking organizations offering custodial services for crypto assets.

[903] *See, e.g.,* TDC Comment Letter I, *supra* footnote 38 (stating that ''every blockchain protocol generally requires the development of a custom technology build, which takes a significant amount of engineering work (often taking two to three months), by any financial institution agreeing to provide custody services for the given asset/token''). However, entities specializing in crypto asset custody services may nevertheless face lower fixed costs when offering services for a new crypto asset or network compared to firms that specialize in traditional asset custody and that are looking to enter the market of crypto asset custody services.

[904] These challenges can also result in asymmetric information problems, which can lead to principal-agent problems. *See infra* footnote 921 and accompanying text.

[905] *See supra* section I.A.2.

[906] In addition, it is important to distinguish between a lack of available custodians that arises naturally from economies of scale (where high fixed costs make it unprofitable for firms to enter a market where demand is small) and a lack of available custodians that results from additional barriers, such as regulatory requirements that restrict entry. Under the current custody rules, regulatory constraints such as the requirement to meet the definition of ''bank'' for State trust companies may be limiting entry beyond what would be economically efficient.

[907] The integrity of a distributed ledger technology network depends on its decentralized nature, which prevents any single entity, or a small number of entities, from manipulating network operations for their own benefit, for example by reversing transactions. *See, e.g., https://corporatefinanceinstitute.com/resources/cryptocurrency/what-is-a-51-attack/.* In addition, an asset held in a concentrated group of custodians may be at higher risk of cybersecurity incidents, which could create systemic vulnerabilities and compromise the entire blockchain. *See, e.g.,* Dechert Comment Letter (arguing for measures to avoid ''the concentration of crypto assets in the hands of a few custodians, so that the failure of any one custodian or a cybersecurity breach at any one custodian is less likely to result in systemic consequences for the crypto asset ecosystem as a whole'').

[908] Hence, there may be no or a very limited number of custodians available for crypto assets for which there is low demand or for newly-issued assets, for which demand is more likely to be uncertain. *See supra* section I.A.2. *See also, e.g.,* TDC Comment Letter I, *supra* footnote 38. Custodians that would implement custody of client assets would seek to recover their costs through fees charged to their clients, and demand from these clients at those fee levels should be sufficient to enable custodians to recover their costs.

[909] *See supra* text accompanying footnote 27; section II.A.1.d). *See also* Blockchain Association Comment Letter II (stating that ''non-crypto asset-native custodians often are reluctant to retrieve 'forked' or 'airdropped' assets'').

[910] *See supra* section IV.B.1. For example, when staking their assets, users typically earn rewards. *See supra* footnote 729.

[911] *See supra* section I.A.2. These alternative custodians, by specializing in crypto assets, may also face lower costs when deciding to extend their services to additional assets or networks. *See supra* footnote 903 and accompanying text. This would make it more profitable for them to offer a wider variety of services.

[912] In addition, it is possible that some advisers or regulated funds use a State trust company that does not meet the definition of ''bank'' as custodian for crypto assets. *See supra* footnotes 50 (discussing the 2025 State Trust Company NAL) and 877 and accompanying text.

[913] *See supra* section I.A.2. It is also possible that some State trust companies do not meet the definition of bank under the custody rules. These State trust companies are not permitted custodians under the current custody rules.

[914] *See supra* footnote 877 and accompanying text.

regulated funds, and their respective clients and investors.[915]

Despite this market development, permitted custodians and State trust companies that would become permitted custodians under the proposed State trust company rules may not currently offer custodian services for nascent or novel crypto assets. One potential solution to this lack of available custodians is for advisers to self-custody their clients' crypto assets (including the assets of regulated fund clients). Advisers conducting extensive due diligence of the crypto asset may develop expertise on the functioning and operation of the crypto network, allowing them to be well-positioned to securely self-custody such a crypto asset and potentially to face lower costs of doing so compared to permitted custodians looking to provide custody services for those novel or nascent crypto assets. They may also be well-positioned to assess potential demand for these assets.[916] However, self-custody increases the potential for conflicts of interest, which could result in an increased risk of misuse or misappropriation of the asset by the adviser.[917] The nature of the distributed ledger technology also affects this risk. On the one hand, distributed ledger technology could mitigate custodial risk resulting from conflicts of interest by enabling real-time verification of crypto asset transactions.[918] On the other hand, because ownership is recorded pseudo-anonymously on the ledger, tracing and recovering stolen or misappropriated assets can be significantly more difficult than with traditional assets.

(b) Safeguarding Requirements

Because safeguarding crypto assets often requires highly specialized technical knowledge and abilities,[919] custodians of crypto assets are likely to be entities that have developed deep knowledge of the field and of the technology behind it. While this knowledge can help them safeguard crypto assets more effectively, it also creates an information asymmetry, where the custodian has more information than the adviser, client, regulated fund, or regulated fund investor about the technical details of the custodial services provided. Further, a custodian could, in theory, have incentives to put in place controls that are less costly, but also less effective, than what was agreed at the time when the custodian was selected by the adviser or regulated fund.[920] Thus, a principal-agent problem arises between the custodian and the adviser or regulated fund: the custodian may implement controls that are less costly but also less effective than anticipated, and the adviser or regulated fund may lack the technical knowledge to detect this deficiency.[921]

This problem can be particularly acute in the case of State trust company custodians. Most currently permitted custodians are regulated at the Federal level,[922] and Federal regulators have issued statements on the crypto asset custodial activities performed by the entities they regulate.[923] To the extent that these entities choose to follow the guidance or views outlined in these statements, these statements provide useful information to advisers and regulated funds on the type of safeguarding measures put in place by these entities. While some States have established legal frameworks on the custody of crypto assets by State trust companies, many have not, and the requirements are not uniform across jurisdictions.[924] Hence, the information asymmetry between custodians and advisers and regulated funds is likely to be greater when the custodians are State trust companies.

These challenges could result in an inefficient allocation of resources since they could result in advisers and regulated funds selecting State trust company custodians that they would not have chosen had they been able to effectively understand and monitor the work performed by these custodians. In the case of self-custody, this could result in investors choosing advisers or regulated funds they would similarly not have chosen.[925] At a wider scale, this can prevent the market from excluding custodians that do not fully comply with the custodial agreements they have with advisers or their clients, including regulated funds.[926]

Even in cases where the custodian is not the adviser (including a regulated fund's adviser) or a related person of the adviser, asymmetric information can also pose challenges in the relationship between an adviser and its clients and between a regulated fund and its investors, which can result in an

[915] The organizers of a national bank or Federal savings association must present a business plan or operating plan that adequately addresses a number of statutory and policy considerations, such as the ability and experience of its management, the sufficiency of its capital for the volume and type of business, its expectation of profitability, and the safety and soundness of operations. *See* 12 CFR 5.20(e), (f), (h). The application will be reviewed for compliance with applicable banking laws and regulations, such as sections 23A and 23B of the Federal Reserve Act, 12 U.S.C. 371c, c–1, and Regulation W, 12 CFR part 223. *See, e.g.,* BitGo Trust Co. Dec. 12, 2025.

[916] For example, an adviser could know that some of its clients will invest in the asset after it launches.

[917] *See supra* section I.A. An adviser is less likely to engage in unauthorized trading in a client's account when the adviser knows that the client will be receiving from the custodian an account statement detailing any trading activity. To mitigate the risks associated with self-custody, the current custody rules include additional requirements in the instances where the custodian is the adviser or a related party of the adviser. *See, e.g.,* rule 206(4)–2(a)(6).

[918] For example, records recorded onchain, particularly on public networks, can provide investors with low-cost options to verify the transaction history and could facilitate the identification of potential instances of misuse or misappropriation by the adviser.

[919] *See supra* footnotes 701 and 903 and accompanying text.

[920] When the adviser's client is not a regulated fund, the custodial services agreement is typically between the custodian and the adviser's client. Nevertheless, the Advisers Act custody rule imposes requirements on the adviser. It is also part of the adviser's fiduciary duty, which includes the entire relationship between the adviser and the client, to select and monitor a custodian that will act in the best interests of its client. *See supra* footnotes 121, 753, and 772 and accompanying text. Hence, even when the agreement does not involve the adviser directly, we expect that the adviser would, in many cases, negotiate the terms of the agreement on behalf of its client.

[921] A principal-agent problem happens when the principal (here, the adviser, client, or regulated fund) comes into an agreement with the agent (the custodian) regarding the provision of services (the custody of crypto assets), but the principal's and the agent's incentives are not perfectly aligned. This situation can result in the agent taking actions that are different from those it agreed to take in its agreement with the principal, for example to increase its own profit. Under perfect information, that is, when the principal is able to fully observe the agent's actions, the terms of the agreement can generally be enforced. For example, the principal can withhold payment until the terms of the agreement have been fully reached, which significantly mitigates the principal-agent problem. Under asymmetric information, however, the principal is unable to fully observe the agent's actions and may therefore be unable to enforce the terms of the agreement. The costs associated with such conflict are referred to as agency costs. *See, e.g.,* Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure,* 3 J. Fin. Econ. 305 (1976).

[922] *See supra* section IV.B.2.d).

[923] For example, the Interagency Crypto Statement applies to national banks, Federal savings association, Federal branches and agencies of foreign banks, and State-chartered banks, among others. *See supra* footnote 876 and accompanying text.

[924] *See supra* section IV.B.2.e). In addition, because requirements under State law can vary significantly across States, this can make it more challenging for advisers and regulated funds to be familiar with them.

[925] The asymmetric information could also be particularly acute in the case of self-custody by the adviser, since there is currently no regulatory framework covering advisers' custodial activities. Advisers are currently permitted to maintain client assets only if they or a related person meets the definition of qualified custodian. *See supra* section IV.B.2.a).

[926] Under perfect information, these custodians would either lose their clients and therefore stop existing, or they would be forced to charge a price that reflects the true quality of the services that they provide.

additional inefficiency in the allocation of resources. When choosing an adviser or a regulated fund, an investor may have limited access to information on how the adviser or regulated fund chooses the custodian, including the weight that is placed on the proper safeguarding of the assets compared to the costs of using a specific custodian, for example.[927] An investor may also have limited visibility and limited ability to observe or independently monitor the adviser's or regulated fund's oversight of the custodial services provided.[928] Further, the adviser or regulated fund could, in theory, have incentives to choose a custodian that provides a level of safeguarding services that may be less robust than what the investor anticipates in order to reduce its costs. Hence, there is also a principal-agent problem between the adviser and its clients or the regulated fund and its investors.[929] This could result in investors choosing advisers or regulated funds that they would not have chosen had they had better information.

In the next sub-sections, we describe the benefits and costs associated with the proposed rules and amendments. We discuss how the proposed self-custody rules and State trust company rules would help alleviate the economic challenges resulting from the small number of available custodians for crypto assets.[930] We also discuss how the conditions and requirements under these proposed rules would help alleviate the principal-agent problems described here.

The sections below discuss different costs that would or could be incurred by advisers and regulated funds, including costs that could be passed on to them from third parties such as custodians. We expect that some of these costs would be passed on to advisory clients or regulated funds' investors, for example via higher fees or expenses. We expect that the extent of this passthrough would depend on factors such as the size of the client or investor (institutional investors may have more bargaining power and be better able to negotiate smaller fees or avoid fee increases) or the type of contract in place between the adviser and the client (for example, such contract could include fixed fees or variable fees).

2. Adviser Self-Custody

The proposed adviser self-custody rule would allow advisers to hold client crypto assets for which they provide investment advice without maintaining them at a qualified custodian, under certain conditions designed to protect these assets. These conditions include a written determination by the adviser that a qualified custodian is not available to maintain the crypto assets, a requirement that the adviser have appropriate safeguarding expertise, and the adoption, implementation, and maintenance by the adviser of systems and processes necessary to safeguard the crypto asset against loss, theft, misuse, and misappropriation.[931]

(a) General Considerations

An adviser with custody of client funds or securities is generally required to maintain these assets at a qualified custodian under the Advisers Act custody rule.[932] Although there has been an increase in the number of qualified custodians offering custodial services for crypto assets,[933] and we anticipate this number to continue growing, it remains possible that certain crypto assets lack qualified custodians.[934] For example, qualified custodians may not be able to provide custodial services for all new crypto assets or may decide not to support a particular crypto asset for business or other reasons.[935] Thus, some advisers may currently be unable to provide some crypto-related advisory services to their clients. However, advisers may be well positioned to securely maintain some of the crypto assets and/or to do so on a timelier basis than a qualified custodian.[936] In addition, advisers conducting extensive due diligence of the crypto asset may develop expertise on the functioning and operation of the associated crypto network, which may allow them to better assess the potential demand for those assets and also to incur lower costs to custody them.[937] The proposed adviser self-custody rule would allow advisers to hold client crypto assets for which they provide investment advice without maintaining them at a qualified custodian,[938] under certain conditions that are designed to protect these assets.[939]

The proposed adviser self-custody rule would benefit investors by enhancing their access to advisory services and investment options for crypto assets for which a qualified custodian is not available. For example, the proposed adviser self-custody rule would allow advisers to offer investments in nascent crypto assets upon or shortly after launch.[940] To the extent that advisers would offer a greater variety of strategies involving

[927] An investor typically knows the name of the custodian chosen by the adviser or regulated fund, either because the custodial agreement is between the client and the custodian or through other disclosures such as Form N–CEN or Form ADV.

[928] While an oversight failure can result in costs to an adviser, including a regulated fund's adviser, such as reputational costs or fiduciary liabilities, an adviser's oversight activities are at least partly unobservable to the adviser's clients or regulated fund's investors.

[929] The magnitude of this inefficiency is likely to differ across different types of clients. For example, it is likely to be lower for the adviser clients or regulated fund investors that are regulated funds, private funds, or institutional investors such as pension plans since these entities are likely to have a higher ability to observe or independently monitor the adviser's or regulated fund's oversight of the custodial services provided by the custodian. *See supra* sections IV.B.3.a).

[930] *See infra* sections IV.C.2, IV.C.3, and IV.C.4. Other proposed amendments, such as the proposed amendments to rule 17f–1 to permit regulated funds to use any broker-dealer registered with the Commission as custodians, where the broker-dealer's custody of the securities or similar investments is subject to the requirements of rule 15c3–3 under the Exchange Act, could also alleviate these challenges. *See infra* section IV.C.5.b).

[931] *See supra* section II.A. The specific conditions are described in more detail in the sections below.

[932] Different custody rules apply when the client is a regulated fund. *See supra* section IV.B.2.

[933] *See supra* footnotes 877–879 and accompanying text.

[934] *See supra* section I.A.1.

[935] *See supra* section II.A.1. These points could continue to apply even if, as proposed, the set of qualified custodians were expanded to include State trust companies.

[936] *See supra* section IV.C.1.

[937] *See supra* footnote 916 and accompanying text.

[938] An adviser that holds any key materials associated with its client's crypto asset would have self-custody of the crypto asset and would thus be required to maintain such key materials according to the proposed adviser self-custody rule. *See* proposed rule 223–1(d)(16) for the proposed definition of ''self-custody'' and proposed rule 223–1(b)(7); *supra* section II.A. However, if the adviser maintains clients' crypto assets through its related person acting in the capacity of a qualified custodian, it would not need to comply with the proposed adviser self-custody rule, but instead with proposed rule 223–1(a)(6). *See supra* section II.A.1.c).

[939] Although regulated funds are generally excepted from the application of the Advisers Act custody rule, ''client'' for purposes of the proposed adviser self-custody rule would include regulated funds. Under the proposed fund self-custody rule, regulated funds would be permitted to place and maintain their crypto assets with their adviser if the adviser complies with the proposed adviser self-custody rule and if the fund complies with the additional requirements in the proposed fund self-custody rule. *See supra* section II.B; proposed rule 17f–9. *See infra* section IV.C.2 for a discussion of the benefits and costs associated with the proposed fund self-custody rule. The proposed rules also include new definitions and amendments to existing definitions of terms in connection with the proposed self-custody rules. *See* proposed rules 223–1(d)(1), (d)(3), (d)(4), (d)(5), (d)(6)(i), (d)(10), and (d)(16).

[940] Many crypto assets are not widely known at launch. After an asset launches, as investors learn about the characteristics of the asset, demand can increase. This can result in an increase in the value of the asset, providing potentially higher returns to early investors. *See, e.g., Decenturalized Dog, HYPE Token Gains Over 200% in Value, Reaches $12 Billion Fully Diluted Valuation After Launch, Crypto News, https://coinmarketcap.com/academy/article/hype-token-gains-over-200percent-in-value-reaches-dollar12-billion-fully-diluted-valuation-after-launch* (last visited May 26, 2026).

crypto assets under the proposed adviser self-custody rule, this may further benefit investors through increased diversification.[941]

The conditions under the proposed adviser self-custody rule would act as guardrails when advisers self-custody client assets and would benefit investors by mitigating the custodial risks of self-custody. Specifically, because of the potential for conflicts of interest that arises when the adviser is also the custodian, self-custody of clients' assets may result in an elevated risk of misuse or misappropriation compared to custody by an independent party.[942] Requirements that facilitate independent oversight, such as the proposed internal control report and recordkeeping requirements, as well as some of the safeguarding requirements, such as the proposed joint authorization requirement, would mitigate this risk. Moreover, some of the proposed requirements, such as those related to the adviser's safeguarding expertise and systems and to cybersecurity, would mitigate operational risks that could result from self-custody, as providing custodial services is beyond the scope of advisers' core business activities. Hence, we expect that these provisions would help reduce the risk of permanent loss of crypto assets in self-custody.[943]

We expect that the benefits of permitting self-custody would vary depending on the investment strategies offered by an adviser. For instance, advisers of clients whose investment strategies do not involve crypto assets or involve crypto assets for which qualified custodians are available are expected to see no benefits other than having the option to use self-custody for investments in crypto assets in the future.[944] Conversely, advisers of clients whose investment strategies involve exposure to crypto assets for which no qualified custodian is available, as well as these clients, would benefit more from the proposed adviser self-custody rule.[945]

The benefits could also vary depending on the size of an adviser. Having expertise, systems, and controls to self-custody crypto assets, as would be required under the proposed rule, is costly; an adviser may reasonably conclude that it does not have the resources to take advantage of the proposed rule to adequately safeguard client crypto assets.[946] Thus, smaller advisers may elect not to self-custody crypto assets.[947] Consequently, their clients would not benefit from the proposed adviser self-custody rule. Conversely, larger advisers could have adequate resources to meet the proposed safeguarding requirements and be more likely to offer self-custody to clients. The clients of such advisers would be more likely to benefit from the proposed adviser self-custody rule.

Advisers that would implement self-custody of client assets would incur direct costs to comply with the proposed adviser self-custody rule, most of which would likely be passed on to their clients and thus be reflected in fees or expenses.[948] We estimate certain one-time compliance costs of $173,499 and certain recurring annual compliance costs of $57,833 per adviser that would have self-custody of client crypto assets.[949] These estimates include costs that are associated with the adviser obtaining information or delivering communications. They also include costs associated with the proposed financial asset election requirement.[950]

Compliance costs would likely vary based on assets managed by advisers. Generally, advisers with more crypto assets and more types of crypto assets in self-custody would incur higher costs in absolute terms as the proposed requirements would apply to each crypto asset.[951] However, the cost per dollar of assets under management (*i.e.,* the total cost of self-custody divided by the adviser's RAUM, ''per-dollar costs'') may be lower for large advisers. First, some costs, such as those associated with the QC determination and implementation of safeguarding systems and controls, could be distributed among a large client base, reducing the associated compliance per-dollar costs. Additionally, economies of scale could sometimes be achieved across crypto assets. For example, although many crypto assets have unique characteristics and require specific technology or infrastructure, certain aspects of safeguarding systems and cybersecurity measures may apply to multiple types of crypto assets. This means that the marginal cost to self-custody additional types of crypto assets may decrease as advisers provide self-custody for a larger set of crypto assets. Furthermore, costs may vary depending on each adviser's market power and their ability to negotiate with third-party service providers that facilitate self-custody related activities. Large advisers may be able to obtain better terms in these contract negotiations. We also anticipate that some of the compliance costs and other economic costs would likely be borne at the family level (*i.e.,* divided between the entities that are part of the family), so advisers and

[941] We expect any such diversification benefits to be limited, however. While early investments in nascent tokens may present opportunities for returns, these assets typically have limited circulating supply. As a result, these tokens may not be readily tradable or widely accessible for investment strategies that seek diversification benefits. Moreover, to the extent the prices of these nascent tokens become more correlated with broader crypto asset markets or with other risk assets during periods of market stress, any diversification benefits they may appear to provide in normal market conditions could be substantially reduced at the times when investors most need them. *See* Roshan Iyer & Adina Popescu, *New Evidence on Spillovers Between Crypto Assets and Financial Markets* (IMF Working Paper No. WP/2023/213, 2023), *available at https://www.elibrary.imf.org/view/journals/001/2023/213/article-A001-en.xml.*

[942] *See supra* section I.A and footnote 917 and accompanying text for discussions of these conflicts of interest.

[943] Many crypto asset transactions are irreversible, which makes the recovery of lost assets more challenging.

[944] The option to self-custody could still benefit investors to the extent that exposure to crypto assets for which there is no qualified custodian would be considered in weighing different investment options.

[945] For example, venture capital funds may be more likely to be investing in early-stage crypto projects associated with crypto assets for which there are no qualified custodians available.

[946] *See supra* section II.A.3.

[947] For example, the proposed adviser self-custody rule includes requirements on safeguarding systems, cybersecurity, and internal control reports, which may require a high setup cost. For example, operating (or, where service providers are engaged, overseeing) systems for key management, joint authorization of transactions, and segregation of client crypto assets requires proficiency in crypto technology that might be beyond advisers' customary expertise. In such cases, it may not be economical for advisers to invest additional resources to provide self-custody services. Furthermore, smaller advisers may only have limited amounts of assets under management that could be invested in crypto assets that would require self-custody and therefore may not have a financial incentive to invest in safeguarding systems that would meet the requirements under the proposed rule.

[948] In the cases where these clients themselves have investors, for example clients that are private investment vehicles, these costs could be further passed on to the clients' investors.

[949] We estimate that one-time compliance costs would consist of 300 burden hours at $578.33 per hour (300 hours × $578.33 per hour = $173,499) and that recurring annual compliance costs would consist of 100 burden hours at $578.33 per hour (100 hours × $578.33 per hour = $57,833). *See infra* section V.B.

[950] *See infra* section IV.C.2.h). Hence, the estimates do not include all of the costs an adviser would incur. For example, they do not include all of the costs associated with an adviser acquiring new technology, software, hardware, and other associated systems and processes as part of its compliance with the proposed requirements. We expect these costs to be economically significant for advisers. The cost of obtaining an internal control report is separately discussed in section IV.C.2.f).

[951] For example, the proposed rule would require the adviser to have safeguarding expertise, including the appropriate technology, software, hardware, and other associated systems and processes around their use, for each crypto asset in self-custody.

funds belonging to a large family would incur lower costs.[952]

There may also be some indirect costs to investors related to the proposed adviser self-custody rule. First, despite the protective conditions we propose, because custodial services extend beyond the services usually provided by advisers, the operational risks of adviser self-custody could still be elevated, which could potentially lead to the loss or theft of clients' crypto assets.[953] Second, the digital nature of crypto assets and networks exacerbates the negative impact of potential vulnerabilities in custodial infrastructure and associated cybersecurity risks, which could result in significant financial loss following from a cybersecurity incident.[954] Third, there is inherent heightened misuse or misappropriation risk when the adviser directly controls client assets that follows from the potential for conflicts of interest.[955] To the extent that, as a result of these factors, an adviser's safeguarding systems are less robust than those of a qualified custodian that offers custodial services for similar crypto assets, the proposed adviser self-custody rule could result in indirect costs to some investors due to the heightened custodial risks.

Several conditions of the proposed adviser self-custody rule would require an adviser to assess and document its own safeguarding capabilities,[956] raising the question whether those conditions would reliably distinguish advisers capable of safeguarding crypto assets from those that are not. The proposed rule's framework would not rely on self-assessment alone. An independent public accountant would evaluate the design and effectiveness of the adviser's controls;[957] joint authorization would help prevent one person from effecting a transaction;[958] client-specific addresses and account statements would identify where assets are held;[959] a regulated fund's board would make and review specified determinations;[960] and the adviser's and, if applicable, regulated fund's determinations and records would be subject to Commission examination.[961] The conditions would also impose largely fixed costs,[962] which, together with the proposed QC determination requirement, could limit self-custody to advisers with sufficient scale in crypto assets for which no permitted custodian is available. These costs, however, do not directly establish safeguarding competence. Clients could also verify balances and transactions at disclosed crypto asset addresses, reducing information asymmetry, although such verification would not establish that all client assets are held at those addresses, that key materials remain secure, or that the assets are free of undisclosed encumbrances.

As an adviser would only be permitted to rely on the proposed adviser self-custody rule when it has a reasonable basis, after due inquiry, for believing that no qualified custodian will maintain the crypto asset, the degree to which advisers would rely on the proposed rule may decrease over time. Specifically, over time, the number of qualified custodians offering custodial services for a wider range of crypto assets is likely to increase.[963] As crypto assets held in self-custody by the adviser increasingly would no longer meet the proposed QC determination requirement, the degree to which advisers would rely on the adviser self-custody rule would diminish. In addition, advisers could have self-custody of only a small number of crypto assets, or could be able to have self-custody for only a very short period of time. Furthermore, an adviser would be permitted to rely on the proposed adviser self-custody rule only with respect to crypto assets for which they provide investment advice, preventing them from serving primarily as custodians of crypto assets, rather than providers of investment advice. To the extent that costs associated with the requirements of the proposed adviser self-custody rule are largely fixed, this could make self-custody uneconomical for many advisers. Therefore, advisers may be unwilling to incur such costs and may choose not to have self-custody of crypto assets. This would decrease the benefits and costs associated with the proposed adviser self-custody rule.[964]

(b) Scope of Activity Subject to the Proposed Adviser Self-Custody Rule

(1) Definition of Self-Custody

The proposed rule would add a new term ''self-custody'' to mean, with respect to a client's crypto asset, possession of any portion of the crypto asset's key materials.[965] An adviser with self-custody of clients' crypto assets would be required to comply with the self-custody rule with respect to such crypto assets only if the adviser actually possesses (rather than merely having the authority to obtain possession of) the key materials to the crypto asset.[966]

Investors would benefit from the proposed definition of self-custody as it would help ensure safekeeping of all the key materials associated with a crypto asset. Loss of any portion of private keys could result in permanent loss of a client's crypto assets. Therefore, the application of the adviser self-custody rule when an adviser holds even any portion of the key materials would mitigate the associated risks because advisers would be required to comply with the proposed protective conditions.

The proposed conditions to safeguard clients' crypto assets are important as transactions are generally irreversible. In addition, as advisers' primary business area is not custody, the required conditions associated with the safeguarding systems and cybersecurity practices may differ from the practices they have adopted or would have adopted otherwise. As a result, these conditions would help ensure protection of clients' crypto assets when these assets are self-custodied by advisers.

Advisers having self-custody of client crypto assets would be required to comply with the requirements under the proposed adviser self-custody rule and would incur compliance costs

[952] *See supra* section IV.B.3.b).

[953] The conditions outlined in the proposed adviser self-custody rule are principles-based and are consistent with the current best practices based on our understanding and feedback from industry outreach; nevertheless, the custodial risks for crypto assets remain significant.

[954] For example, according to an industry report, over $3.4 billion was stolen through wallet compromises and other attacks on private key infrastructure in 2025. *See* Chainalysis, North Korea Drives Record $2 Billion Crypto Theft Year, Pushing All-Time Total to $6.75 Billion (Dec. 18, 2025), *available at https://www.chainalysis.com/blog/crypto-hacking-stolen-funds-2026/*. It is possible, however, that qualified custodians face similar technical and operational challenges or face higher risks of cybersecurity attack compared to advisers who would self-custody client assets under the proposed rule.

[955] *See supra* section I.A and footnote 917 and accompanying text for discussions of these conflicts of interest. In addition, as in the case of third-party custody, there are agency costs that follow from the investor's inability to fully observe the custodian's safeguarding measures. *See supra* footnote 921 and accompanying text. These agency costs could result in the assets being less well protected.

[956] *See infra* section IV.C.2.e).

[957] *See infra* section IV.C.2.f).

[958] *See infra* section IV.C.2.e).

[959] *See infra* sections IV.C.2.e) and IV.C.2.g).

[960] *See infra* section IV.C.3.

[961] *See infra* sections IV.C.7.a)(1) and IV.C.7.b)(1).

[962] Some of these costs are estimated at $173,499 initially and $433,833 annually per adviser, including $376,000 annually for the internal control report. *See supra* footnote 949 and accompanying text and infra footnote 1000 and accompanying text.

[963] *See supra* section IV.B.4.b) for an analysis of the crypto custodians used by advisers, as reported on Form ADV.

[964] *See infra* section IV.C.2.d) for additional discussion of the benefits and costs associated with the QC determination provision of the proposed rule.

[965] *See* proposed rule 223–1(d)(16).

[966] *See* proposed rule 223–1(d)(16).

associated with these requirements, as discussed below.[967]

(2) Use of Service Providers

The proposed adviser self-custody rule generally would not prevent advisers from engaging a third-party or related person service provider to support its effectuating of crypto asset self-custody and to help administer the required safeguards under the proposed rule, provided the adviser exercises appropriate oversight and continues to comply with the proposed rule's substantive requirements.

Using service providers could benefit advisers and their clients. Advisers typically do not specialize in custody operations, and they may need to or choose to engage service providers to comply with the proposed self-custody requirements. Alternatively, advisers may choose to develop in-house systems instead of retaining such providers. However, the development of these safeguarding systems may be prohibitively expensive and may not provide the same level of safeguarding as those offered by the specialized service providers since custody is not advisers' primary area of business. The proposed guidance would therefore allow the use of service providers while specifying under which conditions advisers would be permitted to use such service providers, thereby allowing advisers to comply with the proposed adviser self-custody rule more efficiently by reducing cost and helping ensure the safeguarding of clients' crypto assets.[968]

Advisers that engage with service providers to have self-custody of crypto assets may incur costs associated with ensuring that the service providers do not have the ability to access the key materials. For example, an adviser may incur costs related to due diligence before engaging the service provider and to subsequent ongoing oversight and monitoring. While these providers generally would assist with managing key materials and developing security systems but would not be permitted to have access to the key materials, a lack of adviser oversight could create safeguarding risks.

(c) Airdropped Crypto Assets

An adviser holding a client's, including a regulated fund's, crypto asset at a permitted custodian or in self-custody under the proposed self-custody rules may receive a new crypto asset through an airdrop with little or no advance notice. Permitted custodians may not immediately offer custodial services for airdropped crypto assets or immediate compliance with the proposed self-custody rules' requirements with respect to a distributed crypto asset received with little or no advance notice may not be possible.[969] In these cases, advisers may need to have self-custody of these airdropped crypto assets without having had sufficient time to comply with the proposed custody rules' requirements.

The proposed Advisers Act custody rule and proposed rule 17f–9 under the Investment Company Act each would include a provision for such distributed crypto assets that would deem the receipt of airdropped crypto assets to not be in violation of the Advisers Act custody rule and section 17(f) of the Investment Company Act and the rules thereunder, as applicable, provided that, as soon as reasonably practicable, the adviser or regulated fund either (i) comes into compliance with the requirements of the proposed adviser self-custody rule and proposed rule 17f–9(b) under the Investment Company Act, as applicable, with respect to such distributed crypto asset; or (ii) places and maintains the distributed crypto asset at a permitted custodian.[970]

Advisory clients, including regulated funds, as well as regulated funds' investors would benefit from the proposed airdrop provisions as advisers could use the airdropped crypto assets to, for instance, sell them and generate a profit for their clients.[971] Clients, advisers, and regulated fund investors would also benefit from the proposed provision for airdropped crypto assets as a reasonably practicable compliance timeline would provide a grace period to comply with the Advisers Act and Investment Company Act custody rules, as applicable, and thus to adequately safeguard the airdropped crypto assets by either holding them in their self-custody or placing them at a permitted custodian.

While this flexibility would provide benefits for investors, airdropped crypto assets could be subject to increased custodial risks until the adviser and regulated fund, as applicable, are fully in compliance with the proposed self-custody rules' requirements. Custodial risks—including risk of loss, theft, misuse, or misappropriation—could become more pronounced when an adviser's actions to safeguard client assets are delayed. Additionally, advisory clients, including regulated funds, who receive high-value airdropped crypto assets could be exposed to increased risks.

(d) Qualified Custodian Determination

To be permitted to self-custody clients' crypto assets, advisers would be required to, among other things, have a reasonable basis, after due inquiry, for believing that no qualified custodian will maintain the crypto asset.[972] Advisers would have to make this determination in writing, prior to taking self-custody of each crypto asset, and no less frequently than quarterly thereafter.[973]

The proposed QC determination requirements would benefit investors by limiting the type of crypto assets that are eligible for self-custody and specifying the circumstances under which self-custody is permitted. Maintaining assets with a qualified custodian is a way to mitigate custodial risk and adviser self-custody carries inherently heightened risks due to a lack of independent oversight when the adviser has the ability to change a client's ownership and possession of assets.[974] Therefore, the proposed QC determination requirements would benefit investors by helping ensure that client assets would be maintained with a qualified custodian that has the capability to safeguard the client's assets whenever such qualified custodian is reasonably determined to be available.

Because the crypto custodial service market is rapidly evolving, we expect the availability of qualified custodians and the services they provide to change as well. As a result, the quarterly determination would protect investors by ensuring that advisers would maintain crypto assets with an available qualified custodian following their next QC reassessment, limiting the period of self-custody to no more than one quarter after a qualified custodian becomes available.[975]

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[967] For a detailed discussion of costs, *see infra* sections IV.C.2.d), IV.C.2.e), and IV.C.2.f).

[968] *See supra* section II.A.1.c)(1).

[969] *See supra* section II.A.1.d).

[970] *See* proposed rule 223–1(b)(11); proposed rule 17f–9(c). *See also supra* section II.A.1.d).

[971] ''Distributed crypto asset'' is defined as a crypto asset received as a distribution for no or nominal consideration in connection, or as a result of activity associated, with a client's crypto asset in the adviser's custody. *See* proposed rule 223–1(d)(7); proposed rule 17f–9(d).

[972] For purposes of any QC determination made with respect to an account of a regulated fund, ''qualified custodian'' would mean a bank or other person authorized to hold assets for the regulated fund under section 17(f) of the Investment Company Act (15 U.S.C. 80a–17(f)) or the rules thereunder.

[973] *See* proposed rule 223–1(b)(7)(i) and related proposed amendments to rule 204–2(a) under the Advisers Act.

[974] *See supra* section I.A. *See also supra* footnote 917 and accompanying text.

[975] An adviser would be required to place the crypto assets with a qualified custodian as soon as reasonably practicable after determining that a

Advisers would also incur costs related to the proposed initial and quarterly determinations.[976] Specifically, an adviser would incur costs when conducting an analysis to obtain a reasonably comprehensive understanding of the marketplace of custody services for each crypto asset it self-custodies or intends to self-custody on behalf of its client. These costs may vary based on factors such as the type of assets, the diversity of assets, the holding period of these assets, and investment strategies. For instance, an adviser holding relatively homogenous crypto assets may only have to monitor a single market for the availability of custodial services. In contrast, an adviser managing a variety of asset types would likely incur overall higher costs due to the need to evaluate custodial services across multiple markets, although there may exist some economies of scale in conducting this kind of market research.[977] Because advisers are required to make a quarterly determination for the assets in self-custody, advisers making short term investments would need to make fewer determinations for a given asset and, as a result, incur lower costs.

The proposed QC determination provision could also result in indirect costs for advisers and their clients. In some cases, maintaining the client crypto assets at a qualified custodian may be more expensive than maintaining them in self-custody or may result in the safeguarding services being of lower quality (for example, because the adviser has specific knowledge about the asset and the associated crypto network infrastructure that the custodian does not have). When a qualified custodian becomes available, an adviser would have to transfer the asset to the custodian, sell the client asset, or, depending on the type of client, transfer the asset to the client.[978] Transferring the crypto asset (to a qualified custodian or a client) could result in less effective safeguarding, including potential risks associated with transferring the asset.[979] Transferring the crypto asset to a qualified custodian would also create additional costs associated with putting in place a custodial services agreement between the client and the new custodian.[980] Finally, having to sell the crypto asset could result in lost investment opportunities for the clients.

In addition, the possibility of a qualified custodian becoming available after an adviser undertakes the investment to develop the systems necessary for self-custody also limits the degree to which we anticipate advisers planning to offer strategies for which no qualified custodian is currently available and which would make use of the proposed adviser self-custody rule.

(e) Safeguarding and Cybersecurity Measures

Advisers would be required to have safeguarding expertise and systems when relying on the adviser self-custody rule.[981] Specifically, the proposed adviser self-custody rule would specify that advisers must have safeguarding expertise for each crypto asset in self-custody and adopt, implement, and maintain the systems, including the appropriate technology, software, hardware, and other associated systems and processes around their use, necessary to safeguard each crypto asset against loss, theft, misuse and misappropriation. The proposed adviser self-custody rule would also specify that such systems must, at a minimum, (1) manage and protect key materials against loss and unauthorized access, (2) prevent unauthorized transfers, including through joint authorization requirements for transfers of crypto assets, and (3) maintain each client's crypto assets in one or more crypto asset addresses on the crypto network storing only such client's crypto asset.[982]

Additionally, advisers would be required to mitigate cybersecurity risks, including by implementing (1) periodic but no less than annual written assessments of cybersecurity risks to crypto assets in the adviser's self-custody and cybersecurity risks associated with the adviser's safeguarding systems; (2) measures reasonably designed to detect, mitigate, and remediate any cybersecurity threats and vulnerabilities with respect to the adviser's safeguarding systems; and (3) measures reasonably designed to detect, respond to, and recover from a cybersecurity incident relating to the adviser's safeguarding systems.[983]

The proposed adviser self-custody rule would also require advisers to review their safeguarding systems and the cybersecurity controls implemented pursuant to the proposed cybersecurity requirement within a year of taking self-custody of each crypto asset and no less frequently than annually thereafter.[984]

To the extent that the proposed safeguarding expertise and systems requirements would lead advisers to modify their practices and systems to more effectively safeguard crypto assets, the proposed adviser self-custody rule would benefit investors by reducing the risk that their crypto assets be subject to loss, theft, misuse, or misappropriation by an adviser.[985]

Specifically, the proposed safeguarding measures regarding key management, joint authorization, and asset segregation would benefit investors by helping ensure advisers are well-positioned to offer custody services. As advisers do not customarily provide custody services and are not subject to other extensive regulatory requirements for custodial services, a robust key management program requirement is essential to prevent the loss or theft of crypto assets, particularly because recovery of transferred crypto assets is typically more challenging compared to traditional assets.[986] Similarly, requiring advisers to implement an authorization policy that mandates joint authorization for crypto

qualified custodian has become available. *See* proposed rule 223–1(b)(7)(i). We do not expect that transferring the assets to the qualified custodian would involve significant costs for the adviser. The qualified custodian would incur costs related to the opening of the account (for example, to generate a new key). We expect that these costs would be passed on to the adviser, and eventually to the client, via a custody fee charged by the custodian. We do not expect that this fee would differ based on whether the assets would be initially maintained at the adviser or whether they would be maintained at the custodian directly.

[976] *See supra* footnote 949 and accompanying text for estimates of some of the costs associated with the proposed adviser self-custody rule.

[977] For example, although different crypto networks have unique characteristics, they often share certain technical aspects; consequently, in an event of system updates, the costs could be shared among multiple types of assets, which reduce the per-asset cost.

[978] This option would not be available for clients that are regulated funds since regulated funds would only be allowed to self-custody their crypto assets through their adviser. *See supra* section II.F.5.a).

[979] Transferring the asset would also result in additional costs associated with the generation of a new private key to safeguard the asset. We understand these costs to be minimal.

[980] These costs could vary based on the number and type of clients whose crypto assets would be transferred to a qualified custodian as well as on the type of qualified custodian (*e.g.,* bank, broker-dealer, etc.).

[981] We understand that in implementing the safeguarding systems and other protection measures, advisers may engage service providers. However, to the extent the service provider does not have access to key materials stored in or generated by the wallet or maintained on the platform or does not have other means to access and/or move a client's crypto assets, they should not be deemed to have custody of client crypto assets.

[982] *See* proposed rule 223–1(b)(7)(ii).

[983] *See* proposed rule 223–1(b)(7)(iii).

[984] *See* proposed rule 223–1(b)(7)(v).

[985] To the extent some advisers already have safeguarding systems in place, the proposed rule may still benefit investors by establishing a minimum safeguarding standard which they can expect would be applied to those assets, increasing investors' confidence in the market for advisory services.

[986] *See supra* section II.A.3.b)(1).

transactions and restricts key access to designated individuals would likely reduce the risk of erroneous or fraudulent transactions that could lead to irreversible asset loss, thereby protecting investors from potential harm.[987] Additionally, segregating client assets from other entities' assets (including the adviser's proprietary assets) would reduce the risk of advisers misappropriating client assets and help protect investors from insolvency or bankruptcy of the adviser or its related persons, as client assets would be better protected from claims by third parties seeking to satisfy obligations of the adviser.

Segregating clients' assets from other clients' assets would also facilitate easier identification of and access to assets, reduce the potential for operational errors related to misidentification or transfer of client assets, and enhance transparency and verifiability of the ownership of clients' crypto assets. Additionally, maintaining crypto assets in separate crypto asset addresses for each client could mitigate the risk and potential loss subsequent to a cybersecurity attack, as the amount of assets held in each address would be smaller compared to what would be held in an omnibus account that includes many clients' crypto assets together.[988]

Furthermore, the proposed requirement for advisers to mitigate cybersecurity risks would also benefit advisers and their clients. The principle-based proposed core elements would allow advisers to adapt their systems in line with the industry-developed practices, while helping to ensure that all required standards are consistently maintained.[989] For example, a periodic risk assessment would enable advisers to accurately identify significant risk factors and better prepare for cybersecurity threats, thereby reducing the likelihood of cybersecurity incidents and enhancing investor protection. An adviser holding a client crypto asset in self-custody for less than a year would not be expected to conduct this period risk assessment, and the adviser would not incur such costs. However, if a material cybersecurity risk were to arise or if there were to be an internal or external change that could require a risk assessment before the periodic risk assessment due date, advisers would be required to conduct the risk assessment. Additionally, detection, mitigation, and remediation measures would also benefit investors by lowering the impact of cybersecurity attacks, such as by reducing the duration of exposure and limiting the scope of assets exposed, thereby reducing the likelihood of further compromising the safety of other assets under an adviser's self-custody and minimizing financial losses during adverse events. Response and recovery measures would benefit investors by helping to ensure business continuity during adverse events and minimizing disruptions to adviser-provided services.

The proposed requirement for advisers to conduct annual reviews of safeguarding systems and the cybersecurity controls implemented pursuant to the proposed cybersecurity requirement would additionally provide benefits for investors. Technological developments, compliance issues in the prior year or changes in the adviser's business activities may necessitate updates to safeguarding systems for adviser's self-custody of crypto assets. The proposed annual review requirement would help ensure that the adviser's safeguarding systems and cybersecurity measures continue to work as designed and remain effective, thereby enhancing investor protection. Furthermore, because an outdated system would likely increase cybersecurity risks and operational deficiencies and put assets in custody at risk, the annual reviews would help ensure the advisers' safeguarding systems remain adaptive and benefit investors by allowing advisers to leverage current industry-developed practices while adapting their systems and controls to technological advancements and innovations. To the extent that an adviser would not hold any client crypto assets in self-custody by the time an annual review would be due, the adviser would not be expected to conduct this annual review, and these benefits from the annual review could not apply.

Advisers that would offer self-custody services would likely incur both initial and ongoing costs related to the development of safeguarding expertise, the implementation of a safeguarding system, and the documentation of the material facts that demonstrate an adviser's ability to safeguard each crypto asset.[990] Relatedly, advisers would incur costs to implement cybersecurity protocols tailored to their safeguarding systems. Specifically, advisers may incur costs acquiring or developing appropriate technology, software, hardware, and/or other accompanying third-party services for establishing, implementing, and overseeing the appropriate systems and processes. There would likely be costs associated with wallet setup and key management systems for each crypto asset for each client.[991]

Advisers would also incur costs associated with annual review of safeguarding systems and the cybersecurity controls implemented pursuant to the proposed cybersecurity requirement with respect to each crypto asset they self-custody.[992] As a result of this review, there could be additional costs if the adviser would be required to update its safeguarding systems and cybersecurity controls to ensure that they remain effective and work as designed. To the extent that an adviser does not hold any client crypto assets in self-custody by the time an annual review would be due, the adviser would not be expected to conduct this annual review as the adviser would no longer be subject to the adviser self-custody rule, and the adviser would not incur such costs.

In addition, advisers would also incur costs to design and implement policies and procedures reasonably designed to prevent violations of the Advisers Act and rules under the Act, as required by the Advisers Act compliance rule.[993]

We expect advisers that maintain a greater variety of crypto assets or crypto assets with complex network

[987] Under the proposed adviser self-custody rule, advisers would be required to establish an appropriate joint authorization system which requires joint authorization of transfers of crypto assets by two or more supervised persons designated by the adviser, with at least one person being a management person. In the case of crypto assets held for the account of a regulated fund, such management person shall be an officer. *See supra* section II.A.3.b)(2).

[988] The proposed adviser self-custody rule, however, would not prescribe specific wallet management methods or a procedure for segregating client assets. This is because the adviser's level of due care would depend on the facts and circumstances, and wallet technology is continuing to evolve. This flexibility would allow advisers to leverage technology advancements to choose the most economical and secure way to comply with the segregation requirement.

[989] Although specific vulnerabilities may differ based on factors such as crypto asset type, investment strategy, and trading activities, the principle of risk assessment remain crucial for enhancing cybersecurity measures.

[990] *See supra* footnote 949 and accompanying text for estimates of some of the costs associated with the proposed adviser self-custody rule.

[991] To the extent certain advisers currently do not currently segregate client crypto assets, advisers would incur costs associated with adapting existing systems and processes to meet the proposed requirement.

[992] Advisers would also be expected to account for novel cybersecurity threats to crypto assets as they emerge, which may lead them to review, modify, or update their systems more frequently than annually. *See supra* section II.A.5. This could result in additional costs.

[993] This existing requirement would apply to the proposed adviser self-custody rule. *See supra* footnote 194 and accompanying text; section IV.B.2.

technological specifications to incur higher costs to implement safeguarding systems. These costs may also vary depending on the type of crypto assets in self-custody. For example, commercial-grade cryptographic wallet solutions may be available for certain crypto assets only, and the costs associated with acquiring robust wallet technology may also vary depending on the technical complexities inherent to each crypto network. To the extent that certain crypto networks are more susceptible to cybersecurity attacks and other vulnerabilities, the costs to implement effective safeguarding systems may be higher.[994] For example, certain crypto assets may require cybersecurity practices such as more frequent risk-assessments due to their evolving vulnerabilities; consequently, advisers that self-custody these assets may incur higher costs. The total costs to implement safeguarding measures covering multiple crypto assets would likely be higher, as distinct cybersecurity threats may exist for different crypto assets and their associated networks. However, to the extent cybersecurity controls can be applied to a larger set of crypto assets, per-dollar costs may be lower due to economies of scale.

Additionally, we expect the implementation of safeguarding systems and cybersecurity measures to differ across advisers.[995] As a result, the costs would vary based on the design and implementation of these protocols as well as each adviser's experience and current practices.[996] To the extent that advisers lack expertise in managing crypto assets or do not have existing safeguarding expertise or technology to implement safeguarding systems, the costs to develop the expertise and necessary safeguarding systems to comply with the proposed requirements would likely be higher. Conversely, for advisers with experience in cybersecurity controls, the costs of implementation would likely be lower. Additionally, advisers may be currently implementing cybersecurity measures consistent with the proposed core elements of the cybersecurity measures under the proposed adviser self-custody rule.[997] These advisers would also incur lower compliance costs associated with implementation of such measures.

While we anticipate that the proposed safeguarding and cybersecurity measures would reduce the risk of loss, theft, misuse, or misappropriation that crypto assets would be subject to, the effectiveness of safeguarding systems and their associated cybersecurity controls may vary. For example, custodial solutions for certain assets may necessitate more expensive measures, such as more advanced wallet technology or sophisticated cybersecurity controls, because of unique technical specifications or cybersecurity vulnerabilities associated with certain networks. To the extent an adviser fails to allocate sufficient resources or overestimates its safeguarding capabilities, such an adviser's safeguarding systems may be deficient in protecting client assets. Thus, we anticipate that the proposed safeguarding and cybersecurity measures would not eliminate all residual custodial risks and operational errors that could lead to inadvertent asset loss.

(f) Internal Control Reports

The proposed rule would require advisers with self-custody of clients' crypto assets to obtain a written internal control report prepared by an independent public accountant within six months of having self-custody and no less than once each calendar year thereafter.[998] The report must include an opinion of the independent public accountant as to whether controls were suitably designed and implemented and operating effectively throughout the period to achieve control objectives relating to custodial services, including the safeguarding of crypto assets held by the adviser on behalf of its clients.[999] In addition, the proposed rule would also require that the independent public accountant verify that the crypto assets are reconciled to the crypto network.

The proposed initial internal control report requirement would benefit investors by providing an important check on the safeguards relating to client crypto assets held by the adviser, thereby mitigating custodial risks and enhancing investor protection. The proposed annual internal control report requirement could increase the likelihood that significant control issues are detected and addressed on a regular basis. Specifically, independent assessment would likely help mitigate conflicts of interest when advisers, rather than unaffiliated custodians, custody client assets. In addition, the proposed verification of the reconciliation of the clients' crypto assets requirement would facilitate the detection of misconduct, thereby discouraging potential fraudulent behaviors, lowering agency costs, and protecting investors. Additionally, the proposed requirement that these reports be prepared by a public accountant that is independent of the adviser could also enhance both investor protection and investor confidence by further mitigating agency costs. To the extent that an adviser with self-custody of client crypto assets moves the crypto assets to a qualified custodian that becomes available before an internal control report would be due and does not hold any other crypto asset in self-custody, investors could lack these benefits from the internal control report that would otherwise be due.

Advisers would incur costs in obtaining the initial and annual internal control reports. We estimate that on average, the cost of obtaining an internal control report would be $376,000 per year per adviser with self-custody of client crypto assets.[1000] This cost may vary based on the number and type of crypto assets in self-custody as well as the complexity of their safeguarding systems. Specifically, advisers that have self-custody of various types of crypto assets may incur higher costs because they are likely to have more complex safeguarding systems and require internal control reports related to different networks. Advisers holding crypto assets with unique technical challenges or those within intricate networks requiring specialized attestation expertise for verification of the reconciliation may also incur higher costs. To the extent that an adviser with self-custody of client crypto assets moves the crypto assets to a qualified custodian that becomes available before

[994] The marginal benefit per dollar cost associated with each of these proposed requirements may differ as well. For example, post-attack intervention may be more effective for certain crypto assets than for others. If the marginal benefit is higher for certain recovery measures than for certain detection and prevention measures, an adviser may incur more costs on those recovery measures.

[995] For example, there are different methods that can facilitate joint authorization. The effectiveness of these methods may, however, differ depending on the specific requirements imposed by the advisers.

[996] For example, it is our understanding that physical wallets (or cold wallets), which typically are considered more secure, are more expensive than software-based wallets (hot wallets). *See supra* footnote 724 and accompanying text.

[997] *See supra* section II.A.4 for similar requirements under Regulation S–P and Regulation S–ID.

[998] *See* proposed rule 223–1(b)(7)(iv).

[999] The internal control report from an independent public accountant with an opinion regarding the design, implementation, and operating effectiveness of internal controls that would be required is consistent with the existing custody rule that applies when advisers and affiliates act as qualified custodians. *See* rule 206(4)–2(a)(6). The Commission also expects to revise certain aspects of the guidance for accountants to, among other things, specify the minimum control objectives for these reports. Such objectives would generally cover the design, implementation, and operating effectiveness of the controls. See *supra* section II.I; *infra* section IV.C.8.

[1000] *See infra* section V.B.

an internal control report would be due and does not hold any other crypto asset in self-custody, the adviser would not need to obtain that internal control report that would otherwise be due and would not incur the associated costs.

Additionally, to the extent that advisers choose to have self-custody of clients' crypto assets, the demand for accountants to prepare internal control reports would increase, which may result in higher costs for these services. Furthermore, increased demand may place some pressure on the supply of independent public accountants who have the knowledge and skills to prepare internal control reports with respect to the custody of crypto assets. This could create a challenge for advisers in engaging an independent public accountant, by either imposing a high cost on advisers that would seek to offer self-custody services or potentially making it economically not viable to do so. This challenge could be more pronounced for small advisers that have limited crypto assets under self-custody and limited bargaining power when negotiating with accounting firms. As a result, such advisers may have more limited access to qualified audit firms compared to larger advisers.[1001]

(g) Account Statements to Clients

Under the proposed adviser self-custody rule, advisers with self-custody of clients' crypto assets would be required to send each client an account statement—or alternatively, to transmit information or arrange for the transmission of the information otherwise required to be in an account statement in a human-readable and reasonably usable electronic format, provided that a notice is sent to the client—at least quarterly, with certain exceptions.[1002] These account statements (or transmissions) would be required to identify the crypto address that stores the client's crypto assets and the crypto network on which such crypto address operates, to identify the amount of crypto assets in the account at the end of the period and set forth all transactions in crypto assets in the account during the period, and to include a statement urging the client to compare the account statements from the adviser with the crypto asset balances and transaction information indicated under the client's crypto asset address. If an adviser or a related person is a general partner of a limited partnership (or a managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle), the account statements, transmission, and any notices would be required to be sent to each limited partner (or member or other beneficial owner).[1003] In addition, the proposed rule would allow any account statements, transmissions and notices sent pursuant to this requirement to be delivered to the client's independent representative.[1004]

Quarterly account statements would provide transparency and verifiability of records, facilitating easier comparison between records from advisers and data from other independent sources (*e.g.,* onchain records). These statements would increase the likelihood of timely detection of any misappropriation, discourage fraudulent reporting, and mitigate the impact of adverse events while facilitating asset recovery. For example, software tools could enable real-time access to crypto asset balances and transaction records on the crypto network.[1005] Transmission of information using these tools could benefit clients by enabling them to review each transaction and balances directly and promptly on the crypto network in an easily readable format, reducing the risk of fraud by keeping clients informed about their crypto assets and facilitating prompt detection of suspicious activities. Therefore, alternative ways for transmitting information would offer benefits similar to those offered by account statements, to the extent that clients would be capable of using these tools and the information transmitted would be readily interpretable, thus clients could effectively identify potentially suspicious activities and achieve results comparable to those obtained by reviewing account statements. Such flexibility would also benefit advisers by aiding effective communication without imposing unnecessary compliance burdens.[1006]

Advisers having self-custody of clients' crypto assets would incur direct costs associated with preparing and sending account statements.[1007] However, to the extent that third-party services and tools supporting the transmission and delivery of such records become available, these costs may decrease over time. These costs may also vary across advisers. Advisers having a larger number of clients for which they self-custody crypto assets may incur higher absolute costs but lower per-dollar costs because of economies of scale.

Under the proposed adviser self-custody rule, an adviser would not be required to comply with the self-custody account statement requirement if it has self-custody of crypto assets for a pooled investment vehicle client that undergoes a financial statement audit at least annually and upon liquidation in accordance with the audit provision. An adviser would also not be required to comply with the proposed self-custody account statement requirement if the advisory client is a regulated fund,[1008] which is subject to annual audit. While audited financial statements provide an important check on adviser behavior and can identify erroneous or unauthorized activity, they are prepared and sent annually. As a result, they may not offer the same timeliness of fraud or error detection as quarterly account statements. However, for pooled investment vehicles and regulated funds, the annual audit is considered sufficient in light of the additional controls in place (*e.g.,* independent oversight, board review, and regulatory requirements) and the effectiveness of audits in detecting material misstatements or misappropriation.[1009] We do not expect that the account statement exception would reduce investor protection for pooled investment vehicle or regulated fund investors since account statements and audited financial statements provide comparable means to identify any erroneous or unauthorized activity as financial statement audits involve confirming account balances and transactions.

(h) Financial Asset Election

The proposed adviser self-custody rule would require an adviser and the

[1001] In some cases, this could result in advisers having to delay or forego taking self-custody of client crypto assets, which could result in advisory clients being unable to invest in some assets.

[1002] *See* proposed rule 223–1(b)(7)(vi). Advisers are excepted from complying with the account statements provision if their clients are pooled investment vehicles and receive audited financial statements, or if their clients are regulated funds. *See supra* section IV.B.2.a). Advisers would be required to maintain records of these statements. *See supra* section II.H.1.a) and *infra* section IV.C.7.a)(1).

[1003] *See* proposed rule 223–1(b)(7)(vi).

[1004] *See* proposed rule 223–1(a)(7).

[1005] *See supra* section II.A.7.

[1006] However, an adviser may choose the delivery format that is most cost efficient or convenient for itself, which may not be preferred by the client.

[1007] *See supra* footnote 949 and accompanying text for estimates of some of the costs associated with the proposed adviser self-custody rule.

[1008] *See* proposed rule 223–1(b)(7)(vii).

[1009] Academic research suggests that there is a robust negative association between audit effort and annual report restatements. *See, e.g.,* Gerald J. Lobo & Yuping Zhao, *Relation Between Audit Effort and Financial Report Misstatements: Evidence From Quarterly and Annual Restatements*, 88 Acct. Rev. (2013) *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2265051* (retrieved from SSRN Elsevier database).

client to agree, in writing, to treat each crypto asset held in the adviser's self-custody for such client as a financial asset, and that the adviser holding the client's crypto asset in self-custody is a securities intermediary, pursuant to applicable State law that governs the written agreement between the adviser and the client.[1010] In addition, under this proposal, an adviser would be required to retain copies of these financial asset elections.[1011]

State law governs the written contractual treatment of an asset as a financial asset and a party to the written agreement as a securities intermediary pursuant to the applicable State's enacted version of Article 8 of the UCC. Article 8 of the UCC governs how financial assets are held by a securities intermediary that maintains securities accounts for others (*e.g.,* a clearing corporation, broker-dealer or a bank). The financial asset election, accompanied by the adviser crediting the asset to the client's securities account on the adviser's records, would enable the client to obtain a security entitlement and become an entitlement holder.[1012] This would provide certain protections and priorities to the client: for example, the adviser, as a securities intermediary, would be required to maintain the financial asset in sufficient quantities corresponding to all security entitlements with respect to the asset; the financial asset would not be the property of the adviser, and would generally not be subject to claims of creditors of the adviser; and the client would have priority of claims to the financial asset over the claims of other creditors.[1013]

Therefore, to the extent there would be uncertainty with respect to the proprietary status of self-custodied crypto assets in the event of adviser's bankruptcy or insolvency, a financial asset election would help protect client crypto assets from adviser's financial reverses.[1014]

Advisers that have self-custody of clients' crypto assets and such clients would incur expenses associated with the review and preparation of the initial agreement. These costs are included in the cost estimates provided above.[1015]

3. Regulated Fund Self-Custody of Crypto Assets

The proposed fund self-custody rule would permit an investment adviser to self-custody a regulated fund client's crypto asset if (a) the adviser complies with the proposed adviser self-custody rule and (b) the regulated fund's board of directors, including a majority of directors who are not interested persons of the fund, exercises oversight responsibilities by (i) evaluating, prior to the investment adviser maintaining the crypto asset and quarterly thereafter, the adviser's written report documenting the basis for its determination for believing that no qualified custodian will maintain the crypto asset and (ii) making a determination, prior to the investment adviser maintaining the fund's crypto asset and annually thereafter, that the fund's crypto asset will be subject to reasonable care, if maintained with the fund's adviser, after considering the factors relevant to the safekeeping of the crypto asset.[1016]

To facilitate the board's determination, the adviser would be required to furnish and the regulated fund's board would be required to evaluate, at a minimum, certain information as may reasonably be necessary for the board to evaluate the fund's custody arrangement of the crypto asset.

First, the adviser would need to provide a written report documenting the basis for its determination under the adviser self-custody rule, that it has safeguarding expertise and systems, including the appropriate technology, software, hardware, and other associated systems and processes, necessary to safeguard the crypto assets against loss, theft, misuse, and misappropriation.[1017]

Second, the adviser would be required to provide the board with the most recent written annual review of the adviser's safeguarding systems and cybersecurity controls including the effectiveness of their implementation pursuant to the annual review requirement under the proposed adviser self-custody rule, if one is available at the time of the board's determination, and if not available, such information would be required to be provided by the adviser to the board for its evaluation by the next regularly scheduled board meeting after the information becomes available.[1018]

Third, the adviser would be required to provide the board with the most recent written internal control report as required under the proposed adviser self-custody rule, if one is available at the time of the board's determination, and if not available, such information would be required to be provided by the adviser to the board for its evaluation by the next regularly scheduled board meeting after the information becomes available.[1019]

Finally, the adviser would be required to provide such other information as may reasonably be necessary for the board to evaluate the regulated fund's custody arrangement.[1020]

The requirements under the proposed adviser self-custody rule would also apply in the context of regulated fund self-custody of crypto assets, except that, in the case of regulated fund self-custody, they would apply to the crypto assets constituting ''securities and similar investments.'' [1021] In addition, for purposes of any QC determination made with respect to an account of a regulated fund, ''qualified custodian'' would mean a bank or other person authorized to hold assets for the regulated fund under section 17(f) of the Investment Company Act (15 U.S.C. 80a–17(f)) or the rules thereunder.[1022] Furthermore, in the case of regulated fund self-custody, the supervised persons that would have access to key materials would be required to be designated by resolution of the board of directors of the regulated fund.[1023] Consequently, to the extent that regulated funds choose to invest in crypto assets that no qualified custodian will maintain, we expect that the benefits and costs resulting from these proposed requirements and discussed in section III.C.2 would also apply when

[1010] *See* proposed rule 223–1(b)(7)(viii).

[1011] *See* proposed rule 204–2(a)(26)(viii); *see also infra* section IV.C.7.a)(1) for a discussion of the benefits and costs associated with this proposed requirement.

[1012] While the UCC does not have the effect of law unless a State enacts it, currently, all fifty States have enacted Article 8, although the version of the UCC adopted may vary from State to State. The proposed requirement is intended to allow the adviser and the client to invoke the definitions of ''financial asset'' and ''securities intermediary'' and the attendant obligations that result from a financial asset election as provided for in the UCC as adopted under applicable State law. *See supra* section II.A.8.

[1013] *See id.*

[1014] *See id.* This proposed requirement would complement the proposed segregation requirement discussed in section IV.C.2.e) in protecting client assets from advisers' financial reverses.

[1015] *See supra* footnote 949 and accompanying text for estimates of some of the costs associated with the proposed adviser self-custody rule.

[1016] *See* proposed rule 17f–9; see also supra section II.B.

[1017] *See* proposed rule 17f–9(b)(1)(ii)(A); proposed rule 223–1(b)(7)(ii); *see also supra* section II.A.3.

[1018] *See* proposed rules 17f–9(b)(1)(ii)(B) and 17f–9(b)(1)(ii)(D); proposed rule 223–1(b)(7)(v). *See also supra* text surrounding footnote 323.

[1019] *See* proposed rules 17f–9(b)(1)(ii)(C) and 17f–9(b)(1)(ii)(D); proposed rule 223–1(b)(7)(iv); supra section II.A.5. *See also supra* text surrounding footnote 324.

[1020] We are also proposing related disclosure and recordkeeping requirements. *See supra* sections II.H.2 and II.J.2; *see also infra* sections IV.C.9 and IV.C.7.b) for discussions of the benefits and costs associated with these proposed requirements.

[1021] *See* proposed rules 223–1(a) and 223–1(b)(5).

[1022] *See* proposed rule 223–1(b)(7)(i).

[1023] *See* proposed rule 223–1(b)(7)(ii)(A).

regulated funds would maintain their crypto asset with their advisers. We expect that advisers of regulated funds with strategies that involve crypto asset exposures could face different costs than advisers of non-regulated fund clients due to the potentially different set of assets subject to the proposed fund self-custody rule compared to advisers that have solely non-regulated fund clients.

The proposed fund self-custody rule would require additional board oversight, which could further enhance investor protection. Specifically, the written reports documenting the basis for the adviser's determination that no qualified custodian will maintain the crypto asset would assist a board in evaluating the adviser's rationale and justification for self-custody. In addition, the written reports documenting the basis for the adviser's determination that it has safeguarding expertise and systems necessary to safeguard the crypto asset against loss, theft, misuse, and misappropriation would assist a board in evaluating the adviser's ability to safeguard the fund's crypto assets. Finally, the proposed requirement that the access to the regulated fund's crypto asset key materials be restricted to those persons designated by resolution of the board would facilitate board oversight of key access materials. This proposed requirement could benefit investors by enhancing independent monitoring by the fund's board and reducing custodial risks. It would also help ensure that the board agreed that there was a legitimate need for the regulated fund to place and maintain its crypto assets with its adviser and that the adviser had the capability to subject the crypto assets to reasonable care. This would help mitigate the heightened risk of misappropriation of the assets by the adviser that is present when the adviser is also the custodian (*i.e.,* when the adviser has direct access to the client's assets).[1024]

Additionally, the combination of the written reports with the adviser's most recent annual review of its safeguarding systems and with the adviser's most recent internal control report (at the time of the board's determination or promptly after they become available) would facilitate the board's assessment of the information provided by the adviser and would help the board evaluate the adviser's safeguarding systems, which could reduce risk for the regulated fund's assets.

The proposed fund self-custody rule's requirements that the review of the QC determination and the reasonable care determination be made by a majority of the regulated fund's directors who are not interested persons of the fund would strengthen these benefits by further helping ensure independent oversight of the adviser. This would benefit the fund's investors by helping further mitigate the conflicts of interest that occur when the adviser is also the custodian.[1025]

We expect that regulated funds would incur costs associated with the board oversight provisions. Specifically, we expect regulated funds to incur costs associated with the time necessary for the regulated fund's board's members to review and assess the information provided by the advisers. We estimate one-time compliance costs of $53,037 and recurring annual compliance costs of $21,660 generally per regulated fund that would maintain crypto assets in self-custody through its adviser.[1026] These estimates include costs that are associated with the board of directors' evaluation of the adviser's written reports and internal control reports. To the extent that the board would request from the adviser information beyond what the adviser would produce under the proposed adviser self-custody rule, the proposed fund self-custody rule could result in additional costs for regulated funds' advisers as they could incur costs associated with preparing and providing the information. The board would also incur costs associated with processing this additional information. These costs would vary based on the extent of the information that the board would request. Costs incurred by regulated funds and their advisers could be passed on to the funds' investors.

The proposed requirements that the review of the QC determination and the reasonable care determination be made by a majority of the regulated fund's directors who are not interested persons of the fund could result in additional costs since it could result in board members that are less familiar with crypto obtaining additional resources in order to be better able to review and assess the information provided by the adviser.

The costs associated with the proposed fund self-custody rule would likely vary with the size of the regulated funds. We expect the costs as a percentage of assets to be lower for larger regulated funds or funds within a complex sharing the same adviser and with common board members due to economies of scale,[1027] as the board's determination could be applied across multiple funds. In addition, certain boards could be less familiar with crypto assets. As a result, they could incur higher costs to obtain additional resources needed for effective oversight.

It is also possible that board oversight could be less effective in instances where a regulated fund's board of directors is less familiar with crypto assets, since board members could be less able to assess the information provided by the adviser despite potentially obtaining additional resources.[1028] This could result in higher custodial risks and agency costs associated with self-custody.[1029]

4. Custody of Crypto Assets by State Trust Companies

(a) Overview and Scope

Under the current custody rules, an adviser or regulated fund is permitted to use a State trust company as custodian to the extent that the State trust company meets the applicable definition of a bank.[1030] A State trust

[1024] *See supra* section I.A and footnote 917 and accompanying text for discussions of the conflicts of interest that arise when the adviser is also the custodian.

[1025] *Id.*

[1026] We estimate that one-time compliance costs would consist of 9 burden hours for the evaluation of the investment adviser's written reports at $4,539 per hour and of 1 hour for the evaluation of internal control reports at $12,186 per hour (9 hours × $4,539 per hour + 1 hour × 12,186 per hour = $53,037). We estimate that recurring annual compliance costs would consist of 3 burden hours for the evaluation of the investment adviser's written reports at $4,539 per hour and 0.66 burden hours for the evaluation of internal control reports at $12,186 per hour (3 hours × $4,539 per hour + 0.66 hours × $12,186 per hour = $21,660). *See infra* section V.C.2.

[1027] Regulated funds are often organized in such families. *See supra* section IV.B.3.b). *See also* Elif Sisli-Ciamarra & Abigail Hornstein, *Board Overlaps in Mutual Fund Families* (Working Paper Series, 2015) *available at https://www.brandeis.edu/economics/RePEc/brd/doc/Brandeis_WP92.pdf.*

[1028] We expect that even board members that are not familiar with the custody of crypto assets would be able to understand the opinion given by the independent public accountant in the internal control report as to whether controls were suitably designed and implemented and operating effectively. Hence, we expect that the proposed board oversight requirements would provide benefits to regulated funds' investors even when a regulated fund's board of directors is not familiar with the custody for crypto assets.

[1029] While a regulated fund's investors would not know explicitly the fund's board of directors' level of familiarity with crypto assets, they would typically have access to the fund's Statement of Additional Information, or other disclosure, which generally contains information on board members and their expertise.

[1030] Under section 17(f)(1) of the Investment Company Act, a permitted custodian includes a ''bank'' as defined in section 2(a)(5) of the Act that meets the qualification requirements of section 26(a)(1) of the Act. Under rule 206(4)–2(d)(6) under the Advisers Act, a qualified custodian includes a ''bank,'' *i.e.,* a ''bank'' as defined in section 202(a)(2)

company is a ''bank,'' and thus a permitted custodian for an adviser or regulated fund, if, among other conditions, a substantial portion of the State trust company's business consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency and the State trust company is supervised and examined by State or Federal authority having supervision over banks.

Under the proposed State trust company rules, State trust companies would be an additional category of permitted custodians for crypto assets and related cash and/or cash equivalents.[1031] A State trust company would be defined as ''a legal entity organized under State law that is supervised and examined by a State authority having supervision over banks and permitted to exercise fiduciary duty powers under applicable State law.'' [1032] Advisers and regulated funds using State trust companies as custodians pursuant to the proposed State trust company rules would be subject to certain requirements designed to help ensure that the crypto assets are appropriately safeguarded from the risk of loss, theft, misuse, and misappropriation, which are discussed further below.[1033]

Because State trust companies that meet the definition of bank under the custody rules are currently permitted custodians, the benefits and costs associated with the proposed State trust company rules may not apply when such State trust companies are used as custodians by advisers or regulated funds.[1034] These effects would only apply to situations where an adviser or regulated fund would rely on the proposed State trust company rules and the requirements specified therein. Under the proposed rules, advisers and regulated funds would continue to be permitted to use any entity that meets the applicable definition of bank as custodian, including for crypto assets, without relying on the proposed State trust company rules.[1035]

In addition, if State trust companies that provide or are planning on providing custodial services for crypto assets to advisers and regulated funds opt to obtain national bank charters, [1036] the economic effects discussed below would be lower since fewer advisers and regulated funds would rely on the proposed State trust company rules for the custody of crypto assets.

(1) Benefits

The main benefit of the proposed State trust company rules would be to increase the number of entities that could be available for advisers and regulated funds looking to custody crypto assets and related cash and/or cash equivalents under the custody rules.[1037] State trust companies that do not meet the definition of bank under the current custody rules would become permitted custodians to the extent that their adviser or regulated fund clients would be able to comply with the proposed requirements. This could result in some advisers and regulated funds being able to find custodians offering services that fit or better fit their needs, for example because these custodians support crypto assets or the participation in certain rights or activities associated with crypto assets that no or only a limited number of other custodians support, or because the custodian is available at a lower cost.[1038] This would allow these advisers and regulated funds to better serve their clients or investors by better implementing their investment advice or strategies. Hence, we expect that for some advisers or regulated funds, the effect of allowing State trust companies to custody crypto assets could be significant and directly affect the services that they are able to offer to their clients or investors. This could result in investors obtaining higher risk-adjusted returns or being able to implement investment strategies that better fit their objectives.[1039]

Another benefit of the proposed State trust company rules would be to simplify the custodian eligibility determination for advisers and regulated funds, potentially decreasing the costs associated with engaging State trust companies as custodians for crypto assets and related cash and/or cash equivalents. Determining whether a State trust company meets the definition of bank under the custody rules can be costly for advisers and regulated funds as it requires a fact-specific inquiry that involves analysis of both a particular State trust company's activities and applicable State and Federal banking laws. This may discourage some advisers and regulated funds from engaging as custodian a State trust company that could provide competent custodial services for crypto assets. Under the proposed State trust company rules, an adviser or regulated fund would still need to determine that a State trust company is supervised and examined by a State authority having supervision over banks, as is the case under the baseline. However, it would be required to determine that the entity is permitted to exercise fiduciary duty powers under applicable State law instead of determining that a substantial portion of the entity's business consists

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of the Advisers Act or a savings association that meets certain requirements. In both cases, the term ''bank'' is defined to include, among other things, a ''banking institution'' or ''trust company'' ''whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency,'' which is ''supervised and examined by State or Federal authority'' having supervision over banks, and which is ''not operated for the purpose of evading the provisions'' of the Investment Company Act or Advisers Act, as applicable. *See also supra* section IV.B.2.

[1031] This new category of permitted custodians would be distinct from the current category of custodians that includes banks. *See* proposed rules 223–1(d)(13)(v) and 17f–8; *see also supra* section II.C.1. The proposed State trust company rules would apply to advisers' client funds and securities that are crypto assets and to regulated funds' securities and similar investments that are crypto assets, as applicable. In addition, the Advisers Act custody rule includes requirements, including requirements related to surprise examinations, that apply regardless of the type of qualified custodian. These requirements, as well as the proposed amendments to these requirements, would continue to apply, as applicable, including in instances where the qualified custodian would be a State trust company. *See* rule 206(4)–2; *supra* section II.G.

[1032] *See* proposed rules 223–1(d)(18) and 17f–8(c). Hence, to meet the proposed definition of State trust company, an entity would have to be permitted to exercise fiduciary power. On the other hand, to meet the definition of bank under the current custody rule, a substantial portion of its business must consist of receiving deposits or exercising fiduciary powers.

[1033] *See* proposed rules 223–1(d)(13)(v) and 17f–8(a). *See supra* section II.C for a more detailed description of these conditions. *See infra* sections IV.C.4.b)—IV.C.4.e) for discussions of the benefits and costs associated with these conditions.

[1034] It is also possible that some advisers and regulated funds currently use entities that would meet the definition of State trust company as crypto asset custodian. *See supra* footnote 50 (discussing the 2025 State Trust Company NAL) and accompanying text; *supra* footnote 882. To the extent that this is the case, the proposed State trust company rules could result in a limited change in market practice, which would decrease the magnitude of the benefits and costs discussed below.

[1035] *See* proposed rules 17f–8 and 223–1(d)(13)(v); *supra* footnote 346.

[1036] *See supra* footnote 877 and accompanying text.

[1037] Allowing self-custody of crypto assets by advisers (including regulated funds' advisers) that are not currently permitted custodians because they are not and do not have a related person that is a qualified custodian would also help mitigate the challenges associated the instances where there are no permitted custodians available. *See supra* discussion in sections IV.C.2 and IV.C.3.

[1038] *See supra* section IV.C.1; *infra* section IV.D.2.a).

[1039] *See supra* footnote 910. In addition, increasing the number of permitted custodians would increase competition in this market, which would have benefits for advisers, regulated funds, and their clients and investors. *See infra* section IV.D.

of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, which may be a more complicated assessment to make and result in higher costs.[1040] This could reduce the costs to advisers and regulated funds of finding a custodian for crypto assets and related cash and/or cash equivalents.[1041] These cost reductions would benefit advisers' clients and regulated funds' investors to the extent that they would be passed on to them, for example via lower fees or expenses.

A related benefit of the proposed State trust company rules would be to potentially decrease the costs for State trust companies to find clients that are advisers or regulated funds, which could affect the price charged to these clients for the provision of custodial services. Under the baseline, because of the challenges associated with the determination for believing that a State trust company meets the definition of bank under the custody rules and because the responsibility of making the determination rests on the adviser or regulated fund, State trust companies may be unable to provide custodial services for crypto assets to potential clients that are advisers or regulated funds, even when a substantial portion of their business consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency. This inability could lead some State trust companies to apply for, and potentially obtain, a national bank charter in order to facilitate their provision of custodial services for crypto assets to advisers and regulated funds.[1042] Because the proposed State trust company rules would make State trust companies a category of permitted custodians distinct from banks, fewer State trust companies could decide to obtain a national bank charter solely in order to facilitate their provision of crypto asset custodial services to advisers and regulated funds.[1043] This would significantly reduce costs for those State trust company custodians, which could allow them to charge lower prices to the advisers and regulated funds retaining their services or enhance the safeguarding controls they put in place.[1044] This would benefit these advisers' clients and regulated funds' investors to the extent that the lower prices would be passed on to them, for example via lower fees or expenses or by reducing the risk to which their assets are subject.

A potential indirect effect of the proposed State trust company rules could be to enable advisers' clients and regulated funds' investors to take advantage of investment opportunities that are not currently being taken advantage of. The proposed rules could result in advisers increasing their services related to crypto assets and in regulated funds increasing their investments in crypto assets by reducing custody-related challenges. Clients and investors of these advisers and regulated funds could therefore be able to obtain higher risk-adjusted returns or implement investment strategies that better fit their objectives.

In addition, some investors may wish to have exposure to crypto assets but may currently be unable to find an appropriate adviser or regulated fund to achieve this goal. As a result, they might make their investment decisions without the help of a registered adviser or gain exposure to crypto assets outside of regulated funds (and outside of funds that are not regulated funds but that are advised by a registered investment adviser). To the extent that the proposed State trust company rules result in more advisers offering crypto assets-related services or in more regulated funds investing in crypto assets, these investors may decide to invest instead under the advice of an adviser or in regulated funds. These investors would benefit by being covered by the investor protections associated with the involvement of an adviser or with investing in a regulated fund. This could also benefit investors to the extent that investing under the advice of an adviser or in a regulated fund helps them achieve investment strategies that yield higher returns or otherwise better fit their objectives.[1045]

(2) Costs

State trust companies are organized under State law, supervised and examined by a State authority, and permitted to exercise fiduciary powers under applicable State law.[1046] Under the current custody rules, entities that are permitted custodians are instead generally subject to Federal law.[1047] Because State laws vary from State to State, and because different States may allocate varying levels of resources towards the enforcement of such laws, the crypto assets that would be custodied by State trust companies under the proposed State trust company rules could be subject to varying levels of protection against the risk of theft, loss, misuse, and misappropriation.

However, we do not expect that in practice there would be significant risk, for three reasons. First, the proposed definition of State trust company would help ensure that a State banking authority regulates the custodial activities of the State trust company and that the State trust company is subject to State examination and supervision, similar to a State bank. In addition, several States have developed robust State law frameworks that oversee and regulate State trust companies and other State-regulated entities offering crypto asset custodial services.[1048] Second, the proposed State trust company rules include additional requirements, discussed in the subsequent sections, with which advisers and regulated funds would need to comply in order to be permitted to use a State trust company as custodian for crypto assets and related cash and/or cash equivalents.[1049] These requirements are designed specifically to help ensure that appropriate steps are taken by the State trust company custodian to safeguard client crypto assets from the risk of loss,

[1040] Nevertheless, the reasonable determination under the proposed rule could still result in uncertainty and prevent some advisers or regulated funds from using certain State trust companies as custodians. In addition, the adviser or regulated fund would be required to determine in writing that it has a reasonable basis to believe, after due inquiry, that the State trust company is authorized by the relevant State banking authority to provide custody services for crypto assets and related cash and/or cash equivalent. *See infra* section IV.C.4.b)(1) for a discussion of the benefits and costs associated with this proposed requirement.

[1041] The costs of finding a custodian would not necessarily be reduced because the proposed State trust company rules include additional requirements that must be complied with prior to engaging the State trust company as a custodian but that would not apply in the cases where the custodian meets the definition of bank under the custody rules. These additional requirements would result in costs for advisers and regulated funds. *See infra* sections IV.C.4.b)–IV.C.4.e). In addition, because of these additional costs, it could be the case that the same State trust company would provide custodial services for crypto assets to some adviser or regulated fund clients under the existing custody rules, that is, without relying on the proposed State trust company rules, and to some other adviser or regulated fund clients under the proposed State trust company rules. *See supra* section II.C.1.

[1042] *See supra* footnotes 877 and 914 and accompanying text.

[1043] Some state trust companies could still apply for a national bank charter, for example to provide different services or to attract additional clients.

[1044] *See infra* section IV.D.1.a).

[1045] In the case of investing with an adviser, this could be true also for such investors' investments in traditional assets to the extent that they would decide to discuss such investment decisions with their advisers.

[1046] *See* proposed rules 223–1(d)(18) and 17f–8(c); *supra* section IV.B.2.e).

[1047] For example, banks, whether nationally-chartered or State-chartered, are regulated by Federal agencies. *See supra* section IV.B.2.d).

[1048] *See supra* section IV.B.2.e).

[1049] *See* proposed rules 223–1(d)(13)(v) and 17f–8.

theft, misuse, and misappropriation. Third, advisers, including advisers to regulated funds, would continue to be required to exercise their fiduciary duty of care when selecting and monitoring a custodian.[1050]

(b) Initial and Annual Determinations

The proposed State trust company rules would require that an adviser or regulated fund make certain reasonable basis determinations both prior to engaging a State trust company as a custodian for crypto assets and related cash and/or cash equivalents and on an annual basis thereafter.[1051] The adviser or regulated fund would be required to determine in writing that it has a reasonable basis, after due inquiry, for believing that the State trust company (i) is authorized by the relevant State banking authority to provide custody services for crypto assets and (ii) maintains and implements written policies and procedures reasonably designed to safeguard crypto assets and related cash and/or cash equivalents from the risk of theft, loss, misuse, and misappropriation.

Benefits

The proposed initial and annual determination requirements under the proposed State trust company rules would benefit advisers and regulated funds, as well as their clients and investors, by helping ensure that the assets custodied under the proposed State trust company rules would be custodied with custodians that are appropriate and capable, which would reduce the risk of theft, loss, misuse, and misappropriation for these assets, enhancing investor protection.

These requirements would mitigate the asymmetric information problem between the adviser or regulated fund and the State trust company custodian by helping ensure that the adviser or regulated fund reviews information about the custodian that it may not otherwise consider.[1052] This additional information, combined with the proposed requirement that advisers and regulated funds perform a due inquiry to reach the reasonable basis determinations, would result in advisers and regulated funds making better-informed decisions when selecting, or considering whether to continue doing business with, a custodian for crypto assets and related cash and/or cash equivalents. To the extent that the reduced information asymmetry would allow advisers and regulated funds to better evaluate the quality of custodians, this could lead to a more efficient allocation of resources.[1053] It could also result in investors' assets being maintained at State trust company custodians with more robust safeguards, which would support investor protection. In addition, it could also result in advisers and regulated funds being more confident in the quality of custodial services that they would receive from State trust company custodians, which could result in increased crypto-related services provided by advisers and increased investments in crypto assets by regulated funds.

By providing information to advisory clients and regulated funds' investors on the considerations that would be required to be included in advisers' and regulated funds' reasonable basis determinations when selecting or opting to continue doing business with a custodian, the proposed requirements would also contribute to increase transparency between advisers and regulated funds and their clients and investors. This could decrease the asymmetry of information and result in investors being more confident in the quality of custodial services provided by State trust company custodians,[1054] which could increase their propensity to invest in crypto assets under the advice of an adviser or via regulated funds. This would benefit these investors as they would be covered by the investor protections associated with the involvement of an adviser or investment in a regulated fund. In addition, it could facilitate investing in crypto assets among interested investors.[1055]

The proposed requirements specifying when the reasonable basis determinations would have to be made would also have benefits. First, the proposed requirement that the determinations be made prior to engaging the custodian would help ensure that no assets are transferred to the custodian before the adviser or regulated fund engaging the custodian has performed the due inquiry and concluded that it is able to make the required reasonable basis determinations. Second, the proposed requirement that the reasonable basis determinations be made annually after the custodian has been engaged to provide custodial services would help ensure that the custodian remains appropriate and capable over time, which would benefit investor protection.[1056] Different factors could result in the State trust company becoming less effective at safeguarding crypto assets over time. For example, the custodian's management team could change, a weakness in the cybersecurity risk defense of the firm could be discovered, or the State banking authority could modify its criteria regarding which entities are authorized to provide custodial services for crypto assets. In addition, the evolution of the technology related to crypto assets could affect the types of tools and procedures that make the safeguarding of crypto assets effective, and the degree to which any particular State trust custodian updates their systems to account for these changes may change over time. Hence, a State trust company's written policies and procedures are likely to be regularly updated or to be applied differently over time. The proposed requirement would help ensure that due diligence is performed at least annually by the adviser or regulated fund and that the assets continue to be safeguarded appropriately.

Costs

The proposed initial and annual determination requirements would entail costs for the advisers or regulated funds considering obtaining custodial services for crypto assets under the proposed State trust company rules. For example, the requirement that advisers

[1050] *See supra* footnote 344 and accompanying text; footnotes 753 and 772.

[1051] *See* proposed rules 223–1(d)(13)(v) and 17f–8(a). The adviser or regulated fund would also be required to maintain records documenting these required determinations. *See* proposed rules 204–2(a)(27) and 270.31a–2(a)(9); *supra* sections II.H.1.b) and II.H.2. *See also infra* sections IV.C.7.a)(2) and IV.C.7.b)(2) for discussions of the benefits and costs associated with these proposed requirements.

[1052] *See supra* section IV.C.1 for a description of the asymmetric information problem, and the principal-agent problem to which it can give rise, in this context.

[1053] *See infra* section IV.D.1. An adviser deciding whether to switch from its current crypto custodian to a newly-permitted custodian that is a State trust company would take the cost of switching custodians into account when making this decision.

[1054] The extent to which this would be the case depends on factors such as the information that advisers and regulated funds would disclose to their clients and investors in the absence of this requirement and the effectiveness of this disclosure. It would also depend on how clients and investors would choose and be able to use this additional information in their decision-making process. In addition, while these proposed requirements would impose a minimum on what advisers and regulated funds would be required to do, they would not fully resolve the asymmetric information problem because, among other things, some advisers and regulated funds could decide to apply additional criteria when selecting a State trust company as custodian. Clients and investors may not be able to observe these additional criteria.

[1055] *See infra* section IV.D for a discussion of the benefits and costs associated with an increase in demand for crypto assets in general.

[1056] An adviser's (including a regulated fund's adviser's) fiduciary duty would continue to apply. Hence, circumstances could continue to require that the adviser reconsiders its relationship with the custodian more frequently than annually.

and regulated funds reach a ''reasonable basis for believing'' that the specified conditions are met could entail some costs for advisers and regulated funds, including potentially costs related to legal advice.[1057] These costs could be passed on to the adviser's clients or regulated fund's investors, for example via higher fees or expenses.[1058] We estimate one-time compliance costs of $30,460 and recurring annual compliance costs of $10,153 per adviser or regulated fund that would maintain crypto assets at a State trust company pursuant to the proposed State trust company rules.[1059]

Under the proposed requirements, the adviser or regulated fund would have to make a due inquiry prior to engaging a State trust company as custodian for crypto assets and related cash and/or cash equivalents under the State trust company rule. Because this inquiry would, in many instances, occur before there is an established business relationship between the adviser or regulated fund and the State trust company,[1060] the adviser or regulated fund might not have observed the State trust company's performance and might lack access to relevant information that is not publicly available. It may therefore be challenging for the adviser or regulated fund to complete it. This could result in additional costs, including related to obtaining relevant documentation. However, we expect that State trust companies would be aware of the proposed requirements to which advisers and regulated funds would be subject and, to the extent that they would be interested in providing custodial services to new clients that would be advisers or regulated funds, that they would cooperate with the adviser or regulated fund's request for information. Hence, we do not expect that this requirement would result in significant costs.

The adviser or regulated fund would also incur costs associated with the proposed ongoing annual determinations. However, we expect that in many instances, these costs would be significantly smaller than those of the initial determinations. This is because the adviser or regulated fund would already have in hand relevant information about the State trust company and would be able to focus its inquiry on the differences between the new information obtained and the previous information.

(1) Authorization to Custody Crypto Assets

Under the proposed State trust company rules, an adviser or regulated fund would be required to determine in writing that it has a reasonable basis for believing, after due inquiry, that the State trust company is authorized by the relevant State banking authority to provide custody services for crypto assets and related cash and/or cash equivalents.[1061]

Benefits

While the proposed definition of ''State trust company'' would help ensure that the entity that would be providing custodial services under the proposed State trust company rules would be supervised and examined by a State authority having supervision of banks and permitted to exercise fiduciary powers under applicable State law, this proposed requirement would require that the adviser or regulated has a reasonable basis for believing that the entity is authorized by the relevant State banking authority to provide custody services for crypto assets and related cash and/or cash equivalents. Depending on a State's regulatory framework, this could help ensure that the entity would be subject to regulatory oversight in relation to its provision of custodial services generally or for crypto assets and related cash and/or cash equivalents specifically.

Regulatory oversight generally ensures that entities are subject to and required to comply with specialized regulation. It also generally includes efforts made to enforce the regulation, which increases the likelihood that the regulation is complied with. Hence, this proposed requirement would help ensure that State trust companies that would be permitted custodians under the proposed State trust company rules would be authorized to do so by a State authority and would comply with requirements beyond those included in the proposed rules. This would benefit advisers and regulated funds using State trust companies as custodians under the proposed State trust company rules, as well as their clients and investors, by helping ensure that the adviser or regulated fund has a reasonable basis for believing that the State trust company custodian safeguarding the assets is appropriately qualified.

In addition, this proposed requirement could result in advisers and regulated funds choosing State trust company custodians that are organized in States where the regulatory framework covers the custody of crypto assets specifically.[1062] This could result in these custodians having better safeguarding controls in place, which would reduce the risk of theft, loss, misuse, and misappropriation for the crypto assets maintained at these custodians.

Costs

The proposed requirements would entail costs for an adviser or regulated fund considering using a State trust company as custodian for crypto assets and related cash and/or cash equivalents under the State trust company rules. In order to comply with the proposed requirements, an adviser or regulated fund would need to perform an analysis of the applicable State law and have a reasonable basis for believing that the State trust company is authorized to provide custody service for crypto assets.[1063] While some States have adopted regulatory frameworks for the custody of crypto assets specifically,[1064] many have not. This analysis could therefore be relatively costly to perform as, in some instances, it could be unclear whether a State trust company is authorized to custody crypto assets or

[1057] For example, the audited financial statements received by the adviser or regulated fund (as required by proposed rules 223–1(d)(13)(v)(B) and 17f–8(a)(2) for advisers and regulated funds, respectively) could indicate that the State trust company's financial condition has moderately deteriorated. This could make it difficult for the adviser or regulated fund to determine whether the State trust company retains its ability to effectively safeguard crypto assets and related cash and/or cash equivalents.

[1058] We expect that these costs would be lower for regulated funds that are part of a family of funds, to the extent that the selection of a custodian takes place at the family level and that the associated costs are shared across all funds in the family. *See supra* section IV.B.3.b). Fee increases passed on to these regulated funds' investors could be lower as a result.

[1059] We estimate that one-time compliance costs would consist of 60 burden hours at $507.67 per hour (60 hours × $507.67 per hour = $30,460) and that recurring annual compliance costs would consist of 20 burden hours at $507.67 per hour (20 hours × $507.67 per hour = $10,153). *See infra* sections V.B and V.C.2.

[1060] Some State trust companies could be subsidiaries of other entities. Hence, it is possible that the adviser or regulated fund would already have a business relationship with the State trust company's parent.

[1061] *See* proposed rules 223–1(d)(13)(v) and 17f–8(a); *supra* section II.C.2.a).

[1062] As discussed below, not all States have adopted regulatory frameworks for the custody of crypto assets specifically, which could increase the costs associated with making this proposed initial determination. This proposed requirement could also provide incentives for State regulators to adopt regulatory frameworks explicitly covering the custody of crypto assets by State trust companies, which could lead to additional investor protection benefits in the longer term.

[1063] This could involve obtaining a legal opinion of counsel, for example. *See supra* section II.C.2.a).

[1064] *See, e.g.,* 23 NYCRR § 200 *et seq.;* Wyo. Stat. Ann. § 34–29–104.

whether the applicable state law applies only to traditional assets.[1065]

In addition, because many States do not have a regulatory framework for the custody of crypto assets specifically, it is possible that some advisers or regulated funds would be unable to reach the proposed reasonable basis determination requirements with regard to some State trust companies. While this could happen when the adviser or regulated fund is not able to determine that the State trust company is authorized to custody crypto assets, it could also happen when the adviser or regulated fund does not have sufficient understanding of the applicable State law or where the applicable State law does not provide sufficient clarity. As a result, this proposed requirement could result in additional costs, including due diligence costs and uncertainty costs, for advisers and regulated funds. It could also prevent some advisers or regulated funds from using as custodian a State trust company that would be permitted under the proposed State trust company rules, which could result in advisers and regulated funds having to select custodians that charge higher fees or that have lower safeguards. However, this situation could happen infrequently, as the entities offering custodial services for crypto assets that are organized as State trust companies may choose to be organized in States where the applicable State law clearly authorizes them to custody crypto assets.

(2) Policies and Procedures

As part of the proposed initial and annual determinations, an adviser or regulated fund would be required to determine in writing that it has a reasonable basis for believing, after due inquiry, that the State trust company maintains and implements written policies and procedures reasonably designed to safeguard crypto assets and related cash and/or cash equivalents from the risk of theft, loss, misuse, and misappropriation, with such policies and procedures addressing, at a minimum, private key management and cybersecurity.[1066]

Benefits

To make the required determination, advisers and regulated funds would need to obtain sufficient information about the State trust company's policies and procedures. This could result in State trust companies sharing information that they would not have otherwise shared with advisers and regulated funds, and thus help reduce the level of asymmetry between the information available to the State trust company and that available to the adviser or regulated fund.[1067] As a result, advisers and regulated funds would be better equipped to make informed decisions when selecting (or deciding whether to continue doing business with) a State trust company custodian under the proposed State trust company rules.[1068] An adviser or regulated fund would be more likely to select a custodian that provides the level and type of services that it desires.

In addition, under the proposed requirements, the adviser or regulated fund would also be required to determine that the State trust company's written policies and procedures are reasonably designed to safeguard crypto assets and related cash and/or cash equivalents from the risk of theft, loss, misuse, and misappropriation with such policies and procedures addressing, at a minimum, private key management and cybersecurity.[1069] This would help ensure that advisers and regulated funds select appropriate custodians.[1070] Written policies and procedures can help ensure that the State trust company's personnel knows the different steps to take when handling crypto assets, including during events that could put the assets at risk.[1071] Hence, these proposed requirements would help ensure that advisers' client crypto assets and regulated funds' crypto assets are appropriately safeguarded by custodians that are State trust companies.[1072] This would reduce the risk of theft, loss, misuse, and misappropriation, thereby increasing investor protection.[1073]

To facilitate their adviser or regulated fund clients' or potential clients' compliance with the proposed requirements, some State trust companies could choose to design and implement new policies and procedures or otherwise enhance the design or implementation of existing ones. To the extent this is the case, this would result in an increase in the quality of custodial services for crypto assets and support investor protection. To the extent that these new or enhanced policies and procedures would be applied to all of the crypto assets in custody with the State trust companies and not only those of advisers' clients or regulated funds, these benefits would apply to all investors whose crypto assets are maintained at these State trust companies.

Costs

In order to comply with the proposed requirements, an adviser or regulated fund using or considering using a State trust company as custodian under the proposed State trust company rules would need to obtain sufficient information to be able to make the required reasonable basis determinations. This would require the adviser or regulated fund to first determine the type of information that it would need to receive from the State trust company to be able to comply with the proposed requirements.[1074] It would also require the adviser or regulated fund to come to an agreement with the State trust company on the information to be received, relating to both the policies and procedures themselves and how they are implemented by the state trust company.[1075] Once it has received the information from the State trust company, the adviser or regulated fund would need to review it to be able to make the required determination.

Hence, these proposed requirements would impose costs on advisers and

[1065] *See supra* footnote 351. After some time, participants in this market could converge on which states authorize State trust companies to custody crypto assets. Such convergence could reduce the costs associated with this analysis.

[1066] *See* proposed rules 223–1(d)(13)(v) and 17f–8(a). *See also supra* section II.C.2.b).

[1067] *See supra* footnote 921 and accompanying text.

[1068] Commenters writing to the Crypto Task Force have recommended that an adviser considers whether a custodian has appropriate policies and procedures in place as part of its evaluation of custodians. *See, e.g.,* Blockchain Association Comment Letter II, *supra* footnote 200.

[1069] To the extent an adviser or regulated fund lacks the technical expertise to make this determination, the benefits of this proposed requirement could be limited, or this proposed requirement could lead to additional costs for the adviser. *See infra* discussion of costs.

[1070] An adviser or regulated fund could, in order to reduce its costs, have incentives to select a custodian with less robust policies and procedures for safeguarding crypto assets without appropriate disclosure. *See supra* text surrounding footnote 928.

[1071] For example, written policies and procedures can help ensure that the State trust company's personnel know the steps to be taken quickly to protect the assets during a cyberattack.

[1072] This benefit could vary based on the adviser or regulated fund's ability to understand the detail of the State trust company's policies and procedures.

[1073] This could increase trust by investors and lead them to invest more with advisers or regulated funds. This could benefit investors, who would be covered by additional investor protections and could potentially obtain higher returns on their investments. *See supra* section IV.C.4.a).

[1074] This discussion refers to information received in addition to the required financial statements and internal control report, which are discussed in sections IV.C.4.c) and IV.C.4.d). For example, an adviser or regulated fund may consider obtaining a certification from the State trust company regarding the adequacy and implementation of its policies and procedures to support its reasonable basis determinations.

[1075] However, we expect that market practice would develop around this proposed requirement and therefore do not expect that this would entail significant costs for advisers.

regulated funds using, or considering using, State trust companies as custodians under the proposed State trust company rules. We expect that these costs would be higher for the advisers and regulated funds that are less familiar with the technology required to safeguard crypto assets, since they may need to hire third parties to comply with the proposed requirements or spend more time or resources making the required reasonable basis determinations, for example. These costs could be passed on to the advisers' clients or the regulated funds' investors, for example via higher fees or expenses. However, we expect that some of these costs would be significantly mitigated by the proposed requirements that advisers and regulated funds receive and review audited financial statements and a written internal control report from current or potential custodians.[1076]

To the extent that they would result in some State trust companies designing and implementing new policies and procedures, or enhancing the design or implementation of existing ones, the proposed requirements would also result in costs for these State trust companies. State trust companies could also face some additional costs related to responding to advisers' and regulated funds' requests for information. Some of these costs could be passed on to the advisers and regulated funds retaining the services of these State trust companies for the custody of crypto assets and further passed on the advisers' clients and regulated funds' investors. However, we expect that, to the extent that these new or enhanced policies and procedures would be applied to all of the crypto assets in custody with the State trust companies, and not only those of advisers' clients or of regulated funds, these costs would be spread among all of the State trust companies' clients for which they would maintain crypto assets. The costs eventually passed on to advisers' clients and regulated funds' investors could therefore be minimal, depending on the set of entities to which State trust companies provide custodial services for crypto assets.

(c) Financial Statement Audit

An adviser or regulated fund would be required, under the proposed State trust company rules, to receive and review the State trust company's most recent annual financial statements.[1077] The adviser or regulated fund would also be required to confirm that such financial statements were prepared in accordance with U.S. GAAP and subject to an audit performed by an independent public accountant.[1078]

Benefits

Appropriately safeguarding crypto assets can be costly for custodians.[1079] Hence, when choosing a custodian, an adviser or regulated fund could rely on its assessment of the financial health of potential custodians to predict whether these custodians would have the financial means to provide the custodial services that it expects.[1080] For that reason or for other reasons,[1081] some custodians may currently be reluctant to share detailed financial information with advisers or regulated funds. This information asymmetry can impede the adviser or regulated fund's decision-making process and result in the adviser or regulated fund choosing a custodian that it would not have chosen had it had better information.[1082] This could result in the adviser's client crypto assets or the regulated fund's crypto assets being at increased risk of theft, loss, misuse, and misappropriation.

To the extent that they would result in the sharing of information that would not be shared otherwise, the proposed requirements relating to audited financial statements would help reduce this market inefficiency in three ways. First, the State trust company would have to send its financial statements to the adviser or regulated fund in order for the adviser or regulated fund to be permitted to use it as custodian under the proposed State trust company rules. Hence, the adviser or regulated fund would receive important information about the State trust company's financial position. The adviser or regulated fund would then be able to use this information when assessing the financial stability of the State trust company, which could inform its assessment of the State trust company's ability to safeguard crypto assets to the level that meets its expectations. Second, the adviser or regulated fund would be required to confirm that the financial statements were prepared in accordance with U.S. GAAP. This would help the adviser or regulated fund review the financial statements it receives as it would have a better understanding of the accounting principles used to prepare the statements. In addition, because the adviser or regulated fund would receive financial statements prepared in accordance with U.S. GAAP from all potential State trust company custodians, it would be better able to compare options, which would support its decision-making process. Third, the adviser or regulated fund would be required to confirm that the financial statements were audited by an independent public accountant. This would further support the adviser or regulated fund in its decision-making process by potentially increasing the quality and reliability of the financial statements that it receives and by potentially increasing the level of trust that the adviser or regulated fund has in the accuracy of the information contained in the financial statements that it receives.[1083]

Costs

Obtaining financial statements that are prepared in accordance with U.S. GAAP and audited by an independent public accountant would entail costs for State trust companies providing custodial services to advisers and regulated funds under the State trust

[1076] Audited financial statements could provide the adviser or regulated fund with information on the custodian's financial ability to implement the written policies and procedures. The internal control report could help the adviser or regulated fund determine the level of adequacy of the policies and procedures and of their implementation. *See infra* sections IV.C.4.c) and IV.C.4.d). Hence, these documents could facilitate the adviser's or regulated fund's reasonable basis determination for believing that a State trust company maintains and implements appropriate written policies and procedures, which would reduce the associated costs.

[1077] *See supra* section II.C.3 for a discussion of the case where the State trust company's financial statements are presented on a consolidated basis.

[1078] *See* proposed rules 223–1(d)(13)(v)(B) and 17f–8(a)(2). *See also supra* section II.C.3. Under both the current and proposed Advisers Act custody rule, as well as under the proposed Investment Company Act State trust company rule, an independent public accountant means a public accountant that meets the standard of independence described in rule 2–01(b) and (c) of Regulation S–X (17 CFR 210.2–01(b) and (c)). *See* rule 206(4)–2(d)(3) and proposed rules 223–1(d)(8) and 17f–8(c). Under the proposed rules, the adviser or regulated fund would also be required to maintain copies of the audited financial statements it receives. *See supra* sections II.H.1.b) and II.H.2. *See also infra* sections IV.C.7 for an analysis of the benefits and costs associated with these requirements.

[1079] *See supra* section IV.C.4.a).

[1080] For example, a custodian in bad financial health could be tempted to cut costs to restore profitability, which could affect the quality of the controls put in place to safeguard the assets.

[1081] For example, some financial information could contain proprietary business information that the State trust company would prefer not sharing publicly.

[1082] *See supra* section IV.C.1.

[1083] Because audits may uncover evidence of fraudulent activity, they also serve as an important deterrence against fraudulent conduct. *See* PCAOB AS 1000.03, *General Responsibilities of the Auditor in Conducting an Audit* (stating that the objectives of an auditor in audit of financial statements include obtaining reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud).

company rules.[1084] These costs could be passed on to the adviser or regulated fund retaining the services of the State trust company and further passed on to the adviser's clients or the regulated fund's investors, for example via higher fees or expenses. However, we expect that, in many cases, the State trust companies would prepare their financial statements in accordance with U.S. GAAP and have them audited by an independent public accountant under the baseline.[1085] Hence we expect that, in these cases, the cost for State trust companies of this proposed requirement would be minimal as it would only consist of the cost of sharing the statements with the adviser or regulated fund.

Reviewing the audited financial statements they would receive would entail costs for advisers and regulated funds. These costs could be passed on to their clients and investors, for example via higher fees or expenses. However, we do not expect that these costs would be significant since regulated funds are required to produce audited financial statements themselves and are therefore likely to be familiar with them and since advisers, as part of the advice they provide to clients, would likely be familiar with reviewing audited financial statements of other entities.

(d) Internal Control Report

An adviser or regulated fund would be required, under the proposed State trust company rules, to receive and review the State trust company's most recent written internal control report prepared by an independent public accountant during the current or prior calendar year. The adviser or regulated fund would also be required to confirm that the internal control report contains an opinion of the independent public accountant as to whether controls were suitably designed and implemented and operating effectively throughout the period to achieve control objectives relating to custodial services, including the safeguarding of crypto assets and related cash and/or cash equivalents.[1086]

Benefits

The internal control reports that would be required under the proposed State trust company rules are assessments performed in accordance with specified standards where individuals with specific qualifications evaluate the design and effectiveness of an organization's internal control framework and report on their findings. They may include descriptions of control activities, testing procedures performed, identified deficiencies, remediation plans, and conclusions regarding control effectiveness. In this context, the internal control report would serve as a signal for a potential State trust company custodian communicating to an adviser or regulated fund that it has appropriate controls in place to effectively safeguard crypto assets and related cash and/or cash equivalents. To the extent that this sharing of information would not happen in the absence of this proposed requirement,[1087] this would help mitigate the principal-agent problem by reducing the level of asymmetry between the information available to the State trust company and that available to the adviser or regulated fund.[1088] By receiving and reviewing the internal control reports, advisers and regulated funds would gain important information on the design and effectiveness of internal control measures in place at the custodian to protect crypto assets from the risk of theft, loss, misuse, and misappropriation. As a result, advisers and regulated funds would be better equipped to make informed decisions when selecting (or deciding whether to continue doing business with) a custodian.[1089] An adviser or regulated fund would be more likely to select a custodian that provides the level and type of services that it expects.[1090]

In addition, under the proposed requirements, the adviser or regulated fund would also be required to confirm that the internal control report contains an opinion of the independent public accountant as to whether controls were suitably designed and implemented and operating effectively throughout the period to achieve control objectives relating to custodial services, including the safeguarding of crypto assets and related cash and/or cash equivalents. This would help ensure that advisers and regulated funds select appropriate custodians.[1091] This would help reduce the information asymmetry, and therefore the principal-agent problem, that can occur between the adviser or regulated fund and its clients or investors.[1092] Hence, these requirements would help ensure that client and fund crypto assets and related cash and/or cash equivalents are appropriately safeguarded by custodians that are State trust companies. This would reduce the risk of theft, loss, misuse, and misappropriation for these assets, thereby enhancing investor protection.[1093]

These benefits would be strengthened by the fact that, under the proposed requirements, the report would be prepared by an independent public accountant. This would help ensure that the report is prepared by individuals who have sufficient technical knowledge to adequately make a judgement on whether the controls in place at the custodian are suitably designed and implemented and operating effectively.[1094] It would also help ensure that the report would be

[1084] We do not have estimates of the costs of such services. *See infra* section IV.E.8.

[1085] This could be, for example, because this is a requirement under the laws of the State under which the State trust company is organized, because other clients of the State trust company demand that the State trust company obtain audited financial statements, because this is part of the State trust company's internal procedures, or because the State trust company is a subsidiary of another entity who is a public company, for which audited financial statements are required. *See also supra* footnote 50 (discussing the 2025 State Trust Company NAL). However, in all these instances, it is possible that the financial statements could be audited by public accountants that do not meet the independence requirement of the proposed State trust company rules. *See supra* footnote 1078. This could require a State trust company to find a different public accountant to audit its financial statements, which could result in additional costs.

[1086] *See* proposed rule 223–1(d)(13)(v)(C) and proposed rule 17f–8(a)(3). *See also supra* section II.C.4. Under the proposed rules, the adviser or regulated fund would also be required to maintain copies of the internal control reports it receives. *See supra* sections II.H.1.b) and II.H.2. *See also infra* sections IV.C.7.a)(2) and IV.C.7.b)(2) for an analysis of the benefits and costs of these proposed requirements.

[1087] *See infra* footnote 1098 and accompanying text.

[1088] *See supra* footnote 921 and accompanying text.

[1089] *See supra* section IV.C.1.

[1090] The internal control report could also support accountants auditing financial statements for advisers' clients or for regulated funds, which would improve the quality of the statements. *See, e.g.,* KPMG Comment Letter, Comment Letter to Crypto Task Force of EY (May 22, 2025) (''EY Comment Letter'').

[1091] An adviser or regulated fund could, in order to reduce its costs, have incentives to select a custodian with controls that may not be viewed by an independent public accountant as being suitably designed, implemented, or operating effectively to safeguard crypto assets without appropriate disclosure. *See supra* footnote 929 and accompanying text.

[1092] *See supra* footnote 929 and accompanying text.

[1093] *See supra* footnote 1073.

[1094] The independent public accountant preparing the internal control report would have to comply with the AICPA Statements on Standards for Attestation Engagements, which states that when providing services under the standards, ''practitioners are responsible for having the appropriate competence and capabilities to perform the engagement'' and for ''exercising professional judgment throughout the planning and performance of the engagement,'' where professional judgment is defined as the ''application of relevant training, knowledge, and experience, within the context provided by attestation and ethical standards in making informed decisions about the courses of action that are appropriate in the circumstances of the attestation engagement.'' *See* AICPA Attestation Standards (Clarified), *supra* footnote 551.

prepared by an accountant that is independent from the custodian. Hence, this proposed requirement could increase the reliability of the internal control report and potentially increase the level of trust that the adviser or regulated fund has in the accuracy of the information contained in the internal control report it receives.[1095]

The proposed internal control report requirements would also strengthen the benefits associated with the proposed audited financial statement requirements. An accountant auditing a State trust company's financial statements would have a better understanding of the State trust company's internal controls and processes, which could affect how it chooses to conduct the audit. Hence, the proposed internal control report requirements could result in a higher quality financial statement audit, which would strengthen the benefits described in section IV.C.4.c).

The proposed requirements that advisers and regulated funds receive an internal control report from potential State trust company custodians could also result in some State trust companies enhancing their controls in order to support potential clients that are advisers or regulated funds in their compliance with the proposed State trust company rules. This could result in crypto assets and related cash and/or cash equivalents being better safeguarded.[1096]

Costs

Obtaining an internal control report that is consistent with the proposed requirements would entail costs for State trust companies providing custodial services to advisers and regulated funds under the proposed State trust company rules.[1097] These costs could be passed on to the adviser or regulated fund retaining the services of the State trust company and further passed on to the adviser's clients or the regulated fund's investors, for example via higher fees or expenses. However, we expect that, in some cases, a State trust company would have obtained an internal control report even under the baseline.[1098] Hence we expect that, in these cases, the costs for State trust company of this proposed requirement would be relatively low as they would only consist in the cost of sharing the report with the adviser or regulated fund.

This proposed requirement could also result in an increase in the demand for independent public accountants preparing internal control reports, which may result in higher costs for these services if the supply of independent public accountants who have the knowledge and skills to prepare internal control reports with respect to the custody of crypto assets is limited. This could create a challenge for advisers and regulated funds if they are unable to obtain an internal control report from the State trust company they would like to use as custodian for crypto assets under the proposed State trust company rules. In this case, they would have to find an alternative custodian, which may charge higher fees or have lower safeguards.

To the extent that they would result in some State trust companies implementing enhanced controls to safeguard crypto assets, the proposed requirements would entail additional costs for State trust companies. These controls could be costly to design, implement, and operate, especially since they could be updated regularly as the technology and best practices evolves and to support advisers and regulated funds in their compliance with the proposed requirements. We expect that the costs of these controls would be reflected in the fees charged to advisers and regulated funds by these custodians, which could result in higher fees or expenses for adviser clients and regulated fund investors. However, we expect that, to the extent that these enhanced controls are applied to all of the crypto assets in custody with the State trust companies, and not only those of advisers' clients or regulated funds' investors, these costs would be spread among all of the State trust companies' clients for crypto assets. The costs ultimately passed on to advisers' clients and regulated funds' investors could therefore be reduced, depending on the set of entities to which State trust companies provide custodial services for crypto assets.

Reviewing the internal control reports they would receive would entail costs for advisers and regulated funds. These costs could be passed on to their clients and investors, for example via higher fees or expenses. Because advisers and regulated funds may not have extensive knowledge of the technology required to safeguard crypto assets properly, they could have to devote significant resources to be able to make the required reasonable basis determination, which could increase these costs. However, we expect that these costs would be mitigated by the fact that the internal control report would contain an opinion of the independent public accountant as to whether controls were suitably designed and implemented and operating effectively throughout the period to achieve control objectives relating to custodial services. This would facilitate the adviser's or regulated fund's review of the report.

(e) Segregation of Assets

Under the proposed Investment Company Act State trust company rule, a regulated fund would be able to place and maintain the crypto assets and related cash and/or cash equivalents with a State trust company under the condition that the fund enters into a custodial services agreement with the State trust company and that this agreement provides that all crypto assets (and related cash and/or cash equivalents) held in custody for the fund would be held in accounts that are segregated from the State trust company's assets.[1099]

[1095] *See supra* footnote 1083.

[1096] Because such enhanced controls could be in place to all of the crypto assets in custody at a given State trust company, and not only those that are advisory client funds or securities, or fund investments in securities or similar investments, this potential benefit could extend to other assets and to other investors as well.

[1097] The cost of obtaining the internal control report would vary across State trust companies, depending on different characteristics such as the complexity of the entity's safeguarding systems. The cost could also depend on the choice of the independent public accountant preparing the internal control report, with larger, better known accounting firms typically charging higher prices. *See, e.g., https://www.thoropass.com/blog/soc-1-audit-cost-a-guide*, discussing different factors affecting the price of certain internal control reports. Additionally, we estimate that the cost of obtaining an internal control report under the proposed adviser self-custody rule would be $376,000 on average for an adviser. The cost of obtaining a similar internal control report for a State trust company could be higher or lower. *See infra* section IV.F.

[1098] For example, State trust companies providing custodial services for crypto assets could obtain an internal control report in order to find potential clients or retain existing clients. *See, e.g.,* EY Comment Letter (stating that custodians for institutional customers now often issue SOC 1 Type 2 reports to provide their customer with relevant information about their internal controls). *See also supra* footnote 50 (discussing the 2025 State Trust Company NAL). However, it is possible that independent public accountants preparing such internal control reports would not meet the proposed independence requirement. This could require a State trust company to find a different independent public accountant, which could result in additional costs.

[1099] *See* proposed rule 17f–8(b). *See also supra* section II.C.5. The Advisers Act custody rule generally requires that advisers with custody of client funds and securities maintain those funds and securities with a qualified custodian in separate accounts under the client's name or in accounts containing only the funds and securities of the adviser's clients, under the adviser's names as agent or trustee. *See* rule 206(4)–2(a)(1). The Commission proposes to renumber this provision but not to amend it substantively. *See* proposed rule 223–1(a)(1). Because segregation is already a requirement on the adviser side, we do not discuss the associated benefits and costs here. *But see supra* section II.G.10; *infra* section IV.C.6.h).

Benefits

The proposed segregation requirements for regulated funds' crypto assets and related cash and/or cash equivalents held with State trust company custodians would help ensure that a regulated fund's assets are isolated and more readily identifiable as property of the State trust company custodian's clients. This would help protect the regulated fund's assets from claims by a third party looking to secure or satisfy an obligation of the State trust company custodian, including in cases of insolvency or bankruptcy of the custodian or its related persons. More generally, it would help protect the regulated fund's assets in instances where the State trust company custodian liquidates its own assets for any reason. In addition, making the regulated fund's assets more readily identifiable as property of the State trust company custodian's clients would help prevent misuse or misappropriation of the assets by the custodian. The proposed segregation requirements would benefit regulated funds' investors by helping ensure the safety of their investments in the funds. Any instance where a fund's assets are lost as a result of events occurring at the custodian results in investment losses for the fund's investors, who ultimately own the fund and its investments.

These benefits would apply to the extent that State trust companies that would be custodians for regulated funds' crypto assets and related cash and/or cash equivalents would not segregate fund assets in the absence of the proposed requirement. We expect that some entities that would provide custodial services for regulated funds' crypto assets under the proposed State trust company rules already segregate assets under the baseline. Those that meet the definition of bank under the current custody rules and are custodians for advisers have the obligation to segregate assets under the current Advisers Act custody rule.[1100] In addition, the internal practices of the State trust companies that would provide custodial services under the proposed State trust company rules may include asset segregation.[1101]

Costs

The proposed segregation requirements for regulated funds' crypto assets and related cash and/or cash equivalents held with State trust company custodians would result in costs for the State trust companies that would be custodians for these assets to the extent that they would have to modify their processes as a result of the proposed rules. We expect that many such State trust companies already segregate their clients' assets.[1102] For those that do not, they would need to familiarize themselves with the requirements to which potential regulated fund clients would be subject to under the proposed rules. Because segregation is a common custody requirement,[1103] we expect that most, if not all, State trust companies that would be providing custodial services under the proposed State trust company rules would be familiar with and understand what asset segregation entails, even though they may not be directly subject to asset segregation requirements. Hence, we do not expect that these costs would be significant. These entities would also need to design and implement modifications to their processes and procedures, which could entail more significant costs, depending on their existing processes.[1104] Finally, the proposed requirement that a regulated fund enter into a custodial services agreement with the State trust company and that this agreement provide that all crypto assets (and related cash and/or cash equivalents) held in custody for the fund be held in accounts that are segregated from the State trust company's assets would result in some costs for the regulated fund, which could be passed on to the fund's investors. We estimate one-time compliance costs of $6,966 and recurring annual compliance costs of $2,322 per regulated fund that would maintain its crypto assets at a State trust company custodian under the proposed State trust company rules.[1105]

5. Investment Company Custody Rule Modernizations

We are proposing amendments to the Investment Company Act custody rules to modernize the rules and correct certain errors or inconsistencies. Specifically, the proposed amendments include adding a reference to BDCs in the Investment Company Act custody rules, removing the existing conditions from the broker-dealer custody rule and permit regulated funds to custody securities and similar investments with a broker or dealer registered under section 15(b)(1) of the Exchange Act where the broker-dealer's custody of the securities or similar investments is subject to the requirements of rule 15c3–3 under the Exchange Act or such other rule that the Commission determines provides similar customer protections.[1106]

(a) BDCs

Section 17(f) of the Investment Company Act applies to BDCs to the same extent as if the BDC was a registered closed-end investment company.[1107] Specifically, under the statute, BDCs are required to place and maintain their securities and similar investments in the custody of a permitted custodian such as a bank or a member of a national securities exchange; or can self-custody, provided certain conditions are met.[1108] In addition to these statutory custodians, the custody rules under the Investment Company Act permit additional types of custodians.[1109] However, these rules do not include an explicit reference to BDCs as many of them were adopted before the Congress adopted the amendments to the Investment Company Act that created BDCs. We are proposing amendments to the Investment Company Act custody rules to explicitly include a reference to BDCs.[1110]

We understand that market practice has been to interpret the Investment Company Act custody rules as applying

[1100] *See supra* footnote 1099.

[1101] For example, State trust companies that are chartered as limited-purpose trust companies in New York are expected to ''separately account for and segregate customer virtual currency'' from the assets of the limited-purpose trust company and its affiliated entities, both onchain and on the limited-purpose trust company's internal ledger accounts. *See* NYDFS Custodial Guidance, *supra* footnote 362.

[1102] *See supra* text accompanying footnote 1100.

[1103] *See supra* section IV.B.2.

[1104] This could entail steps such as creating new wallets and generating new keys.

[1105] We estimate that one-time compliance costs would consist of 9 burden hours at $774 per hour (9 hours × $774 per hour = $6,966) and that recurring annual compliance costs would consist of 3 burden hours at $774 per hour (3 hours × $774 per hour = $2,322). *See infra* section V.C.2.

[1106] We are proposing to make technical corrections to rules 17f–5 and 17f–7, and we do not anticipate that the proposed corrections would have economic effects. In addition, we are also proposing to rescind rule 17f–3. While we do not think regulated funds currently use this rule, we expect this amendment to have an effect on efficiency. *See infra* section IV.D.1.e).

[1107] *See supra* section II.F.1.

[1108] *See supra* section II.F.1; Investment Company Act section 59, 15 U.S.C. 80a–58 (applying section 17(f) to a BDC ''to the same extent as if it were a registered closed-end investment company''). *See also* Investment Company Act section 64(a), 15 U.S.C. 80a–63(a) (likewise applying section 31 to a BDC, with certain exceptions, ''to the same extent as if it were a registered closed-end investment company'').

[1109] *See supra* section IV.B.2.b).

[1110] *See supra* section II.H.2. We are also proposing to add references to BDCs to rules 31a–1 and 31a–2. *See supra* footnote 640 and accompanying text. We do not expect that this amendment would result in costs or benefits since BDCs are already subject to the rules. *See supra* footnote 787.

to BDCs to the same extent as they apply to registered closed-end investment companies. Hence, we do not expect any benefits or costs from the proposed amendments.[1111]

Nevertheless, to the extent that any BDCs had not been maintaining securities and similar investments with eligible custodians, investors may benefit from BDCs having the explicit option to use a broader set of custodians. Specifically, the implementation of some investment strategies, such as investments in derivatives, may require the use of certain custodians that are not specified by the statute but permitted by the Investment Company Act custody rules. Since BDCs are not explicitly specified in these rules, some BDCs may choose not to engage those permitted custodians. To the extent some BDCs currently forgo these investment opportunities as a result, the proposed amendments would expand the investment opportunities available to investors and may enhance the risk-return tradeoff for investors. Additionally, even when a statutory custodian is available, the additional types of custodians specified in the rules under the Investment Company Act may be less costly for some assets held by the BDC.

(b) Broker-Dealer Custody

Rule 17f–1 under the Investment Company Act governs the custody of regulated funds' securities or similar investments with a broker-dealer. Section 17(f) of the Investment Company Act defined permissible custodians under that section to include members of national securities exchanges. At that time, the national securities exchanges were themselves subject to Commission registration and oversight; and direct regulation of brokers and dealers that solely effected securities transactions as members of a national securities exchange was to be conducted by the exchanges. Such brokers and dealers were subject to the rules and enforcement mechanisms established by the exchanges that provided significant oversight for exchange members. For broker-dealers that effected securities transactions in the OTC markets, the Commission had authority to prescribe rules, including rules that could provide for such broker-dealers to register with the Commission.[1112] However, the Commission has enacted a comprehensive regulatory regime that generally applies to all broker-dealers since then.[1113] In light of the changes in the regulatory landscape for broker-dealers, we are proposing amendments to rule 17f–1 to permit regulated funds to custody securities and similar investments at a broker or dealer registered under section 15(b)(1) of the Exchange Act, where the broker-dealer's custody of the securities or similar investments is subject to the requirements of rule 15c3–3 under the Exchange Act or such other rule that the Commission determines provides similar customer protections, without requiring specific enumerated conditions in rule 17f–1. Specifically, we are proposing to remove all the conditions, including those relating to segregation, rehypothecation, liens, examination, inspection, and possession in rule 17f–1. These conditions were initially established to protect investors at a time when customer protection requirements for broker-dealers such as rule 15c–3–3 did not exist in Federal regulations or the rules thereunder.[1114] Finally, we are also proposing to rescind Form N–17f–1 as we are proposing to rescind the examination condition under the current rule 17f–1.

While broker-dealers are generally required to be a member of at least one SRO, which can be either FINRA or an exchange, most broker-dealers are only members of FINRA.[1115] Consequently, only a limited number of broker-dealers are currently eligible to serve as custodians for regulated funds. Allowing all registered broker-dealers to serve as custodians would expand the pool of permitted custodians for regulated funds, which in turn could enhance competition between custodians and lower custody fees. We also anticipate that removing the segregation condition for securities or similar investments would make broker-dealers more viable custodial options for regulated funds as the current segregation condition requires physical segregation of assets.[1116]

Additionally, removing the examination condition would also benefit regulated funds and regulated fund investors. Under the current rule, when a regulated fund uses a broker-dealer as its custodian, the broker-dealer has to undergo three examinations annually, thereby incurring the costs associated with these examinations. The proposed amendments would remove the examination condition, thereby eliminating the associated costs. These cost savings may be passed on to funds and their investors. The proposed amendments would also eliminate the requirement for a written custodial contract and therefore also eliminate the requirement for the board of directors to ratify this contract and the associated costs. We estimate that the proposed eliminations of the conditions in rule 17f–1 would result in recurrent annual cost savings of $8,283 per regulated fund that relies on the rule. This includes cost savings associated with the proposed elimination of the requirement that the board of directors ratify the custodial contract ($6,093) and with the proposed elimination of the examinations of the regulated fund's securities and similar investments by an independent public accountant ($2,190).[1117] In addition, we estimate that the proposed rescission of Form N–17F–1 would result in recurrent annual cost savings of $1,521 per regulated fund who currently files Form N–17F–1.[1118]

As registered broker-dealers are subject to extensive regulation, including rules that provide protections for customers, we do not expect any reduction in investor protection due to the proposed broadening of the set of Investment Company Act custodians to include all registered broker-dealers. Similarly, we also do not expect any reduction in investor protection due to the proposed removal of the segregation, examination, inspection, possession, lien, and rehypothecation conditions.

The segregation condition requires a regulated fund's securities and similar

[1111] While complying with the conditions under the Investment Company Act custody rules involves some costs, we expect that BDCs already incur these costs, and we do not expect that the proposed amendments would result in a change in market behavior.

[1112] *See supra* section II.F.2.

[1113] *See id.*

[1114] *See id.*

[1115] *See supra* section IV.B.3.c). *See also* Sec. & Exch. Comm'n, Div. of Trading & Mkts., Guide to Broker-Dealer Registration (2008), *available at https://www.sec.gov/about/divisions-offices/division-trading-markets/division-trading-markets-compliance-guides/guide-broker-dealer-registration*.

[1116] *See infra* section IV.D.2. Existing permitted custodians generally offer comparable custody services; therefore, we do not expect that the benefits would extend to enabling additional strategies that currently permitted custodians may not support.

[1117] We estimate that recurring annual compliance costs associated with the conditions included in rule 17f–1 consist of 0.5 burden hour at $12,186 per hour for the fund's board of directors to review and ratify the custodial contracts (0.5 hour × $12,186 per hour = $6,093) and of 3 burden hours at $730 per hour for the fund's financial manager to assist the fund's independent public accountant in verifying the fund's assets (3 hours × $730 per hour = $2,190). *See infra* section V.C.3.

[1118] We estimate that filing Form N–17F–1 costs on average $507 to a regulated fund. This consists of 1 burden hour at $142 per hour for an office clerk and 0.5 burden hour at $730 per hour for the fund's financial manager (1 hour × $142 per hour + 0.5 hour × $730 per hour = $507). The form is filed three times per year, for a total annual cost of $1,521 per fund per year. See infra section V.E.3.

investments to be individually segregated from the securities and investments of any other person and marked to clearly identify them as the property of the regulated fund. Removing the current segregation condition in rule 17f–1 generally would not affect clients' ability to recover their securities and funds that are held at a broker-dealer for several reasons. First, the customer protection rule requires carrying broker-dealers to maintain physical possession or control over customers' fully paid and excess margin securities and to maintain a customer reserve bank account that includes funds or qualified securities with a value at least equal to the net cash owed to their customers. Second, the customer protection rule works in conjunction with the net capital rule to help ensure not only that the broker-dealer properly segregates customer assets from the firm's proprietary assets, but also that it maintains sufficient liquid assets to meet all liabilities to its creditors, including its obligations to customers, and to help ensure that the broker-dealer has adequate additional resources to wind-down its business in an orderly manner without the need for a formal proceeding under SIPA, helping to ensure that the liquidation of a firm will not result in excessive delay in repayment of the firm's obligations to customers.[1119] Third, SIPA affords certain protections against the loss of customer securities and related customer funds resulting from a broker-dealer failure. These protections include the right for customers to share pro rata with other SIPA customers in the customer property[1120] held by the carrying broker-dealer by way of a priority claim on the customer property compared to general unsecured creditors of the carrying broker-dealer.[1121] If the amount of customer property is insufficient, customers may receive up to $500,000 (of which $250,000 can be used to cover cash claims) to satisfy their claims for securities and/or cash in case of broker-dealer's insolvency.[1122]

While there is not a singular direct analog in the Exchange Act requirements for broker-dealers to the examination condition in rule 17f–1, its general purpose is collectively addressed by several different requirements found within the broker-dealer rules discussed above. In particular, rule 17a–5 under the Exchange Act requires broker-dealers to file periodic and annual financial reports, including audited annual statements, as well as FOCUS Reports. Similar to the inspection condition in rule 17f–1, rule 17a–4 under the Exchange Act requires a broker-dealer to promptly furnish records of the broker-dealer that are required to be preserved or any records of the broker-dealer subject to examination at the request of the Commission. Finally, unlike the current rule 17f–1 possession condition, rule 15c3–3 requires broker-dealers to promptly obtain and thereafter maintain the physical possession or control of all fully-paid and excess margin securities, but also requires, among other things, certain buy-ins of short security differences, steps to take when required securities are not in possession or control, and required items in the customer reserve formula for items that are failed to receive or deliver, which provide additional protection for assets not in possession of the broker-dealer.[1123]

The lien condition under rule 17f–1 provides that regulated funds' securities and similar investments shall be subject to no lien or charge of any kind in favor of the custodian or any persons claiming through the custodian. The customer protection rule provides similar protections for customers' fully paid and excess margin securities.[1124] However, broker-dealers are generally not required to maintain possession or control of margin securities except to the extent that the securities are excess margin securities.[1125] Therefore, when a customer opens a margin account to trade on margin, the broker-dealer may have a lien on, and rule 15c3–3's possession or control requirement may not apply to the customer's margin securities.[1126] Such liens help broker-dealers secure a customer's margin debit balance in the event the customer fails to pay or meet a margin call, thereby lowering risks for broker-dealers and allowing them to offer financing at more favorable terms to their customers. Since broker-dealers can exercise their lien rights only to secure the margin debit balance, we do not expect that removing the lien condition would involve costs for investors.

While the customer protection rule does not permit broker-dealers to rehypothecate customers' fully-paid or excess margin securities, broker-dealers are allowed to rehypothecate customers' margin securities up to a 140 percent threshold. However, the reserve requirement and the SIPA protections provide investor protection benefits when customer margin securities are subject to rehypothecation. Additionally, the rules governing broker-dealer hypothecation create further restriction on the broker-dealer's use of customer securities.[1127] As a result, we do not expect a reduction in investor protection due to the proposed removal of the rehypothecation condition.

While a number of the protections discussed in this section apply only to customer securities and funds, this proposal also limits when regulated funds can custody their similar investments with a broker-dealer to where that custody is subject to rule 15c3–3 or such other rule that the Commission determines provides similar customer protections.[1128] Therefore, for the same reasons as discussed above, we do not expect the proposed amendments to result in a reduction in investor protection with regard to broker-dealer custody of similar investments.

However, this provision of the proposed amendments could result in certain costs to regulated funds and their investors. Under the proposed amendments, if rule 15c3–3 remains limited to customer securities and funds and the Commission does not determine that there is another rule that provides similar customer protections, regulated funds would not be able to custody their similar investments with a broker-dealer, which could result in additional costs for regulated funds and their investors. These costs could result, for example, from the need to search for a different custodian or to use a custodian charging higher fees.

6. Investment Adviser Custody Rule Modernization

The Dodd-Frank Act provided the Commission with additional authority to impose requirements on registered investment advisers safeguarding client assets. Consistent with this authority, we are proposing to redesignate the custody rule as a new rule 223–1 under the Advisers Act. We are also proposing several amendments to the Advisers Act custody rule to address certain longstanding questions relating to the

[1119] *See supra* section II.F.2 for a more detailed discussion of the net capital rule.

[1120] *See supra* section II.F.2 for a more detailed discussion of SIPA, including the definition of customer property.

[1121] *See* 15 U.S.C. 78fff–2(c) and 15 U.S.C. 78fff–3(a).

[1122] *See supra* footnotes 455 and 456 and accompanying text.

[1123] *See supra* section II.F.2.

[1124] *See supra* section II.F.2.

[1125] *See* rule 15c3–3(a)(5).

[1126] However, the terms on which broker-dealers can extend credit for securities transactions are governed by federal regulation and by SRO rules. *See, e.g.,* Regulation T and FINRA Rule Series 4200.

[1127] *See supra* section II.F.2.

[1128] *See* proposed rule 17f–1.

application of the Advisers Act custody rule. Specifically, the proposed rule would include amendments regarding discretionary trading authority, the requirement relating to the registration with and inspection by the PCAOB for accountants performing certain engagements, audit provision, standing letters of authorization, treatment of BDCs, advisers' notice to clients upon opening an account with a qualified custodian, the accountants' notice to the Commission upon finding any material discrepancies, and inadvertent custody. Additionally, we are also outlining our views on segregation and accommodation reporting practices.[1129]

(a) Discretionary Trading Authority

In the 2003 Adopting Release, the Commission stated that an adviser's trading authority does not constitute custody, noting that DVP arrangements minimize the risks that the custody rule is designed to prevent. Market participants have expressed uncertainty as to whether trading authority over assets not settled on a DVP basis constitutes custody. The proposed amendment would specifically state that an adviser would not be required to comply with the Advisers Act custody rule with respect to funds and securities over which the adviser has custody due to its authority to trade at its discretion provided that the adviser: (1) executes (and only has the authority to execute) such trades only from and into designated client accounts in the client's name or the transfer is recorded in the client's name by the issuer; (2) has no authority (under the discretionary trading arrangement or otherwise) to transfer client funds or securities from the designated client account to itself, to an account controlled by the adviser or by its related person, or to any account that is not the client's, unless directed by the client in connection with such trading, and does not have the authority to have the transfer recorded by the issuer in the adviser's own name or that of a related person; and (3) complies with the Advisers Act custody rule for any other activities, rights, or authorities that cause the adviser to have custody of the funds or securities separate from discretionary trading authority, and with the requirements of any corresponding exceptions under the Advisers Act custody rule that the adviser exercises pursuant to such custody.[1130] If the proposed discretionary trading authority exception is adopted, the Commission expects to rescind the discussion in the 2003 Adopting Release on trading authority.

An adviser who currently has discretionary trading authority and complies with the requirements of the Advisers Act custody rule—or who would have such authority under the proposed rule—would benefit from the proposed amendment. Specifically, to the extent such an adviser meets the conditions in the proposed amendment, it would not be subject to the requirements of the Advisers Act custody rule and would not incur the associated compliance costs.

Additionally, clients whose advisers currently have authority that goes beyond the conditions in the proposed rule but were viewing such authority as not requiring compliance with the requirements of the Advisers Act custody rule as well as clients who would grant discretionary trading and other authority in the future under the proposed rule could both benefit from enhanced protections because their adviser would be required to either come into compliance with the Advisers Act custody rule or alter its practices to meet the proposed conditions to the exception.

Furthermore, current rule 206(4)–7 requires advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.[1131] Thus, an adviser relying on the proposed discretionary trading authority exception would need to adopt additional policies and procedures reasonably designed to ensure that the adviser's discretionary trading practices meet the conditions required under the proposed rule. The proposed conditions along with policies and procedures reasonably designed to prevent such violations could mitigate the misappropriation risks associated with discretionary trading authority.

Clients could also benefit from the proposed amendments if they currently avoid granting trading authority to advisers for assets where they perceive heightened risk of misappropriation related to an asset's trading complexity or delays in settlement. The proposed conditions could help mitigate the perceived misappropriation risk associated with an adviser's discretionary trading authority over such assets, making clients more likely to grant their advisers such authority, which could help clients to achieve better their intended risk-return objectives.

Advisers could incur costs related to complying with the proposed conditions. Advisers may need to modify their existing authorized discretionary trading arrangements or create new arrangements that are consistent with the proposed conditions. Alternatively, advisers that currently have discretionary trading authority but have different practices from the proposed conditions may choose not to meet the conditions described above. In these cases, they would be required to comply with the Advisers Act custody rule, incurring associated compliance costs. Some of these costs may be passed on to clients.

When an adviser is excepted from complying with the requirements of the Advisers Act custody rule, there may be a reduction in investor protection as clients' funds and securities may not be subject to the protections required under the Advisers Act custody rule. Specifically, without surprise examinations and the qualified custodian requirements, advisory clients who would grant discretionary trading authority could be subject to heightened misappropriation risks, and any risky activity may not be detected in a timely manner.[1132] However, these risks could be mitigated by the proposed conditions, as discussed above.

(b) PCAOB-Registered and Inspected Accountant Requirement

The current Advisers Act custody rule requires that if an adviser relies on the audit provision with respect to the account of a pooled investment vehicle, the independent public accountant that performs the financial statement audit must be registered with, and subject to regular inspection by, the PCAOB.[1133] Additionally, if an adviser or a related person of the adviser maintains client funds or securities as a qualified custodian, the independent public accountant performing the required surprise examination and preparing the required internal control report must be registered with, and subject to regular inspection by, the PCAOB.[1134] We are proposing an amendment to remove the

[1129] We anticipate that some of the amendments we are proposing would not have any economic effects. These include: (i) redesignating the custody rule as new rule 223– and (ii) amending the language concerning notice upon the finding of any material discrepancies during the course of an examination.

[1130] *See* proposed rule 223–1(b)(9).

[1131] *See supra* section IV.B.2.

[1132] We understand that some advisers would likely have both discretionary trading authority and fee deduction authority over a client account. With respect to such funds or securities that are subject to fee deduction the proposed rule would only except them from the surprise examination, but they would still be required to comply with the remainder of the Advisers Act custody rule.

[1133] *See* current rule 206(4)–2(b)(4).

[1134] *See* rule 206(4)–2(a)(6)(i) and (ii)(C).

requirements that the accountants performing these engagements be registered with, and subject to regular inspection by, the PCAOB to allow advisers to retain any independent public accountant for these activities.

Accountants registered with the PCAOB primarily for the purpose of providing services required by the Advisers Act custody rule could benefit from the proposed amendments. Specifically, these accountants may choose to withdraw their registration with the PCAOB and could realize cost savings associated with the annual PCAOB registration fees. These cost savings would be $500 per accountant.[1135]

Additionally, removing the PCAOB-related requirements could also expand the pool of independent public accountants eligible to provide services required by the Advisers Act custody rule, resulting in enhanced competition among accountants and reduced costs for these services to advisers.[1136] However, these PCAOB-related requirements under the Advisers Act custody rule may not be the primary barrier to entry into this market; rather, it may be the setup of the necessary technology, operational capability, and regulatory knowledge. Accounting firms conducting audits or examinations required by the Advisers Act custody rule may have capabilities to engage in additional business activities and may be registered with the PCAOB to support other business lines, such as financial statement audits of public companies and broker-dealers. As a result, such accounting firms would continue to incur annual registration fees. Consequently, reductions in the cost of audits or examinations due to the removal of the PCAOB requirements could be limited.[1137]

We anticipate that the proposed removal of the PCAOB inspection requirement would likely not carry costs in the form of reduced investor protections, as the PCAOB does not inspect audit or examination engagements required solely by the Advisers Act custody rule.[1138] Whether the proposed removal of the PCAOB-registration requirement would impact audit quality is unclear. The findings in one study for non-U.S. companies suggest that PCAOB registration may improve audit quality through requirements that are part of the registration process.[1139] Therefore, to the extent that the proposed amendment would increase the market share of accounting firms not registered with the PCAOB, this could reduce audit quality. However, this study was not conducted specifically in the context of activities required under the Advisers Act custody rule, and therefore its implications may be limited for those activities.[1140]

(c) Audit Provision

The current Advisers Act custody rule provides that an adviser to a pooled investment vehicle is excepted from the client notice and account statement delivery requirements and is deemed to have complied with the annual surprise examination requirement, provided certain conditions are met, including that audited financial statements are delivered to the investors in the pooled investment vehicle on an annual basis.[1141] We are proposing to make several amendments to the audit provision and outlining our views on certain matters.

(1) Use of U.S. GAAP and Reconciliation to U.S. GAAP for Foreign PIVs

The current audit provision requires that audited financial statements be prepared in accordance with ''generally accepted accounting principles.''[1142] The Commission's longstanding view has been that, except in limited circumstances, audited financial statements would need to be prepared in accordance with U.S. GAAP, and the Commission previously took a similar view in allowing advisers to foreign PIVs to rely on audited financial statements prepared in accordance with accounting principles other than U.S. GAAP in certain circumstances.[1143] We are proposing amendments that would incorporate these positions. Specifically, we are proposing amendments to the audit provision to specify that a pooled investment vehicle's audited financial statements must be prepared in accordance with U.S. GAAP, except for financial statements of foreign PIVs, provided certain conditions are met. In such cases, the proposed amendment would require that the statements of foreign PIVs contain information substantially similar to the information contained in financial statements prepared in accordance with U.S. GAAP, including a reconciliation to U.S. GAAP for material differences, and that such reconciliation is delivered to the pooled investment vehicle's U.S. investors, along with the required audited financial statements.[1144]

To the extent that advisers to foreign PIVs do not rely on the current audit provision or guidance and instead comply with the client notice, account statement, and surprise examination requirements, the proposed amendments would provide benefits for advisers and investors. Advisers of

[1135] *See* PCAOB, Registration, Annual Fee, *available at https://pcaobus.org/oversight/registration/annual-fee.* This is the PCAOB registration fee for firms with 200 or less issuer audit clients and 1,000 or less personnel. Accountants registered with the PCAOB specifically for the purpose of providing services required by the Advisers Act custody rule would likely fit in that category.

[1136] *See infra* section IV.D.2.b).

[1137] Accounting services related to crypto assets, as required under the proposed crypto custody rules, may require a different set of skills compared to those required by traditional assets. To the extent that the number of PCAOB-registered and -inspected accounting firms capable of providing crypto asset related services is currently limited, crypto-specialized accounting firms that are not registered with the PCAOB may gain more market share relative to accounting firms providing services for traditional assets.

[1138] *See* 2009 Adopting Release, *supra* footnote 7. While there is some evidence that PCAOB inspections may improve audit quality in the context of non-U.S. companies that were audited, this evidence relates to public company audits, which the PCAOB directly inspects. *See, e.g.,* Philip T. Lamoreaux, *Does PCAOB Inspection Access Improve Audit Quality? An Examination of Foreign Firms Listed in the United States,* 61 J. Acct. & Econ. 313 (2016); and Simon Yu Kit Fung et al., *Does the PCAOB International Inspection Program Improve Audit Quality for Non-U.S. Listed Foreign Clients?,* 64 J. Acct. & Econ. 15 (2017).

[1139] *See* Partha S. Mohapatra et al., *The Impact of PCAOB International Registration on Audit Quality and Audit Fees: Evidence from China,* 41 J. Acct. & Pub. Pol'y 106947 (2022). Firms registered with the PCAOB are required to comply with certain standards, including certain quality control standards. *See* Sarbanes-Oxley Act of 2002, section 101(c)(2), 15 U.S.C. 7211(c)(2) and section 103(a)(1), 15 U.S.C. 7213(a)(1); *see also* Quality Control Standards, PCAOB, *https://pcaobus.org/oversight/standards/qc-standards* (last visited July 7, 2026).

[1140] When amending the custody rule to include the PCAOB requirements, the Commission stated that the PCAOB requirements could provide indirect benefits for purposes of the Advisers Act custody rule regarding the quality of the accountant's or auditor's other engagements. *See* 2009 Adopting Release, *supra* footnote 7, at section II.C.3. As the PCAOB has previously stated, PCAOB registration does not itself provide assurance of the quality of a firm's professional services. *See supra* footnote 560.

[1141] *See* rule 206(4)–2(b)(4).

[1142] *See* rule 206(4)–2(b)(4).

[1143] *See supra* footnote 570. In connection with audits under rule 206(4)–2(b)(4), foreign PIVs may have their financial statements prepared in accordance with accounting standards other than U.S. GAAP so long as they contain information substantially similar to statements prepared in accordance with U.S. GAAP and contain a footnote reconciling any material variations between such comprehensive body of accounting standards and U.S. GAAP. Commission staff has taken a similar view. *See also* Question VI.5 in the Custody Rule FAQ.

[1144] *See* proposed rule 223–1(b)(4); *supra* section II.G.4.a). While the audited financial statements would be required to be distributed to all investors in the pooled investment vehicle (or their independent representatives), the reconciliations to U.S. GAAP would be required to be distributed to U.S. investors only (or their independent representatives).

foreign PIVs that do not currently rely on the audit provision but would do so under the proposed amendments would no longer incur the costs associated with the client notice, account statement, and surprise examination requirements. Advisers of foreign PIVs that rely on the current audit provision, but not on the Commission guidance permitting accounting principles other than U.S. GAAP under certain conditions, could save costs by instead preparing their financial statements in accordance with different standards and complying with the proposed requirement regarding reconciliation of material differences under the proposed amendments. In addition, the proposed amendments would ensure that U.S. investors receive statements that contain information substantially similar to the information contained in financial statements prepared in accordance with U.S. GAAP, which incorporates industry-specific accounting and disclosure principles for pooled investment vehicles within the scope of FASB ASC Topic 946, including a reconciliation to U.S. GAAP for any material differences. For example, such statements or reconciliation could include a presentation of a schedule of investments and financial highlights designed to ensure that the statements provide a complete view of a pooled investment vehicle's investments. Since U.S. investors are likely to be familiar with these features, the use of or reconciliation to U.S. GAAP would allow investors to better understand and compare pooled investment vehicles.

To the extent that an adviser to foreign PIVs does not rely on the current guidance and does not currently avail itself of the audit provision, the proposed rule could also involve costs for advisers and investors. Advisers of foreign PIVs may incur expenses to ensure that financial statements contain information substantially similar to the information contained in financial statements prepared in accordance with U.S. GAAP, including a reconciliation to U.S. GAAP for material differences. These costs could ultimately be borne by investors.

(2) Distribution of Audited Financial Statements

The current audit provision requires that annual audited financial statements be delivered to all limited partners, members, or other beneficial owners of a pooled investment vehicle within 120 days of the end of its fiscal year.[1145] The proposed rule would extend the current rule's 120-day distribution timeframe to 180 days in the case of a fund of funds and 260 days in the case of a fund of funds of funds.[1146] Second, we propose to amend the audit provision to permit an adviser to satisfy the distribution requirement by distributing the audited financial statements to a designated independent representative of an investor.

Accountants auditing financial statements of pooled investment vehicles that invest in other funds may only be able to complete those audits once the audited financial statements of the underlying funds have been received. As a result, these pooled investment vehicles may need longer periods to distribute their own audited financial statements due to this delay. These proposed amendments would give funds of funds and funds of funds of funds more time to perform their financial statement audits after receiving the audited financial statements of the underlying funds, which could increase audit quality and help ensure that investors have reliable information when making decisions about their investments. In addition, the proposed amendments that would permit advisers to distribute audited financial statements to a designated independent representative of an investor could also benefit pooled investment vehicle investors, as such investors may prefer to have an independent representative receive the audited financial statements on their behalf. Distribution of these statements in accordance with the investor's preference could facilitate investors' review of the statements.

The proposed amendments could also result in investors receiving the audited financial statements at a later date than under the baseline, which would extend the period before reliable information is disclosed to investors (*i.e.,* the audited financial statements).[1147]

(3) Audit Requirement for Newly-Formed Pooled Investment Vehicles

The current audit provision requires that annual audited financial statements be delivered within 120 days of the end of the pooled investment vehicle's fiscal year and promptly upon completion of the audit at liquidation.[1148] We are proposing amendments to the audit provision with respect to certain newly-formed pooled investment vehicles. If a pooled investment vehicle is formed within the last 90 days of its fiscal year, the audit provision would be satisfied if (a) financial statements (which may be unaudited) covering the last 90 days of the first fiscal year are distributed to investors within 90 days of the end of the first fiscal year and (b) audited financial statements are distributed to investors that cover the first fiscal year and second fiscal year after the end of the second fiscal year.[1149]

We understand that audits, regardless of the period covered, generally involve certain fixed administrative costs associated with obtaining and delivering audited financial statements. Therefore, the cost of audited financial statements that covers a single quarter may not be significantly less than the cost of an audit for the entire fiscal year, thereby potentially making these audits burdensome for advisers. The proposed amendments would benefit advisers and investors by allowing advisers to avoid the costs associated with obtaining audited financial statements covering only the pooled investment vehicle's first fiscal year, if applicable. These savings could be passed on to investors.

While advisers would benefit from the cost savings associated with the modification of the audited financial statement requirement for the first fiscal year, they would incur additional costs due to the requirement that audits in the following year cover the entire period since formation (*i.e.,* two separate sets of audited financial statements, one covering the first fiscal year and the second covering the entire second fiscal year), instead of only the second fiscal year. However, we anticipate that the cost associated with obtaining audits for the entire period since formation would be lower than the cost of obtaining audited financial statements for the first and second fiscal years at different times, in part because the work could be completed at the same time rather than through separate engagements in the first and second fiscal years. This could result in net cost savings for advisers; these savings could be passed on to investors.

The costs from the proposed requirement to prepare and distribute unaudited financial statements within 90 days of the end of the first fiscal year would likely be minimal for advisers. Since it is likely that advisers already prepare unaudited financial statements due to investor demand, we do not expect significant additional costs associated with the preparation aspect of unaudited financial statements. The 90-day distribution timeframe for the unaudited financial statements would

[1145] *See* rule 206(4)–2(b)(4)(i) through (iii).

[1146] *See* proposed rule 223–1(b)(4)(i)(C); *supra* section II.G.4.b).

[1147] These benefits and costs would only apply to the extent that market practice is not currently consistent with the proposed amendments. *See* Custody Rule FAQs *supra* footnote 572.

[1148] *See* rule 206(4)–2(b)(4)(i) through (iii).

[1149] *See* proposed rule 223–1(b)(4)(ii).

be different from the 120-day timeframe for audited financial statements. However, we expect that the distribution of unaudited financial statements would require less time and be less costly compared to that of audited financial statements. We estimate average recurring annual compliance costs associated with the preparation and distribution of unaudited financial statements of a pooled investment vehicle within 90 days of the end of the fiscal year of $76 per adviser that distributes unaudited financial statements to investors in the pool.[1150]

The proposed modification of the audited financial statement requirement for the pooled investment vehicle's first fiscal year could lead to a reduction in investor protection as it could extend the period before any fraudulent activities are detected. However, we anticipate that forgone benefits from modifying the first fiscal year audit requirement would be minimal for two reasons. First, newly-formed entities may have limited assets and few investment activities or other transactions to be audited during the first few months of their existence. While audits generally provide investor protection by identifying risks of material misstatements, these limited activities in the first few months may involve low misappropriation risks and audits covering this period may provide limited benefits. Second, audited financial statements delivered after the second year would encompass all activities since the formation of the fund, thereby helping to identify any potential high-risk activities that occurred during the initial months. Also, the distribution of financial statements, although unaudited, covering the initial 90-day period would allow investors to review an entity's assets and investments from an economic perspective. As a result, investors would be subject to limited additional risks due to the proposed amendments.

(d) Standing Letters of Authorization

Under the current Advisers Act custody rule, an adviser with custody of client funds and securities is generally required to have an annual surprise examination.[1151] We are proposing an amendment that would provide an exception from the surprise examination requirement if the adviser has custody of client funds and securities solely because of a SLOA. [1152] Under a SLOA, clients authorize their advisers, in writing, to direct a qualified custodian to transfer funds and securities to a third-party recipient, from time to time or on a specified schedule. For an adviser to rely on this proposed exception, the SLOA would need to satisfy certain conditions, which are described in the proposed rule.[1153]

The proposed rule is consistent with the staff's position provided in the IAA SLOA No-Action Letter.[1154] For advisers who already operate in accordance with the IAA SLOA No-Action Letter, and therefore forego surprise examinations, the benefits and costs associated with the proposed amendment, as discussed below, would be minimal.

This amendment would reduce compliance costs for investment advisers that currently undergo surprise examinations but would no longer be required to comply with the surprise examination requirement under the proposed rule. To the extent such advisers pass along the cost savings to clients, those clients would benefit from lower fees.

While investor protection could, in theory, be reduced when advisers forgo surprise examinations, an adviser's role would be limited when the adviser has custody of client funds and securities solely because of a SLOA, particularly given the conditions of the proposed rule. Specifically, the adviser would have no ability or authority to designate or change any information about the third-party recipient, so that the client would have the ultimate ability to terminate or change the instruction with the qualified custodian. Additionally, the qualified custodian would not be permitted to be an adviser's related party and clients would need to provide signed written instructions and authorization to both the adviser and the qualified custodian. The required signature would allow qualified custodians to verify the instructions and authorizations. Considering these proposed conditions, we anticipate that there would be little risk that an adviser could misappropriate its clients' funds or securities through such authorizations even in the absence of a surprise examination.

To rely on this exception, advisers could incur setup costs to comply with these conditions. We estimate one-time compliance costs of $471 and recurring annual compliance costs of $471 per adviser with clients that issue SLOAs.[1155]

(e) Treatment of Business Development Companies

Advisers are currently not required to comply with the Advisers Act custody rule with respect to the account of an investment company registered under the Investment Company Act.[1156] The current exception ensures that advisers and registered investment companies are not subject to duplicative or conflicting custody regulations. However, the current exception does not include an explicit reference to BDCs. We are proposing an amendment that would extend this exception to include the accounts of BDCs as well.[1157]

As the custody provisions under the Investment Company Act are incorporated by statute to apply to BDCs to the same extent these provisions apply to registered closed-end investment companies,[1158] we understand that market participants are already treating BDCs as registered closed-end investment companies for purposes of the Advisers Act custody rule. To the extent that market practice is not consistent with this approach, the proposed amendment could involve benefits and costs.

[1150] We estimate that recurring annual compliance costs would consist of 0.1784 burden hours at $423.67 per hour (0.1784 hour × $423.67 per hour = $76). *See infra* section V.B. We do not anticipate that the requirement to distribute the first audited financial statements covering the first fiscal year and the following fiscal year under proposed rule 223–1(b)(4)(ii) would result in significant costs for advisers as advisers relying on the audit provision are already required to audit and deliver their financial statements every year, and we understand that adding a single quarter to the audit period does not add significantly more to the cost of distributing the audited financial statements.

[1151] *See* rule 206(4)–2(a)(4).

[1152] *See* proposed rule 223–1(b)(8).

[1153] *See* proposed rule 223–1(d)(17). Under the proposed rule, the qualified custodian must not be the adviser's related person, the client's authorization must include the client's signature, the third-party recipient's name, and either its address or account number at a custodian to which the transfer should be directed, and the adviser must have no ability or authority to designate or change any information about the third-party recipient, including the name, address, and account number.

[1154] *See supra* footnote 544.

[1155] We estimate that one-time compliance costs would consist of 1 burden hour at $471 per hour (1 hour × $471 per hour = $471) and that recurring annual compliance costs would consist of 1 burden hour at $471 per hour (1 hour × $471 per hour = $471). *See infra* section V.B.

[1156] *See* rule 206(4)–2((b)(5). Registered investment companies are subject to the Investment Company Act custody rules.

[1157] *See* proposed rule 223–1(b)(5). As a regulated fund, a BDC would be permitted to self-custody its crypto asset by maintaining its crypto asset in self-custody with its investment adviser if the adviser complies with the proposed adviser self-custody rule and subject to additional conditions. *See supra* sections II.A, IV.C.2, and IV.C.3. In addition, we are proposing to define the term ''business development company'' in the rule to mean an entity that has elected to be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act and has not withdrawn the election. *See* proposed rule 223–1(d)(1). *See also supra* section II.G.6.

[1158] *See supra* footnote 593.

The proposed amendment would benefit advisers by ensuring that they are not subject to duplicative or conflicting custody regulations with respect to BDC clients. To the extent that advisers currently incur additional costs for accounts of BDCs in complying with the Advisers Act custody rule alongside the Investment Company Act custody rules, this amendment would allow advisers to avoid the associated costs.

We do not expect any costs related to this proposed amendment. Specifically, we do not anticipate a reduction in investor protection as the Investment Company Act custody rules are designed to safeguard investor assets, with regulations tailored for regulated funds.

(f) Account Number in Notice to Clients

The current Advisers Act custody rule requires an investment adviser to notify clients of the qualified custodian's name, address, and the manner in which the funds or securities are maintained promptly upon opening an account with a qualified custodian on the client's behalf and following any changes to this information.[1159] The proposed rule would further require an adviser to include the custodial account number in this notice.[1160]

The addition of the custodial account number to the notice would benefit clients by enhancing the specificity of custodial account information made available to them in a timely manner, allowing them to monitor their accounts more effectively for loss, theft, misuse, or misappropriation. The proposed amendment would also provide clients with a tool for reference in any communications with the qualified custodian.

We understand that custodial account numbers are readily available from qualified custodians and, as a result, that the cost of including the custodial account number in the notice to clients would be minimal. We estimate recurring annual compliance costs associated with the addition of the custodial account number to client notices of $302 per adviser that would be affected by this proposed requirement.[1161]

(g) Inadvertent Custody

Advisers may inadvertently receive authority to obtain possession of client funds or securities because a custodial agreement between a custodian and an advisory client grants an adviser expansive authority to transact in or transfer funds and securities held in its client custodial accounts that are often superfluous to the advisory services being provided. We understand that, where such broad grants of authority are discovered by the adviser, advisers have had little success in modifying or eliminating this unwanted authority either because custodians are unwilling to accept an adviser's request to modify the custodian's agreement with its client or because the client may lack the bargaining power to negotiate for modifications to the custodian's standard forms. We are proposing an amendment that would provide an exception from the Advisers Act custody rule with respect to funds and securities over which an adviser has inadvertent custody arising from a custodial agreement provided that the adviser (1) did not recommend, request, or require that the client select the qualified custodian, and (2) either (A) does not have a copy of the client's custodial agreement, nor has knowledge or reason to know that the custodial agreement confers custody upon the adviser or (B) if the adviser knows or has reason to know of such custody, such adviser promptly notifies the client and qualified custodian in writing of such unwanted authority, repudiates such authority to the client and qualified custodian, and requests in writing that such authority be removed from the custodial agreement or be superseded by a new agreement, consented to by both the client and the qualified custodian, that does not confer custody on the adviser.[1162]

The proposed amendment granting advisers an exception from the Advisers Act custody rule could mitigate compliance risks arising from inadvertent custody. An adviser could be in violation of the Advisers Act custody rule without being aware that it has custody over client funds and securities, which could result in additional costs for the adviser. The proposed amendment would reduce this possibility. The proposed amendment would also reduce compliance costs for advisers that have inadvertent custody of client funds and securities, have unsuccessfully tried to modify or eliminate this unwanted authority, and as a result comply with the current Advisers Act custody rule with regard to such funds or securities. Under the proposed amendment, these advisers could realize cost savings by complying with the proposed conditions of the exception instead. Such cost savings could be passed on to their clients.

Providing an exception from the Advisers Act custody rule with respect to funds and securities over which an adviser has inadvertent custody could put client funds and securities at risk because advisers may misuse such authority to misappropriate a client's funds and securities held at the custodian. However, the proposed conditions would mitigate this risk by enhancing investor protection against inadvertent custody risks to which client assets may be exposed. Specifically, the first condition could mitigate the risk of misappropriation of client funds and securities as the risk of collusion could be less pronounced when the adviser is not involved in selecting the custodian. The first part of the second condition could further mitigate the risk of misappropriation as an adviser without knowledge of its inadvertent custody could not intentionally exercise such authority. When advisers would know or have a reason to know that a custodial agreement confers custody on them, they would be required to take the steps described in the second part of the second condition to mitigate the risks associated with the custodial agreement. Overall, the proposed conditions could mitigate risks that may arise from inadvertent custody. As a result, excepting advisers from the Advisers Act custody rule would likely present minimal risks to investors.

While the proposed amendments would not require advisers to review every client's custodial contract or to implement a specific set of policies and procedures related to the inadvertent custody exception, advisers may incur expenses associated with having reasonably designed policies and procedures in place under the Advisers Act compliance rule. Specifically, advisers may incur expenses associated with reviewing client custodial contracts that they have access to. To the extent they discover any unwanted authority, advisers would also incur costs associated with notifying the client and qualified custodian in writing, repudiating such unwanted authority, and requesting that certain agreements are amended. We estimate recurring annual compliance costs associated with this proposed requirement of $471 per adviser that

[1159] *See* rule 206(4)–2(a)(2).

[1160] *See* proposed rule 223–1(a)(2).

[1161] We estimate that recurring annual compliance costs would consist of 1 burden hour at $302 per hour (1 hour × $302 per hour = $302). *See infra* section V.B.

[1162] *See* proposed rule 223–1(b)(10); *supra* section II.G.9. The proposed amendments are consistent with the 2017 IM Guidance and would not involve economic effects for advisers that already rely on this guidance. *See supra* footnote 600.

would repudiate inadvertent custody.[1163]

(h) Segregation

(1) Segregation From Adviser and Qualified Custodian Proprietary Assets

The current Advisers Act custody rule's segregation provision requires that a qualified custodian maintain client funds and securities in a separate account for each client or in accounts that contain only the adviser's clients' funds and securities under the adviser's name as agent or trustee for the clients.[1164] We expect to provide our views regarding the application of the segregation requirement above.[1165] In summary, we expect to provide our view that the segregation requirement encompasses segregation of such client funds and securities from the proprietary assets of the qualified custodian in addition to those of the adviser (and its related persons). We also expect to provide our view that the segregation requirement does not preclude cash balances at a custody bank from being held as general deposits and reflected on the custody bank's balance sheet as a liability to the client.[1166]

We do not expect any economic impact to result from providing such views regarding the segregation of clients' funds and securities from the proprietary assets of qualified custodians and advisers. This is because the views align with the applicable laws and regulations covering banks, broker-dealers, and futures commission merchants and is consistent with our understanding of current custodial practices.[1167]

While we do not anticipate any change in market practice to result from the view that the segregation requirement does not preclude keeping client cash in depository accounts at banks, the interpretation would benefit advisers to the extent that it would facilitate their compliance with the requirements. We do not expect any costs associated with this view.

(i) Accommodation Reporting Guidance

The Advisers Act custody rule requires an adviser to have a reasonable basis, after due inquiry, for believing that a qualified custodian that maintains client funds and securities sends an account statement, at least quarterly, to each of the adviser's applicable clients.[1168] These account statements provide information about the clients' funds and securities held by the custodian.[1169] On these statements, custodians sometimes include information regarding additional client assets that they do not hold to accommodate advisers' requests. Custodians engage in accommodation reporting when they list funds or securities on a client's account but do not accept custodial liability for them.[1170] The Commission outlines the views it expects to provide on the standards for such accommodation reporting above.[1171] If account statements sent by a custodian include assets not held by the custodian, advisers should generally ensure that such statement clearly discloses that the custodian does not hold or have authority to obtain such funds or securities, among other disclosures. Such disclosures should generally indicate that such funds or securities are included on the statement at the request of the adviser; the information (including valuation) for such externally held funds or securities included on the statement is derived from the adviser or other external source for which the custodian is not responsible; and such externally held funds or securities may not be subject to certain protections typically available at the qualified custodian.

To the extent that advisers would change their practices in response to these expected views, it could mitigate risks associated with potential misinterpretation of account statements by investors by clarifying to the clients that custodians neither attest to these assets nor offer protection for them. This clear disclosure would help ensure that clients are aware of potential custodial risks, and, as a result, they may independently verify the existence and valuations of these assets to safeguard against any misreporting risks.

Advisers that would change their practices in response to these expected views may incur expenses related to ensuring that account statements properly disclose holdings and transactions reported on an accommodation basis. The costs could be higher for advisers who have more clients receiving such statements, or for advisers whose clients hold a larger number of funds and securities reported in account statements provided on an accommodation basis. Advisers would need to have a reasonable basis for believing the qualified custodian is providing adequate disclosures in the account statement. However, we anticipate that these disclosures would generally follow standard formats, and the marginal cost of adding a disclosure would not be significant. Moreover, advisers currently incur costs for having a reasonable basis for believing that qualified custodians provide account statements to clients and are therefore likely to already have communication with the custodians about the account statements sent to clients. As a result, advisers may already ensure that such disclosures or similar disclosures are included in the account statements sent to clients by custodians. Therefore, on average, the marginal cost of relying on this view should be minimal. Furthermore, these disclosures would include information that is provided by advisers to custodians. Therefore, additional disclosure costs for custodians should be minimal as well.

7. Recordkeeping Requirements

(a) Adviser Recordkeeping

(1) Records Related to the Proposed Adviser Self-Custody Rule

The proposed amendments to the Advisers Act recordkeeping rule would introduce new recordkeeping requirements related to adviser self-custody of crypto assets. Under the proposed amendments, an adviser would be required to maintain: (i) the memorandum describing the basis for its required QC determination related to the self-custody of client crypto assets; (ii) the memorandum describing the basis for its required determination as to its safeguarding expertise; (iii) records identifying the persons that have been designated persons with access to the crypto asset private key material; (iv) a copy of the required written assessments of cybersecurity risks (v) a copy of the internal control reports required to be obtained or received pursuant to the proposed self-custody rule; (vi) records documenting its required annual review of its safeguarding systems and cybersecurity controls implemented in connection with self-custody; (vii) copies of the account statements provided to clients and records of any transmissions and notices sent to clients as required under

[1163] We estimate that recurring annual compliance costs would consist of 1 burden hour at $471 per hour (1 hour × $471 per hour = $471). *See infra* section V.B.

[1164] *See* rule 206(4)–2(a)(1).

[1165] *See supra* section II.G.10.a).

[1166] *See supra* section II.G.10.

[1167] *See supra* section II.G.10.a); *supra* footnotes 607 and 608. While some FFIs may be subject to regulations that do not include a segregation requirement, under the current Advisers Act custody rule, an FFI can only serve as a qualified custodian provided that it keeps the clients' assets in customer accounts segregated from its proprietary assets.

[1168] *See* rule 206(4)–2(a)(3); *see also supra* footnote 766 and accompanying text.

[1169] *See* rule 206(4)–2(a)(3).

[1170] *See supra* section II.G.11.

[1171] *See supra* section II.G.11.

the proposed self-custody rule; (viii) a copy of the required financial asset elections, and (ix) for each client for which the adviser maintains crypto assets under the proposed self-custody rule, records that include such information as may be reasonably necessary to reconstruct all financial positions and transactions related to such client crypto assets including, at a minimum, client names, client account numbers, crypto asset addresses, transaction amounts, transaction destinations, transaction authorizations, and relevant metadata.[1172]

In addition, under the proposed recordkeeping amendments, the adviser would also be required to maintain the records that are otherwise required to be made and kept under paragraph (b) of rule 204–2 for advisers with custody or possession of securities or funds of any clients, related to client crypto assets maintained by the adviser under the proposed adviser self-custody rule, provided that references to securities in paragraph (b) would also include any crypto assets of a regulated fund maintained by the adviser pursuant to the proposed self-custody rules.[1173]

These proposed recordkeeping requirements could result in better safeguarding practices by advisers that would self-custody crypto assets under the proposed self-custody rules. For example, the proposed requirements that the adviser maintain records documenting its annual review of its safeguarding systems and of its assessment of cybersecurity controls could facilitate the identification, by the adviser, of any weaknesses in its systems. It could also result in advisers performing more exhaustive annual reviews or cybersecurity risk assessments, which could also help it identify any weaknesses in its systems. To the extent that advisers would be able to address weaknesses identified (or identified by the Commission during its examination or enforcement functions, as discussed below), these proposed requirements would reduce the risk to which investors' crypto assets could be subject. Hence, these proposed recordkeeping requirements could strengthen the benefits associated with the proposed safeguarding and cybersecurity requirements under the proposed self-custody rules.[1174]

The proposed recordkeeping requirements, by facilitating the Commission's examination and enforcement functions, could improve the accuracy of the information advisers maintain and transmit to clients. Hence, these proposed requirements could strengthen the benefits associated with the proposed requirements related to the communications made to clients under the proposed self-custody rules.[1175] The proposed requirements that the adviser maintain records that include such information as may be reasonably necessary to reconstruct all financial positions and transactions could also help advisers and their clients identify the correct legal entitlement of a crypto asset in the event of theft, loss, misuse, or misappropriation of the asset.

The proposed recordkeeping requirements would also help facilitate the Commission's examination and enforcement functions by helping the Commission staff assess compliance with the proposed self-custody rules, which would support the Commission's investor protection efforts. The proposed requirements that the adviser maintain a memorandum describing the basis for its required QC determination and a memorandum describing the basis for its required determination as to its safeguarding expertise would allow Commission staff to understand the basis of these determinations. The proposed requirements that the adviser maintain a copy of the internal control reports would give Commission staff access to the findings of the independent public accountant who prepared the report and allow them to understand any potential weaknesses identified by the accountant, which would support its evaluation of the effectiveness of the adviser's safeguarding practices. The proposed requirements that the adviser maintain records documenting its annual review of its safeguarding systems and its cybersecurity controls would allow Commission staff to confirm that the adviser sought to identify and address potential weaknesses in its systems. The proposed requirement that the adviser maintain records related to the designated persons with access to the private key material would help ensure that the adviser is appropriately documenting who has access to clients' private key material and allow Commission staff to assess whether the adviser is appropriately managing access to the private key material.

The proposed requirement that the adviser maintain copies of the account statements and other transmissions and notices sent to clients would help Commission staff determine whether the adviser has complied with its obligation to send such documents to clients under the proposed self-custody rule. The proposed requirement that the adviser maintain records of such information as may be reasonably necessary to reconstruct all financial positions and transaction activities for each client for which the adviser maintains crypto assets in self-custody would provide Commission staff with visibility into the activities and movements of client crypto assets. Commission staff would also be able to reconcile these records against the account statements and other disclosures sent to clients, which would help it assess the accuracy of the information disclosed to clients and give Commission staff records to examine that could show potential theft, misappropriation, loss, or misuse of client assets, resulting in more effective investor protections. The proposed requirement that the adviser maintain a copy of the applicable financial asset elections would help Commission staff determine whether the adviser has complied with the proposed financial asset election requirement. This would also help protect clients' assets in the event the adviser became insolvent or bankrupt.[1176]

The proposed amendment that would require that the records made and kept under paragraph (b) of rule 204–2 also includes the records related to crypto assets of a regulated fund maintained at the adviser pursuant to the proposed self-custody rules would also help facilitate the Commission's examination and enforcement functions. Under the proposed amendment, Commission staff would be able to request from advisers true and accurate custodial records related to the crypto assets of regulated funds, including records showing sales, receipts, and deliveries of the assets.[1177] This would help the Commission identify potential instances of fraud, which could reduce the risk of theft,

[1172] *See* proposed rules 204–2(a)(26)(i) through (ix); *supra* section II.H.1.a).

[1173] *See* proposed rule 204–2(a)(26)(x). Rule 204–2(b) imposes additional recordkeeping obligations on advisers that have custody or possession of client securities or funds. We are also proposing amendments to rule 204–2(b) to address standing letters of authorization. *See supra* sections II.H.1.c) and IV.C.6.d); *infra* section IV.C.7.a)(3). Separately, the current recordkeeping requirements in rule 204–2 would continue to apply. Notably, paragraph (b) would continue to apply to the cases where the adviser has custody of client funds and securities, including when the funds and securities would be maintained at the adviser under the proposed self-custody rules. In addition, we are proposing conforming amendments to the Advisers Act recordkeeping rule to update references to rule 206(4)–2 to reflect the proposed redesignation of the Advisers Act custody rule to rule 223–1. *See* proposed rules 204–2(a)(17)(iii) and 204–2(b)(5). We do not expect that these amendments would have any economic effects.

[1174] *See supra* section IV.C.2.e) for a discussion of these benefits.

[1175] *See supra* section IV.C.2.f) for a discussion of these benefits.

[1176] *See supra* section II.A.8.

[1177] *See* proposed rule 204–2(b)(1).

loss, misuse, or misappropriation for some regulated fund assets that would be maintained by the adviser under the proposed self-custody rules.[1178]

More generally, the proposed recordkeeping requirements for self-custody of crypto assets would enhance the transparency into an adviser's crypto asset custodial practices and strengthen the Commission's oversight capabilities. Improving the Commission's oversight capabilities could benefit clients and investors by lowering the risk of loss and providing greater transparency to the Commission in its investor protection efforts.

Advisers choosing to self-custody their clients' crypto assets would incur costs related to creating and maintaining the required records. We expect that some of the requirements would result in relatively low compliance costs for advisers, such as the requirements that the adviser maintain a copy of the internal control reports, of the account statements provided to clients and records of any other transmissions or notices sent to clients, and of the financial asset elections required under the proposed self-custody rules. We expect that copies of these documents would be produced even in the absence of the proposed recordkeeping requirements and that maintaining them would result in relatively low compliance costs for advisers, resulting from the requirement to create and maintain the records.

We expect that the compliance cost could be higher for the requirements that the adviser maintain a memorandum describing the basis for its required QC determinations, a memorandum describing the basis for its required determination as to its safeguarding expertise, and a copy of the written cybersecurity risk assessments, that the adviser maintain records documenting its required annual review of its safeguarding systems and cybersecurity controls, and that the adviser maintain, for each client for whom the adviser maintain crypto assets under the proposed self-custody rule, records that include such information as may be reasonably necessary to reconstruct all financial positions and transactions related to the client crypto assets that the adviser maintains. This is because the adviser would first have to determine what the records would include. Such a process could involve retaining the services of compliance professionals who would need to review and familiarize themselves with the proposed requirements before supporting the adviser in the creation and maintenance of the required records.

There would also be costs for advisers related to the proposed amendment that would require the records made and kept under paragraph (b) of rule 204–2 to also include the records related to the crypto assets of a regulated fund maintained at the adviser pursuant to the proposed self-custody rules. We expect that these costs would be limited since advisers are already subject to such requirements for clients that are not regulated funds and are therefore likely to be familiar with these requirements and to have appropriate staff, systems, and procedures in place.[1179] However, for advisers whose only clients are regulated funds and who would maintain client crypto assets under the proposed self-custody rules, the costs could be more significant.[1180]

We estimate recurring annual compliance costs associated with the proposed requirements of $309 per adviser that would have self-custody of client crypto assets.[1181] This estimate includes costs related to the creation and retention of the records and may include costs such as obtaining additional storage. We expect that these costs and other costs associated with the proposed recordkeeping requirements would vary across advisers based on a variety of factors, including, among others, the factors listed below. First, the particular situation that leads to the adviser determining that it can self-custody the crypto assets could result in a more or less complex memorandum describing the basis for the adviser's required QC determination. Second, the complexity of the adviser's safeguarding systems could affect the length and the depth of the required annual review and cybersecurity risk assessment.[1182] Third, the number of different assets in self-custody with the adviser, as well as the number of different crypto networks on which these assets are traded and the number of clients for which the adviser maintains crypto assets, would likely affect the compliance cost associated with many of the proposed recordkeeping requirements, with larger numbers resulting in higher costs. Hence, in some instances, the compliance costs could be significant for advisers.

The proposed recordkeeping requirements could also result in indirect costs for advisers. To the extent that they would result in enhanced safeguarding practices by advisers maintaining client crypto assets under the proposed self-custody rules,[1183] the proposed requirements could result in higher costs for advisers associated with safeguarding systems and cybersecurity measures.[1184]

(2) Records Related to the Proposed State Trust Company Rule

Under the proposed Advisers Act State trust company rule, an adviser would be required to make certain reasonable basis determinations in writing prior to engaging the State trust company as a custodian and on an annual basis thereafter.[1185] As part of these determinations, the adviser would be required to receive copies of the State trust company's most recent audited annual financial statements and internal control report.[1186] Under the proposed recordkeeping amendments, the adviser would be required to make and keep a memorandum describing the basis upon which it made its required initial and annual determinations,[1187] and copies of the State trust company's financial statements and internal control reports obtained and received pursuant to the proposed State trust company rules.[1188]

These proposed recordkeeping requirements could support advisers in their annual reasonable basis determinations by enhancing their ability to compare the information they would receive in a given year with the information they would have received in prior years. For example, the proposed recordkeeping requirements could result in advisers making a more complete inquiry before concluding that the State trust company maintains and implements written policies and

[1178] Paragraph (b) of rule 204–2 already applies to client assets that are securities and funds. *See supra* footnote 1173.

[1179] Under proposed rule 204–2(h)(2), an adviser would not be required to make and keep more than one distinct copy of the records required under paragraph (b) of rule 204–2. *See supra* footnote 619 and accompanying text.

[1180] These advisers are likely to be familiar with the Investment Company Act recordkeeping rules, and they could be able to leverage this familiarity as well as the staff, systems, and procedures they have in place to comply with these rules when complying with the proposed requirements. This could lower their costs.

[1181] We estimate that recurring annual compliance costs would consist of 2 burden hours at $154.50 per hour (1 hour × $154.50 per hour = $309). *See infra* section V.D.1.

[1182] *See supra* section IV.C.2.e).

[1183] This could be, for example, because the proposed requirements would result in advisers identifying weaknesses in their systems.

[1184] *See supra* section IV.C.2.e) for a discussion of the types of costs that can result from enhanced safeguarding practices.

[1185] *See* proposed rule 223–1(d)(13)(v); *supra* sections II.C.2.a) and IV.C.4.b).

[1186] *See* proposed rules 223–1(d)(13)(v)(B) through (C); *supra* sections II.C.3, II.C.4, IV.C.4.c), and IV.C.4.d).

[1187] *See* proposed rule 204–2(a)(27)(i); *supra* section II.H.1.b).

[1188] *See* proposed rules 204–2(a)(27)(ii) through (iii); *supra* section II.H.1.b).

procedures reasonably designed to safeguard crypto assets from the risk of theft, loss, misuse, and misappropriation. Hence, the proposed requirements could result in advisers maintaining crypto assets with State trust companies that maintain and implement more robust policies and procedures, potentially reducing the risks to which investors' crypto assets are subject. Hence, the proposed recordkeeping requirements could strengthen the benefits associated with the proposed initial and annual reasonable basis determination requirements.[1189]

These proposed recordkeeping requirements would also help facilitate the Commission's examination and enforcement functions related to determining compliance with the proposed Advisers Act State trust company rule, which would support its investor protection efforts. The proposed requirement that the adviser maintain a copy of the State trust company's financial statements and internal control reports would help Commission staff understand the basis upon which the adviser would have made its reasonable basis determination for believing that the State trust company maintains and implements appropriate written policies and procedures. The proposed requirement that the adviser maintain a copy of the State trust company's internal control report would also enable Commission staff to understand the independent public accountant's assessment of the State trust company's crypto asset safeguarding controls. The proposed requirements that the adviser maintain a memorandum describing the basis upon which it made its required initial and annual determinations would help Commission staff understand the due inquiry performed by the adviser and the basis upon which the adviser made its initial and annual reasonable basis determinations. The proposed recordkeeping requirements related to the use of a State trust company as a custodian for crypto assets would help Commission staff determine whether an adviser complied with the proposed initial and annual reasonable basis determinations, supporting its investor protection efforts.

Advisers choosing to maintain their client assets with a State trust company custodian would incur costs related to creating and maintaining the required records. We expect that some of the requirements would result in relatively low compliance costs for advisers, such as the requirements that the adviser maintain a copy of the State trust company's financial statements and internal control reports. We expect that these documents would be created even in the absence of the proposed recordkeeping requirements and that maintaining them would result in minimal costs for advisers. Advisers are already subject to extensive recordkeeping requirements.[1190] Hence, we do not expect that they would have to invest in new recordkeeping staff, systems, or procedures to satisfy these proposed recordkeeping requirements.

We expect that for the requirement that the adviser make and keep a record of a memorandum describing the basis upon which it made its required initial and annual determinations, the compliance cost could be higher. This is because the adviser would first have to determine what to include in the memorandum, which could include retaining the services of compliance professionals who would need to review and familiarize themselves with the proposed requirements before supporting the adviser in the creation and maintenance of the required records.

We estimate recurring annual compliance costs associated with the proposed requirements of $309 per adviser that would maintain client crypto assets with a State trust company custodian.[1191] This estimate includes costs related to the creation and retention of the records and may include costs such as obtaining additional storage. We expect that these and other costs associated with the proposed requirements would vary across advisers based on the complexity of the required memorandum, which would depend on the complexity of the initial and annual determinations performed by the adviser.

(3) Records Related to Standing Letters of Authorization

The Commission is proposing to add a recordkeeping requirement related to the proposed amendment to the Advisers Act custody rule that provides an exception from the custody rule's surprise examination requirement if an adviser has custody of client assets solely because of a SLOA.[1192] The adviser would be required to make and keep a record of any SLOA that the adviser has in effect with a client and any related records pursuant to which the adviser relies or relied on the proposed exception to the Advisers Act custody rule's surprise examination requirement.[1193] The adviser would be required to retain such records for a SLOA that is in effect, or at any time within the past five years was, in effect.[1194]

The proposed amendments would help facilitate the Commission's examination and enforcement functions, including determining compliance with the proposed exception to the Advisers Act custody rule's surprise examination requirement, which would support its investor protection efforts. The proposed recordkeeping requirement would provide Commission staff with the ability to evaluate whether the adviser has satisfied the conditions to avail itself of the proposed SLOA exception or if, instead, the client's funds and securities must be subject to an annual surprise examination pursuant to the Advisers Act custody rule. The proposed requirement to keep records for any SLOA that is in effect, or that at any time within the past five years was in effect, would further enable the Commission to more effectively assess compliance practices within a recent timeframe. This would reinforce the protective measures included in the proposed SLOA exception.

Advisers having custody of client assets solely because of a SLOA and relying on the proposed surprise examination exception would incur costs related to creating and maintaining the required records. Advisers would incur these costs for the period during which a SLOA is in effect and for the five following years. However, we do not expect that these costs would be economically significant. Since advisers are already subject to extensive recordkeeping requirements, we do not expect that they would have to invest in new recordkeeping staff, systems, or procedures to satisfy the proposed recordkeeping requirements.[1195] The recurring incremental compliance costs arising from maintaining additional

[1189] *See supra* section IV.C.4.b).

[1190] *See* rule 204–2.

[1191] We estimate that recurring annual compliance costs would consist of 2 burden hours at $154.50 per hour (2 hours × $154.50 per hour = $309). *See infra* section V.D.1.

[1192] *See supra* sections II.G.5 and IV.C.6.d) for discussions of the proposed amendments related to the surprise examination requirement for advisers that custody client assets solely pursuant to a SLOA.

[1193] *See* proposed rule 204–2(b)(6); *supra* section II.H.1.c).

[1194] We are also proposing to amend rule 204–2(e)(1) to include proposed rule 204–2(b)(6) as an exception to the requirement that books and records required to be made under the provisions of paragraph (a) to (c)(1)(i), inclusive, and (c)(2) of rule 204–2 be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser. *See* proposed rule 204–2(e)(1).

[1195] See rule 204–2.

records related to these proposed requirements using existing systems are estimated to be $39 per year per adviser that has clients that issue SLOAs.[1196]

(b) Regulated Fund Recordkeeping

(1) Records Related to the Proposed Fund Self-Custody Rule

Under the proposed amendments to the Investment Company Act recordkeeping rules, a regulated fund relying on the proposed fund self-custody rule would be required to make and keep certain records related to the proposed fund self-custody rule. Specifically, regulated funds would be required to preserve for a period not less than six years, the first two years in an easily accessible place, any report or other information provided to the fund's board of directors in connection with the board oversight requirements under the proposed rule 17f–9(b)(1) for each crypto asset of the fund held in custody under the proposed rule for fund self-custody of crypto assets.[1197] Such information would include the quarterly written report documenting the basis for the investment adviser's QC determination, as well as the adviser's annual written report regarding its expertise and systems, the most recent annual review of the adviser's safeguarding systems and cybersecurity controls, if available, the most recent written internal control report, if available, and any other information reasonably necessary for the board to evaluate the fund's custody arrangement.[1198] In addition, the proposed adviser self-custody rule and current regulated fund recordkeeping rules would also require a regulated fund to maintain records of resolutions regarding the board's designation of supervised persons with access to key materials permanently, the first two years in an easily accessible place.[1199] This requirement is based on the proposed adviser self-custody rule limiting access to fund crypto asset key materials to those persons designated by resolution of the board to have such access and the current recordkeeping requirements.[1200]

The proposed requirements would help facilitate oversight by a regulated fund's board. By having past documents available, a regulated fund's board could be better able to make the required annual determination on whether the assets maintained with the adviser would continue to be subject to reasonable care.

In addition, the proposed amendment would help facilitate the Commission's examination and enforcement functions, including determining compliance with the proposed fund self-custody rule, which would support its investor protection efforts. Commission staff would be able to observe documents received and evaluated by the regulated fund's board as part of its determination that the crypto asset would be subject to reasonable care, based on the standards applicable to safekeeping such assets, if maintained with the fund's adviser. This would help Commission staff determine whether the regulated fund's board has complied with the proposed determination requirement.

We expect that these proposed recordkeeping requirements would result in minimal costs for regulated funds since they would not require the creation of new documents but instead consist of maintaining documents received by the regulated fund's board. In addition, regulated funds are already subject to several recordkeeping requirements, including some under which the records must also be preserved for a period not less than six years, the first two years in an easily accessible place. Hence, we do not expect that regulated funds would have to invest in new recordkeeping staff, systems, or procedures to satisfy the proposed amendment. We estimate recurring annual compliance costs of $578 per regulated fund that would maintain crypto assets in self-custody through its adviser.[1201] This estimate includes costs related to the creation and retention of the records and may include costs such as obtaining additional storage.

(2) Records Related to the Proposed State Trust Company Rule

Under the proposed State trust company rule for regulated funds, a regulated fund would be required to make certain reasonable basis determinations in writing prior to engaging the State trust company as a custodian and on an annual basis thereafter.[1202] As part of these determinations, the regulated fund would be required to receive and review copies of the State trust company's most recent audited annual financial statements and internal control report.[1203]

Under the proposed recordkeeping amendments related to State trust company custody, a regulated fund that maintains client crypto assets and related cash and/or cash equivalents with a State trust company pursuant to the proposed State trust company rules would be required to make and keep the following records for a period of not less than six years, the first two years in an easily accessible place: (1) a memorandum describing the basis upon which the fund made its required initial and annual determinations with respect to the State trust company as a qualified custodian, (2) records of the State trust company's audited financial statements obtained or received, and (3) a copy of the State trust company's internal control reports obtained or received.[1204]

The proposed recordkeeping requirements would be similar to those that would apply to advisers under the proposed Advisers Act recordkeeping rule amendments except that, in the case of regulated funds, they would apply to the crypto assets and related cash and/or cash equivalents constituting ''securities and similar investments.'' Consequently, we expect that the benefits and costs discussed in section IV.C.7.a)(2) would also apply when regulated funds would maintain crypto assets with a State trust company custodian.

We estimate recurring annual compliance costs of $578 per regulated fund that would maintain its crypto assets with a State trust company custodian.[1205] This estimate includes costs related to the creation and retention of the records and may include costs such as obtaining additional storage. We expect that these and other costs associated with the proposed requirements would vary across advisers based on the complexity of the required memorandum, which would depend on the complexity of the initial and annual determinations performed by the adviser.

(c) Records Related to Crypto Assets From a Crypto Network

The Commission is proposing amendments to the Advisers Act and Investment Company Act recordkeeping rules to provide that records related to

[1196] We estimate that recurring annual compliance costs would consist of 0.25 burden hour at $154.50 per hour (0.25 hours × $154.50 per hour = $39). *See infra* section V.D.1.

[1197] *See* proposed rule 31a–2(a)(10); *supra* sections II.H.2 and II.B.

[1198] *See supra* section II.B; proposed rule 17f–9(b)(1).

[1199] *See supra* section II.H.2.

[1200] *See supra* footnote 644.

[1201] We estimate that recurring annual compliance costs would consist of 2 burden hours at $289 per hour (2 hours × $289 per hour = $578). *See infra* section V.D.2.

[1202] *See* proposed rule 17f–8(a); *supra* sections II.C.2.a) and IV.C.4.b).

[1203] *See* proposed rule 17f–8(a)(2) and (3); *supra* sections II.C.3, II.C.4, IV.C.4.c), and IV.C.4.d).

[1204] *See* proposed rule 31a–2(a)(9); *supra* section II.H.1.b).

[1205] We estimate that recurring annual compliance costs would consist of 2 burden hours at $289 per hour (2 hours × $289 per hour = $578). *See infra* section V.D.2.

crypto assets that are required to be maintained and preserved under the applicable recordkeeping rule may be maintained and preserved on a crypto network.[1206] Advisers and regulated funds would be required to provide such records to the Commission (including its examiners and other representatives) in a human-readable and reasonably usable electronic format promptly upon request by a Commission representative and continue to provide access for the same period that for which other books and records are required to be maintained and preserved under the Advisers Act and Investment Company Act recordkeeping rules.[1207] These proposed amendments would apply to any record required to be maintained and preserved under the Advisers Act and Investment Company Act recordkeeping rules related to crypto assets, including the proposed amendments related to crypto custody.[1208]

The proposed amendments would benefit advisers and regulated funds by reducing their recordkeeping costs in the instances where they would be able to leverage the recordkeeping capabilities of crypto networks to reduce the quantity of offchain records that they would need to maintain and preserve.[1209] This would also avoid duplicate records, which would improve efficiency.[1210] More generally, providing flexibility to advisers and regulated funds could reduce their costs as they would be able to tailor their recordkeeping practices based on their needs and cost structures.[1211]

The proposed amendment that would require the adviser or regulated fund to provide to the Commission (including its examiners and other representatives) the applicable records in a human-readable and reasonably usable electronic format promptly upon request would help facilitate the Commission's examination and enforcement functions, including determining compliance with the recordkeeping requirements, which would support its investor protection efforts. This proposed requirement would help ensure that Commission staff is able to review and analyze records on the crypto network and that it is able to review the same underlying information to which it currently has access when performing these functions, notwithstanding the tool used by the adviser or regulated fund itself to view the onchain records.

Onchain records could face risks that are different from those to which offchain records are subject. This is because offchain records are maintained and preserved by, and therefore under the control of, the adviser or regulated fund. On the other hand, onchain records exist on the crypto network. Hence, certain events could result in the records being lost or temporarily unavailable without the adviser or regulated fund being able to remedy the situation, unless it has duplicate offchain records available.[1212] This could affect the Commission's ability to protect investors by affecting its ability to perform its examination and enforcement functions. We do not anticipate any compliance costs associated with the proposed amendments.[1213]

8. Guidance for Accountants Updates

The 2009 Guidance for Accountants provides interpretive guidance for accountants on surprise examinations and internal control reports.[1214] We expect to revise certain aspects of the guidance for accountants set forth in the 2009 Guidance for Accountants to address auditing and attestation standards for crypto assets and other industry developments since its publication.[1215]

Specifically, we expect to specify that a material discrepancy—requiring accountants who perform surprise examinations to notify the Commission pursuant to a written agreement between the adviser and the accountant[1216]—would be, for example, a variance, irregularity, or omission identified during an accountant's examination that, individually or in the aggregate, indicates actual or potential loss, theft, misuse, or misappropriation of funds or securities. We also expect to include additional control objectives for internal control reports regarding information technology for non-crypto funds and securities custody.[1217] These control objectives are intended to help ensure that other control objectives are achieved when automated controls or reliance on computer-generated information is important.[1218] In addition, we also expect to make revisions regarding verification procedures for internal control reports so that the independent public accountant, instead of substantive testing as part of the control report procedures, should observe, inspect, and/or reperform a sample of

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[1206] For regulated funds, *see* proposed rule 31a–1(b)(14). For advisers, we propose to add a crypto network as an additional format that advisers can use to maintain its records. See proposed rule 204–2(g)(1)(iii). In connection with this proposed amendment, we are also proposing conforming amendments to rules 204–2(g)(2) and (3) to prescribe maintenance, preservation, and access procedures for records maintained on a crypto network. *See supra* section II.H.3.

[1207] *See* proposed rules 31a–1(b)(14) and 204–2(g)(4). *See also supra* footnote 653. For purposes of this section IV.C.7.c) of this release, the term ''regulated fund'' includes all registered investment companies and BDCs, including UITs and FACCs.

[1208] The adviser or regulated fund would remain obligated to comply with the substantive provisions of the recordkeeping rules and provide the same information required under the current rules. This may require that the adviser or regulated fund supplement information available on the crypto network with offchain records. *See supra* section II.H.3.

[1209] For example, blockchain explorers can generally be used to navigate a crypto network and view information available on the crypto network, including transaction information. *See Supra* section II.H.3.

[1210] *See infra* section IV.D.1.d).

[1211] For some assets or networks, options to view information, including information on transactions taking place on the network, may be limited or inexistent. *See supra* section II.H.3. Hence, some advisers and regulated funds may not be able to take advantage of the proposed onchain recordkeeping option and would need to keep all of their records offchain, as is currently required. This would limit the benefits associated with the proposed amendments.

[1212] For example, the tool used by the adviser or regulated fund to view the onchain records could be temporarily unavailable. As another example, a smaller blockchain could become ''abandoned'' (*i.e.,* ceased to be maintained or used), which could result in its records becoming unavailable or difficult to retrieve. *See, e.g., https://crypto.lethanhnamwork.com/the-archaeology-of-abandoned-blockchains/* (stating that accessing abandoned blockchains can be difficult). Offchain records are also subject to risks, but because they are controlled by the adviser or regulated fund, the adviser or regulated fund is able to put appropriate recovery measures in place in case of incidents. This may not be the case for onchain records.

[1213] *See infra* section V.D.1.

[1214] *See* 2009 Guidance for Accountants, *supra* footnote 89.

[1215] The proposed amendments to the custody rules, if ultimately adopted by the Commission, would also result in the Commission making conforming changes to the guidance. Specifically, the conforming changes to the guidance would include (1) updating references associated with the proposed redesignation of the current Advisers Act custody rule to rule 223–1; (2) the removal of the requirement for independent public accountants to be registered with, and subject to regular inspection by, the PCAOB; and (3) the updates made to the notice of material discrepancies to electronic means and to the more recently designated Division of Examinations. The amendments we expect to make to the 2009 Guidance for Accountants would also reflect changes in technical references, as the AICPA professional standards referenced throughout the 2009 Guidance for Accountants have been superseded with new AICPA professional standards. We anticipate that the economic effect of these conforming changes to the guidance would likely be minimal.

[1216] *See* rule 206(4)–2(a)(4)(ii).

[1217] The current control objectives and associated controls for internal control reports include the following areas: (1) client account setup and maintenance; (2) authorization and processing of client transactions; (3) security maintenance and setup; (4) processing of income and corporate action transactions; (5) reconciliation of funds and securities to depositories and other unaffiliated custodians; (6) client reporting. *See* 2009 Guidance for Accountants, *supra* footnote 89.

[1218] *See supra* section II.I.2.

reconciliations as part of testing the reconciliation control objective to verify that the data used in such reconciliations is obtained from unaffiliated custodians and is unaltered.

Consistent with the control objectives regarding non-crypto funds and securities, we also expect to revise the guidance to introduce comparable control objectives regarding crypto assets. Additionally, the revised guidance would state the internal control report requirements when the custodian maintains both crypto assets and non-crypto funds and securities. In these circumstances, if the party responsible for controls related to crypto assets is the same as the party responsible for controls related to non-crypto funds and securities, instead of two internal control reports for each type of assets, the revised guidance would specify that the adviser may obtain a single internal control report satisfying all relevant control objectives for all relevant assets.

The revised definition of material discrepancy would help ensure timely notification to the Commission regarding matters that may put client funds and securities at risk. For example, by covering situations that could create a reasonable possibility of a material misstatement of funds or securities, the revised definition of material discrepancy could better align the definition of material discrepancy with the matters that an accountant's examination is designed to identify.

To the degree that internal control reports are prepared consistent with the revised guidance, the additional control objectives for internal control reports for non-crypto funds and securities custody would help ensure that other control objectives are achieved when automated controls or computer-generated information play a significant role. Having internal control report objectives for crypto assets that are similar to those for non-crypto funds and securities would help ensure that internal control reports provide comparable safeguarding benefits for clients' crypto assets. Additionally, the revision related to verification procedures would benefit accountants by eliminating duplication of efforts as they are already testing a sample of reconciliations as part of the reconciliation control objective. The revised guidance regarding the internal control report objectives when the custodian has custody of both crypto assets and non-crypto funds and securities would also benefit advisers by specifying that advisers do not need to obtain two separate internal control reports, provided the above conditions are met. This would help advisers save costs, which may be ultimately passed on to clients.

The revised guidance would also involve costs for accountants, to the extent that they change their practices consistent with the revised guidance. They may incur costs associated with updating their business practices to examine the proposed control objectives for internal control reports on funds and securities custody. Accountants may incur additional costs related to understanding and testing the proposed control objectives for internal control reports on crypto asset custody. Additionally, to the extent that they change their practices consistent with the revised guidance, advisers or their related party custodians may also incur costs associated with updating their business practices to satisfy control objectives to be able to provide custody services to advisory clients. These costs may be passed on to advisers and, ultimately, to their clients.

9. Disclosure and Reporting Requirements

The proposed disclosure reporting requirements would include amendments to Form ADV, including Part 1A, Form ADV General Instructions and Glossary of Terms, Part 2A of Form ADV, and Form ADV–E,[1219] and to Form N–CEN, aimed to provide the Commission and investors with enhanced and accurate information about the adviser's custodial practices, and to streamline reporting for advisers.

(a) Amendments to Form ADV

The proposed amendments to Form ADV Part 1A would include new questions related to crypto asset self-custody, new questions on tokenized private funds, new questions to Item 9, and a change in instructions for Item 9.[1220] We are also proposing amendments to conform with the current Advisers Act custody rule and the proposed amendments.[1221]

(1) Amendments Related to Crypto Asset Self-Custody

We are proposing amendments to Form ADV to introduce new questions associated with the self-custody of crypto assets. The proposed changes include amendments to: (1) Item 9 to add several new questions related to advisers' crypto asset self-custody practices under the proposed adviser self-custody rule; and (2) Item 5.K. and section 7.B. of Schedule D to add questions about crypto assets self-custodied on behalf of SMA clients and private funds. The proposed new questions and related instructions would concern the approximate amount (in U.S. dollars) and total number of clients for which the adviser has self-custody of crypto assets as well as the total number of crypto asset addresses that hold clients' crypto assets in the adviser's self-custody; independent public accountants engaged to prepare internal control reports with respect to custodial services in connection with the adviser having self-custody of crypto assets; quarterly account statements or alternatively, transmission of the required information in an account statement in a human-readable and reasonably usable electronic format; and, for advisers having self-custody of crypto assets on behalf of pooled

[1219] The proposed amendment to Form ADV–E only includes conforming amendments and do not involve any substantives change in the requirement. *See infra* footnote 1221.

[1220] All advisers registering with the SEC must complete Form ADV, Part 1A. Although ERAs that are not also registering with any state securities authority only need to complete certain items of Form ADV, Part 1A (Items 1, 2, 3, 6, 7, 10, and 11, as well as corresponding schedules), ERAs that are registering with a State securities authority must complete all of Form ADV, Part 1A. *See* Form ADV Instruction 3. Hence, for the purposes of this section IV.C.9.a) of this release, ''advisers'' includes both registered advisers and ERAs that are registered with a state securities authority. *See also infra* footnote 1231.

[1221] We are proposing to make amendments to Form ADV that include (1) removing PCAOB-related questions, (2) updating existing references to rule 206(4)–2 to proposed new rule 223–1 (this amendment would also be applied to Form ADV–E and to Item 18 of Form ADV Part 2A), (3) replacing the term ''unqualified opinion'' with ''unmodified opinion,'' and (4) removing from Item 1.I and section 1.I. of Schedule D a parenthetical that lists examples of social media platforms. This last amendment would affect ERAs in addition to registered investment advisers. *See supra* section II.J.1.d). In addition, we are proposing to make conforming amendments to Item 9 to (1) instruct advisers to exclude both registered investment companies and BDCs when reporting under Items 9.A through 9.E, (2) refer to ''funds or securities'' instead of ''assets'' in Item 9, and (3) refer to ''funds'' instead of ''cash or bank accounts'' in Item 9.A.(1)(a) to be consistent with the Advisers Act custody rule. *See supra* section II.J.1.b)(1). (Additional amendments to Item 9 are discussed below.) Finally, we are proposing amendments to the Form ADV Glossary of Terms to (1) define ''crypto asset,'' ''crypto asset address,'' and ''self-custody'' as having the same meaning as those terms in proposed rule 223–1 under the Advisers Act, (2) revise the definition of ''custody'' to cross-reference to the definition of custody in proposed rule 223–1, (3) make a correction edit to the definition of ''custody'' to add a reference to Schedule D in the list of Form ADV Items where the term ''custody'' is currently used, and (4) revise the definition of ''Related Person'' to add Item 5 in the list of Items where this term is used. Although unrelated to this proposal, we are also making a small correction edit to this definition to add Item 1 to the list of Items where the term ''Related Person'' is used, because related person is referenced in current Item 1.J.(2). *See supra* footnote 665. Overall, these proposed conforming amendments would not substantively modify any information required to be reported. Therefore, we expect that any associated economic impacts would not be significant.

investment vehicles, audited financial statements furnished to investors and independent public accountants engaged to audit the pooled investment vehicles. The new questions in Item 9 would need to be completed on an aggregate basis (that is, covering all of an adviser's clients) while the other new questions would need to be completed separately for adviser's SMA clients in aggregate (Item 5.K. in Part 1A) and private fund clients (section 7.B. of Schedule D), as applicable.

The proposed reporting requirements would help investors assess custodial risks and advisers' compliance practices related to the self-custody of crypto assets, thereby allowing investors to make more informed decisions in selecting advisers when investing in these assets. Disclosure of this information would also help the Commission to effectively identify potential risks and evaluate the need for an examination of the adviser. Anticipating this, advisers would have stronger incentives to avoid harmful activities, thereby reducing agency costs and benefiting investors.

We estimate that these proposed amendments to Form ADV would result in one-time compliance costs of $553 and recurring annual compliance costs of $780 per adviser.[1222]

(2) Amendments to Item 9

We are proposing to make several amendments to current Item 9.[1223] First, we are proposing to make amendments to current Item 9.A.(1) on Form ADV. The current instructions to this question provide that an adviser should answer 'no' if the adviser has custody solely because it deducts advisory fees or an operationally independent related person has custody of client assets in connection with advisory services provided to clients. We are proposing an amendment to the instructions that would provide that advisers should answer ''yes'' to Item 9.A.(1) if the adviser or its related person has custody of client funds or securities, notwithstanding whether the adviser meets any of the exceptions listed under proposed Item 9.A.(2). If the adviser answers ''no'' to Item 9.A.(1), the proposed amended instruction would further specify that the adviser should not complete the remainder of Item 9.

Second, we are proposing to make amendments to the current Item 9.A.(2) that requires advisers to exclude indirect custody figures, which are currently required to be separately reported under current Item 9.B.(2), when reporting the approximate amount of client funds and securities, as well as the total number of clients for which they have custody. The proposed amendments would redesignate Item 9.A.(2) as Item 9.A.(3) and require advisers to include indirect custody figures as well.[1224] In addition, the proposed Item 9.B.(2) would instruct advisers to report the amount of client funds and securities and the number of clients for which advisers have custody only because their related persons have custody. Moreover, the current Item 9.A.(2) instructs advisers to exclude from this reporting the amount of client assets and number of clients relating to custody arising solely from their fee deducting authority. We are proposing to instruct advisers to exclude from proposed Item 9.A.(3) reporting the amount of client funds and securities and the number of clients for which they have custody solely as a result of activities that would except advisers from having to comply with the surprise examination requirement or with the Advisers Act custody rule.[1225]

Third, we are also proposing to add new questions to Item 9.A. under proposed Item 9.A.(2) to address the adviser's reliance on certain exceptions under the Advisers Act custody rule. Proposed Item 9.A.(2)(a) would ask the adviser to disclose whether it relies on certain exceptions under the Advisers Act custody rule.[1226] Proposed Item 9.A.(2)(b) would ask advisers to answer ''yes'' if they have custody of client funds or securities solely because they have discretionary trading authority (as described under proposed rule 223–1(b)(9)) and/or because they have inadvertent custody (as described under proposed rule 223–1(b)(10)). The proposed Item would instruct advisers who check ''yes'' to not complete the remainder of Item 9.

Finally, we are proposing to amend Item 9.C to require advisers to disclose whether a State trust company (as defined in proposed rule 223–1(d)(18)) maintains client funds or securities pursuant to proposed rule 223–1(d)(13)(v).[1227]

The proposed amendment to the instructions in Item 9.A.(1) would help ensure collection of accurate information and improve compliance practices. Advisers who have custody solely because they deduct advisory fees but respond 'no' to Item 9.A.(1) as currently instructed, may mistakenly believe that they are not subject to the Advisers Act custody rule. These advisers may also provide incomplete or inaccurate reporting in the remainder of Item 9. The proposed amendment would reduce uncertainty, assisting in reporting accurate information and complying with the Advisers Act custody rule's requirements. This would help in safeguarding the assets of advisory clients and mitigate compliance risks for advisers. Additionally, investors would benefit from the proposed amendment as more accurate Form ADV data may assist Commission staff in identifying compliance risks, which would support investor protection. Furthermore, the proposed amendment could result in cost savings for advisers that do not have custody as these advisers would no

[1222] *See infra* section V.E.1. We estimate that one-time compliance costs would consist of 1 burden hour at $553 per hour (1 hour × $553 per hour = $533) and that recurring annual compliance costs would consist of the sum of $221 in internal costs (0.4 burden hour at $553 per hour; 0.4 × $553 per hour = $221) and $559 in external costs (1 burden hour for a lawyer at $774 per hour for 25% of advisers and 1 burden hour for a financial manager at $730 per hour for 50% of advisers; 0.25 × 1 hour × $774 per hour + 0.5 × 1 hour × $730 per hour = $559). These estimates are associated with the proposed changes to Part 1A and Schedule D of Form ADV (not including private fund reporting), which include the proposed amendments to Item 9 discussed in section II.J.1.b). We expect that these cost estimates would apply equally to registered advisers and ERAs registered with a state securities authority.

[1223] *See supra* section II.J.1.b). In addition to the amendments described below, we are also proposing to remove current Item 9.E. We do not expect that this amendment would have significant economic effect since similar information is collected on Form ADV–E. *See supra* footnote 666.

[1224] *See supra* section II.J.1.b)(4).

[1225] These activities would include: (i) fee deducting authority, (ii) the adviser having a standing letter of authorization, (iii) a related person having custody of client funds or securities in connection with advisory services the adviser provides to clients, but the adviser has overcome the presumption that it is not operationally independent (pursuant to Advisers Act rule 223–1(d)(12)) from the related person; (iv) the adviser having authority to trade at its discretion and meets the conditions set forth under Advisers Act rule 223–1(b)(9); and/or (v) custodial agreements described under Advisers Act rule 223–1(b)(10) that confer unwanted authority upon the adviser, and the adviser has taken the steps set forth under Advisers Act rule 223–1(b)(10)(ii)(B) to repudiate any such unwanted authority. *See supra* section II.J.1.b).

[1226] These exceptions include: (i) the privately offered securities exception under rule 223–1(b)(2) (which would be redesignated from current rule 206(4)–2(b)(2)); (ii) exception for fee deducting authority under rule 223–1(b)(3) (which would be redesignated from current rule 206(4)–2(b)(3)); (iii) exception under rule 223–1(b)(6) for custody arising solely from an operationally independent related person having custody of client funds or securities in connection with advisory services the adviser provides to clients (which would be redesignated from current rule 206(4)–2(b)(6)); (iv) exception for standing letters of authorization under proposed rule 223–1(b)(8); (v) exception for discretionary trading authority under proposed rule 223–1(b)(9); and (vi) exception for inadvertent custody under proposed rule 223–1(b)(10) and where the adviser knows, or has reason to know, that a custodial agreement confers custody on the adviser, and the adviser has taken the steps described in proposed rule 223–1(b)(10). *See supra* section II.J.1.b).

[1227] *See* proposed Form ADV Item 9.C.(5).

longer need to complete the rest of the section if they respond 'no' to Item 9.A.(1).

The proposed amendments to current Item 9.A.(2) and 9.B.(2) would also involve benefit for advisers and investors. We understand that current instructions have resulted in interpretive challenges and inconsistent reporting across advisers, especially among advisers with custodial arrangements that involve custodial authorities that are integrated between the adviser and its related persons or otherwise where the parameters of those custodial authorities between the adviser and its related persons are less than clear.[1228] The revised instructions are intended to alleviate these interpretive challenges and promote more consistent reporting of direct and indirect custody by advisers and their related persons. The instructions for proposed Item 9.A.(3) to exclude certain activities with mitigated custodial risks would allow investors and our examination staff to more accurately assess the degree of client exposure to custodial risks that subject advisers to the full extent of the Advisers Act custody rule and enhance our examination staff's ability to focus their examination efforts on material custodial exposures, enhancing investor protection.

The proposed new Item 9.A.(2) that addresses the adviser's reliance on certain exceptions under the Advisers Act custody rule would enhance investor protection by enhancing the Commission staff's ability to effectively carry out the Commission's risk-based examination program by facilitating more targeted assessments of custody-related risks.

Finally, the proposed amendment to Item 9.C. would provide information to clients and prospective clients on the use of State trust companies as qualified custodians by advisers. Because State trust companies are subject to State regulations that can vary from State to State, their use as qualified custodians could involve different risk for advisory clients' crypto assets and securities.[1229] This proposed amendment would assist investors in making informed decisions with respect to the choice of an adviser and help Commission staff assess advisers' practices for the custody of crypto assets.

We anticipate that the proposed amendments to Item 9 would create additional costs for advisers as they would need to understand the new instructions and potentially adjust their systems to collect and report the new information.[1230] In addition, advisers that currently erroneously believe they are not subject to the Advisers Act custody rule as a result of deducting advisory fees or having an operationally independent related person with custody may incur costs associated with complying with the amended instructions.

(3) Questions on Tokenized Private Funds

We are proposing to make amendments to Form ADV that would require advisers to report whether any reported private fund (or series or class thereof) is a tokenized fund.[1231] To the extent only certain series or classes of the private fund shares are tokenized, the adviser would be required to indicate the series or class involved. Advisers would also be required to provide the names of any crypto networks used to record ownership of the fund or class or series of the private fund.[1232]

Tokenization may involve new types of risk, which could eventually contribute to systemic risk. The proposed amendments would enhance investor protection as they would facilitate the Commission's oversight activities and assessment of a novel and growing trend in the tokenization of private funds. Furthermore, this information would help the Commission accurately identify affected parties should operational challenges affecting trade settlements, redemption processes, and/or pricing arise within a crypto network. This information would also involve benefits for investors as public disclosure of this information would help prospective investors in making informed decisions with respect to advisers that tokenize private fund shares.

We estimate one-time compliance costs associated with the proposed amendments to the private fund reporting requirements of $55 per private fund reported on Form ADV.[1233]

(b) Form N–CEN

We are proposing to make amendments to Form N–CEN to require reporting of whether the regulated fund (or Series or Class thereof) is a tokenized fund. Regulated funds that are tokenized funds would additionally be required to provide the names of any crypto networks used to record ownership of the fund or class or series of the regulated fund.[1234] We are also proposing to make conforming amendments to Form N–CEN in relation to the proposed crypto custody rules. Currently, Form N–CEN requires regulated funds to disclose information about entities that provided custodial services to them, including checking a box corresponding to the different types of permitted custodians for regulated funds under applicable rules and statutes.[1235] We are proposing to add two additional checkboxes, corresponding to the proposed crypto asset self-custody and State trust company rules.[1236] We are also proposing to amend the title of the checkbox for custody under rule 17f–1 from ''Member national securities exchange'' to ''brokers or dealers'' to correspond to the proposed title and scope of rule 17f–1.

These proposed amendments to Form N–CEN would enhance investor protection by providing the Commission with information to support its oversight and assessment of tokenized regulated funds and by assisting the Commission and data users in monitoring custodial risk and areas of concern.

We estimate one-time compliance costs of $570 and recurring annual compliance costs of $382 per registrant that would be affected by the proposed fund tokenization disclosure, one-time compliance costs of $570 and recurring annual compliance costs of $382 per registrant that would be affected by the proposed State trust use disclosure, and one-time compliance costs of $570 and recurring annual compliance costs of $382 per registrant that would be affected by the proposed self-custody use disclosure.[1237]

[1228] *See supra* section II.J.1.b)(4).

[1229] *See supra* section IV.C.4.

[1230] These costs are included in the cost estimates provided above. *See supra* footnote 1222 and accompanying text.

[1231] This proposed requirement would apply to all registered advisers and all ERAs. *See* form ADV Instruction 3. Hence, for the purposes of this section IV.C.9.a) of this release, ''advisers'' includes both registered advisers and ERAs. *See also supra* footnote 1220.

[1232] Relatedly, we propose to add to the Glossary of Terms of Form ADV the term ''tokenized fund,'' which would be defined as a pooled investment vehicle or any series thereof that has issued shares in the format of a crypto asset, where the record of ownership is maintained in whole or in part on or through one or more crypto networks, and the term ''crypto network,'' which would have the same meaning as proposed in rule 223–1 under the Advisers Act. *See supra* section II.J.1.c).

[1233] We estimate that recurring annual compliance costs would consist of 0.1 burden hour at $553 per hour (0.1 hour × $553 per hour = $55). *See infra* section V.E.1.

[1234] *See supra* section II.J.2.

[1235] *See supra* footnote 696.

[1236] *See supra* footnote 698 and accompanying text.

[1237] For each of these proposed amendments, we estimate that one-time compliance costs would

Continued

(c) Disclosures of Risks Related to Crypto Asset

Open-end and closed-end funds are required to disclose, among other things, the principal risks of investing in the fund to their current and prospective shareholders in their prospectuses. Additionally, open-end funds are required to disclose non-principal strategies and the risks of those strategies in the SAI section of the registration statement. Similarly, advisers are required to deliver to prospective and current clients a narrative brochure that discloses information about the adviser's business, conflicts of interest, and investment strategies, among other required information.[1238] In addition, advisers may also be required to provide additional disclosures as part of their fiduciary duty.

When a regulated fund or an adviser invests (on behalf of a client) in crypto assets, these disclosures would be required to appropriately address the associated material risks. This generally would include a description of their crypto asset investment strategies and the risks associated with investing in crypto assets as well as custodial risks related to crypto asset investments.[1239] If the proposed self-custody rules are adopted, the adviser or regulated fund would need to disclose whether it holds crypto assets in self-custody as well as the associated material risks and conflicts of interest, including disclosure of what measures are in place if the assets are lost, stolen, or misappropriated or in the event of bankruptcy.[1240] Finally, if the proposed State trust company rules are adopted, the adviser or regulated fund would need to disclose whether it uses a State trust company as custodian for crypto assets and the associated risks that may arise from this arrangement.[1241]

Advisers and regulated funds may have incentives to avoid disclosure of certain risks absent the proposed guidance. There may also be uncertainty about what types of risks related to crypto asset investments should be included in the disclosures. To the extent that current disclosure practices are inconsistent with the matters outlined in the Commission's views, the Commission's views are intended to help ensure that investors are fully informed about these risks.

Without clear and detailed disclosure, some investors may not fully understand the risks associated with investments in crypto assets. In particular, some investors may not be fully aware of investment risks as some of the crypto assets may carry excess market price volatility and associated risks. Disclosure of crypto asset investment risks would benefit investors by helping them to understand these risks and could enable them to make more informed investment decisions. Similarly, there may be information asymmetry between advisers and their clients and between regulated funds and their investors regarding the unique custodial risks that arise from investing in crypto assets, as understanding these risks may require a certain level of knowledge about the nature of these assets.[1242] Disclosures about custodial risks would further help investors understand the risks beyond the investment risks as anyone with access to the private key could transfer crypto assets, and these transactions are generally irreversible. Furthermore, when an adviser has self-custody of crypto assets, the principal-agent problem between the adviser and its clients could be exacerbated and result in suboptimal custody practices by advisers, putting investors' crypto assets at risk.[1243] Disclosures associated with self-custody practices would mitigate the risks by allowing clients and investors to monitor adviser's self-custody practices and encouraging advisers to implement comprehensive safeguarding measures for investors' crypto assets. Finally, there may be information asymmetry concern when an adviser uses a State trust company as regulations may differ across States, and investors may not assess State-specific risks themselves without disclosure as this may require specialized knowledge about regulations. Therefore, disclosures about using State trust companies as crypto asset custodians would also benefit investors by providing information about the potential risks in a particular jurisdiction, or a specific State trust or custodial arrangement. Overall, we believe that the disclosure of the risks described in the proposed guidance would be beneficial for investors when deciding whether to make an investment in crypto assets through a particular adviser or fund.[1244]

10. Aggregate Monetized Benefits and Costs

Throughout this economic analysis, we have estimated monetized benefits and costs per affected entity. In this section, we present aggregate measures of these monetized effects across entities and time. These aggregates include only benefits and costs that are monetized in the economic analysis and thus do not encompass all of the proposed rules' and amendments' benefits and costs. In addition, these estimates assume each entity will realize the full extent of possible benefits and costs as a result of the proposed rules and amendments; actual benefits or costs may vary across entities depending on their existing practices and whether those practices continue after the proposed rules and amendments.

(a) Aggregate Monetized Benefits and Costs Across Affected Entities

Tables 7 to 11 report the benefits (Table 7) and costs (Tables 8 to 11) that are monetized in this economic analysis, aggregated across all affected entities.[1245] To aggregate these monetized effects we use estimates of the number of affected parties [1246] and burdens under the Paperwork Reduction Act in section V. The proposed crypto custody rules would only apply to advisers and regulated funds who choose to maintain crypto assets with a State trust company custodian under the proposed State trust company rule or who would choose to self-custody crypto assets. Hence, the number of affected parties for requirements related to the proposed crypto custody rules (including applicable recordkeeping and disclosure requirements) are estimates that could present over- or under-estimates. For the other proposed rules and amendments, the number of affected entities depends on the current and future practices of advisers and regulated funds.[1247]

consist of 1 burden hour at $570 per hour (1 hour × $570 per hour = $570) and that recurring annual compliance costs would consist of 0.67 burden hour at $570 per hour (0.67 hour × $570 per hour = $382). *See infra* section V.E.2.

[1238] *See supra* section II.J.3.

[1239] We discuss earlier in the proposal matters regulated funds and advisers would be required to disclose to adequately disclose the material risks when a fund or adviser invests in crypto assets, and particularly if the adviser were holding the crypto assets in self-custody. *See supra* section II.J.3.

[1240] **See supra** section II.J.3.a) for a discussion of different examples of elements this disclosure would include.

[1241] *See supra* section II.J.3.b).

[1242] *See supra* section IV.C.1.

[1243] *See supra* section IV.C.1.

[1244] We do not expect that the guidance discussed in this section would result in additional costs for advisers and regulated funds since advisers and regulated funds currently are and would remain subject to the underlying Form ADV and prospectus requirements, respectively, that are underlying the requirements discussed in this section IV.C.9.c).

[1245] For all tables in this section, the total in the last row may be different from the sum of the rows above due to rounding.

[1246] *See supra* section IV.B.3.

[1247] *See supra* sections IV.C.5 through IV.C.9 and infra section V for additional discussions of entities that would be affected by the proposed rules and amendments not related to the crypto custody rules.

We were unable to quantify the main benefits of the proposal, which include benefits from the ability of advisers and regulated funds to gain access to custodial services via State trusts and self-custody to implement strategies for investors who seek out crypto investments. For the ancillary benefits for which we were able to provide estimates, the total aggregate initial monetized benefit is $0 and the total aggregate annual monetized benefit is $176,472.

Table 7: Aggregate Monetized Benefits
(2026 Dollars)

Requirements	Initial Benefit Per Affected Entity (A)	Annual Benefit Per Affected Entity (B)	Estimated Number of Affected Entities (C)	Aggregate Initial Benefit (D) [(A) x (C)]	Aggregate Annual Benefit (E) [(B) x (C)]
Amendments to rule 17f-1	$0	$8,283[a]	18[b]	$0	$149,094
Rescission of Form N-17F-1	$0	$1,521[c]	18[d]	$0	$27,378
Total				$0	$176,472

Notes:

[a] *See supra* footnote 1110 and accompanying text.

[b] *See supra* Table 4 (Form N-CEN Item C.12 data). When quantifying these benefits, we use a recent number of affected entities rather than relying on the number of affected entities underlying the previously approved PRA estimates, which appears in section V.C.3.

[c] *See supra* footnote 1111 and accompanying text.

[d] *See supra* Table 4 (Form N-CEN Item C.12 data). When quantifying these benefits, we use a recent number of affected entities rather than relying on the number of affected entities underlying the previously approved PRA estimates, which appears in section V.E.3.

We estimate that the total aggregate initial monetized cost is $301,856,490 and the total aggregate annual monetized cost is $433,706,625.[1248]

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[1248] The total aggregate initial monetized cost is the sum of the total aggregate initial cost in Tables 8–11: $284,337,627 + $1,002,636 + $0 + $16,516,227 = 301,856,490. The total aggregate annual monetized cost is the sum of the total aggregate annual cost in Tables 8–11: $407,073,452 + $11,257,656 + $2,084,732 + $13,290,785 = $433,706,625.

Table 8: Aggregate Monetized Costs – Crypto Custody Rules
(2026 Dollars)

Requirements	Initial Cost Per Affected Entity (A)	Annual Cost Per Affected Entity (B)	Estimated Number of Affected Entities (C)	Aggregate Initial Cost (D) [(A) x (C)]	Aggregate Annual Cost (E) [(B) x (C)]
Adviser self-custody rule	$173,499[a]	$433,833[b]	823[c]	$142,789,677	$357,044,559
Fund self-custody rule	$53,037[d]	$21,660[e]	715[f]	$37,921,455	$15,486,728
Adviser State trust company rule	$30,460[g]	$10,153[h]	1,645[i]	$50,107,029	$16,702,343
Fund State trust company rule – determination	$30,460[j]	$10,153[k]	1,430[l]	$43,558,086	$14,519,362
Fund State trust company – agreement	$6,966[m]	$2,322[n]	1,430[o]	$9,961,380	$3,320,460
Total				$284,337,627	$407,073,452

Notes:

[a] *See supra* footnote 941 and accompanying text.

[b] *See supra* footnotes 941 and 993 and accompanying text. $433,833 is the sum of $57,833 in annual internal compliance costs and of $376,000 for the annual internal control report.

[c] *See infra* section V.B.

[d] *See supra* footnote 1019 and accompanying text.

[e] *See supra* footnote 1019 and accompanying text.

[f] *See infra* section V.C.1.

[g] *See supra* footnote 1051 and accompanying text.

[h] *See supra* footnote 1051 and accompanying text.

[i] *See infra* section V.B.

[j] *See supra* footnote 1051 and accompanying text.

[k] *See supra* footnote 1051 and accompanying text.

[l] *See infra* section V.C.2.

[m] *See supra* footnote 1098 and accompanying text.

[n] *See supra* footnote 1098 and accompanying text.

[o] *See infra* section V.C.2.

Table 9: Aggregate Monetized Costs – Advisers Act Custody Rule Modernization
(2026 Dollars)

Requirements	Initial Cost Per Affected Entity (A)	Annual Cost Per Affected Entity (B)	Estimated Number of Affected Entities (C)	Aggregate Initial Cost (D) [(A) x (C)]	Aggregate Annual Cost (E) [(B) x (C)]
Audit provision	$0	$76[a]	4,847[b]	$0	$366,349
SLOAs	$471[c]	$471[d]	2,131[e]	$1,002,636	$1,002,636
Notice to clients	$0	$302[f]	7,140[g]	$0	$2,152,710
Inadvertent custody	$0	$471[h]	16,442[i]	$0	$7,735,961
Total				$1,002,636	$11,257,656

Notes:

[a] *See supra* footnote 1135 and accompanying text.

[b] *See infra* section V.B.

[c] *See supra* footnote 1140 and accompanying text.

[d] *See supra* footnote 1140 and accompanying text.

[e] *See infra* section V.B.

[f] *See supra* footnote 1146 and accompanying text.

[g] *See infra* section V.B.

[h] *See supra* footnote 1148 and accompanying text.

[i] *See infra* section V.B.

Table 10: Aggregate Monetized Costs – Recordkeeping
(2026 Dollars)

Requirements	Initial Cost Per Affected Entity (A)	Annual Cost Per Affected Entity (B)	Estimated Number of Affected Entities (C)	Aggregate Initial Cost (D) [(A) x (C)]	Aggregate Annual Cost (E) [(B) x (C)]
Advisers: self-custody	$0	$309[a]	823[b]	$0	$254,307
Advisers: State trust company	$0	$309[c]	1,645[d]	$0	$508,305
Advisers: SLOAs	$0	$39[e]	2,131[f]	$0	$82,310
Funds: self-custody	$0[g]	$578[h]	715[i]	$0	$413,270
Funds: State trust company	$0[j]	$578[k]	1,430[l]	$0	$826,540
Total				$0	$2,084,732

Notes:

[a] *See supra* footnote 1166 and accompanying text.

[b] *See infra* section V.D.1.

[c] *See supra* footnote 1176 and accompanying text.

[d] *See infra* section V.D.1.

[e] S*ee supra* footnote 1181 and accompanying text.

[f] *See infra* section V.D.1.

[g] S*ee supra* footnote 1186 and accompanying text.

[h] S*ee supra* footnote 1186 and accompanying text.

[i] *See infra* section V.D.2.

[j] S*ee supra* footnote 1190 and accompanying text.

[k] S*ee supra* footnote 1190 and accompanying text.

[l] *See infra* section V.D.2.

Table 11: Aggregate Monetized Costs – Disclosure
(2026 Dollars)

Requirements	Initial Cost Per Affected Entity (A)	Annual Cost Per Affected Entity (B)	Estimated Number of Affected Entities (C)	Aggregate Initial Cost (D) [(A) x (C)]	Aggregate Annual Cost (E) [(B) x (C)]
Advisers: Form ADV – Parts 1 and 2	$553[a]	$780[b]	16,831[c]	$9,307,543	$13,123,131
Advisers: Form ADV – Private fund reporting	$55[d]	$0[e]	125,831[f]	$6,958,454	$0
Funds: Form N-CEN – fund tokenization	$570[g]	$382[h]	27[i]	$15,390	$10,311
Funds: Form N-CEN – State trust disclosure	$570[j]	$382[k]	275[l]	$156,750	$105,023
Funds: Form N-CEN – self-custody disclosure	$570[m]	$382[n]	137[o]	$78,090	$52,320
Total				$16,516,227	$13,290,785

Notes:

[a] *See supra* footnote 1207 and accompanying text.

[b] *See supra* footnote 1207 and accompanying text.

[c] This number includes existing registered advisers and expected new registered investment advisers. *See infra* section V.E.1. It also includes 4 ERAs that are registered with a state securities authority. *See supra* footnote 1205.

[d] *See supra* footnote 1218 and accompanying text.

[e] *See supra* footnote 1218 and accompanying text.

[f] This is the estimated number of private funds advised by advisers that would be affected by this proposed amendment. It is the sum of 67,769 private funds currently advised by registered advisers, 53,353 private funds currently advised by ERAs, 1,960 expected new private funds advised by registered advisers, and 2,749 expected new private funds advised by ERAs. *See infra* section V.E.1.

[g] *See supra* footnote 1222 and accompanying text.

[h] *See supra* footnote 1222 and accompanying text.

[i] *See infra* section V.E.2.

[j] *See supra* footnote 1222 and accompanying text.

[k] *See supra* footnote 1222 and accompanying text.

[l] *See infra* section V.E.2.

[m] *See supra* footnote 1222 and accompanying text.

[n] *See supra* footnote 1222 and accompanying text.

[o] *See infra* section V.E.2.

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(b) Present Values and Annualized Values of Aggregate Monetized Benefits and Costs

Consistent with the requirements of Executive Order 12866, the Commission reports estimated total monetized benefits and costs for all affected entities in two additional ways specified in Office of Management and Budget

(''OMB'') Circular A–4.[1249] The two presentations are intended to address the fact that the various benefits and costs of the proposed rules and amendments would not accrue at the same point in time; rather, benefits and costs that accrue sooner are generally more valuable than those that occur later in time.[1250]

We report (1) the present values of expected benefits and costs that are monetized in our Economic Analysis, aggregated across all affected entities, over a 10-year time horizon, starting in 2026, as well as (2) the annualized values over the same time horizon that are derived from the present values. This time horizon represents the period over which the principal benefits and costs that are monetized in the Economic Analysis are expected to accrue.[1251] The present values and annualized values account for the timing of benefits and costs through discounting, which is a procedure that accounts for the time value of money.[1252]

Table 12 reports the present values of the aggregate monetized benefits and costs from Tables 7 to 11, combining initial and annual monetized benefits and costs. The analysis uses annual real discount rates of 3 percent and 7 percent over a 10-year time horizon, starting in 2026.[1253] We estimate that the present value of total monetized benefits is $1,527,755 using a 3 percent discount rate and $1,282,113 using a 7 percent discount rate. We estimate that the present value of total monetized costs is $4,056,545,978 using a 3 percent discount rate and $3,452,843,217 using a 7 percent discount rate.

Table 12: Present Value of Aggregate Monetized Benefits and Costs over 10 years from 2026 to 2035 (2026 Dollars)

Estimated Effects[a]	3% real discount rate	7% real discount rate
Benefits	$1,527,755	$1,282,113
Costs	$4,056,545,978	$3,452,843,217

Notes:

[a] For each discount rate, the present value calculations are based on these assumptions: (i) all one-time monetized costs are incurred immediately and not discounted and (ii) recurring annual monetized benefits and costs begin to accrue in the year in which affected entities first comply. In (ii), we assume that monetized benefits and costs occur in a steady stream, and we use a mid-year discount rate.

[1249] *See* E.O. 12866 (Sept. 30, 1993) [58 FR 51735, 51741 (Oct. 4, 1993)] (requiring agencies to provide an analysis of benefits, costs, and regulatory alternatives to the Office of Information and Regulatory Affairs for significant regulatory actions); OMB, Circular A–4, at 31–34, 45 (Sept. 17, 2003) (providing guidance to agencies regarding compliance with E.O. 12866); *see also* E.O. 14215 (Feb. 18, 2025) [90 FR 10447, 10448 (Feb. 24, 2025)] (requiring all Federal agencies, including the Securities and Exchange Commission, to comply with E.O. 12866). In addition, E.O. 14192 requires agencies to provide their best approximation of the total costs or savings associated with each new regulation or repealed regulation consistent with the analyses required by E.O. 12866. *See* E.O. 14192 (Jan. 31, 2025) [90 FR 9065, 9066 (Feb. 6, 2025)]. For purposes of approximating the total cost savings and costs under E.O. 14192, the Commission uses the annualized monetized benefits and costs using a real discount rate of 7%. *See* Table 13 and accompanying discussion.

[1250] *See* Circular A–4, at 32.

[1251] See id. at 31 (stating that ''[t]he ending point should be far enough in the future to encompass all the significant benefits and costs likely to result from the rule''). For the purposes of this analysis, we assume the effective date of the rule, as well as the start year for the analysis's time horizon, is the present year. The analysis uses calendar years and accounts for the compliance periods included in the release (see note a in Table 12).

[1252] *See id.* at 32 (''The Rationale for Discounting'') & 45 (''Treatment of Benefits and Costs over Time''); *see also* OIRA, Regulatory Impact Analysis: A Primer, at 11 (Aug. 15, 2011), available at *https://www.reginfo.gov/public/jsp/Utilities/circular-a-4_regulatory-impact-analysis-a-primer.pdf* (''To provide an accurate assessment of benefits and costs that occur at different points in time or over different time horizons, an agency should use discounting. Agencies should provide benefit and cost estimates using both 3% and 7% annual discount rates expressed as a present value as well as annualized.''); Harvey S. Rosen & Ted Gayer, Public Finance 151 (8th ed. 2008) (defining present value as ''the value today of a given amount of money to be paid or received in the future'').

[1253] This approach is consistent with OMB Circular A–4. *See* Circular A–4, at 31–34 (stating that, ''[f]or regulatory analysis, [agencies] should provide estimates of net benefits using both 3 percent and 7 percent'' discount rates and discussing why those rates are reasonable default rates). Also, we use a mid-year discount rate. *See* OMB, Circular A–94, at 21–22 (Oct. 19, 1992) (stating that, ''When costs and benefits occur in a steady stream, applying mid-year discount factors is more appropriate.'').

Table 13: Annualized Aggregate Monetized Benefits and Costs over 10 years from 2026 to 2035 (2026 Dollars)

Estimated Effects[a]	3% real discount rate	7% real discount rate
Benefits	$176,472	$176,472
Costs	$468,574,265	$475,254,613

Notes:

[a] For each discount rate, the annualized values are calculated by dividing the corresponding present values in Table 12 by the sum of discount factors over the time horizon. This converts a lump-sum present value into an equivalent constant annual stream over the 10-year horizon. The discount factor in year t of the time horizon is equal to $1/(1 + discount\ rate)^{(t-0.5)}$.

D. Effects on Efficiency, Competition, and Capital Formation

1. Efficiency

(a) Additional Options for Crypto Asset Custody

The proposed rules would include more crypto asset custody options for advisers and regulated funds as the proposed self-custody rules would allow advisers to self-custody their clients' crypto assets and the proposed State trust company rules would allow advisers and regulated funds to use State trust companies as custodians for crypto assets.[1257]

The additional options for crypto asset custody could enable advisory clients and regulated funds to invest in crypto assets as the current permitted custodians may not provide custody services for some crypto assets or may not allow certain activities, which may limit investment opportunities that may otherwise serve the client's or regulated fund's best interests. Hence, the proposed rules could increase crypto asset exposure obtained through advisers and regulated funds among interested investors, which could improve the efficiency with which their portfolios are managed and increase their risk-adjusted returns.

In addition, the proposed self-custody rules could contribute to increased efficiency in situations where advisers conducting extensive due diligence of novel or nascent crypto assets as part of their regular business activities would be able to custody these assets at lower costs than other entities that are permitted custodians and that would have to de novo acquire knowledge and technical expertise about the assets and the infrastructure that supports them.

Finally, the proposed State trust company rules could contribute to increased operational efficiency for certain entities. To the extent that some entities that previously were or currently are State trust companies currently hold or are in the process of obtaining a national bank charter solely for the purpose of providing crypto asset custodial services to advisers or regulated funds,[1258] the proposed State trust company rules could result in a more efficient allocation of resources. Under the proposed rules, it would no longer be necessary for these entities to keep the bank charter, thereby reducing the resources that would need to be allocated to complying with Federal banking regulations.[1259]

(b) Safeguarding Requirements

The proposed self-custody rules and State trust company rules include requirements to help ensure that investors' assets would be appropriately safeguarded against the risk of loss, theft, misuse, and misappropriation.[1260] Because of asymmetric information, investors could be unable to tell whether a custodian has in place safeguarding measures that are appropriate.[1261] Hence, these proposed requirements would help ensure that investors' crypto assets are not being maintained at custodians (including advisers who would self-custody client assets) that do not have appropriate safeguarding measures in place, thereby improving allocative efficiency of matching advisers and regulated funds with custodians.[1262]

(c) Third-Party Service Providers

The proposed adviser self-custody rule would not preclude an adviser from engaging third parties (including related persons) and service providers to support its effectuating of crypto asset custody and to help administer the required safeguards under the proposed self-custody rule, provided the adviser exercises appropriate oversight and continues to comply with the substantive requirements of the adviser self-custody rule.

Advisers typically do not specialize in custody operations; therefore, they may engage with third-party service providers that are specialized and have expertise in crypto asset custody. Using these service providers could help reduce the risks associated with the self-custody of crypto assets, helping advisers to offer efficient safeguarding systems for their clients. Even when advisers could offer similar protections with in-house developments, service providers may offer these services at lower costs due to economies of scale as these providers could serve a large number of clients. These effects would be more pronounced for advisers with a limited amount of crypto assets under

[1254] This approach is consistent with the recommended treatment of benefits and costs over time in Circular A–4. *See id.* at 45 (''You should present annualized benefits and costs using real discount rates of 3 and 7 percent'').

[1255] For each discount rate, the annualized monetized benefits (costs, respectively) in Table 13 represent the constant annual stream of benefits (costs, respectively) whose present value over the time horizon equates the corresponding present value in Table 12. *See* note a, Table 13 for additional calculation details.

[1256] The annualized benefits and costs present these values over the 10-year time horizon, starting in the 2026.

[1257] The sub-sections below describe effects on efficiency from certain of the proposed rule provisions and amendments. We do not expect any effect on efficiency from the proposed amendments under the Investment Company Act and Advisers Act custody rule modernizations, from the proposed amendments to the disclosure requirements, or from the other proposed amendments to the recordkeeping requirements.

[1258] *See supra* footnotes 877–879 and accompanying text.

[1259] *See supra* section IV.C.4.a) for additional discussion of this effect.

[1260] *See supra* sections IV.C.2, IV.C.3, and IV.C.4 for additional discussions of these proposed requirements.

[1261] *See supra* section IV.C.1.

[1262] *See supra* section IV.C.1 for a discussion of how asymmetric information could result in an inefficient matching of advisers and regulated funds to custodians in the absence of the proposed requirements. In addition, because the proposed requirements would reduce inefficiency in the allocation of resources, we do not expect that the additional costs associated with these proposed requirements would result in lower efficiency.

custody, since developing such systems could involve considerable fixed costs, thereby increasing expenses relative to the amount of assets under custody.

(d) Onchain Recordkeeping

The proposed amendments to the Advisers Act and Investment Company Act recordkeeping rules would provide that records related to crypto assets that are required to be maintained and preserved under the applicable recordkeeping rule may be maintained and preserved on a crypto network.[1263]

The development of crypto networks may afford advisers and regulated funds the opportunity to leverage the recordkeeping capabilities of crypto networks to support their recordkeeping obligations under the Advisers Act and Investment Company Act recordkeeping rules by providing information and records related to crypto asset transactions. Hence, under the proposed rules, advisers and regulated funds could devote fewer resources to maintaining offchain records, which would improve their operational efficiency. In addition, onchain recordkeeping could also reduce the need for error detection and correction, further improving efficiency.[1264]

(e) Custody Rules Modernization

The proposed amendments to modernize the Investment Company Act custody rules could enhance efficiency by removing duplicative or outdated requirements. In particular, the conditions under rule 17f–1 we are proposing to remove were adopted in 1940. Since that time, the Commission has adopted a comprehensive set of broker-dealer rules that collectively address the risks that the current rule 17f–1 conditions were designed to mitigate. Hence, removing these conditions could reduce the regulatory burden on regulated funds that use broker-dealers as custodians while preserving investor protection through the existing broker-dealer financial responsibility rules, SIPA and SIPC protections, and SRO oversight, increasing regulatory efficiency.[1265]

Similarly, the proposed rescission of rule 17f–3 under the Investment Company Act, which governs free cash accounts for regulated funds with bank custodians,[1266] would eliminate a requirement that has become obsolete due to technological advances in banking and payment processing. We understand that regulated funds are no longer using this rule, and its continued existence imposes unnecessary regulatory complexity without any corresponding investor protection benefit. As a result, rescinding rule 17f–3 would simplify the regulatory framework governing regulated fund custody without any loss of investor protection, thereby increasing regulatory efficiency.

Additionally, the proposed amendments to the Advisers Act could improve efficiency by removing requirements that impose costs on regulated entities while maintaining comparable levels of investor protection. For example, the proposed amendment that excepts advisers with custody solely due to a SLOA from the Advisers Act custody rule's independent verification requirement would reduce compliance burden on such advisers. The conditions an adviser would need to comply to rely on the proposed SLOA exception, which include that the qualified custodian must not be the adviser's related person, that the client's authorization must include the client's signature and information on the third-party recipient, and the prohibition on adviser authority to change such recipient information, could substantially reduce the risk of misappropriation, such that the independent verification requirement would not be meaningfully additive to investor protection in these circumstances.[1267] As a result, the proposed exception could allow advisers to direct compliance resources toward purposes that address greater custodial risks, thereby increasing the efficiency of their compliance programs.

Further, the proposed exception from the Advisers Act custody rule for circumstances in which an adviser has inadvertent custody could help reduce unnecessary compliance burdens.[1268] Subjecting these advisers to the full requirements of the Advisers Act custody rule in these circumstances impose compliance costs. The proposed exception could reduce this burden while preserving investor protection through the required conditions, including the requirement that advisers promptly notify clients and qualified custodians upon discovering such inadvertent custody and take steps to repudiate the unwanted authority.

The proposed amendments to the Advisers Act custody rule that remove the PCAOB registration and inspection requirements for accountants and auditors could similarly enhance efficiency.[1269] While there has been some evidence that PCAOB registration may improve audit quality, the causal effect of the PCAOB requirements on the quality of the services required by the Advisers Act custody rule remains uncertain.[1270] Therefore, removing this requirement could increase efficiency by reducing compliance costs for advisers, as it would allow them to choose an accountant from a larger pool, and there is no clear evidence suggesting that such an amendment would adversely affect investor protection related to these services.

The proposed amendments to the audit provision of the Advisers Act custody rule could improve efficiency as well.[1271] For example, the proposed amendment that would allow foreign PIVs to have audited financial statements prepared in accordance with accounting principles other than U.S. GAAP could improve regulatory efficiency by providing advisers with additional flexibility in how they satisfy the rule's requirements, while maintaining similar investor protections through the required conditions, including the reconciliation to U.S. GAAP for material differences. In addition, the proposed amendment that would extend the audited financial statement delivery deadline for advisers to a fund of funds and to a fund of funds of funds could reduce operational burdens associated with meeting a deadline that may not practicably be met given that these funds must first receive audited financial statements of the funds in which they invest. Furthermore, the proposed amendment that would modify the financial statement audit and delivery requirements for advisers to pooled investment vehicles formed within the 90 day period prior to the pooled investment vehicle's first fiscal year end could eliminate the cost of obtaining audited financial statements for a short initial period when assets and activity may be minimal, while ensuring that investors continue to receive relevant financial information (which may be unaudited) covering the first fiscal year of the pooled investment vehicle and annual audited financial statements covering both the first fiscal year and

[1263] *See* proposed rules 31a–1(b)(14) and 204–2(g)(4); *see also supra* sections II.H.3 and IV.C.7.c). For purposes of this section IV.D.1.d) of this release, the term ''regulated fund'' includes all registered investment companies and BDCs, including UITs and FACCs. *See supra* footnotes 653 and 1207.

[1264] *See* Digital Asset Holdings Comment Letter (stating that ''a blockchain is ultimately a better set of electronic books and records'' and ''one that synchronizes automatically with the books and records of counterparties'').

[1265] *See supra* sections II.F.2 and IV.C.5.b.).

[1266] *See supra* section II.F.3.

[1267] *See supra* sections II.G.5 and IV.C.6.d).

[1268] *See supra* sections II.G.9 and IV.C.6.g).

[1269] *See supra* sections II.G.3 and IV.C.6.b).

[1270] *See supra* section IV.C.6.b).

[1271] *See supra* sections II.G.4 and IV.C.6.c).

second fiscal year after the end of the second fiscal year.

The proposed amendments could also improve efficiency by updating certain references. While the proposed amendments that would explicitly except advisers to BDCs from the Advisers Act custody rule and that would add references to BDCs in the Investment Company Act custody rules may not change existing market practices, the proposed amendments could still improve regulatory efficiency by reducing regulatory complexity and promoting more consistent compliance. In addition, the proposed amendments to rule 17f–4 and rule 17f–7 to update certain references and addresses would facilitate more efficient compliance without any reduction in investor protection.

2. Competition

(a) Additional Options for Crypto Asset Custody

The proposed State trust company rules would enhance competition among custodians for crypto assets.[1272] There is currently a limited number of permitted custodians that provide custodial services for a substantial range of crypto assets. Therefore, it may be difficult for advisers or regulated funds to find a permitted custodian for some crypto assets, or it may be prohibitively expensive. The proposed State trust company rules would permit such companies to serve as custodians for crypto assets, under certain conditions, thus increasing the number of permitted custodians. The increased number of custodians would enhance competition among custodians for crypto assets, which could benefit investors by lowering custody fees for crypto assets. Increased competition could also lead to an increase in the quality of the custodial services provided, including custodians' safeguarding systems, which could provide enhanced protection for investors' crypto assets.[1273]

The proposed self-custody rules would allow advisers to have self-custody of clients' crypto assets if they have a reasonable basis, after due inquiry, for believing that no qualified custodian will maintain the crypto asset.[1274] Currently, advisers are not permitted to have self-custody of clients' crypto assets;[1275] consequently, there may be some crypto assets that advisory clients, including clients that are regulated funds, are not holding in their portfolio as a result of a lack of available permitted custodians. This may limit the visibility of, and therefore demand for, these assets. Under the proposed rules, advisory clients and regulated funds would be able to invest in these assets to the extent that the adviser and, if applicable, the regulated fund would be complying with the conditions in the proposed rules.[1276] This could increase the visibility of these assets and, as a result, increase the demand for them from other investors. This increase in demand could increase the incentives for permitted custodians to expedite the development of systems to be able to provide custody services for these crypto assets since it could signal that a larger number of advisers or regulated funds would demand their custodial services. Once permitted custodians establish the systems and are able to offer custody services, an adviser or regulated fund would be required to maintain the client crypto asset with a permitted custodian instead of having self-custody or, in the case of a regulated fund, maintaining the assets with the fund's adviser.[1277] Consequently, enhanced competition among permitted custodians could benefit investors by reducing the period of self-custody.[1278] As a result, investors could begin to realize the benefits of having permitted custodians safeguarding their crypto assets in a timelier manner.

In addition, the proposed additional options for the custody of crypto assets could result in a larger number of advisers offering crypto-related services and in a larger number of regulated funds investing in crypto assets to interested investors. This increase in competition among advisers and among regulated funds could benefit investors by making available additional investment strategies and by reducing fees and expenses related to these services.

(b) Accountants

The requirements under the proposed self-custody rules and State trust company rules could result in increased competition among accountants. Specifically, the internal control report requirement under the proposed self-custody rules and the internal control report and the financial statement audit requirements under the proposed State trust company rules could increase the demand for services provided by accountants. In response to this, new accountants could enter the market and begin offering these services. These effects would be mitigated if some of these State trust companies already engage independent public accountants to obtain internal control reports and have their financial statements audited under the baseline. Nevertheless, there would likely be more accountants in this market over time, resulting in greater competition. Enhanced competition could improve the quality of the associated audit services and thus benefit investors through more robust oversight provided by accountants and reduced custodial risks associated with self-custody and the use of State trust companies as crypto asset custodians. Prices for these services could go up initially as the demand increases; however, as new accountants enter the market, they would likely decrease over time.

In addition, the proposed amendments to the Advisers Act custody rule would remove the requirement that accountants must be registered with and subject to regular inspection by the PCAOB to perform certain activities.[1279] To the extent that accountants that do not meet the current PCAOB-registration and inspection requirements have sufficient technology, operational capabilities, and regulatory knowledge to provide these services, removing such requirements could increase the number of eligible

[1272] The sub-sections below describe effects on competition from certain of the proposed rule provisions and amendments. We do not expect any effect on competition from the other proposed amendments under the Investment Company Act and Advisers Act custody rule modernizations or from the proposed amendments to the disclosure and recordkeeping requirements.

[1273] For example, the proposed State trust company rules could result in some State trust companies designing and implementing new policies and procedures or enhancing the design or implementation of existing ones. *See supra* section IV.C.4.b)(2) for a discussion of the benefits of policies and procedures. In addition, establishing or enhancing policies and procedures can facilitate discussion among the State trust company's personnel and expose flaws in the State trust company's safeguarding approach.

[1274] When the client is a regulate fund, ''qualified custodian'' would mean a bank or other person authorized to hold assets for the regulated fund under section 17(f) of the Investment Company Act or the rules thereunder. *See supra* section II.A.2.

[1275] The custody rules apply to ''funds and securities'' in the case of clients that are not regulated funds and ''securities and similar investments'' in the case of clients that are regulated funds. Hence, currently, advisers can have self-custody of client assets that do not meet these definitions, as applicable.

[1276] The current custody rules do not prevent advisory clients that are not regulated funds from investing in these assets, but they cannot do so through their adviser, that is, the adviser is not permitted to have custody of these assets at any point during the investment process.

[1277] This could result in a decrease in economic efficiency since a permitted custodian could have higher costs of providing custodial services for a specific crypto asset. However, we expect that, eventually, a competitive market for the custody of the asset would develop and that this market would exclude less efficient custodians.

[1278] *See supra* section IV.C.2.a).

[1279] *See supra* section IV.C.6.b).

accountants. However, if PCAOB registration is not the primary barrier to entry into this market, the increase could be limited.[1280] In addition, the effect on competition could also vary between the services related to traditional assets and crypto assets. The effect on competition could be particularly significant for services related to crypto assets, as the current pool of accountants providing such services may be limited. Therefore, crypto-specialized accounting firms that are not registered with the PCAOB may potentially benefit from a competitive advantage.[1281]

An increased number of accountants that could provide services required by Advisers Act custody rule could promote competition, thereby potentially reducing the cost for advisers of obtaining services from accountants. To the extent that advisers pass on any such cost savings, their clients could benefit, for example from reduced fees.

Enhanced competition could also increase the quality of the services. Additional firms that are not registered with the PCAOB but capable of delivering high-quality services could enter the market to offer these services, which could lead to increased competition based on service quality. Therefore, removing the PCAOB requirement could lead to a greater number of high-quality firms in the market.

(c) Broker-Dealer Custody

The proposed amendments to rule 17f–1 would update and modernize the circumstances in which regulated funds may use broker-dealers as custodians. The proposed amendment permitting all registered broker-dealers, rather than only members of a national securities exchange, to serve as custodians for regulated funds would expand the pool of permitted custodians; which in turn could enhance competition among custodians. Additionally, removing the conditions in rule 17f–1 would also enhance competition among custodians as these amendments could enhance the feasibility of broker-dealers acting as custodians for regulated fund securities and similar investments. For example, the proposed amendment that would remove the condition requiring broker-dealer custodians to undergo three annual examinations could enhance competition among custodians as three annual examinations may be too costly for some broker-dealers, potentially limiting their ability to offer custody services for regulated funds. Therefore, removing this condition could expand the number of available custodians and enhance competition in the custody market. Furthermore, we also anticipate that removing the segregation condition could further promote competition, as the current segregation condition requires physical segregation of assets, which is inconsistent with the uncertificated nature of most of the current assets.

Regulated funds that currently use broker-dealers as their custodians could benefit from these amendments as they could incur lower custody fees due to enhanced competition. Additionally, regulated funds that may prefer broker-dealer custodians but are currently constrained by high costs could also benefit from these amendments. This would be particularly relevant for funds that may have low negotiating power regarding custody fees.

3. Capital Formation

The proposed self-custody rules could promote capital formation as they could lead to an increase in demand for nascent crypto assets among interested investors.[1282] For example, the proposed adviser self-custody rule would make it easier for venture capital funds to invest in new firms that could eventually issue nascent crypto assets, which they could distribute to their investors or in which the funds could decide to invest. Under the proposed rule, the funds' advisers would be able to self-custody crypto assets for which no permitted custodian would be available, under certain conditions.[1283] This would make it easier for the firms issuing these crypto assets to raise capital. To the extent that investment in nascent crypto assets represent new capital formation rather than a reallocation from other investment vehicles, the proposed self-custody rules would promote capital formation.

E. Reasonable Alternatives

1. Alternative Qualified Custodian Determination Criteria in Adviser Self-Custody

We propose to require that, in order to be permitted to self-custody client crypto assets, advisers make a determination in writing, prior to taking self-custody of each crypto asset and no less frequently than on a quarterly basis thereafter, that the adviser has a reasonable basis, after due inquiry, for believing that no qualified custodian will maintain the crypto asset.

As an alternative, we considered allowing advisers to self-custody client crypto assets when no qualified custodians are available or when using them would prevent the adviser from implementing investment advice in the best interests of its client, based on the client's investment objective. Compared to the proposal, this approach could increase the benefits of self-custody for investors, as advisers could be able to support certain investment strategies, for example strategies involving network-related activities (*e.g.,* staking) that they may not be able to support under the proposal if at least one qualified custodian is available to maintain the crypto asset but no qualified custodians facilitate such activities. However, this alternative could also increase costs for advisers by potentially adding a need for additional research into auxiliary services provided by qualified custodians in order to be able to make the required QC determination. Additionally, this method would broaden the eligibility for and potentially the use of self-custody, thereby potentially increasing misappropriation risks that are inherent to self-custody arrangements.[1284]

As another alternative approach, we considered permitting advisers to self-custody client crypto assets without any determination criteria, provided that the adviser has a reasonable belief that self-custody serves the client's best interests. For instance, for advisers that have established adequate safeguarding systems, the incremental costs associated with the self-custody of additional crypto assets could be relatively low. Consequently, the expenses related to self-custody could potentially be lower than the fees incurred for custodial services offered by a qualified custodian.[1285] Hence, under this alternative, self-custody could represent a more cost-effective solution, which could benefit investors. To the extent that the costs of implementing certain strategies would decrease due to more economical custody solutions, investors could benefit, for example from higher returns or lower fees. In addition, to the extent that lower costs encourage more advisers to implement strategies involving crypto assets, investors could further benefit from greater investment

[1280] *Id.*

[1281] *See supra* footnote 1137.

[1282] We do not expect any effect on capital formation from the proposed custody rule modernization amendments under the Investment Company Act and Advisers Act, from the proposed State trust company rules, or from the amendments to the disclosure and recordkeeping requirements.

[1283] *See supra* sections II.A and IV.C.2.

[1284] *See supra* footnote 917 and accompanying text.

[1285] For example, there could be cases where only one or a few qualified custodians are available for a certain crypto asset, resulting in high costs due to low competition.

options. However, self-custody could increase the risk of misappropriation of assets by advisers and could introduce additional operational risks if the adviser's safeguarding systems are less robust than those implemented by qualified custodians.[1286]

2. Alternative Protective Measures in Adviser Self-Custody

We are proposing certain conditions designed to address custodial risks associated with self-custody, including requirements for safeguarding expertise and systems and cybersecurity controls. We considered several alternative approaches to these custodial protection conditions.

As an alternative to the proposed safeguarding system requirements, we considered less prescriptive approaches. For instance, we considered allowing advisers to maintain more than one client's crypto assets in a single crypto asset address, while still mandating the segregation of clients' assets from an adviser's proprietary assets (that is, the adviser's proprietary assets would need to be maintained in a different crypto asset address), similar to the current requirement for qualified custodians.[1287] Compared to the proposed approach, which requires each client's assets to be segregated from those of other clients, advisers would likely incur lower costs associated with wallets and key management. However, this alternative would also make it more difficult for investors to monitor their balances and transactions since it would be difficult for investors to identify their portion of the assets maintained in a given address. This cost is especially relevant in the context of self-custody, given the heightened risk of misuse and misappropriation.

We also considered requiring advisers to make the QC determination less frequently than quarterly, for example, annually. Compared to the proposed approach, this alternative would result in lower compliance costs for advisers, which could be passed on to investors as lower fees. However, the crypto market is rapidly evolving, as is the market for crypto custodial services.[1288] It is possible that using a qualified custodian for certain assets becomes possible, shortly after an adviser takes custody of the clients' assets. An annual review requirement could therefore result in crypto assets remaining in self-custody, rather than with a qualified custodian, for longer than necessary.

We also considered more prescriptive approaches. For example, we considered requiring advisers to implement specific key management procedures that are current industry practices (*e.g.,* multi-signature wallets, MPC, etc.). Compared to the principle-based approach we are proposing, this alternative would likely result in more homogenous safeguarding systems and controls across advisers, facilitating easier comparison of custodial practices for investors and potentially reducing monitoring costs. However, technology and market practices related to crypto assets are rapidly evolving, with each crypto network having unique characteristics and potential vulnerabilities. As a result, a prescribed approach may not be able to accommodate the characteristics and specific custodial risks of each crypto asset in self-custody and could become outdated quickly, thereby compromising the efficacy of safeguarding systems and increasing custodial risks.

As another alternative, we considered requiring advisers to review their safeguarding systems more frequently than annually, for example, on a quarterly basis. Crypto networks frequently undergo protocol improvement upgrades. To the extent that an adviser's annual review would occur too long after these upgrades, the adviser could fail to adapt its safeguarding systems accordingly, thereby exposing clients' assets to higher risk.[1289] Hence, more frequent reviews would help ensure that advisers' safeguarding systems are promptly updated to addressing emerging risks. However, compared to the proposed approach, this alternative would result in higher compliance costs. In addition, advisers' fiduciary duty would continue to apply, requiring the adviser to act in the best interests of its client at all times. Hence, advisers could monitor such protocol improvement upgrades and modify their safeguarding systems accordingly more frequently than annually, mitigating the benefits of a more frequent review requirement.

We also considered requiring advisers to designate a responsible person, or group of persons, in connection with the safeguarding systems and cybersecurity program used for the adviser's self-custody of crypto assets. This responsible person or group of persons—for example, a chief information security officer, chief compliance officer, or other designated person or group—would be responsible for overseeing and implementing the adviser's safeguarding systems and cybersecurity program or parts thereof, including functions and services performed by third parties in connection with the adviser's self-custody of crypto assets. Under this alternative, advisers would be required to establish, maintain, and enforce reasonably designed written policies and procedures that specify the criteria for identifying such individual(s) and provide for the documentation of their designation.

Designating a responsible person or group of persons to oversee and implement an adviser's safeguarding systems and cybersecurity programs could promote more effective implementation and oversight of those systems and programs. A designated responsible person or group of persons could help ensure that potential vulnerabilities or incidents affecting the safeguarding of crypto assets are identified, allowing the adviser to determine whether corrective action is needed and to take any appropriate steps without a delay. By improving the timeliness and quality of an adviser's response to safeguarding deficiencies, this alternative could reduce the likelihood and severity of client asset loss, theft, or unauthorized access, thereby benefiting investors.

Advisers would incur costs associated with drafting, maintaining, and periodically updating written policies and procedures that specify criteria for identifying responsible individuals and documenting their designation. Advisers could also incur additional costs from recruiting or training staff to ensure certain qualifications or experience for any designee serving in this capacity. These costs would likely be largely fixed and therefore would be more burdensome for advisers with a limited amount of crypto assets under self-custody, as such advisers would have a smaller base of self-custodied assets over which to spread these costs.

3. Alternative Board Oversight Measure in Regulated Fund Self-Custody

The proposed fund self-custody rule would permit regulated funds to self-custody their crypto assets by maintaining such assets with their adviser if (a) the adviser complies with the proposed adviser self-custody rule and (b) the fund's board of directors exercises oversight responsibilities by making an initial and annual determination that the fund's crypto

[1286] *See supra* section II.A.5.

[1287] *See* current rule 206(4)(20(a)(1); *see also supra* section IV.C.6.h).

[1288] *See supra* section I.A.

[1289] For example, protocol upgrades may change the cybersecurity risk profile; therefore, failure to adapt in a timely matter would increase the risk of cyberattack.

assets will be subject to reasonable care, if maintained with the fund's adviser, after considering the factors relevant to the safekeeping of the crypto assets. To facilitate the board's determination, the adviser would be required to furnish such information as may reasonably be necessary for the board to evaluate the fund's custody arrangement.[1290]

As an alternative, we considered more prescriptive approaches regarding the information that a board would be required to evaluate. Some regulated fund boards may lack proficiency in crypto assets and the associated technology, potentially limiting their ability to evaluate the information provided by the adviser.[1291] Hence, in addition to the information required to be provided by the adviser under the proposed fund self-custody rule, we considered requiring that a regulated fund's board obtain independent assessments from third parties. For example, we considered requiring that a regulated fund's board receives a custody service landscape study conducted by a third party to facilitate its evaluation of the adviser's determination that a qualified custodian is not available to maintain the crypto assets. Such information obtained from independent third parties could serve as potential benchmarks when evaluating the information provided by advisers. Additionally, independent information could serve as a discipline mechanism, encouraging advisers to be more thorough in their determination process.[1292] However, compared to the proposed approach, the additional third-party assessments would result in additional costs for regulated funds. In addition, it would be challenging for the Commission to prescribe more specific information to be obtained by the board that would be appropriate in all cases and would remain so over time. Furthermore, regulated fund boards are empowered to demand information beyond the information that would be required by the proposed rule, if necessary to the board's determination of whether to permit an adviser to hold the fund's crypto assets in self-custody.

4. State Trust Companies as Permitted Custodians

Under the proposed State trust company rules, advisers and regulated funds would be permitted to use State trust companies as custodians for crypto assets, under some conditions. As an alternative, the Commission considered permitting the use of State trust companies as custodians by advisers and regulated funds for all types of assets, including both traditional assets and crypto assets. Under this alternative, additional initial and annual reasonable basis determination requirements would be added to complement the proposed requirements that would apply only to crypto assets.[1293]

To the extent that the number of State trust companies providing custodial services for traditional assets to advisers and regulated funds would increase as a result of this alternative,[1294] this alternative could make it more likely that advisers and regulated funds find a custodian that fits their needs or does so at a lower cost. It could also result in advisers and regulated funds that have both crypto and traditional assets being able to find a custodian that fits all of their custody needs (instead of having a custodian for traditional assets and a different custodian for crypto assets), which could reduce their costs associated with custodial services.[1295] This would benefit investors as it could increase the quality of the custodial services provided or reduce the fees and expenses charged by advisers and regulated funds.

However, it is our understanding that there is no shortage of permitted custodians for traditional assets. In addition, we are not aware of adviser or regulated fund demand for custodial services from State trust companies for traditional assets.[1296] Hence, we do not expect that this alternative would, in practice, result in significant benefits for advisers and regulated funds. Furthermore, while we are aware of State trust companies that have built an expertise in the custody of crypto assets, we are not aware that these or other State trust companies would have comparable expertise in the custody of traditional assets.

5. Alternative Conditions Attached to the Use of State Trust Companies as Custodians for Crypto Assets

Policies and Procedures

The proposed State trust company rules also include as a requirement that the adviser or regulated fund have a reasonable basis for believing, after due inquiry, that the State trust company maintains and implements written policies and procedures reasonably designed to safeguard crypto assets and related cash and/or cash equivalents from the risk of theft, loss, misuse, and misappropriation, with such policies and procedures addressing, at a minimum, private key management and cybersecurity.

Instead of this last requirement, the Commission considered alternative, more prescriptive approaches where the adviser or regulated fund would be required to have a reasonable basis to believe, after due inquiry, that the State trust company's policies and procedures include specific safeguarding elements, such as joint authorization for transactions (*e.g.,* using multi-signature wallets), specific key management procedures (*e.g.,* the encryption of store key material), or the use of cold wallets in certain circumstances.[1297] The Commission also considered requiring that the adviser or regulated fund have a reasonable basis to believe that the State trust company is appropriately mitigating cybersecurity risks, for example by making periodic assessments of cybersecurity risks associated with the safeguarding of crypto assets.[1298] These approaches would provide additional information to advisers and regulated funds and could result in them selecting a custodian that

[1290] Such information would be required to include, at a minimum, (i) a written report documenting the basis for the adviser's determination that a qualified custodian is not available to maintain the crypto assets and the basis for the adviser's determination that it has expertise regarding the safeguarding of crypto assets and has the systems necessary to safeguard the crypto assets against loss, theft, misuse, and misappropriation, (ii) the most recent written annual review of the adviser's safeguarding systems, if available at the time of the board's determination, and (iii) the most recent written internal control report, if available at the time of the fund's determination. *See* proposed rule 270.17f–9; *supra* sections II.A.8 and IV.C.3.

[1291] *See supra* section IV.C.3.

[1292] To the extent that board oversight reduces adviser misconduct, other clients of the adviser holding the same crypto assets could also benefit from this alternative approach.

[1293] For example, this alternative could include an additional requirement that in order to be permitted to use a State trust company as custodian for traditional assets, the adviser or regulated fund must determine in writing that it has a reasonable basis to believe that the State trust company maintains and implements written policies and procedures reasonably designed to safeguard traditional assets from the risk of theft, loss, misuse, or misappropriation.

[1294] Some State trust companies may already provide custodial services for traditional assets to advisers and regulated funds. *See supra* footnote 1030 and accompanying text.

[1295] This could be because the adviser or regulated fund would spend fewer resources on activities that have to be done for each custodian, such as negotiating agreements. It could also be because a custodian providing a wider range of services to a given client could charge a price that is lower than the sum of the prices that would be charged by the different custodians providing the different services, for example because of the presence of economies of scale.

[1296] *See supra* section II.C.1.

[1297] *See supra* section IV.E.2 for a discussion of the benefits and costs of requiring specific safeguarding elements for crypto assets in the context of self-custody by the adviser.

[1298] *See supra* section IV.C.2.e) for a discussion of the benefits and costs of cybersecurity requirements for the custody of crypto assets in the context of self-custody by the adviser.

better fits their needs. It could also result in the crypto assets being placed and maintained with State trust company custodians that have in place more protective controls, which could result in the assets being at lower risk of theft, loss, misuse, and misappropriation.

However, these approaches would result in higher costs for advisers and regulated funds, who would have to verify that a State trust company that they are using or considering using as custodian for crypto assets has the prescribed safeguarding or cybersecurity measures in place. Due to the highly technical nature of the task, the adviser or regulated fund could be unable to understand and appropriately interpret information that it would receive from a custodian without significant effort or external help. In addition, because different crypto assets are traded on different networks, the same safeguarding elements could be unequally effective across different assets. As a result, these alternative requirements could result in advisers and regulated funds being unable to use as custodians State trust companies that have in place controls that are more effective at safeguarding crypto assets than the controls that would be specified in the requirements. Furthermore, these more prescriptive approaches could, by requiring the sharing of potentially sensitive information, result in bad agents having additional information on the types of controls that are put in place by State trust company custodians, which could result in an increased risk that the controls become compromised and that the assets get stolen. Finally, as the technology supporting crypto assets evolves, the prescribed safeguarding elements could become less effective over time and inconsistent with industry best practices.

Audited Financial Statements and Internal Control Report

Under the proposed State trust company rules, the adviser or regulated fund would be required to receive and review the State trust company's most recent audited financial statements and internal control report.

As alternatives, the Commission considered not requiring that the adviser or regulated fund receive and review one or both of these documents.[1299] To the extent that they would choose not to receive and review these documents in the absence of the proposed requirements, these alternatives would result in lower costs for advisers as they would not need to review the documents, which could be technical and challenging to understand.[1300] They would also lower the costs for the State trust companies providing custodial services under the proposed State trust company rules, to the extent that they would not obtain audited financial statements or an internal control report in the absence of a request from an adviser or regulated fund. This could result in lower costs for advisers and regulated funds if State trust companies reduce their prices as a result. However, we expect that many State trust companies providing custodial services for crypto assets would obtain these documents even in the absence of the proposed requirements on advisers and regulated funds.[1301]

In the absence of the proposed requirements that the adviser or regulated fund receive and review the State trust company's financial statements and internal control report, it would be uncertain whether the adviser or regulated fund, as part of its due inquiry, would review documents that would not have been prepared by the State trust company itself.[1302] Being audited or prepared by independent public accountants, these documents provide a credible external perspective of the State trust company's ability to implement its policies and procedures relating to the safeguarding of crypto assets. Hence, we expect that, without the proposed requirements, an adviser or regulated fund could be less well informed when making decisions on the selection of a custodian for crypto assets. This could result in the assets being less well safeguarded and therefore at higher risk of theft, loss, misuse, and misappropriation.

Rehypothecation

The Commission considered permitting regulated funds or investment advisory clients engaging State trust companies as custodians under the proposed State trust company rules to provide consent to have their assets rehypothecated. Under this alternative, rehypothecation would be permitted only in instances where the regulated fund or advisory client has given prior consent and where rehypothecation is done for the benefit of the regulated fund or advisory client. Rehypothecation of client assets is used primarily by custodians to finance lending to their clients and to reduce the costs of this financing. Hence, the benefits of alternative would include financing at a lower cost or fee reduction for a margin account for the regulated funds and advisory clients. Regulated funds' investors would benefit via higher returns and/or lower fees.

The rehypothecation of crypto assets by custodians can expose the assets to certain types of risk. For example, the assets being rehypothecated could be lost if they are lent to a counterparty that is unable to repay. Without necessarily being lost, the assets could also be unavailable to the fund or advisory client at a time where it would otherwise trade them, which could potentially impact the implementation of its investment strategy. Such events could negatively affect a fund's or advisory client's return. The potential benefits and costs of this alternative would apply to the extent that rehypothecation would take place. The Commission does not currently have sufficient information to understand whether permitting rehypothecation would change market practice.[1303] For this reason, we are not proposing this alternative.

Additional Conditions

The Commission considered additional conditions to the use of State trust companies as custodians for crypto assets by advisers and regulated funds. For example, the Commission considered requiring that the adviser or regulated fund have a reasonable basis to believe, after due inquiry, that the State trust company has insurance coverage for the crypto assets for which it is the custodian. As another example, the Commission considered requiring that the adviser or regulated fund have a reasonable basis to believe, after due inquiry, that the State trust company is subject to capital requirements under applicable State law or posts sufficient collateral to the adviser or regulated fund.

These alternatives would benefit investors by potentially reducing their losses in the event that their crypto assets would be lost or stolen.[1304] In

[1299] Under this alternative, the adviser or regulated fund would still be required to make the proposed reasonable basis determination about the State trust company's policies and procedures.

[1300] *See supra* section IV.C.4.d).

[1301] *See supra* footnotes 1085 and 1098 and accompanying text.

[1302] In the absence of these proposed requirements, an adviser or regulated fund could have more difficulty obtaining the State trust company's audited financial statements or internal control report.

[1303] The Commission is seeking comment on this topic. *See supra* questions 160–164.

[1304] For the alternative insurance requirement, this would depend on whether the event that led to the assets being lost or stolen would be covered by the custodian's insurance.

addition, to the extent that they would result in more State trust company custodians obtaining insurance or posting collateral in order to facilitate their potential adviser and regulated fund clients' compliance with the custody rules, the alternative requirements could provide incentives to State trust company custodians to have better safeguards in place in order to avoid increases in insurance premiums or losses of collateral that could result from safeguarding failures. This would result in the crypto assets being better safeguarded and reduce the risk of theft, loss, misuse, and misappropriation.[1305]

However, these alternatives would result in an increase in costs for advisers and regulated funds, which would have to perform the due inquiry to be able to make the reasonable basis determination. In the case of the capital requirement alternative, this cost could be significant, especially if the adviser or regulated fund considers custodians organized in different States. These alternative requirements could also increase the cost of the custodial services agreement, to the extent that the custodian would pass along insurance, collateral, or capital requirement costs to its clients. Increased costs for advisers and regulated funds could be passed on to advisers, for example via higher fees or expenses. In addition, these alternative requirements could result in fewer custodians available for advisers and regulated funds as some State trust companies may not include insurance, collateral, or capital requirements in their services.[1306]

6. Crypto Asset Trading

The Commission considered the possibility of proposing a new, stand-alone rule to permit advisers and regulated funds to maintain assets on crypto trading platforms that are not permitted custodians and would not be permitted custodians under the proposed rules, under certain conditions. The Commission considered permitting advisers and regulated funds to maintain crypto assets at a crypto trading platform for a limited period of time, for example 24 hours. The Commission also considered permitting advisers and regulated funds to maintain crypto assets at a crypto trading platform for a period longer than 24 hours, but only under certain conditions. These conditions could have included, for example, that the adviser (including a regulated fund's adviser) (1) reasonably determines that placing and maintaining crypto assets at the crypto trading platform is in the best interests of the client and presents minimal risk of loss, theft, or misuse of the assets; (2) receives and reviews the crypto trading platform's policies and procedures regarding the safeguarding of crypto assets and has a reasonable basis to believe that such policies and procedures are reasonably designed to safeguard crypto assets from the risk of theft, loss, misuse, and misappropriation before placing client assets on the crypto trading platform; and (3) regularly obtains and reviews internal control reports of the crypto trading platforms.[1307]

These alternatives could result in investors obtaining higher risk-adjusted returns or being able to follow investment strategies that better fit their objectives. For example, these alternatives could allow advisers and regulated funds to use certain platforms that require pre-funding and potentially to trade crypto assets that may be available only on such platforms.[1308] The alternative allowing advisers and regulated funds to maintain crypto assets at a crypto trading platform for periods longer than 24 hours could also allow advisers to implement strategies that require frequent and rapidly-executed trading, such as arbitrage strategies. However, the Commission currently lacks sufficient data to conclude that such benefits would be significant, and therefore preliminarily does not expect that such a rule would significantly affect investors' and regulated funds' market practice. In addition, to the extent that advisers and regulated funds would rely on such a rule, investors' assets could be subject to higher risk, depending on the conditions that would be included in the rule. Stricter conditions would reduce such risk but could result in significant costs for advisers and regulated funds, potentially making it impractical or not in the client's best interests to rely on the rule.[1309]

7. Other Alternatives for Investment Company Custody Rule Modernization

We considered proposing additional Investment Company Act custody rules or amendments to the Investment Company Act custody rules to accommodate certain custodial arrangements, including custody of regulated fund assets with an affiliated custodian and custody of certain uncertificated securities that cannot be placed with a securities depository.[1310]

Regulated funds may be subject to rule 17f–2 as a result of using an affiliated custodian, requiring them to undergo three examinations annually in addition to the annual audit requirement for all regulated funds. [1311] We considered amending rule 17f–2 to require internal control reports in lieu of the three annual examination requirements.[1312]

This alternative could benefit investors of regulated funds using an affiliated custodian. Related person custody arrangements can present higher risks; and as acknowledged in the 2009 Adopting Release, surprise examination alone may not adequately address custodial risks associated with these arrangements because the independent public accountant seeking to verify client assets would rely, in

[1305] Because the better safeguards would likely apply to all of the crypto assets in custody at a given State trust company, and not only those that are adviser client funds or securities or fund investments in securities or other similar investments, we expect that this potential benefit would extend to other assets and to other investors as well.

[1306] Some State trust company custodians could have instead other measure to compensate their clients in the event of asset loss or theft. For example, State trust company custodians could set aside reserves to be able to compensate their clients in the case of crypto asset loss or theft. These reserves would not necessarily satisfy formal capital requirements under applicable State law.

[1307] *See supra* section II.E for additional examples of such conditions.

[1308] It is our understanding that many trading platforms have developed practices that are consistent with the existing custody rules and that would also be consistent with the proposed rules. *See supra* section II.E. However, some trading platforms may not have put in place such practices and would therefore not be available to advisers and regulated funds under both the current and proposed custody rules.

[1309] The Commission is requesting comment on the conditions that it should consider in this context. *See supra* section II.E.

[1310] Some regulated funds have sought no-action letters from Commission staff relating to certain Investment Company Act custody rules, such as rule 17f–2 and rule 17f–4, for the regulated fund to follow alternative procedures designed to achieve the same goals as the relevant Investment Company Act custody rule including the prevention of misappropriation.

[1311] The Commission and its staff has taken the position that, where a regulated fund's investment adviser controls or is controlled by, or is under common control with an affiliated custodian, such arrangements may be subject to rule 17f–2, which governs custody of investments by registered management investment company. *See supra* footnote 490.

[1312] The Advisers Act custody rule requires that investment adviser or its related person maintaining client funds or securities must obtain an internal control report from an independent public accountant. Such internal control report must include an opinion of an independent public accountant as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of client funds and securities held by the adviser or its related person, during the year. The accountant must also verify that the client's funds and securities are reconciled to a custodian unaffiliated with the adviser or its related person.

part, on custodial reports issued by the adviser or the related person.[1313] However, internal control reports would provide an important check on the safeguards relating to custodial practices of an affiliated party custodian and verify that the fund's reported assets exist, enhancing investor protection in these arrangements. In addition, regulated funds would also benefit from this alternative by saving costs associated with three examinations annually.

This alternative could also involve costs. Instead of three examinations, affiliated custodians could incur costs associated with obtaining internal control reports, which can be passed on to regulated fund investors through higher fees or expenses. However, we understand that custodians often already provide internal control reports to clients who demand a rigorous evaluation of internal control as a condition of obtaining their business, therefore regulated funds may use these internal control reports to satisfy the requirement at no additional cost.

We also considered amendments to rule 17f–4 and 17f–2 regarding custody of uncertificated securities. Regulated funds can generally hold their investments in the uncertificated securities with an Investment Company Act custodian, but we understand that regulated funds have difficulty custodying certain uncertificated securities that cannot be placed with a securities depository, including regulated fund shares, privately offered securities, and loan shares. Ownership records of regulated fund shares are maintained by the transfer agent of the fund, privately offered securities are generally recorded only on the books of the issuer, and loan interests and the principal amount of the loan attributable to each investor are maintained by the administrative agent on behalf of borrowers. None of these entities maintaining ownership records is a permitted custodian, making it difficult for a regulated fund to custody with a permitted custodian.[1314]

We considered proposing to amend rule 17f–4, which governs custody of regulated fund assets with securities depositories, to designate transfer agents as an additional type of permitted custodians for custody of regulated fund shares.[1315] This alternative could technically benefit acquiring funds' investors as the conditions under 17f–4 that are designed to safeguard fund assets could enhance investor protection.[1316] However, additional investor protection benefits from these conditions could be limited, as regulated funds are already subject to annual audits in which an independent public accountant verifies regulated fund's investments, helping ensure safekeeping of these assets. Moreover, these benefits would not apply for acquiring funds that already operate in accordance with the Commission staff's no-action letter regarding maintaining acquired fund shares at the transfer agents.[1317]

If the acquiring fund has self-custody of the acquired fund shares or the transfer agent is an affiliated party of the acquiring fund, acquiring funds are required to comply with rule 17f–2 instead of 17f–4; and certain requirements under rule 17f–2 may not be achievable.[1318] In particular, it may not be achievable to keep ownership records in a vault or other depository maintained by a bank or regulated entity, satisfy the written notation requirement for each transaction, and satisfy three examination requirements by an independent public accountant to physically verify such assets.[1319] Therefore, designating transfer agents as permitted custodians under rule 17f–4 could not provide any benefits in these arrangements.

Designating transfer agents as permitted custodian under rule 17f–4 could also involve costs. Specifically, transfer agents planning to offer custody services could incur compliance costs to the extent they need to modify their practices to meet the requirements of rule 17f–4.

We also considered proposing an exception for privately offered securities from the requirement that regulated fund assets must be held with a permitted custodian.[1320] This exception could benefit regulated funds investing in privately offered securities as custody of privately offered securities with current permitted custodians could pose difficulties as ownership of such assets generally is recorded only on the books of the issuer.

We do not expect this exception would reduce investor protection because risk of loss or theft is low with respect to privately offered securities as they are not easily transferable.[1321] In addition, an independent public accountant verifies regulated fund's investments as part of the annual audit, providing additional protection against the risk that the custody rules seek to prevent.

We also considered proposing a new rule for custody of regulated funds' investments in uncertificated loan interests, subject to conditions described in the K&L Gates NAL. [1322] This alternative could provide benefits to regulated funds investing in loan interest because custody of loan interests with current permitted custodians may involve difficulties, and compliance with vaulting, access, and notation requirements under rule 17f–2 may not be achievable. The conditions in the K&L Gates NAL would help achieve the same goal as rule 17f–2—the prevention of misappropriation. However, benefits from these conditions could be limited because an independent public accountant already verifies regulated funds' investments in loan interests as part of an annual audit.

Overall, we are not proposing these alternatives as the Commission could benefit from further feedback on such a comprehensive set of topics to determine the scope of appropriate modernizations to the Investment Company Act custody rules.

8. Alternative to the Independent Verification Requirement

As an alternative to the independent verification requirement of the Advisers Act custody rule,[1323] we considered a combination of reconciliation obligations, enhanced client disclosure, and mandatory incident reporting. Under this alternative, we would require advisers with custody of client funds and securities to implement daily system-based reconciliations of their internal books and records against the records maintained by qualified

[1313] *See* 2009 Adopting Release, *supra* footnote 7.

[1314] We understand that regulated funds place a copy of the ownership records with a bank to satisfy Investment Company Act custody rule requirements.

[1315] *See supra* footnote 501 and *supra* section II.F.5.b)(1).

[1316] *See* rule 17f–4.

[1317] *See, e.g., American Pension and FundVest, supra* footnote 501. Commission staff would not recommend enforcement action under rule 17f–4 where acquired fund shares are maintained at the transfer agents of those funds and where the acquiring funds represented that certain procedures designed to comply with then-current rule 17f–4 would be implemented. *See supra* section II.F.5.b)(1).

[1318] *See supra* footnote 502.

[1319] *See* Gardner NAL and Franklin NAL, *supra* footnote 502. The Commission staff gave assurance that they would not recommend enforcement action under rule 17f–2 subject to the acquiring funds representing that certain procedures would be implemented. *See supra* section II.F.5.b)(1) .

[1320] *See* rule 206(4)–2(b)(2) and proposed rule 223–1(b)(2). The current and proposed Advisers Act custody rules permit an adviser to custody its advisory clients' holdings of privately offered securities outside of a qualified custodian. *See supra* footnote 508.

[1321] Privately offered securities are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

[1322] *See supra* footnote 513 and *supra* section II.F.5.b)(3).

[1323] *See* rule 206(4)–2(a)(4).

custodians, supported by documented exception management procedures that identify, escalate, and resolve discrepancies. In addition to the reconciliation component, this alternative would require advisers to furnish clients, on a quarterly basis, with a summary of custodial balances and any material reconciliation exceptions, accompanied by a standing notice explaining how clients may independently confirm their account balances and positions directly with the qualified custodian.

There have been significant advances in data aggregation and recordkeeping technology that have occurred since the surprise examination requirement was first adopted. Continuous, potentially automated, reconciliations of this manner could potentially provide more timely detection of safeguarding failures than a periodic surprise examination conducted on an annual basis. By empowering clients with the information and means necessary to verify their holdings and any exceptions on an ongoing basis, this element of the alternative could deter and detect misappropriation without imposing the compliance costs associated with engaging an independent public accountant to conduct a surprise examination. In addition, this alternative would complement the foregoing requirements with a mandatory incident reporting obligation, under which advisers would be required to report significant safeguarding incidents, including unauthorized transfers and material reconciliation breaks, to the Commission and to affected clients within a prescribed period following detection. Timely reporting to the Commission would facilitate regulatory oversight and allow the Commission to identify patterns of safeguarding failures across the industry, while prompt notification to affected clients would enable them to take protective action.

This alternative could also involve costs. Specifically, there could be uncertainty about how to define reportable incidents with sufficient precision. This uncertainty could lead to both under-reporting and an undue volume of immaterial disclosures, thereby potentially making aggregate deterrent and detection benefits uncertain. Moreover, such an alternative would require advisers to invest significantly in internal controls related to reconciliation systems and technology while also relying on the adviser itself, as opposed to a qualified custodian or an independent third-party, to provide the summary of custodial balances, any material reconciliation exceptions, and self-report any significant safeguarding incidents.

9. Adviser Account Statements

Under the current Advisers Act custody rule, an adviser with custody of client funds or securities is required to have a reasonable basis, after due inquiry, for believing that the qualified custodian holding those assets sends account statements to the adviser's clients on at least a quarterly basis.[1324] The current Advisers Act custody rule does not, however, mandate that advisers themselves prepare and deliver account statements, relying instead on the custodian's statement as the primary vehicle for client disclosure, supplemented in certain circumstances by an adviser-prepared statement where the adviser is also the qualified custodian or an affiliate. The Commission considered requiring advisers to prepare account statements in addition to the account statements from qualified custodians. Specifically, the Commission considered requiring each adviser with custody of client funds and securities to prepare and deliver to clients, on a quarterly basis, an account statement providing a clear itemization of the amount of funds and each security held in the account at the end of the period, together with a complete record of all transactions, including incoming and outgoing transfers, occurring during that period. The adviser's account statement would identify each security or instrument by name and quantity, provide a summary of all fees deducted from the account during the period, and include a prominent notation directing clients to compare the adviser's statement against any account statement they receive directly from their qualified custodian.

Adviser-prepared account statements could serve as another important disclosure mechanism for advisory clients. In addition, this alternative could provide clients with a more granular and adviser-specific view of their account activity than a custodian statement alone, particularly where custodian statements may not reflect the adviser's fee calculations or the full context of portfolio transactions. This alternative could also leverage the client's own ability to identify discrepancies between the adviser's representations and the custodian's independent records, thereby providing a check on the accuracy of the adviser and custodian's disclosures. However, its effectiveness as a safeguarding mechanism would depend in significant part on clients' willingness and ability to actively compare statements received from two separate sources.

This alternative would also impose additional preparation and compliance costs on advisers and require advisers to implement and maintain written policies and procedures reasonably designed to ensure that adviser-prepared statements are accurate and delivered in a timely manner.

10. Sharing Key Materials

The proposed adviser self-custody rule would require an adviser with self-custody of client crypto assets to limit access to key materials to only supervised persons designated by the adviser.[1325] Therefore, the adviser would not be permitted to share key materials with anyone outside of the adviser including the client. As an alternative, we considered permitting advisers to share key materials with the client whose crypto asset the key materials are associated with. Under this alternative, private keys would be distributed between the adviser and the client in an arrangement that the client's share is necessary but not sufficient to move the crypto assets, and advisers would therefore be required to obtain explicit client authorization for each transfer of the client's crypto assets.

This alternative could benefit investors by reducing the risk of unauthorized transfer of crypto assets by the adviser, as any movement of a given crypto asset would require the explicit and mutual authorization of both the client and the adviser.

While unauthorized transfer and misappropriations risks could diminish, sharing key materials with the client could exacerbate other types of custodial risks. Even though advisers would have robust safeguarding systems and cybersecurity measures to self-custody clients' crypto assets, sharing the key materials with clients would expose those materials to additional parties that are not subject to the adviser's supervision and control. To the extent that the client would not be able to adopt or be subject to robust safeguarding systems and cybersecurity measures, sharing key materials with the client could increase the risk of theft or loss of the key materials, which could result in the permanent and irreversible loss of the crypto assets. Furthermore, to the extent an adviser would seek to trade the client's crypto assets frequently, sharing key materials could create operational difficulties, as the client would be needed to authorize

[1324] *See* rule 206(4)–2(a)(3).

[1325] *See* proposed rule 223–1(b)(7)(ii)(A). *See also supra* section II.A.3.b)(1).

each transfer as well. To the extent there would be a delay in authorization for crypto asset transfers, this could result in missed trading opportunities, potential financial losses due to market volatility, and an overall reduction in the adviser's ability to effectively manage the client's crypto assets in a timely and efficient manner.

F. Request for Comments

The Commission requests comment on all aspects of our economic analysis, including the potential benefits and costs of the proposed rules and amendments and alternatives thereto, and whether the proposed rules and amendments, if the Commission were to adopt them, would promote efficiency, competition, and capital formation. In addition, the Commission requests comments on our selection of data sources, empirical methodology, and the assumptions the Commission has made throughout the analysis. Commenters are requested to provide data, documentation (including about any empirical analysis conducted), and other factual support for their views. In addition, the Commission requests comment on:

334. What types of non-custodial service providers would be affected by the proposed rules and amendments? Please describe the nature of the services these providers offer, the extent to which the proposed rules and amendments would alter their business practices or compliance obligations, and whether the proposed rules and amendments would result in any material costs or benefits for such providers.

335. How common is it currently for State trust companies that provide custodial services for crypto assets to prepare financial statements in accordance with U.S. GAAP? Of those that do, how frequently are these financial statements audited by an independent public accountant as defined under SEC rules? For those that do not currently obtain such audits, what impediments, if any, exist to doing so? How much does such an audit typically cost, and how does that cost vary based on the size and complexity of the State trust company's operations?

336. How common is it currently for custodians that provide custodial services for crypto assets to obtain an internal control report from an independent public accountant as defined under SEC rules? For those that do not currently obtain such reports, what impediments, if any, exist to doing so? How much does such a report typically cost? How much does the cost vary based on the number and type of crypto assets in custody, the specific crypto networks involved, and the complexity of the custodian's safeguarding systems? How, if at all, does the cost differ for advisers exercising self-custody of client crypto assets as compared to third-party custodians? How, if at all, does this cost differ across different types of custodians? What is the cost for a state trust company?

337. Under the proposed adviser self-custody rule, advisers that self-custody client crypto assets would be required to obtain internal control reports prepared by an independent public accountant. How much does obtaining an internal control report of this nature typically cost? How much does the cost vary based on the number and type of crypto assets held in self-custody, the complexity of the adviser's safeguarding systems, and the specific crypto networks involved? Are there additional factors, such as adviser size or the availability of qualified independent public accountants with relevant expertise in crypto assets, that would materially affect the cost of obtaining such reports?

338. To what extent are advisers currently unable to offer certain crypto-related investment strategies or advice because of a lack of qualified custodians capable of supporting particular crypto assets or crypto-native activities? Which specific types of crypto assets or investment strategies are most affected by this limitation? In those instances, what is the magnitude of the cost, whether measured in foregone returns, investment value, or otherwise, of this limitation for advisers and their clients?

339. For private funds that invest in crypto assets, what proportion of a fund's gross asset value is typically invested in crypto assets? Does this proportion vary significantly based on the fund's investment strategy, structure, or size? Are there particular types of private funds, such as hedge funds, venture capital funds, or other pooled vehicles, for which crypto assets represent a more substantial or more variable share of gross asset value? How has this proportion changed over time, and how might it be expected to change in response to the proposed rules and amendments?

340. We use a large language model to identify advisers that provide, or plan to provide, investment advice related to crypto assets.[1326] Is this methodology appropriate for identifying the relevant population of affected advisers? Are there limitations or potential sources of error in using a large language model for this purpose? Are there alternative methodologies that would more accurately or efficiently identify the relevant population?

341. What specific costs would be associated with transferring crypto assets from self-custody to a qualified custodian? For example, are there transaction costs, tax consequences, operational challenges, or risks of loss or delay associated with such transfers? Would these costs vary based on the type or volume of crypto assets being transferred, the specific crypto network involved, or the capabilities of the receiving qualified custodian? To the extent that such transfers would require the liquidation and reacquisition of crypto asset positions, what are the potential market impact costs or opportunity costs for clients?

342. Do commenters believe that the proposed rules and amendments could have an effect on capital formation that is not discussed in the economic analysis? For example, could the proposed amendment to the audit provision with respect to newly formed pooled investment vehicles that permit such entities to obtain and distribute audited financial statements covering the first fiscal year and second fiscal year after the end of the second fiscal year reduce costs enough to encourage capital formation? In addition, could the proposed amendment to the audit provision that permits advisers of foreign PIVs to have and distribute audited financial statements prepared in accordance with accounting principles other than the U.S. GAAP in certain circumstances reduce costs enough to encourage capital formation?

V. Paperwork Reduction Act Analysis

A. Introduction

Certain provisions of our proposal would result in new ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[1327] The proposed new rule 223–1 and related amendments to rules 206(4)–2 and 204–2 under the Advisers Act and Form ADV would have an impact on current collection of information burdens. Specifically, we are proposing new collection of information requirements under proposed rule 223–1 and corresponding amendments to currently approved collection of information burdens under: (i) ''Rule 206(4)–2 under the Investment Advisers Act of 1940—Custody of Funds or Securities of

[1326] *See supra* footnote 871 and accompanying text for a description of this analysis and the methodology we used.

[1327] 44 U.S.C. 3501 *et seq.*

Clients by Investment Advisers'' (OMB control number 3235–0241); (ii) ''Rule 204–2 under the Investment Advisers Act of 1940'' (OMB control number 3235–0278); and (iii) ''Form ADV'' (OMB control number 3235–0049). We are also proposing conforming amendments to Form ADV–E to update existing references from current rule 206(4)–2 to proposed new rule 223–1, which do not amend our estimates from the current approved collection of information burden under ''Form ADV–E, Cover Sheet for Each Certificate of Accounting of Client Securities and Funds in Custody of an Investment Adviser'' (OMB control number 3235–0361). The proposed new rules 17f–8 and 17f–9 and amendments to rules 17f–1, 17f–2, 17f–4, 17f–5, 17f–6, 17f–7, 31a–1, and 31a–2 under the Investment Company Act and Form N–CEN, as well as the rescission of Form N–17f–1, would have an impact on current collection of information burdens.[1328] Specifically, we are proposing new collection of information requirements under proposed rules 17f–8 and 17f–9 and corresponding amendments to currently approved collection of information burdens under: (i) ''Investment Company Act Rule 17f–1, Custody of Securities with Members of National Securities Exchanges'' (OMB control number 3235–0222); (ii) ''Rule 17f–4 (17 CFR 270.17f–4) under the Investment Company Act of 1940, Custody of Investment Company Assets with a Securities Depository'' (OMB control number 3235–0225); (iii) ''Rule 17f–5 (17 CFR 270.17f–5) under the Investment Company Act of 1940, Custody of Investment Company Assets Outside the United States'' (OMB control number 3235–0269); (iv) ''Rule 17f–6 (17 CFR 270.17f–6), Custody of Investment Company Assets with Futures Commission Merchants and Commodity Clearing Organizations'' (OMB control number 3235–0447); (v) ''Rule 17f–7 (17 CFR 270.17f–7) under the Investment Company Act of 1940, Custody of Investment Company Assets with a Foreign Securities Depository'' (OMB control number 3235–0529); (vi) ''Rule 31a–1 under the Investment Company Act of 1940 (7 CFR 270.31a–1)'' (OMB control number 3235–0178); (vii) ''Rule 31a–2: Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies'' (OMB control number 3235–0179); (viii) ''Form N–CEN'' (OMB control number 3235–0729); (ix) ''Investment Company Act Form N–17f–1, Certificate of Accounting of Securities and Similar Investments of a Management Investment Company in the Custody of Members of National Securities Exchanges'' (OMB control number 3235–0359). The Commission is submitting these collections of information to the 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.

We discuss below these proposed amendments and new collection of information burdens. To the extent the Commission receives confidential information pursuant to the collections of information provided to the Commission in the context of its examination and oversight program concerning the proposed amendments to rule 31a–2, such information will be kept confidential, subject to the provisions of applicable law.[1329] Responses to the disclosure requirements of Form N–CEN are not kept confidential. Responses provided to the Commission in the context of its examination and oversight program concerning the proposed redesignation of rule 206(4)–2 as new rule 223–1, and corresponding amendments to rule 204–2 would be kept confidential subject to the provisions of applicable law. Responses to the disclosure requirements of the proposed amendments to Form ADV and responses to Form ADV–E are not kept confidential. Rules 17f–1, 17f–2, 17f–4, 17f–5, 17f–6, 17f–7, 17f–8, 17f–9, and 31a–1 involve no disclosure to the Commission, and therefore confidentiality requirements are inapplicable in the context of these rules' information collections.

B. Advisers Act Custody Rule 223–1

Proposed rule 223–1 under the Advisers Act, which will effectively replace current rule 206(4)–2 by a redesignation, states that an adviser registered or required to be registered under section 203 of the Advisers Act, must take certain steps to safeguard client funds and securities of which the adviser has custody.[1330] Under this proposal, we are adding the adviser self-custody rule, an exception for advisers that self-custody client crypto assets, provided that they comply with the required safeguarding conditions, from the qualified custodian requirement as well as the requirement to notify the client in writing of certain information if the adviser opens an account with a qualified custodian on the client's behalf and to have a reasonable basis, after due inquiry, for believing that the qualified custodian sends quarterly account statements to clients.[1331] We also propose to add State trust companies to the list of qualified custodians permitted to maintain client crypto assets.[1332] Finally, we propose a number of modernizing amendments to the current rule including new exceptions from the requirement to comply with the custody rule and the annual surprise examination requirement and modernizations to the audit requirements for pooled investment vehicles.[1333]

Each requirement to disclose or obtain information, deliver communications, or cause reporting by an independent public accountant constitutes a ''collection of information'' requirement under the PRA and is mandatory. Advisory clients would use this information to confirm proper handling of their accounts. The Commission's staff uses the information obtained through these collections in its enforcement, regulatory, and examination programs. The respondents to these collections of information requirements would be investment advisers that are registered or required to be registered with the Commission that have custody of client funds and securities. As of December 2025,[1334] there were 16,442 investment advisers registered with the Commission and 9,926 registered investment advisers reported to have custody of client funds and securities in Item 9 of Form ADV.[1335] The application of the

[1328] Rule 17f–3 does not have an assigned OMB control number or associated information collection burden.

[1329] *See, e.g.,* 15 U.S.C. 80b–10 and 5 U.S.C. 552. Section 10 of the Investment Company Act generally prohibits disclosure of information obtained during the course of an investigation. In addition, Exemption 4 of the Freedom of Information Act provides an exemption for trade secrets and commercial or financial information obtained from a person and privileged or confidential. Exemption 8 of the Freedom of Information Act provides an exemption for matters that are contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

[1330] Proposed rule 223–1.

[1331] *See supra* section II.A for a detailed discussion of the proposed self-custody rule.

[1332] *See supra* section II.C for a detailed discussion of the proposed State trust company rule.

[1333] *See supra* section II.G for a detailed discussion of the modernizing amendments to the Advisers Act custody rule.

[1334] Incorporating Form ADV filings received through March 31, 2026.

[1335] The estimated number of advisers with custody of client funds and securities is derived

provisions of the rule—and thus, the extent to which there are collections of information and their related burdens—would be contingent on a number of factors, such as the types of services the adviser provides, the number of clients to whom it provides those services, and the nature of the relevant assets. The currently approved burden for rule 206(4)–2 is 33,514,391 responses resulting in 315,925 burden hours at a cost of $28,525,065 as well as a $176,577,000 total estimated accounting fee.[1336] Because of the wide diversity of services and relationships offered by investment advisers, we expect that the obligations imposed by the rule will, accordingly, vary substantially among advisers. However, we have made certain estimates of this data solely for the purpose of this PRA analysis.

Table 14 below summarizes the various proposed components of the total annual burden for investment advisers with custody of client funds and securities.

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from the responses to Form ADV Item 9.A.(1) or Item 9.B.(1).

[1336] *See* Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 206(4)–2, OMB Report, OMB Control Number 3235–0241 (April 2025) (''2025 Rule 206(4)–2 PRA'').

Table 14: Proposed Rule 223-1 PRA Estimates

	Internal Initial Burden Hours	Internal Annual Burden Hours	Wage Rate[1]	Internal Time Costs	Annual External Cost Burden
PROPOSED ESTIMATES					
Adviser Self-Custody Rule	300 hours[2]	200 hours[3]	$578.33 per hour (blended current rate for lawyers ($774), accountants and auditors ($330), computer and information systems managers ($631))	$115,666 (Internal Annual Burden 200 hours x Wage rate of $578.33)	$376,000[4]
Total number of affected advisers	823 advisers[5]	x 823 advisers		x 823 advisers	x 823 advisers
Sub-total burden		164,600 hours		$95,193,118	$309,448,000
State Trust Company Rule	60 hours	40 hours[6]	$507.67 per hour (blended current rate for lawyers ($774), accountants and auditors ($330), information security analysts ($419))	$20,307 (Internal Annual Hour Burden 40 hours x Wage rate of $507.67)	$0
Total number of affected advisers	1,645 advisers[7]	x 1,645 advisers		x 1,645 advisers	$0
Sub-total burden		65,800 hours		$33,405,015	$0
Audit Provision	N/A	0.1784 hours[8]	$423.67 per hour (blended current rate for lawyers ($774), accountants and auditors ($330), bookkeeping, accounting and auditing clerks ($167))	$76 (Internal Annual Hour Burden 0.1784 hours x Wage rate of $423.67)	$0
Total number of affected advisers	4,847 advisers[9]	x 4,847 advisers		x 4,847 advisers	
Sub-total burden		865 hours		$368,372	
SLOAs	1 hour [10]	1.3 hour [11]	$470.5 per hour (blended current rate for lawyers ($774), bookkeeping, accounting and auditing clerks ($167))	$611.65 (Internal Annual Hour Burden 1.3 hours x Wage rate of $470.5)	$0
Total number of affected advisers	2,131 advisers[12]	x 2,131 advisers		x 2,131 advisers	
Sub-total burden		2,770.3 hours		$1,303,426	$0
Notice to Clients	N/A	1 hour [13]	$301.5 per hour (blended current rate for computer programmers ($436), bookkeeping, accounting and auditing clerks ($167))	$301.5 (Internal Annual Hour Burden of 1 hour x Wage rate of $301.5)	$0
Total number of affected advisers	7,140 advisers[14]	x 7,140 advisers		x 7,140 advisers	
Sub-total burden		7,140 hours		$2,152,710	
Inadvertent Custody	N/A	1 hour	$470.5 per hour	$470.5	$0

	Internal Initial Burden Hours	Internal Annual Burden Hours	Wage Rate[1]	Internal Time Costs	Annual External Cost Burden
			(blended current rate for lawyers ($774), bookkeeping, accounting and auditing clerks ($167))	(Internal Annual Hour Burden of 1 hour x Wage rate of $470.5)	
Total number of affected advisers	16,442 advisers[15]	x 16,442 advisers		x 16,442 advisers	
Sub-total burden		16,442 hours		$ 7,735,961	
Total annual aggregate burden of Proposed Rule 223-1	**N/A**	**257,617 hours**		**$ 140,158,602**	**$ 309,448,000**
Current annual estimated aggregate burden of Rule 206(4)-2		315,925 hours		$ 28,525,065	$ 176,577,000
Total annual aggregate burden of Proposed Rule 223-1	**N/A**	**573,542 hours**		**$ 168,683,667**	**$ 486,025,000**

Notes

1. To calculate the occupational hourly rates used in this release, the Commission uses the May 2025 occupational mean hourly wage data from the Occupational Employment and Wage Statistics (OEWS) program of the Bureau of Labor Statistics (BLS) for "Securities, Commodity Contracts, and Other Financial Investments and Related Activities" (NAICS 523), except for computer programmers for which May 2023 OEWS data are the most recent available. *See* Occupational Employment and Wage Statistics, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/oes/; *see also* Standard Occupational Classification, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/soc/ (describing occupational classification system used by BLS); EXEC. OFF. OF THE PRESIDENT, OFF. OF MGMT. & BUDGET, NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (2022), *available at* https://www.census.gov/naics/reference_files_tools/2022_NAICS_Manual.pdf (describing the industry classification system used by BLS and other agencies). The mean hourly wage for each occupation (except computer programmers) is multiplied by an employment cost index (ECI) factor of 1.0227, calculated as one plus the percentage change in the seasonally adjusted ECI for wages and salaries of private industry workers from the second quarter of 2025 (ECI=173.563), which contains the May 2025 OEWS reference period, to the first quarter of 2026 (ECI=177.498), which is the date of the most recently available ECI observations when the occupational hourly rates used in this release were calculated. See Employment Cost Index, U.S. BUREAU OF LABOR STATISTICS, Seasonal Data 2001-Present, available at https://www.bls.gov/eci/tables.htm. The ECI factor for computer programmers (1.10179) is calculated similarly, using the seasonally adjusted ECI for wages and salaries of private industry workers in the second quarter of 2023 (161.1) as the starting point. For all occupations, the ECI-adjusted mean hourly wage is then multiplied by a nonwage cost adjustment factor of 5.734, which accounts for nonwage costs borne by employers, such as bonuses, benefits, and overhead. This factor is calculated as the average, over 2016–2025, of the ratio of the Bureau of Economic Analysis's gross output for NAICS 523 to total annual wages across all occupations for NAICS 523 in the OEWS data. See Gross Output by Industry, U.S. BUREAU OF ECONOMIC ANALYSIS, https://www.bea.gov/data/industries/gross-output-by-industry; Occupational Employment and Wage Statistics, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/oes/. For example, the $774 occupational hourly rate for lawyers is calculated as $131.91 × 1.0227 × 5.734, or approximately $774 (where $131.91 is the May 2025 mean hourly wage for lawyers in NAICS 523). The final product is the occupational hourly rate. *See generally* UPDATED METHODOLOGY FOR CALCULATING OCCUPATIONAL HOURLY RATES (Dec. 19, 2025), *available at* https://www.sec.gov/files/method-occupational-hourly-rates.pdf.

2. We anticipate that due to the novel nature of the proposed adviser self-custody rule, it would take significant initial burden hours to come into compliance with the adviser self-custody rule's requirements that constitute "collection of information" for purposes of PRA. *See* proposed rule 223-1(b)(7) and *supra* section II.A for a detailed discussion of the proposed adviser self-custody rule's requirements.

3. Includes initial burden estimates annualized over a three-year period (300 hours / 3 years = 100 initial burden hours), plus 100 ongoing annual burden hours to comply with ongoing requirements under the adviser self-custody rule. The estimate of 200 hours is based on the following calculation: [300 initial hours / 3 years] + 100 additional ongoing burden hours = 100 initial burden hours + 100 annual burden hours = 200 internal annual burden hours.

4. Estimated cost to prepare an internal control report required under the proposed adviser self-custody rule. See proposed rule 223-1(b)(7)(iv). We understand that the cost to prepare an internal control report relating to safeguarding of crypto assets will vary based on the size and services offered by the adviser relating to self-custody. The estimated cost in this calculation has been adjusted for inflation from prior estimates, rounded to the nearest $1,000. *See* 2025 Rule 206(4)-2 PRA.

5. Of the 16,442 registered investment advisers, we estimate for purposes of this burden calculation that approximately 5%, or approximately 823 advisers, will have self-custody of client crypto assets. 5% x 16,442 of all registered advisers = approximately 823 advisers. 5% is an estimate based on staff experience and analysis of information reported in ADV Part 2 brochures (including identification of registered investment advisers that provided extensive risk disclosures regarding cryptocurrency or mentioned that they may invest in crypto assets) that suggest that less than 5% of registered investment advisers likely have investment strategies which may involve direct investments in crypto assets. We assume for purposes of this burden calculation that such registered investment advisers, even if not explicitly stating they invest in crypto assets now, would likely have a higher probability to invest in crypto assets in the near future as compared to a registered investment adviser that currently has no disclosure about crypto assets. The actual number of advisers that self-custody crypto assets if the adviser self-custody rule is adopted may be lower, as advisers

with investment strategies that involve direct investments in crypto assets may not necessarily self-custody crypto assets. Moreover, the number of advisers used for this burden calculation may be lower than the number of advisers identified in the economic analysis above (*see supra* section IV.B.4.b)) as providing or planning to provide investment advice related to crypto assets, because that analysis may include responses related to non-custodial services and future custodial services.

6. Includes initial burden estimates annualized over a three-year period (60 hours / 3 years = 20 initial burden hours), plus 20 ongoing annual burden hours. The estimate of 40 hours is based on the following calculation: [60 initial hours / 3 years] + 20 additional ongoing burden hours = 20 initial burden hours + 20 annual burden hours = 40 internal annual burden hours.

7. Of the 16,442 advisers registered with the Commission, we estimate for purposes of this burden calculation that approximately 10%, or approximately 1,645 advisers, will maintain client crypto assets at a State trust company pursuant to the proposed State trust company rule under the Advisers Act. 10% x 16,442 all registered advisers = approximately 1,645 advisers. 10% is an estimate based on staff experience and analysis of information reported in ADV Part 2 brochures (including identification of registered investment advisers that provided extensive risk disclosures regarding cryptocurrency or mentioned they may invest in crypto assets) that suggest less than 10% of registered investment advisers likely have investment strategies which may involve direct or indirect investments in crypto assets. We assume for purposes of this burden calculation that such registered investment advisers, even if not explicitly stating they invest in crypto assets now, would likely have a higher probability to invest in crypto assets in the near future as compared to a registered investment adviser that currently has no disclosure about crypto assets. The actual number of advisers that use State trust companies to maintain client crypto assets if the State trust company rules are adopted may be lower, as advisers with investment strategies that involve direct or indirect investments in crypto assets may not necessarily use State trust companies as qualified custodians. Moreover, the number of advisers used for this burden calculation may be lower than the number of advisers identified in the economic analysis above (*see supra* section IV.B.4.b)) as providing or planning to provide investment advice related to crypto assets, because that analysis may include responses related to non-custodial services and future custodial services.

8. The proposed audit provision incorporates a longstanding view of the Commission that, except in limited circumstances, audited financial statements would need to be prepared in accordance with U.S. GAAP, and a similar view of the Commission allowing advisers to foreign PIVs to rely on audited financial statements prepared in accordance with accounting principles other than U.S. GAAP in certain circumstances. *See* section II.G.4.a) and proposed rule 223-1(b)(4)(i)(B). Moreover, Commission staff has taken a similar view as the proposed amendments to the audit provision extending the delivery deadlines for annual audited financial statements of funds of funds and funds of funds of funds. *See* section II.G.4.b) and proposed rule 223-1(b)(4)(i)(C). Although our economic analysis recognizes that some advisers, such as advisers to foreign PIVs, may not rely on these views to prepare financial statements for these vehicles (*see supra* section IV.C.6.c)(1)), we assume for purposes of this burden calculation that advisers to pooled investment vehicles relying on the audit provision already distribute audited financial statements largely consistent with the proposed audit provision. The internal annual burden estimate is attributable to distributing the unaudited financial statements to investors in a pooled investment vehicle newly formed in the last 90 days of its first fiscal year as required under the proposed amendment to the audit provision. *See* proposed rule 223-1(b)(4)(ii). We assume for purposes of this burden analysis that advisers would need to distribute the unaudited financial statements to approximately 5% of their investors, and that it takes 1 minute per investor to deliver the unaudited financial statements. We estimate that the 4,487 advisers that have their pooled investment vehicles audited and distribute audited financial statements to investors in the pool (see note 9 below) provide advice to 58,164 private funds that have a total of 1,017,870 investors. [1/60 hour] x [(5% x 1,017,870 investors)] = [0.017 hours x 50,894 investors] = 865 total annual burden hours. 865 total annual burden hours / 4,847 advisers = approximately 0.1784 internal annual burden hour per adviser.

We do not anticipate that the requirement to distribute the first audited financial statements covering the first fiscal year and the following fiscal year under proposed rule 223-1(b)(4)(ii) would impact our burden analysis for this amendment, as advisers relying on the audit provision are already required to audit and deliver their financial statements every year, and we understand that adding a single quarter to the audit period does not add significantly more to the cost of distributing the audited financial statements.

9. Based on IARD data, we estimate that 5,401 advisers have custody of client assets and provide advisory services to pooled investment vehicles other than regulated funds (responses to Items 5.D.(1)(f), 9.A and 9.B of Form ADV, Part 1A). Of these advisers, we estimate that 4,847 advisers will have their pooled investment vehicles audited and distribute audited financial statements to investors in the pool [5,401 advisers to pooled investment vehicles – 554 advisers that undergo a surprise examination = 4,847 advisers that undergo an audit]. We assume for purposes of this burden calculation that all 4,847 advisers would distribute unaudited financial statements to investors in pooled investment vehicles newly formed in the last 90 days of their first fiscal year in reliance on the proposed audit provision.

10. We assume that many advisers already have copies of client SLOAs that have the required provisions, and in our view, this particular collection of information requirement would have a negligible impact on advisers. *See* proposed rule 223-1(b)(8).

11. Includes initial burden estimates annualized over a three-year period (1 hours / 3 years = 0.3 initial burden hours), plus 1 ongoing annual burden hours. [1 initial hour / 3 years] + 1 additional ongoing burden hours = 0.3 initial burden hours + 1 annual burden hours = 1.3 internal annual burden hours.

12. Based on Form ADV data as of December 2025, there were 16,442 investment advisers registered with the Commission and 9,926 registered advisers that reported to have custody of client funds or securities in Item 9 of Form ADV. Of the 9,926 registered advisers that reported to have custody of client funds and securities in Item 9 of Form ADV, we estimate that approximately 21%, or approximately 2,131 advisers, will have clients that issue SLOAs.

13. Attributed to adding the custodial account number to client notices as required under the proposed amendment to the notice requirement. See proposed rule 223-1(a)(2). We do not believe including a custodial account number to the notice would significantly impact the costs incurred by advisers as they are already required to provide a nearly identical notice under the current rule.

14. Based on IARD data, the number of registered investment advisers that are advisers exclusively to pooled investment vehicles and obtain an annual audit is 2,872 advisers (this is the number of registered investment advisers that reported to have custody in response to Item 9.A. or Item 9.B., exclusively advise pooled investment vehicles (other than regulated funds) in response to Item

5.D., and checked the box for Item 9.C.(2) in Form ADV, Part 1A). Since we estimate that 97% of advisers to pooled investment vehicles obtain an annual audit, the notice requirement does not apply to approximately 2,786 advisers, leaving approximately 7,140 advisers that may be subject to this information collection. [9,926 advisers with custody – (2,872 advisers to pooled investment vehicles x 0.97) = 9,926 – 2,786 = 7,140 advisers].

15. Based on IARD data, number of all registered investment advisers as of December 2025. Although the number of investment advisers that repudiate inadvertent custody in order to rely on the proposed inadvertent custody exception may, in practice, be lower, we have assumed for purposes of this burden analysis that all registered investment advisers are subject to this information collection requirement.

C. Investment Company Act

1. Proposed Rule 17f–9

Proposed rule 17f–9 would permit a regulated fund to maintain its crypto assets with the regulated fund's adviser if the adviser complies with the adviser self-custody rule and if the regulated fund's board of directors engages in oversight of the custody arrangement as required under proposed rule 17f–9. Prior to the investment adviser maintaining the crypto asset and annually thereafter, the regulated fund's board would need to determine that the fund's crypto asset will be subject to reasonable care, if maintained with the regulated fund's adviser, after considering the factors relevant to the safekeeping of the crypto asset.

The proposed rule would require the regulated fund's adviser to furnish such information as may reasonably be necessary for the board to evaluate the fund's custody arrangement of the crypto asset, but at a minimum: (1) a written report documenting the basis of the adviser's self-custody determination; (2) the most recent written annual review of the adviser's safeguarding systems and cybersecurity controls pursuant to the annual review requirement in the adviser self-custody rule, if one is available; and (3) the most recent written internal control report as required under the adviser self-custody rule, if one is available. Advisers would be required to provide any additional information as may reasonably be necessary for the board to evaluate the regulated fund's custody arrangement. Compliance with rule 17f–9 would be mandatory for all regulated funds with self-custodied crypto assets.

Table 15 below summarizes the proposed PRA initial and ongoing annual burden estimates associated with the board oversight and reporting requirements under proposed rule 17f–9.

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Table 15: Rule 17f-9 Board Oversight and Reporting PRA Estimates

	Internal initial burden hours	Internal annual burden hours		Wage rate[1]	Internal time costs
PROPOSED ESTIMATES					
Evaluation of investment adviser's written reports	9 hours[2]	6 hours[3]	×	$4,539[4]	$27,232
Evaluation of internal control reports[5]	1 hour	1 hour[6]	×	$12,186 (fund board of directors-assumes an average of 9 directors per board)	$12,186
Total annual burden per fund		**7 hours**			$39,418
Number of funds[7]		× 715			× 715
Total annual burden		**5,005 hours**			**$28,183,870**

Notes:

1. To calculate the occupational hourly rates used in this release, the Commission uses the May 2025 occupational mean hourly wage data from the Occupational Employment and Wage Statistics (OEWS) program of the Bureau of Labor Statistics (BLS) for "Securities, Commodity Contracts, and Other Financial Investments and Related Activities" (NAICS 523). See Occupational Employment and Wage Statistics, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/oes/; see *also* Standard Occupational Classification, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/soc/ (describing occupational classification system used by BLS); EXEC. OFF. OF THE PRESIDENT, OFF. OF MGMT. & BUDGET, NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (2022), *available at* https://www.census.gov/naics/reference_files_tools/2022_NAICS_Manual.pdf (describing the industry classification system used by BLS and other agencies). The mean hourly wage for each occupation is multiplied by an employment cost index (ECI) factor of 1.0227, calculated as one plus the percentage change in the seasonally adjusted ECI for wages and salaries of private industry workers from the second quarter of 2025 (ECI=173.563), which contains the May 2025 OEWS reference period, to the first quarter of 2026 (ECI=177.498), which is the date of the most recently available ECI observations when the occupational hourly rates used in this release were calculated. See Employment Cost Index, U.S. BUREAU OF LABOR STATISTICS, Seasonal Data 2001-Present, available at https://www.bls.gov/eci/tables.htm. The adjusted mean hourly wage is then multiplied by a nonwage cost adjustment factor of 5.734, which accounts for nonwage costs borne by employers, such as bonuses, benefits, and overhead. This factor is calculated as the average, over 2016-2025, of the ratio of the Bureau of Economic Analysis's gross output for NAICS 523 to total annual wages across all occupations for NAICS 523 in the OEWS data. See Gross Output by Industry, U.S. BUREAU OF ECONOMIC ANALYSIS, https://www.bea.gov/data/industries/gross-output-by-industry; Occupational Employment and Wage Statistics, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/oes/. For example, the $774 occupational hourly rate for lawyers is calculated as $131.91 × 1.0227 × 5.734, or approximately $774 (where $131.91 is the May 2025 mean hourly wage for lawyers in NAICS 523). The final product is the occupational hourly rate. See *generally* UPDATED METHODOLOGY FOR CALCULATING OCCUPATIONAL HOURLY RATES (Dec. 19, 2025), *available at* https://www.sec.gov/files/method-occupational-hourly-rates.pdf.

2. Of the 9 hours, we estimate that 7 of those hours will be attributable to work done by General and Operations Managers preparing the written reports, 1 hour to a lawyer reviewing the written reports, and 1 hour to the Fund Board of Directors evaluating the written reports.

3. This estimate assumes that, after the initial 9 hours that a regulated fund would spend on the evaluation of the investment adviser's written reports, which we annualize over a 3-year period, the regulated fund would incur 3 burden hours annually associated with ongoing compliance with this requirement. The estimate of 6 hours is based on the following calculation: (9 initial hour burden /3) = 3 hours + 3 hours ongoing annual burden. This estimate includes the preparation of the written reports by fund personnel, as well as the review and evaluation of the reports by the board of directors (and that 1 hour each would be spent by general and operations managers, the fund board of directors, and lawyers).

4. This estimated wage figure is based on the following blended rates: $656 (General and Operations Managers) + $12,186 (Fund Board of Directors (assumes an average of 9 directors per board) + $774 (Lawyer)/3 = $4,539.

5. We have not attributed any external cost to the regulated fund from the evaluation of the internal control reports because the external cost of preparing the internal control reports is accounted for in the rule 223-1 PRA table, *supra* section IV.B.

6. This estimate assumes that, after the initial 1 hour that a regulated fund would spend on the evaluation of the investment adviser's internal control reports, which we annualize over a 3-year period, the regulated fund would incur .66 burden hours annually associated with ongoing compliance with this requirement. The estimate of 1 hour is based on the following calculation: (1 initial hour burden /3) = .33 hours + .66 hours ongoing annual burden. This estimate includes the board's review and evaluation of the reports.

7. Of 14,301 regulated funds we expect 5% or approximately 715 regulated funds to self-custody crypto assets. We do not have specific data to estimate the percentage of regulated funds that would self-custody crypto assets, because, as discussed above, the conditions of rule 17f-2 under the Investment Company Act, which currently addresses regulated fund self-custody, do not contemplate crypto assets. See *supra* section I.A.2. The assumption that 5% of regulated funds would rely on proposed rule 17f-9 therefore reflects the same percentage of advisers that we estimate would self-custody crypto assets if proposed rule 223-1 under the Advisers Act were adopted, as discussed in note 5 to Table 14 in section V.B, *supra*. The actual number of regulated funds that would self-custody crypto assets if proposed rule 17f-9 were adopted may be lower, as regulated funds with investment strategies that involve direct investments in crypto assets may not necessarily self-custody crypto assets.

2. Proposed Rule 17f–8

Under the proposed rule, regulated funds that choose to engage a State trust company as a custodian would be required to, prior to engaging the State trust company and on an annual basis thereafter, determine in writing that they have a reasonable basis, after due inquiry, for believing that: the State trust company (1) is authorized by the relevant State banking authority to provide custody services for crypto assets and (2) maintain and implement policies and procedures reasonably designed to safeguard crypto assets and related cash and/or cash equivalents from the risk of theft, loss, misuse, and misappropriation. Additionally, the regulated fund would need to receive and review the State trust company's most recent financial statements and internal control report.

Under the proposed rule, regulated funds would be required to enter into a custodial services agreement providing that all crypto assets (and related cash and/or cash equivalents) held in custody for the regulated fund will be held in accounts that are segregated from the State trust company's assets. Compliance with rule 17f–8 would be mandatory for all regulated funds that choose to custody their crypto assets with a State trust company custodian.

Table 16 below summarizes the proposed PRA initial and ongoing annual burden estimates associated with the reasonable basis determination and custodial service agreement requirements under proposed rule 17f–8.

Table 16: Rule 17f-8 Reasonable Basis Determination and Custodial Services Agreement PRA Estimates

	Internal initial burden hours	Internal annual burden hours		Wage rate[1]	Internal time costs	Initial external cost burden	Annual external cost burden
PROPOSED ESTIMATES							
Reasonable basis determination	60 hours	40 hours[2]	×	$507.67 per hour (blended current rate for lawyers ($774), accountants and auditors ($330), information security analysts ($419))	$20,307 (Internal Annual Hour Burden 40 hours x Wage rate of $507.67)		
Custodial services agreement	9 hours	6 hours[3]	×	$774 (lawyers)	$4,644		
Total annual burden per fund		46 hours			$24,951		
Number of funds[4]		× 1,430			× 1,430		
Total annual burden		**65,780 hours**			**$35,679,930**		

Notes:

1. To calculate the occupational hourly rates used in this release, the Commission uses the May 2025 occupational mean hourly wage data from the Occupational Employment and Wage Statistics (OEWS) program of the Bureau of Labor Statistics (BLS) for ["Securities, Commodity Contracts, and Other Financial Investments and Related Activities" (NAICS 523). *See* Occupational Employment and Wage Statistics, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/oes/; *see also* Standard Occupational Classification, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/soc/ (describing occupational classification system used by BLS); EXEC. OFF. OF THE PRESIDENT, OFF. OF MGMT. & BUDGET, NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (2022), *available at* https://www.census.gov/naics/reference_files_tools/2022_NAICS_Manual.pdf (describing the industry classification system used by BLS and other agencies). The mean hourly wage for each occupation is multiplied by an employment cost index (ECI) factor of 1.0227, calculated as one plus the percentage change in the seasonally adjusted ECI for wages and salaries of private industry workers from the second quarter of 2025 (ECI=173.563), which contains the May 2025 OEWS reference period, to the first quarter of 2026 (ECI=177.498), which is the date of the most recently available ECI observations when the occupational hourly rates used in this release were calculated. See Employment Cost Index, U.S. BUREAU OF LABOR STATISTICS, Seasonal Data 2001-Present, available at https://www.bls.gov/eci/tables.htm. The adjusted mean hourly wage is then multiplied by a nonwage cost adjustment factor of 5.734, which accounts for nonwage costs borne by employers, such as bonuses, benefits, and overhead. This factor is calculated as the average, over 2016-2025, of the ratio of the Bureau of Economic Analysis's gross output for NAICS 523 to total annual wages across all occupations for NAICS 523 in the OEWS data. See Gross Output by Industry, U.S. BUREAU OF ECONOMIC ANALYSIS, https://www.bea.gov/data/industries/gross-output-by-industry; Occupational Employment and Wage Statistics, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/oes/. For example, the $774 occupational hourly rate for lawyers is calculated as $131.91 × 1.0227 × 5.734, or approximately $774 (where $131.91 is the May 2025 mean hourly wage for lawyers in NAICS 523). The final product is the occupational hourly rate. *See generally* UPDATED METHODOLOGY FOR CALCULATING OCCUPATIONAL HOURLY RATES (Dec. 19, 2025), *available at* https://www.sec.gov/files/method-occupational-hourly-rates.pdf.

2. Includes initial burden estimates annualized over a three-year period (60 hours / 3 years = 20 initial burden hours), plus 20 ongoing annual burden hours. The estimate of 40 hours is based on the following calculation: [60 initial hours / 3 years] + 20 additional ongoing burden hours = 40 internal annual burden hours.

3. Includes initial burden estimates annualized over a three-year period (9 hours / 3 years = 3 initial burden hours), plus 3 ongoing annual burden hours. The estimate of 6 hours is based on the following calculation: [9 initial hours / 3 years] + 3 additional ongoing burden hours = 6 internal annual burden hours.

4. Of 14,301 regulated funds we expect 10% or approximately 1,430 regulated funds to use State trust companies as custodians. The data we currently have regarding regulated funds' use of State trust companies as custodians may not be indicative of the scale for regulated funds' use of State trust companies as custodians of crypto assets if proposed rule 17f-8 were adopted because of historical challenges associated with determining whether a State trust company is a permitted custodian. The assumption that 10% of regulated funds would rely on proposed rule 17f-8 therefore reflects the same percentage of advisers that we estimate would maintain client crypto assets at a State trust company if proposed rule 223-1 under the Advisers Act were adopted, as discussed in note 7 to Table 14 in section V.B, *supra*. The actual number of regulated funds that would use State trust companies as custodians of crypto assets if proposed rule 17f-8 were adopted may be lower, as regulated funds may not necessarily choose to use State trust companies.

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3. Proposed Rule 17f–1

Our proposed amendments would remove the current requirements for the board of directors to ratify the custodial contract and the examinations of the regulated fund's securities and similar investments by an independent public accountant in rule 17f–1.[1337] Therefore, the proposed amendments to rule would eliminate current paperwork requirements on regulated funds. The proposed amendments to rule 17f–1 would affect all management investment companies that use broker-dealers to custody assets. We estimate that 8 funds rely on the rule annually, with a total of 8 responses. Thus, the staff estimates that the total annual hour burden for rule 17f–1 is 28 hours and $32,712.[1338] Accordingly, we estimate that, in the aggregate, the proposed amendment would eliminate the 28 annual burden hours associated with rule 17f–1.[1339] Additionally, we currently estimate that there are no external costs associated with rule 17f–1 in general.

4. Inclusion of BDCs in Investment Company Act Custody and Recordkeeping Rules

The proposed amendments would add references to BDCs to the Investment Company Act custody rules and regulated fund recordkeeping rules.[1340]

BDCs do not file Form N–CEN, the form where regulated funds disclose if they rely on rules 17f–2, 17f–4, 17f–5, 17f–6 or 17f–7. Due to this we do not have any data on how many BDCs currently rely on these rules. As discussed above, compliance with the rules under section 31 under the Investment Company Act, is mandatory for all registered investment companies, and BDCs are similarly subject to these requirements under statutory incorporation.[1341]

All regulated funds that deal directly with securities depositories in reliance on rule 17f–4 should have either modified their contracts with the relevant securities depository, or negotiated a modification in the securities depository's written rules when the rule was amended. Therefore, we estimate there is no ongoing burden for regulated funds associated with this collection of information.[1342]

The Commission anticipates that the number of existing registrants that change their foreign custody managers is negligible and, therefore, the compliance burden of rule 17f–5 falls primarily on new registrants. In practice, not all registrants will use foreign custody managers. The actual figure therefore may be smaller.

Because rule 17f–6 does not impose any ongoing obligations on funds or FCMs, the Commission estimates there are only costs related to new contracts between funds and FCMs. The Commission estimates that new contracts pursuant to the rule take approximately 1 hour.

The Commission estimates that regulated funds relying on rule 17f–7 will make an average of 8 responses annually under the rule to address depository compliance with minimum requirements, any indemnification or insurance arrangements, and reviews of risk analyses or notifications. The Commission estimates each response will take 6 hours.

The proposed amendments specifying the applicability of the regulated fund recordkeeping rules to BDCs are not anticipated to result in a change in burden. BDCs are already subject to these rules.[1343]

[1337] While rule 17f–1 has a number of other requirements, these are the only two that are collections of information for PRA purposes. Any collections of information associated with the proposed requirement that custody of funds and securities be subject to the requirements of rule 15c3–3 of the Exchange Act are included in the approved burden for that rule. *See* OMB control number 3235–0078.

[1338] $2,385 to review and ratify the custodial contracts + $1,704 to assist the fund's independent public accountants in verifying the fund's assets = $4,089 (total annual cost per fund) × 8 funds = $32,712

[1339] 0.5 hours for the board of directors to review and ratify the custodial contracts + 3 hours for the fund's controller or administrator to assist the fund's independent public accountants in verifying the fund's assets = 3.5 hours × 8 funds = 28 hours.

[1340] The following rules, while being amended to reference BDCs, are not discussed here. As discussed above, the proposed amendments to rule 17f–1 would not impose a PRA burden. The PRA for rule 17f–2 already accounts for BDCs.

[1341] *See supra* footnotes 649–650 and accompanying text.

[1342] The Commission assumes that new funds relying on rule 17f–4 would choose to use a custodian instead of directly dealing with a securities depository because of the high costs associated with maintaining an account with a securities depository. Thus, new funds would not be subject to this condition.

[1343] *See* discussion *supra* at section II.H.2.

Table 17: Incremental Paperwork Burden under the Amendments to Investment Company Act Rules

	Current Annual Responses	Estimated Number of Additional Responses[1]	Current Burden Hours	Change in Burden Hours	Current Cost Burden ($)	Change in Cost Burden ($)
Rule 17f-2	160,710	8,766[2]	41,085	2,241[3]	$10,985,040	$555,975
Rule 17f-4	21,504	10[4]	3,148 hours	1 hour[5]		
Rule 17f-5	184	1[6]	16,457 hours	3.5 hours[7]		
Rule 17f-6	131	2[8]	27 hours	2 hours[9]	$15,534	$1,168
Rule 17f-7	11,712	376[10]	108,880 hours	2,256 hours[11]		
Rule 31a-1[12]	14,125	176[13]	1,936,200 hours	308,000 hours[14]		

Notes:
1. We estimate that a similar percentage of BDCs rely on these rules as do management investment companies.
2. Of the 14,125 management investment companies that filed Part C of Form N-CEN, 724 or 5% relied on rule 17f-2. Therefore, of 176 BDCs, we estimate that 9 rely on rule 17f-2. Each BDC will generally provide 974 responses annually for a total of 8,766 additional responses.
3. 9 BDCs relying on rule 17f-2 x 249 (total annual hourly burden per BDC) = 2,241 hours
4. Of the 14,125 management investment companies that filed Part C of Form N-CEN, 363 or 2.5% relied on rule 17f-4. Therefore, of 176 BDCs, we estimate that 5 rely on rule 17f-4. Each BDC will generally provide 2 responses annually for a total of 10 additional responses.
5. 10 additional responses x 7 minutes per response = 1.2 hours
6. Commission staff has estimated that of all management investment companies, approximately 0.5% will engage a new foreign custody manager. Therefore, of 176 BDCs, we estimate that 1 will engage a new foreign custody manager under rule 17f-5.
7. (1 additional response x 3.5 hours per response) = 3.5 hours
8. Of the 14,125 management investment companies that filed Part C of Form N-CEN, 1,262 or 11% relied on rule 17f-6. Therefore, of 176 BDCs, we estimate that 19 rely on rule 17f-6. Of those we estimate that 10%, or 2 BDCs enter into new FCM contracts each year.
9. (2 additional responses x 1 hour per response) = 2 hours.
10. Of the 14,125 management investment companies that filed Part C of Form N-CEN, 3,764 or 26% relied on rule 17f-7. Therefore, of 176 BDCs, we estimate that 47 rely on rule 17f-7. Of those we estimate that each will make an average of 8 responses annually under the rule for a total of 376 responses.
11. (376 responses x 6 hours per response) = 2,256 hours
12. The rule is being amended to add references to BDCs and provide that records related to crypto assets that are required to be maintained and preserved may be maintained and preserved on an associated crypto network. See proposed rule 31a-1(b)(14). Staff estimates there will be no burden or costs associated with this collection of information.
13. All 14,125 management investment companies are subject to the recordkeeping requirements in rule 31a-1. All 176 BDCs are also subject to the rule.
14. (1,750 hours per year x 176 BDCs) = 308,000 hours.

Table 18: Current and Revised Burdens under the Amendments to Investment Company Act Rules

	Current Burden Burden Hours	Costs ($)	Revised Burden Burden Hours	Costs ($)
Rule 17f-2	41,085 hours	$10,985,040	43,326 hours	$11,541,015
Rule 17f-4	3,148 hours		3,149 hours	
Rule 17f-5	16,457 hours		16,461 hours	
Rule 17f-6	27 hours	$15,534	29 hours	$16,702
Rule 17f-7	108,880 hours		111,136 hours	
Rule 31a-1	1,936,200 hours		2,244,200	

D. Recordkeeping Rules

1. Rule 204–2

Under section 204 of the Advisers Act, investment advisers registered or required to register with the Commission under section 203 of the Advisers Act are required to make and keep for prescribed periods such records (as defined in section 3(a)(37) of the Exchange Act), furnish copies thereof, and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Rule 204–2 sets forth the requirements for making and keeping specified books and records. This collection of information is found at 17 CFR 275.204–2 and is mandatory. The Commission staff uses the collection of information in its examination and oversight program. Responses provided to the Commission in the context of its examination and oversight program concerning the rule 204–2 are kept confidential subject to the provisions of applicable law.[1344] The respondents to this collection of information are investment advisers registered or required to be registered with the Commission.

The current approved annual aggregate burden for rule 204–2 is 2,941,493.4 hours, based on an estimate of 15,906 registered advisers, or 184.9298 hours per registered adviser. We now estimate that the revised annual aggregate hourly burden for rule 204–2 would be 2,946,962.15 hours, based on an estimate of 16,442 registered advisers, and represented by a monetized cost of $240,576,972.80. A table summarizing the various components of the total annual burden associated with the proposed Advisers

[1344] *See* 15 U.S.C. 80b–10(b).

Act recordkeeping rule amendments is found below.

Table 19: Rule 204-2 PRA Estimates

	Internal Initial Hour Burden	Internal Annual Hour Burden	Wage Rate[1]	Annual Internal Time Costs	Annual External Cost Burden
PROPOSED ESTIMATES					
Creation and retention of records related to adviser self-custody of client crypto assets	N/A	2 hours[2]	$154.50 (blended wage rate for office clerk and bookkeeping, accounting, and auditing clerk)[3]	$309 (Internal Annual Hour Burden of 2 hours x Blended Wage Rate of $154.50)	$0
Total burden per adviser		2 hours		$309	$0
Total number of affected advisers	x 823 advisers[4]	x 823 advisers[4]		x 823 advisers	
Sub-total burden	N/A	1,646 hours[5]		$254,307[6]	$0
Creation and retention of records related to the proposed State trust company rule	N/A	2 hours[7]	$154.50 (blended wage rate for office clerk and bookkeeping, accounting, and auditing clerk)	$309 (Internal Annual Hour Burden of 2 hours x Blended Wage Rate of $154.50)	$0
Total burden per adviser		2 hours		$309	
Total number of affected advisers	x 1,645 advisers[8]	x 1,645 advisers[8]		x 1,645 advisers	
Sub-total burden	N/A	3,290 hours[9]		$508,305[10]	$0
Retention of copies of, and records relating to, standing letters of authorization	N/A	0.25 hours[11]	$154.50 (blended wage rate for office clerk and bookkeeping, accounting, and auditing clerk)	$38.63 (Internal Annual Hour Burden of 0.25 hours x Wage rate of $154.50)	$0
Total burden per adviser	N/A	0.25 hours		$38.63	
Total number of affected advisers	x 2,131 advisers[12]	x 2,131 advisers[12]		x 2,131 advisers	
Sub-total burden	N/A	532.75 hours[13]		$82,310[14]	$0
Crypto network records	N/A	N/A	N/A	N/A	N/A
Total burden per adviser	N/A	N/A	N/A	N/A	N/A
Total number of affected advisers	N/A	N/A	N/A	N/A	N/A
Sub-total burden	N/A	N/A	N/A	N/A	N/A
Total annual aggregate burden of Rule 204-2 amendments	**N/A**	**5,468.75 hours[15]**		**$844,922[16]**	**$0**
Current annual estimated aggregate burden of Rule 204-2	N/A	2,941,493.4 hours		$239,732,050.80	$0
Total annual aggregate burden of Rule 204-2	**N/A**	**2,946,962.15 hours[17]**		**$240,576,972.80[18]**	**$0**

Notes:

1. To calculate the occupational hourly rates used in this release, the Commission uses the May 2025 occupational mean hourly wage data from the Occupational Employment and Wage Statistics (OEWS) program of the Bureau of Labor Statistics (BLS) for "Securities, Commodity Contracts, and Other Financial Investments and Related Activities" (NAICS 523). See Occupational

Employment and Wage Statistics, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/oes/; *see also* Standard Occupational Classification, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/soc/ (describing occupational classification system used by BLS); EXEC. OFF. OF THE PRESIDENT, OFF. OF MGMT. & BUDGET, NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (2022), *available at* https://www.census.gov/naics/reference_files_tools/2022_NAICS_Manual.pdf (describing the industry classification system used by BLS and other agencies). The mean hourly wage for each occupation is multiplied by an employment cost index (ECI) factor of 1.0227, calculated as one plus the percentage change in the seasonally adjusted ECI for wages and salaries of private industry workers from the second quarter of 2025 (ECI=173.563), which contains the May 2025 OEWS reference period, to the first quarter of 2026 (ECI=177.498), which is the date of the most recently available ECI observations when the occupational hourly rates used in this release were calculated. See Employment Cost Index, U.S. BUREAU OF LABOR STATISTICS, Seasonal Data 2001-Present, available at https://www.bls.gov/eci/tables.htm. The adjusted mean hourly wage is then multiplied by a nonwage cost adjustment factor of 5.734, which accounts for nonwage costs borne by employers, such as bonuses, benefits, and overhead. This factor is calculated as the average, over 2016-2025, of the ratio of the Bureau of Economic Analysis's gross output for NAICS 523 to total annual wages across all occupations for NAICS 523 in the OEWS data. See Gross Output by Industry, U.S. BUREAU OF ECONOMIC ANALYSIS, https://www.bea.gov/data/industries/gross-output-by-industry; Occupational Employment and Wage Statistics, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/oes/. For example, the $167 occupational hourly rate for bookkeeping, accounting, and auditing clerk is calculated as $28.40 × 1.0227 × 5.734, or approximately $167 (where $28.40 is the May 2025 mean hourly wage for bookkeeping, accounting, and auditing clerk in NAICS 523). The final product is the occupational hourly rate. *See generally* UPDATED METHODOLOGY FOR CALCULATING OCCUPATIONAL HOURLY RATES (Dec. 19, 2025), *available at* https://www.sec.gov/files/method-occupational-hourly-rates.pdf.

2. We estimate that this collection of information will result in an increased burden of 2 hours for each adviser maintaining client crypto assets in self-custody pursuant to the proposed self-custody rules.
3. The $154 wage rate reflects current estimates of the blended hourly rate for office clerk, general ($142) and an bookkeeping, accounting, and auditing clerk ($167). $154.50 is based on the following calculation: ($142+$167) / 2 = $154.50.
4. Based on Form ADV data as of December 2025, there were 16,442 investment advisers registered with the Commission and 9,926 registered advisers that reported to have custody of client funds or securities in Item 9 of Form ADV. Of the 16,442 registered advisers, we expect 5% or approximately 823 advisers to self-custody crypto assets. *See supra* section V.B for a discussion of this estimate.
5. This estimate is based on the following calculation: 2 hours per adviser x 823 advisers = 1,646 hours.
6. This estimate is based on the following calculation: 1,646 hours x $154.50 blended hourly wage rate for an office clerk and bookkeeping, accounting, and auditing clerk= $254,307.
7. We estimate that this collection of information will result in an increased burden of 2 hours for each adviser maintaining client crypto assets at a State trust company pursuant to the proposed State trust company rules.
8. Based on Form ADV data as of December 2025, there were 16,442 investment advisers registered with the Commission and 9,926 registered advisers that reported to have custody of client funds or securities in Item 9 of Form ADV. Of the 16,442 registered advisers, we expect 10% or approximately 1,645 advisers to use State trust companies as custodians for client crypto assets and related cash and/or cash equivalents. *See supra* section V.B for a discussion of this estimate.
9. This estimate is based on the following calculation: 2 hours per adviser x 1,645 advisers = 3,290 hours.
10. This estimate is based on the following calculation: 3,290 hours x $154.50 blended hourly wage rate for an office clerk and bookkeeping, accounting, and auditing clerk= $508,305.
11. We estimate that this collection of information will result in an increased burden of 0.25 hours for each adviser that has custody solely as a result of having a SLOA with its client(s).
12. Based on Form ADV data as of December 2025, there were 16,442 investment advisers registered with the Commission and 9,926 registered advisers that reported to have custody of client funds or securities in Item 9 of Form ADV. Of the 9,926 registered advisers that reported to have custody of client funds and securities in Item 9 of Form ADV, we estimate that approximately 21%, or approximately 2,131 advisers, will have clients that issue SLOAs.
13. This estimate is based on the following calculation: 0.25 hours per adviser x 2,131 advisers = 532.75 hours.
14. This estimate is based on the following calculation: 532.75 hours x $154.50 blended hourly wage rate for an office clerk and bookkeeping, accounting, and auditing clerk= $82,309.875 (rounded to $82,310).
15. This estimate is based on the following calculation: 1,646 hours + 3,290 hours + 532.75 hours = 5,468.75 hours.
16. This estimate is based on the following calculation: $254,307 + $508,305 + $82,310 = $844,922.
17. This estimate is based on the following calculation: 5,468.75 hours + 2,941,493.40 hours = 2,946,962.15 hours.
18. This estimate is based on the following calculation: $844,922 + $239,732,050.80 = $240,576,972.80.

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2. Rule 31a–2

Rule 31a–1 under the Act specifies the books and records that each registered investment company, BDC, and certain underwriters, broker-dealers, investment advisers, and depositors must maintain. Rule 31a–2 specifies the time periods that entities must retain certain books and records, including those required to be maintained under rule 31a–1.[1345] We have previously estimated that it takes a total of 607,315 hours, and involves a total external cost burden of $111,818,274 to comply with the collection of information associated with rule 31a–2.[1346] Compliance with the rule's collection of information requirements is mandatory. To the extent the Commission receives confidential information pursuant to the collections of information, such information will be kept confidential, subject to the provisions of applicable law.[1347] The table below summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to rule 31a–2.[1348] Staff estimates there will be no external costs associated with this collection of information.

[1345] The proposal amends rule 31a–1 to add references to BDCs and provide that records related to crypto assets that are required to be maintained and preserved may be maintained and preserved on an associated crypto network. See proposed rule 31a–1(b)(14). Staff estimates there will be no burden or costs associated with this collection of information. *See also supra* section V.C.4.

[1346] This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2023. *See* ICR Reference No. 202309–3235–013, *available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202309-3235-013*.

[1347] *See, e.g.,* 15 U.S.C. 80b–10 and 5 U.S.C. 552. Section 10 of the Investment Company Act generally prohibits disclosure of information obtained during the course of an investigation. In addition, Exemption 4 of the Freedom of Information Act provides an exemption for trade secrets and commercial or financial information obtained from a person and privileged or confidential. Exemption 8 of the Freedom of Information Act provides an exemption for matters that are contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

[1348] *See supra* section II.H.2. This table does not, however, address the proposed amendments to add references to BDCs to the regulated fund recordkeeping rules, which are discussed above in section V.C.4.

Table 20: Rule 31a-2 PRA Estimates

	Internal initial burden hours	Internal annual burden hours	Wage rate[1]	Internal time costs	External Time Costs
PROPOSED AMENDMENTS TO RULE 31a-2					
Proposed Fund Self-Custody Recordkeeping					
Recordkeeping in connection with a regulated fund's crypto asset self-custody	N/A	2 hours	× $289 (blended rate for office clerk, general and computer programmer)[2]	$578	
Total new annual burden per fund Number of funds[3]	**N/A**	**2 hours** × 715 funds		**$578** × 715 funds	
Total new annual burden	**N/A**	**1,430 hours**		**$ 413,270**	
Proposed State Trust Custody Recordkeeping					
Recordkeeping in connection with a regulated fund's custody of crypto assets at a State trust company	N/A	2 hours	× $289 (blended rate for office clerk, general and computer programmer)[2]	$578	
Total new annual burden per fund Number of funds[4]	**N/A**	**2 hours** × 1,430 funds		**$578** × 1,430 funds	
Total new annual burden	**N/A**	**2,860 hours**		**$826,540**	
Proposed Inclusion of BDCs					
General burden of rule 31a-2	N/A	220.4 hours	x $289 (blended rate for office clerk, general and computer programmer)[2]	$63,696	$40,578
Number of BDCs		× 176 BDCs		× 176 BDCs	× 176 BDCs
Total new annual burden		**38,790 hours**		**$11,210,426**	**$7,141,719**
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Current burden estimates[5]	N/A	+ 607,315 hours		+$52,231,165	$111,818,274
Revised burden estimates	**N/A**	**650,395 hours**		**$63,441,591**	**$118,959,993**

Notes:
1. To calculate the occupational hourly rates used in this release, the Commission uses the May 2025 occupational mean hourly wage data from the Occupational Employment and Wage Statistics (OEWS) program of the Bureau of Labor Statistics (BLS) for "Securities, Commodity Contracts, and Other Financial Investments and Related Activities" (NAICS 523), except for computer programmers for which May 2023 OEWS data are the most recent available. See Occupational Employment and Wage Statistics, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/oes/; see also Standard Occupational Classification, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/soc/ (describing occupational classification system used by BLS); EXEC. OFF. OF THE PRESIDENT, OFF. OF MGMT. & BUDGET, NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (2022), *available at* https://www.census.gov/naics/reference_files_tools/2022_NAICS_Manual.pdf (describing the industry classification system used by BLS and other agencies). The mean hourly wage for each occupation (except computer programmers) is multiplied by an employment cost index (ECI) factor of 1.0227, calculated as one plus the percentage change in the seasonally adjusted ECI for wages and salaries of private industry workers from the second quarter of 2025 (ECI=173.563), which contains the May 2025 OEWS reference period, to the first quarter of 2026 (ECI=177.498), which is the date of the most recently available ECI observations when the occupational hourly rates used in this release were calculated. See Employment Cost Index, U.S. BUREAU OF LABOR STATISTICS, Seasonal Data 2001-Present, available at https://www.bls.gov/eci/tables.htm. The ECI factor for computer programmers (1.10179) is calculated similarly, using the seasonally adjusted ECI for wages and salaries of private industry workers in the second quarter of 2023 (161.1) as the starting point. For all occupations, the ECI-adjusted mean hourly wage is then multiplied by a nonwage cost adjustment factor of 5.734, which accounts for nonwage costs borne by employers, such as bonuses, benefits, and overhead. This factor is calculated as the average, over 2016-2025, of the ratio of the Bureau of Economic Analysis's gross output for NAICS 523 to total annual wages across all occupations for NAICS 523 in the OEWS data. See Gross Output by Industry, U.S. BUREAU OF ECONOMIC ANALYSIS, https://www.bea.gov/data/industries/gross-output-by-industry; Occupational Employment and Wage Statistics, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/oes/. For example, the $142 occupational hourly rate for office clerk, general is calculated as $24.28 × 1.0227 × 5.734, or approximately $142 (where $24.28 is the May 2025 mean hourly wage for office clerk, general in NAICS 523).The final product is the occupational hourly rate. *See generally* UPDATED METHODOLOGY FOR CALCULATING OCCUPATIONAL HOURLY RATES (Dec. 19, 2025), *available at* https://www.sec.gov/files/method-occupational-hourly-rates.pdf.
2.The $289 wage rate reflects current estimates of the blended hourly rate for office clerk, general ($142) and a computer programmer ($436). $289 is based on the following calculation: ($142+$436)/2 = $289.
3. Of 14,301 regulated funds, we expect 5% or approximately 715 regulated funds to self-custody crypto assets.
4. Of 14,301 regulated funds, we expect 10% or approximately 1,430 regulated funds to use State trust companies as custodians.

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E. Disclosure

1. Form ADV

Form ADV is a three-part investment adviser form. Part 1 of Form ADV contains information used primarily by Commission staff, Part 2 is the client brochure, and Part 3 requires registered investment advisers that offer services to retail investors to prepare and file with the Commission, post to the adviser's website (if it has one), and deliver to retail investors a relationship summary. The Commission uses the information in Form ADV to determine eligibility for registration with us and to manage our regulatory, examination, and enforcement programs. Clients and prospective clients use the information required in Form ADV to determine whether to hire or retain an investment adviser, and, if hired, how to manage that relationship. Rule 204–1 under the Advisers Act requires any adviser that is required to complete Form ADV to update the form at least annually, including ERAs that report to the Commission pursuant to rule 204–4, and requires advisers to submit electronic filings through the Investment Adviser Registration Depository (''IARD'').[1349] Compliance with the disclosure requirements of Form ADV is mandatory. Responses to the disclosure requirements are not kept confidential. The paperwork burdens associated with rules 203–1, 204–1, and 204–4, as well as the obligation to deliver codes of ethics to clients under rule 204A–1, are included in the approved annual burden associated with Form ADV and thus do not entail a separate collection of information.[1350]

The current approved annual aggregate burden for Form ADV is 251,851.53 hours, or 10.85 hours per registered adviser. The proposed changes to the rule would increase the annual aggregate burden to 259,438 hours, or 11.17 hours per registered adviser. The table below summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to Form ADV.

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[1349] *See* 17 CFR 275.204–1.

[1350] *See* 17 CFR 275.203–1, 17 CFR 275.204–1, 17 CFR 275.204–4, and 17 CFR 275.204A–1.

Table 21: Form ADV PRA Estimates

FORM ADV PAPERWORK REDUCTION ACT ESTIMATES					
RIAs (burden for Parts 1 and 2, not including private fund reporting)[1]					
	Internal Initial Burden Hours	Internal Amendment Burden Hours[2]	Wage Rate[3]	Internal Time Costs	Annual External Cost Burden
Proposed changes to Part 1A and Schedule D (per adviser)	1 hour	0.4 hours[4]	$553 (blended revised rate for financial examiner and financial manager)[5]	1.4 hours x $553 per hour = $775	
Current burden per adviser	29.72 hours[6]	11.80 hours[7]	$548	(29.72 hours + 11.80 hours) x $548 = $22,752.96	$4,784[8]
Revised burden per adviser	29.72 hours + 1 hour =30.72 hours	11.8 hours + 0.4 hours = 12.2 hours	$553 (blended revised rate for financial examiner and financial manager)[5]	(30.72 + 12.2) x $553 = $23,734.76	$5,413[9]
Total updated aggregate burden estimate	11,827 hours[10]	205,289 hours[11]	$553 (blended revised rate for financial examiner and financial manager)[5]	(11,827 + 205,289) x $553 = $120,065,148	$2,084,005[12]
RIAs (burden for Part 3)[13]					
No proposed changes	--	--	--	553	--
Current burden per RIA	6.67 hours[14]	1.66 hours[15]	$548	(6.67 hours + 1.66 hours) x $548 = $4,564.84	$2,758.74. per adviser[16]
Revised burden per RIA	No change	No change	No change	No change	No change
Total updated aggregate burden estimate	4,833.33 hours[17]	18,633.50 hours[18]	$553 (blended revised rate for financial examiner and financial manager)	(74,870.75 hours + 18,633.50 hours) x $553 = $51,707,850	$2,024,562.50 [19]
ERAs (burden for Part 1A, not including private fund reporting)[20]					
No proposed changes	No change	No change	$553 (blended revised rate for financial examiner and financial manager)	(3.60 hours + 1.51 hours) x $553 = $2,825.53	--
Current burden per ERA	3.60 hours[21]	1.5 hours + (0.1 hours x 675 final filings)/ 7,178 current and expected ERAs) = 1.51 hours[22]	$548	(3.60 hours + 1.51 hours) x $548 = $2,800.28	$0
Revised burden per ERA	No change	No change	$553 (blended revised rate for financial examiner and financial manager)	(3.60 hours + 1.51 hours) x $553 = $2,825.53	No change
Total updated aggregate burden estimate	2,840.40 hours [23]	10,834.50 hours[24]	$553 (blended revised rate for financial examiner and financial manager)	($553 x (2,840.40 + 10,834.50 hours)) = $7,562,220	$0
Private Fund Reporting[25]					

Proposed changes (per adviser)	.10 hours	N/A	$553 (blended revised rate for financial examiner and financial manager)	N/A	N/A
Current burden per adviser to private fund	1 hour per private fund[26]	N/A–included in the existing annual amendment reporting burden for ERAs	$548	N/A	Cost of $55,042.33 per fund applied to 6% of RIAs that report private funds[27]
Revised burden per adviser to private fund	1 hour + .1 hour = 1.10 hours	N/A–included in the existing annual amendment reporting burden for ERAs	$553 (blended revised rate for financial examiner and financial manager)	N/A	No change
Total updated aggregate burden estimate	5,180 hours[28]	N/A	$553 (blended revised rate for financial examiner and financial manager)	($553 x $5,180 hours) = $2,864,540[29]	$19,705,154.14[30]
TOTAL ESTIMATED BURDENS, INCLUDING AMENDMENTS					
Current per adviser burden/external cost per adviser	10.85 hours[31]			10.85 hours x $548 = $5,945.80 per adviser cost of the burden hour	$1,026.42[32]
Revised per adviser burden/external cost per adviser	11.17 hours[33]			11.17 hours x $553 = $6,177 per adviser cost of the burden hour	$1,025.75[34]
Current aggregate burden estimates	251,851.53 initial and amendment hours annually[35]			251,851.53 x $548 = $138,014,638.44 aggregate cost of the burden hour	$23,547,079.14[36]
Revised aggregate burden estimates	259,438 initial and amendment hours annually[37]			259,438 x $553 = $143,469,214 aggregate cost of the burden hour	$23,813,721.64[38]

Notes:

1. Based on Form ADV data as of December 31, 2025, we estimate that there are 16,442 RIAs ("current RIAs") and 385 net new advisers that are expected to become RIAs annually ("expected new RIAs"). We obtain the expected new RIAs number by taking the average number of new RIAs over the past three years (1,203) and subtracting the average RIA deregistrations over the past three years (818), for a total of 385 net new advisers on average.
2. This column estimates the hourly burden attributable to annual and other-than-annual updating amendments to Form ADV, plus RIAs' ongoing obligations to deliver codes of ethics to clients.
3. To calculate the occupational hourly rates used in this release, the Commission uses the May 2025 occupational mean hourly wage data from the Occupational Employment and Wage Statistics (OEWS) program of the Bureau of Labor Statistics (BLS) for "Securities, Commodity Contracts, and Other Financial Investments and Related Activities" (NAICS 523). *See* Occupational Employment and Wage Statistics, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/oes/; *see also* Standard Occupational Classification, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/soc/ (describing occupational classification system used by BLS); EXEC. OFF. OF THE PRESIDENT, OFF. OF MGMT. & BUDGET, NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (2022), *available at* https://www.census.gov/naics/reference_files_tools/2022_NAICS_Manual.pdf (describing the industry classification system used by BLS and other agencies). The mean hourly wage for each occupation is multiplied by an employment cost index (ECI) factor of 1.0227, calculated as one plus the percentage change in the seasonally adjusted ECI for wages and salaries of private industry workers from the second quarter of 2025 (ECI=173.563), which contains the May 2025 OEWS reference period, to the first quarter of 2026 (ECI=177.498), which is the date of the most recently available ECI observations when the occupational hourly rates used in this release were calculated. See Employment Cost Index, U.S. BUREAU OF LABOR STATISTICS, Seasonal Data 2001-Present, available at https://www.bls.gov/eci/tables.htm. The adjusted mean hourly wage is then multiplied by a nonwage cost adjustment factor of 5.734, which accounts for nonwage costs borne by employers, such as bonuses, benefits, and overhead. This factor is calculated as the average, over 2016-2025, of the ratio of the Bureau of Economic Analysis's gross output for NAICS 523 to total annual wages across all occupations for NAICS 523 in the OEWS data. See Gross Output by Industry, U.S. BUREAU OF ECONOMIC ANALYSIS, https://www.bea.gov/data/industries/gross-output-by-industry; Occupational Employment and Wage Statistics, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/oes/. For example, the $730 occupational hourly rate for financial manager is calculated as $124.46 × 1.0227 × 5.734, or approximately $730 (where 124.47 is the May 2025 mean hourly wage for financial manager in NAICS 523). The final product is the occupational hourly rate. *See generally* UPDATED METHODOLOGY FOR CALCULATING OCCUPATIONAL HOURLY RATES (Dec. 19, 2025), *available at* https://www.sec.gov/files/method-occupational-hourly-rates.pdf.

4. We estimate that 13,462 RIAs (80% of the total (16,827) of combined current (16,442) and expected (385) RIAs that are required to complete Parts 1 and 2) would incur a burden of 0.5 hour, and 3,365 RIAs (20% of 16,827 current and expected RIAs that are required to complete Parts 1 and 2 would incur a burden of 0 hours. (13,462 RIAs x 0.5) + (3,365 RIAs x 0) / 16,827 = 0.4 blended average hours per RIA.
5. The $553 wage rate reflects current wage estimates from the new occupational hourly rate methodology based on data from the Bureau of Labor and Statistics ("BLS Wage Data"). This wage represents a blended revised rate utilizing the $375 per hour rate for a financial examiner and the $730 per hour rate for a financial manager. ($375 + $730) / 2 = $553.
6. *See* 2026 Form ADV PRA Renewal.
7. The currently approved average total annual burden for RIAs attributable to annual and other-than-annual updating amendments to Form ADV, Parts 1 and 2 is 11.80065 hours per RIA. *See* 2026 Form ADV PRA Renewal.
8. See 2026 Form ADV PRA Renewal
9. We continue to estimate that a quarter of RIAs would seek the help of outside legal services and half would seek the help of compliance consulting services in connection with the amendments to Form ADV, Part 1A. This is based on previous estimates and ratios we have used for advisers we expect to use external services for initially preparing various parts of Form ADV. *See* 2020 Form ADV PRA Renewal (the subsequent amendment to Form ADV described in the 2021 Form ADV PRA did not change that estimate). With the new wage methodology, instead of using the term "outside counsel," we are using the term "lawyer" and instead of using the term "outside management consultant," we are using the term "financial manager." We estimate $774 per hour for a lawyer, and $730 per hour for a financial manager. External cost per RIA includes the external cost for initially preparing Part 2, which we have previously estimated to be approximately 10 hours for a lawyer for a quarter of RIAs, and 8 hours of financial manager services for half of RIAs. We estimate that a quarter of advisers that prepare Part 1 will utilize a lawyer's services and half of advisers that prepare Part 1 will utilize financial management services. *See* 2020 Form ADV Renewal (these estimates were not affected by subsequent amendments to Form ADV). We therefore calculate the revised burden per adviser as follows: (((.25 x 16,442 RIAs) x ($774 x 11 hours)) + ((0.50 x 16,442 RIAs) x ($730 x 9 hours))) / 16,442 RIAs = $5,413 per adviser.
10. We do not apply the full initial burden to current RIAs, as we believe that current RIAs have generally already incurred the initial burden of preparing Form ADV. For expected new RIAs, we estimate that they will incur the full revised initial burden, which is 30.72 hours per RIA. Therefore, 30.72 hours x 385 expected new RIAs = 11,827 aggregate hours for expected new RIAs. We do not amortize this burden for expected new RIAs because we expect a similar number of new RIAs to incur this initial burden each year. Therefore, the total revised aggregate initial burden for current and expected new RIAs is 11,827 aggregate initial hours.
11. 12.20 amendment hours x (16,442 current RIAs + 385 expected new RIAs) = 205,289 hours.
12. For current RIAs, we are not applying the currently approved external cost for initially preparing Part 2, because we believe that current RIAs have already incurred that initial external cost. For current RIAs, therefore, we would only calculate an annual external cost estimate when a Form ADV amendment imposes a new burden on RIAs. For expected new RIAs, we apply the currently approved external cost for initially preparing Part 2. Therefore, $5,413 per expected new RIA x 385 = $2,084,005 aggregated for expected new RIAs. We do not amortize this cost for expected new RIAs because we expect a similar number of new RIAs to incur this external cost each year. Therefore, the aggregated external cost for RIAs is $2,084,005.
13. Based on Form ADV data as of December 31, 2025, we estimate that 10,500 current RIAs provide advice to retail investors and are therefore required to complete Form CRS, and we estimate an average of 725 expected RIAs to be advising retail investors and completing Form CRS for the first time annually ("expected new retail RIAs"). The number of expected new retail RIAs to be advising retail investors is higher than the number of expected new RIAs because we anticipate some current RIAs as well as some new RIAs will be advising retail investors for the first time and thus be required to complete Form CRS.
14. *See* Form CRS Relationship Summary; Amendments to Form ADV, Investment Advisers Act Release No. 5247 (June 5, 2019) [84 FR 33492 (Sept. 10, 2019)] ("2019 Form ADV PRA"). Since advisers have been required to comply with the Form CRS requirements for more than three years, we are no longer applying the amortized initial burden to current advisers that are required to file Form CRS. Instead, we are applying the amortized initial burden of 6.67 hours to the expected new retail RIAs that will be completing Form CRS for the first time.
15. We estimate that there are 10,500 advisers that provide retail advice to clients and filed a total of 18,559 other-than annual amendments. 18,559 other-than-annual amendments / 10,500 advisers with retail clients = 1.77 amendments per adviser. 10,500 advisers with retail clients x 1.77 amendments per adviser x 1 hour = 18,585 hours. 18,585 hours / (10,500 advisers with retail clients + 725 estimated new retail advisers) = approximately 1.66 hours per adviser.
16. *See* 2026 Form ADV PRA Renewal.
17. We estimate that the initial burden of completing Form CRS for expected new retail RIAs that will be advising retail investors is 725 expected advisers x 20 hours = 14,500 hours. For expected new retail RIAs initially filing Form CRS each year, we are amortizing this initial burden estimate over three years to reflect the anticipated period of time that advisers will use the form. Therefore, 14,500 hours / 3 years = 4,833.33 aggregate initial hours for expected new retail RIAs to initially prepare Form CRS.
18. 1.66 hours x (10,500 current RIAs updating Form CRS + 725 expected new retail RIAs updating Form CRS) = 18,633.50 aggregate amendment hours per year for RIAs updating Form CRS.
19. We have previously estimated the initial preparation of Form CRS would require 5 hours of legal services for an estimated quarter of advisers that prepare Part 3, and 5 hours of compliance consulting services performed by a financial manager for an estimated half of advisers that prepare Part 3. *See* 2020 PRA Renewal (these estimates were not amended by the most recent amendment to Form ADV). The hourly cost estimate is $774 and $730 for lawyer fees and financial management service fees. There is no new estimated annual external cost burden associated with Part 3. Thus, we are not calculating an associated new annual external cost burden for current advisers filing Form CRS. For expected new retail RIAs that we expect would prepare Form CRS each year, we use the following formula: (((.25 x 725 expected RIAs preparing Form CRS) x ($774 x 5 hours)) + ((0.50 x 725 expected new retail RIAs preparing Form CRS) x ($730 x 5 hours))) = $2,024,562.50 aggregated cost for expected RIAs. We are not amortizing this initial cost because we estimate a similar number of new RIAs would incur this initial cost in preparing Form CRS each year.
20. Based on Form ADV data as of December 31, 2025, we estimate that there are 6,389 currently reporting ERAs ("current ERAs"), and an average of 789 expected new ERAs annually ("expected new ERAs").
21. *See* 2024 Form ADV PRA.
22. The previously approved average per adviser annual burden for ERAs attributable to annual and updating amendments to Form ADV is 1.5 hours. *See* 2024 Form ADV PRA. As we have done in the past, we add to this burden the burden for ERAs making final filings, which we have previously estimated to be 0.1 hour per applicable adviser, and we estimated that an expected 470 current ERAs will prepare final filings based on Form ADV data as of October 5, 2023. 1.5 hours + (0.1 hours x 470 final filings) = 48.50 hours. However, this burden figure was incorrectly calculated in the prior Form ADV PRA submission. In order to ascertain the per adviser burden, the hourly burden attributable to final filing submissions should have been divided by the sum of the number of current and expected new ERAs. Thus, the equation should have been 1.5 hours + ((0.1 hours x 470 final filings) / 6,905 current and expected new ERAs) = 1.51 hours.
23. For current ERAs, we are not applying the currently approved burden for initially preparing Form ADV, because we believe that current ERAs have already incurred this burden. For expected new ERAs, we are applying the initial burden of preparing Form ADV of 3.6 hours. Therefore, 3.6 hours x 789 expected new ERAs per year = 2,840.40 aggregate initial hours for expected new ERAs. For these expected new ERAs, we are not amortizing this burden, because we expect a similar number of new ERAs to incur this burden each year. Therefore, we estimate 2,840 40 aggregate initial annual hours for expected new ERAs.
24. The previously approved average total annual burden of ERAs attributable to annual and updating amendments to Form ADV is 1.5 hours. *See* 2020 Form ADV Renewal (this estimate was not affected by the subsequent amendments to Form ADV). As we have done in the past, we added to this burden the currently approved burden for ERAs making final filings of 0.1 hour and multiplied that by the number of final filings we are estimating ERAs would file per year

(675 final filings based on Form ADV data as of December 31, 2025). (1.5 hours x 6,389 currently reporting ERAs) + (0.1 hour x 675 final filings) = 9,651 updated aggregated hours for currently reporting ERAs. For expected new ERAs, the aggregate burden is 1.5 hours for each ERA attributable to annual and other-than-annual updating amendments to Form ADV x 789 expected new ERAs = 1,183.50 annual aggregated hours for expected new ERAs updating Form ADV (other than for private fund reporting). The total aggregate amendment burden for ERAs (other than for private fund reporting) is 9,651 + 1,183.50 = 10,834.50 hours.

25. Based on Form ADV data as of December 31, 2025, we estimate that 5,655 current RIAs advise 67,769 private funds and expect an estimated 312 new RIAs ("expected new private fund RIAs") will advise 1,960 reported private funds per year. We estimate that 5,921 current ERAs advise 53,353 private funds and estimate an expected 676 new ERAs ("expected new private fund ERAs") will advise 2,749 reported private funds per year. Therefore, we estimate that there are 121,122 currently reported private funds reported by current private fund advisers (67,769 + 53,353), and there will be annually 4,709 new private funds reported by expected new private fund advisers (1,960 + 2,749). The total number of current and expected new private fund RIAs that report or are expected to report private funds is 5,967 (5,655 current RIAs that report private funds + 312 expected new private fund RIAs that would report private funds).

26. See 2020 Form ADV PRA Renewal (this per adviser burden was not affected by subsequent amendments to Form ADV). We previously estimated that an adviser without the internal capacity to value specific illiquid assets would obtain pricing or valuation services at an estimated cost of $37,625 each on an annual basis. See Rules Implementing Amendments to the Investment Advisers Act of 1940, Advisers Act Release No. IA-3221 (June 22, 2011) [76 F.R. 42949 (July 19, 2011)]. However, because we estimated that external cost in 2011, we used an inflation-adjusted cost of $46,865.74, based on the CPI calculator published by the Bureau of Labor Statistics at https://www.bls.gov/data/inflation_calculator.htm. As with previously approved PRA methodologies, we continue to estimate that 6% of RIAs have at least one private fund client that may not be audited. See 2024 Form ADV PRA.

27. Using the Bureau of Labor Statistics CPI calculator, the $37,625 cost from 2011 (see footnote 31) was adjusted to $55,042.33 in the 2026 PRA renewal.

28. Per above, for currently reported private funds, we are not applying the currently approved burden for initially reporting private funds on Form ADV, because we believe that current private fund advisers have already incurred this burden. For the estimated 4,709 new private funds annually of expected new private fund advisers, we calculate the initial burden of 1.1 hour per private fund. 1.1 hour per expected new private fund x 4,709 expected new private funds = 5,180 aggregate hours for expected new private funds. For these expected new private funds, we are not amortizing this burden, because we expect new private fund advisers to incur this burden with respect to new private funds each year. Therefore, we estimate 5,180 aggregate initial hours for expected new private fund advisers.

29. Per above, for currently reported private funds, we are not applying the currently approved burden for initially reporting private funds on Form ADV, because we believe that current private fund advisers have already incurred this burden. We expect advisers to incur the initial burden in the first year and are therefore not amortizing this burden. For the estimated 4,709 new private funds annually of expected new private fund advisers, we calculate the initial burden of the 1.1 hours initial burden per private fund. Therefore, 1.1 hours per expected new private fund x 4,709 expected new private funds = 45,180 aggregate hours for expected new private funds. For these expected new private funds, we are not amortizing this burden because we expect new private fund advisers to incur this burden with respect to new private funds each year. 4,709 aggregate hours for expected new private fund advisers. 5,180 hours x $553 blended rate = $2,8648,540.

30. As with previously approved PRA methodologies, we continue to estimate that 6% of registered private fund advisers have at least one private fund client that may not be audited, therefore we estimate that the total number of audits for current and expected new private fund RIAs is 6% x 5,967 current and expected new RIAs reporting private funds or expected to report private funds = approximately 358 audits. We therefore estimate that approximately 358 registered private fund advisers incur costs of $55,042.33 each on an annual basis (see footnote 26 describing the cost per audit), for an aggregate annual total external cost of $19,705,154.14.

31. See 2026 Form ADV PRA Renewal.

32. See 2026 Form ADV PRA Renewal.

33. 259,438 aggregate annual hours for current and expected new RIAs (see infra footnote 37) / 23,216 advisers current and expected annually = 11.17 blended average hours per adviser. (16,442 current RIAs + 385 expected new RIAs + 6,389 current ERAs + 789 expected new ERAs = 23,216)

34. $23,813,721.64 aggregate external cost for current and expected new RIAs (see infra footnote 38) / (23,216 current and expected new advisers (see *supra* footnote 38) = $1,025.75 blended average hours per adviser.

35. See 2026 Form ADV PRA Renewal.

36. See 2026 Form ADV PRA Renewal.

37. 11,827 hours (internal initial burden for Parts 1 and 2) + 205,289 hours (internal annual amendment burden for Parts 1 and 2) + 4,833.33 hours (internal initial burden for Part 3) + 18,633.50 hours (internal annual amendment burden for Part 3) + 2,840.40 hours (internal initial burden for ERAs) + 10,834.50 hours (internal annual amendment burden for ERAs) + 5,180 hours (Internal initial burden for private funds) = 259,438 aggregate annual hours for current and expected new advisers.

38. $2,084,005 (aggregate external cost burden for Parts 1 and 2) + $2,024,562.50 (aggregate external cost for Part 3) + $19,705,154.14 (aggregate external cost burden for private funds) = $23,813,721.64 revised external aggregate burden estimate.

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2. Form N–CEN

Form N–CEN is an annual report filed with the Commission by all registered investment companies, other than FACCs. We have previously estimated that it takes a total of 62,239 hours, and involves a total external cost burden of $605,520, to comply with the collection of information associated with Form N–CEN.[1351] Compliance with the disclosure requirements of Form N–CEN is mandatory. Responses to the disclosure requirements are not kept confidential. The table below summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to Form N–CEN. Staff estimates there will be no external costs associated with this collection of information.

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[1351] This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2024. See ICR Reference No. 202507–3235–010, *available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202507-3235-010.*

Table 22: Form N-CEN PRA Estimates

	Internal initial burden hours	Internal annual burden hours	×	Wage rate[1]	Internal time costs
PROPOSED AMENDMENTS TO FORM N-CEN					
Proposed Fund Tokenization Disclosure					
Reporting tokenized registrant information	1 hour	1 hour[2]	×	$570 (blended rate for lawyer and computer systems analyst)[3]	$570
Total new annual burden per registrant		1 hour			$570
Number of registrants[4]		× 27 registrants			× 27 registrants
Total new annual burden		27 hours			$15,390
Proposed State Trust Use Disclosure					
Reporting use of a State trust to custody registrant assets	1 hour	1 hour[5]	×	$570 (blended rate for lawyer and computer systems analyst)[3]	$570
Total new annual burden per registrant		1 hour			$570
Number of registrants[6]		x 275 registrants			x 275 registrants
Total new annual burden		275 hours			$156,750
Proposed Self-Custody Use Disclosure					
Reporting use of self-custody to custody registrant assets	1 hour	1 hour[7]		$570 (blended rate for lawyer and computer systems analyst)[3]	$570
Total new annual burden per registrant		1 hour			$570
Number of registrants[8]		x 137 registrants			x 137 registrants
Total new annual burden		137 hours			$78,090
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Current burden estimates		+ 62,239 hours			+$605,520
Revised burden estimates		62,678 hours			855,750

Notes:

1. To calculate the occupational hourly rates used in this release, the Commission uses the May 2025 occupational mean hourly wage data from the Occupational Employment and Wage Statistics (OEWS) program of the Bureau of Labor Statistics (BLS) for "Securities, Commodity Contracts, and Other Financial Investments and Related Activities" (NAICS 523). *See* Occupational Employment and Wage Statistics, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/oes/; *see also* Standard Occupational Classification, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/soc/ (describing occupational classification system used by BLS); EXEC. OFF. OF THE PRESIDENT, OFF. OF MGMT. & BUDGET, NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (2022), *available at* https://www.census.gov/naics/reference_files_tools/2022_NAICS_Manual.pdf (describing the industry classification system used by BLS and other agencies). The mean hourly wage for each occupation is multiplied by an employment cost index (ECI) factor of 1.0227, calculated as one plus the percentage change in the seasonally adjusted ECI for wages and salaries of private industry workers from the second quarter of 2025 (ECI=173.563), which contains the May 2025 OEWS reference period, to the first quarter of 2026 (ECI=177.498), which is the date of the most recently available ECI observations when the occupational hourly rates used in this release were calculated. See Employment Cost Index, U.S. BUREAU OF LABOR STATISTICS, Seasonal Data 2001-Present, available at https://www.bls.gov/eci/tables.htm. The adjusted mean hourly wage is then multiplied by a nonwage cost adjustment factor of 5.734, which accounts for nonwage costs borne by employers, such as bonuses, benefits, and overhead. This factor is calculated as the average, over 2016-2025, of the ratio of the Bureau of Economic Analysis's gross output for NAICS 523 to total annual wages across all occupations for NAICS 523 in the OEWS data. See Gross Output by Industry, U.S. BUREAU OF ECONOMIC ANALYSIS, https://www.bea.gov/data/industries/gross-output-by-industry; Occupational Employment and Wage Statistics, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/oes/. For example, the $774 occupational hourly rate for lawyers is calculated as $131.91 × 1.0227 × 5.734, or approximately $774 (where $131.91 is the May 2025 mean hourly wage for lawyers in NAICS 523). The final product is the

occupational hourly rate. *See generally* UPDATED METHODOLOGY FOR CALCULATING OCCUPATIONAL HOURLY RATES (Dec. 19, 2025), *available at* https://www.sec.gov/files/method-occupational-hourly-rates.pdf.

2. This estimate assumes that, after the initial 1 hour that a fund reporting on Form N-CEN to report the proposed tokenized fund data elements, which we annualize over a 3-year period, the fund would incur 0.67 additional burden hours associated with ongoing preparation of the proposed reporting requirements per year. The estimate of 1 hour is based on the following calculation: ((1 initial hour /3) + 0.67 hours of additional ongoing burden hours) = 1 hour.

3. The $570 wage rate reflects current estimates of the blended hourly rate for a lawyer ($774) and a computer systems analyst ($365). $570 is based on the following calculation: ($774+$365)/ 2 = $570.

4. Of 2,749 registrants, we expect 1% or approximately 27 registrants (or series or class thereof) to be tokenized funds. 1% is an estimate based on data indicating that approximately 10 registrants are currently tokenized funds (and we expect this figure to increase in the future).

5. This estimate assumes that, after the initial 1 hour that a fund reporting on Form N-CEN to report the proposed State-trust data elements, which we annualize over a 3-year period, the fund would incur 0.67 additional burden hours associated with ongoing preparation of the proposed reporting requirements per year. The estimate of 1 hour is based on the following calculation: ((1 initial hour /3) + 0.67 hours of additional ongoing burden hours) = 1 hour.

6. Of 2,749 registrants, we expect 10% or approximately 275 registrants to use State trust custodians.

7. This estimate assumes that, after the initial 1 hour that a registrant reporting on Form N-CEN would incur to report the proposed self-custody data elements, which we annualize over a 3-year period, the registrant would incur 0.67 additional burden hours associated with ongoing preparation of the proposed reporting requirements per year. The estimate of 1 hour is based on the following calculation: ((1 initial hour /3) + 0.67 hours of additional ongoing burden hours) = 1 hour.

8. Of 2,749 registrants, we expect 5% or approximately 137 registrants to self-custody crypto assets.

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3. Rescission of Form N–17F–1

Our proposed amendments would rescind Form N–17F–1.[1352] The proposed rescission of Form N–17F–1 would affect all management investment companies required to file reports on the form. We currently estimate on average 21 funds file Form N–17f–1 three times annually and that each fund requires an average of approximately 1.5 hours to prepare and file Form N–17f–1 for a total estimated annual burden of 95 hours.[1353] Accordingly, we estimate that, in the aggregate, our proposed rescission would eliminate the 95 annual burden hours associated with filing Form N–17f–1. Additionally, we currently estimate that there are no external costs associated with filing Form N–17F–1 in general.

F. Request for Comments

We request comment on whether our estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) determine whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct their comments to the OMB Desk Officer for the Securities and Exchange Commission, *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov*, and should send a copy to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, using any of the methods in the **ADDRESSES** section, with reference to File No. S7–2026–35. Requests for materials submitted to OMB by the Commission with regard to the collection of information should be in writing, refer to File No. S7–2026–35 and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington DC 20549–2736. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VI. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with section 3(a) of the Regulatory Flexibility Act (''RFA'').[1354] The IRFA relates to proposed amendments to rules 17f–1 and 17f–2, along with amendments to rules 17f–4 through 17f–7, 31a–1, 31a–2, 204–2, and 206(4)–2 (redesignated as rule 223–1), and Forms N–CEN, ADV, and ADV–E, as well as proposed new rules 17f–8 and 17f–9.

A. Reason for and Objectives of the Proposed Action

As discussed above, we are proposing amendments to the Advisers Act custody rule and new custody rules under the Investment Company Act to enhance investor protection by imposing protective conditions and promote investor choice and ability to invest by tailoring the custody rules to address the existing limitations of the custody rules that may inhibit advisers' ability to provide investment advice and regulated funds to invest in the full range of crypto assets and pursue certain crypto asset-related investment strategies. Specifically, the Commission is proposing new rules under the Investment Company Act and amendments to reporting and recordkeeping requirements to address how regulated funds custody crypto assets and amendments to the custody rule and related reporting and recordkeeping rules under the Advisers Act to address how registered investment advisers custody client assets. In particular, the Commission is proposing to provide a tailored framework for crypto asset custody

[1352] *See supra* footnote 389. Form N–17F–1 and rule 17f–1 have separate OMB control numbers and collections of information that are renewed at different time using different data therefor the effected entities may be different between the form and the rule.

[1353] This estimate is based on the following calculations: Commission staff estimates that it takes: (i) 1 hour of clerical time, at a cost of $73 per hour, to prepare and file Form N–17F–1; and (ii) 0.5 hour for the fund's chief compliance officer, at a cost of $618 per hour (or $309 for half an hour), to review Form N–17F–1 prior to filing with the Commission, for a total of 1.5 hours at a total cost of $382.3. Each fund is required to make 3 filings annually, for a total annual internal hour burden per fund of approximately 4.5 hours at a cost of $1,146. Commission staff estimates that an average of 21 funds currently file Form N–17F–1 with the Commission 3 times each year, for a total of 64 responses annually. 4.5 hours × 21 funds = 94.5 total hours. $1,146 × 21 funds = $24,066.

[1354] 5 U.S.C. 603(a).

based on consideration of the evolution and growth of the crypto asset market, public and industry feedback provided to the Crypto Task Force and the Digital Assets PWG Report's recommendations to the Commission.

We are proposing to amend the Advisers Act custody rule and add a new Investment Company Act custody rule to permit self-custody of client and fund crypto assets, subject to several conditions, including recordkeeping requirements related to the proposed self-custody rules. For example, the proposed self-custody rules would require the adviser to first determine that a permitted custodian is not available to maintain the crypto asset, as an initial matter and on a quarterly basis. Further, the proposed self-custody rules would require, among other things, the adviser to have the expertise (and to document the basis of its determination that it has the expertise) and the systems to safeguard the crypto assets against loss, theft, misuse, or misappropriation, and to review the adequacy of its safeguarding systems on an annual basis. Additionally, the proposed regulated fund self-custody rule would require a regulated fund's board to determine that a crypto asset of the fund would be subject to reasonable care if self-custodied with the fund's investment adviser prior to the investment adviser maintaining the crypto asset and annually thereafter. As described above, further proposed conditions involve, among other things, the mitigation of (and controls associated with) cybersecurity risks associated with safeguarding clients' crypto assets; requirements for the adviser to obtain internal control reports concerning its safeguarding of crypto assets; and requirements to send quarterly account statements to each of the adviser's clients whose crypto assets the adviser has self-custody.

Separately, we are proposing to amend the custody rules to permit custody of client and regulated fund crypto assets by State trust companies, subject to the conditions discussed earlier in the release, including, but not limited to, related recordkeeping requirements. For example, the proposed State trust company rules would, among other things, require that the adviser or regulated fund must have a reasonable basis, after due inquiry, for believing that the State trust company is authorized by the relevant State banking authority to provide crypto asset custody. As another example, the proposed rules would require that the adviser or regulated fund must have a reasonable basis, after due inquiry, for believing that the State trust company maintains and implements written policies and procedures reasonably designed to safeguard crypto assets and related cash and/or cash equivalents from the risk of theft, loss, misuse, and misappropriation. Further proposed conditions require that the adviser or regulated fund receive and review of the State trust company's audited financial statements and internal control reports, and for regulated funds, a custodial agreement that provides for the segregation of the regulated fund's crypto assets (and related cash and/or cash equivalents) from the State trust company's proprietary assets.

The Commission also is proposing to amend the current custody rules to modernize the custody rules so that the rules better address, among other things, current industry practices and industry feedback. For example, for the Investment Company Act rules, we are proposing to add references to BDCs throughout the Investment Company Act custody rules to clarify that BDCs, like registered investment companies, may rely on the rules to use permitted custodians other than banks. We also are proposing, among other things, to amend rule 17f–1 (the rule related to broker-dealer custody) to expand the eligible broker-dealer custodians to include all registered broker-dealers rather than just members of a national securities exchange, and to replace the numerous conditions in the rule with the condition that regulated fund securities and similar investments may be placed or maintained with a broker-dealer where the broker-dealer's custody of the securities or similar investments is subject to the requirements of the rule 15c3–3 under the Exchange Act or such other rule that the Commission determines provides similar customer protections. Likewise, we are proposing to amend the Advisers Act custody rule in several respects, including to modernize the rule and outline Commission views on several topics related to the application of the Advisers Act custody rule.

We are proposing amendments to the recordkeeping rules under the Advisers Act and Investment Company Act related to the proposed self-custody rules, proposed state trust company rules, and the proposed modernization amendments to the custody rules under the Advisers Act and the Investment Company Act. Additionally, we are proposing amendments to the recordkeeping rules to provide that records required to be maintained and preserved under the applicable recordkeeping rules may be maintained and preserved on a crypto network, provided that the adviser or registered fund can provide, promptly upon request by the Commission (including its examiners and other representatives), such records to the Commission in a human-readable and reasonably usable electronic format.

Lastly, we are proposing amendments to certain Commission forms, including amendments to Forms ADV and ADV–E (for advisers) and Forms N–CEN (for regulated funds). The proposed amendments to Form ADV would (1) add new questions related to the proposed rule amendments to permit adviser crypto asset self-custody; (2) add new questions related to an adviser's reliance on certain exceptions under the Advisers Act custody rule and use of State trust companies as qualified custodians for crypto assets; (3) add new questions regarding tokenized private funds; and (4) make conforming amendments to reflect the proposed amendments to the Advisers Act custody rule. The proposed conforming amendments to Form ADV–E would update existing references to the current Advisers Act custody rule to reflect the proposed redesignation to rule 223–1. The proposed amendments to Form N–CEN would require reporting of the use of crypto asset self-custody or of a State trust company to custody regulated fund crypto assets.

B. Legal Basis

The Commission is proposing amendments to rules 17f–1, 17f–2, 17f–4, 17f–5, 17f–6, 17f–7, 31a–1, and 31a–2 under the Investment Company Act pursuant to authority set forth in sections 6(c), 7(d), 17(f), 31(a), and 38(a) of the Investment Company Act. The Commission is proposing new rules 17f–8 and 17–9 under the Investment Company Act pursuant to authority set forth in sections 6(c), 7(d), 17(f), and 38(a) of the Investment Company Act. The Commission is proposing to rescind rule 17f–3 and Form N–17f–1 under the Investment Company Act. The Commission is proposing amendments to Form N–CEN under the authority set forth in sections 8, 30, 35, and 38 of the Investment Company Act.

The Commission is proposing new rule 223–1 by a redesignation of rule 206(4)–2 under the Advisers Act under the authority set forth in sections 206(4), 211(a), and 223 of the Advisers Act. The Commission is proposing corresponding amendments to rule 204–2 under the Advisers Act under the authority set forth in sections 204, 206(4), and 211(a) of the Advisers Act. The Commission is proposing to amend Form ADV pursuant to the authority set forth in sections 203(c)(1), 204, 211(a), and 223 of the Advisers Act. The Commission is

proposing to amend Form ADV–E pursuant to authority set forth in sections 204, 206, and 211(a) of the Advisers Act.

C. Small Entities Subject to the Rule and Rule Amendments

For purposes of Commission rulemaking in connection with the RFA, 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 (a ''small fund'').[1355] Commission staff estimates that, as of December 31, 2025, approximately 20 registered open-end mutual funds, 7 registered ETFs, 34 registered closed-end funds, one UIT, and five BDCs (collectively, 67 funds) are small entities.[1356] Under the Advisers Act, a small entity is an investment adviser that: (1) has assets under management having a total value of less than $25 million; (2) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of the most recent fiscal year.[1357] The Commission estimates that 466 registered investment advisers are small, based on a review of Form ADV filings for the reporting period ending December 2025, with filings received through March 31, 2026.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The Commission is considering amendments and additions to the reporting, recordkeeping, and other compliance requirements of regulated funds and advisers related to the custody of crypto assets. In particular, the Commission is proposing rule amendments that would, among other things: (1) allow advisers and regulated funds to self-custody crypto assets, subject to certain conditions; (2) allow advisers and regulated funds to custody crypto assets with State chartered trusts, subject to certain conditions; (3) modernize the custody rules; (4) amend certain recordkeeping rules; and (5) amend several Commission forms. The Commission considered the potential that the proposed amendments to existing rules and addition of new rules could affect the compliance burden imposed on small entities.

The proposed regulated fund self-custody rule would require, prior to the investment adviser maintaining a regulated fund's crypto asset and quarterly thereafter, that the regulated fund's board of directors, including a majority of directors who are not interested persons of the regulated fund, reviews the investment adviser's written report documenting the basis for the adviser's determination that no qualified custodian will maintain the crypto asset. In addition, the proposed regulated fund self-custody rule would require, prior to the investment adviser maintaining the regulated fund's crypto asset and annually thereafter, that the board of directors, including a majority of directors who are not interested persons of the regulated fund, determines that the crypto asset will be subject to reasonable care if maintained with the regulated fund's adviser, after considering the factors relevant to the safekeeping of the crypto asset.[1358]

Under the proposed adviser self-custody rule, as an initial matter and no less than quarterly, the adviser would need to determine that a qualified custodian is not available to maintain the crypto asset and record that determination in writing. Further, to help ensure that only those advisers who are well-suited and have the capabilities to safeguard crypto assets have self-custody of client crypto assets, the proposed adviser self-custody rule also would require the adviser to have expertise regarding the safeguarding of each crypto asset, and to document in writing the basis of such determination, and to also adopt, implement, and maintain the systems necessary to safeguard each crypto asset against loss, theft, misuse, and misappropriation.[1359]

Under the proposed State trust company rules, prior to engaging a State trust company as a custodian for crypto assets and related cash and/or cash equivalents, and on an annual basis thereafter, the adviser or regulated fund would need to determine in writing that it has a reasonable basis, after due inquiry, for believing that the State trust company: (1) is authorized by the relevant State banking authority to provide custody services for crypto assets and related cash and/or cash equivalents and (2) maintains and implements written policies and procedures reasonably designed to safeguard crypto assets and related cash and/or cash equivalents from the risk of theft, loss, misuse, and misappropriation. Further, the adviser or regulated fund would be required to receive and review the State trust company's most recent internal control report and audited annual financial statements. Further, under the proposed State trust company rules, all client crypto assets must be held in segregated accounts.[1360]

In connection with the proposal's efforts to modernize the custody rules, we are proposing to add references to BDCs to the Investment Company Act custody rules and recordkeeping rules, remove the conditions in current rule 17f–1 and make it permissible for regulated funds to custody their securities or similar investments with all broker-dealers registered under section 15(b)(1) of the Securities Exchange Act of 1934 where the broker-dealer's custody of the securities or similar investments is subject to rule 15c3–3 under the Exchange Act or such other rule that the Commission determines provides similar customer protections, rescind rule 17f–3, update the address to access the Uniform Commercial Code in rule 17f–4, and correct a cross-reference for the

[1355] 17 CFR 270.0–10 (defining small entities under the Investment Company Act). The Commission has a pending proposing release addressing the definitions under the Investment Company Act and Advisers Act of small organization and small business for purposes of the Regulatory Flexibility Act. The Commission encourages commenters to review the proposal to determine whether it might affect their comments on this IRFA. *See* Amendments to the ''Small Business'' and ''Small Organization'' Definitions for Investment Companies and Investment Advisers for Purposes of the Regulatory Flexibility Act, Investment Company Act Release No. 35864 (Jan. 6, 2026) [91 FR 1107] (Jan. 12, 2026)] (the ''Small Entity Proposal''). Under the Small Entity Proposal, an investment adviser would generally be a small entity for purposes of the Advisers Act and the Regulatory Flexibility Act if the adviser: (1) has assets under management of less than $1 billion, (2) did not have total assets of $5 million or more on the last day of the most recent fiscal year, and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $1 billion or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of the most recent fiscal year. Additionally, an investment company would be a small entity for purposes of the Investment Company Act and the Regulatory Flexibility Act under the Small Entity Proposal if the investment company has, or together with other funds in the same family of investment companies has, net assets of $10 billion or less as of the end of its most recent fiscal year.

[1356] As discussed above, the proposed amendments are generally applicable only to management investment companies and BDCs, although all registered funds and BDCs are subject to the recordkeeping requirements. *See* 15 U.S.C. 80a–30.

[1357] 17 CFR 275.0–7.

[1358] For a complete description of the proposed regulated fund self-custody rule, see section II.B of this release.

[1359] For more information about the proposed adviser self-custody rule, see section II.A of this release.

[1360] For a complete description of the proposed State trust company custody rule, see section II.C of this release.

definition of a ''Eligible Securities Depository'' in rule 17f–7.[1361]

As discussed above, the proposed amendments will modify certain reporting, recordkeeping, and disclosure requirements applicable to advisers and regulated funds. For example, advisers are required to report information about custodial practices on Form ADV, and registered investment companies are required to disclose information about their custodians on Form N–CEN. Furthermore, rule 31a–1 under the Investment Company Act and rule 204–2 under the Advisers Act regulate recordkeeping practices that require, among other things, keeping records of all accounts, contracts, and transactions.

Rule 31a–1 under the Investment Company Act requires regulated funds to create and maintain certain records, including documents relating to purchases and sales of securities and advisory fees.[1362] As discussed above, we expect the proposed amendment to rule 31a–1, which has the narrow focus of providing that records related to crypto assets that are required to be maintained and preserved under the applicable recordkeeping rule may be maintained and preserved on a crypto network, would lower the burden on regulated funds—including small entities—related to rule 31a–1. We also are proposing to add a crypto network as an additional format that advisers can use to maintain records under proposed rule 204–2(g)(1)(iii). In connection with this proposed amendment, we are also proposing conforming amendments to rules 204–2(g)(2) and (3) to prescribe maintenance, preservation, and access procedures for records maintained on a crypto network.

As mentioned above, rule 31a–2 spells out the retention periods required for regulated fund records mandated by rule 31a–1. We are proposing amendments to rule 31a–2 that would address the records required to be maintained and the retention periods for records related to regulated fund self-custody of crypto assets and for regulated funds that maintain their crypto assets at a State trust company under the proposed State trust company rules. The proposed self-custody related amendments would require a regulated fund to maintain, for each crypto asset of the fund held in custody under the proposed rule for fund self-custody of crypto assets, any report or other information provided to the fund's board in connection with the board oversight requirements. As discussed above, such information would include, at a minimum, the adviser's written report documenting the QC determination, the adviser's written reports regarding its expertise and systems, the most recent annual review of the adviser's safeguarding systems and cybersecurity controls if available, and the most recent internal written control report, if available. The regulated fund would be required to maintain such reports and other information for at least six years, the first two years in an easily accessible place. The proposed amendments related to State trust company custody would require a regulated fund that maintains client crypto assets with a State trust company as a qualified custodian to make and keep the certain records, including a memorandum describing the basis upon which the fund made its required initial and annual determinations with respect to the State trust company as a qualified custodian, records of the State trust company's audited financial statements obtained or received as required under the proposed rule, and a copy of the State trust company's internal control reports obtained or received pursuant to the proposed rule.

Rule 204–2 sets forth the requirements for making and keeping specified books and records. We are proposing to amend rule 204–2 to add new recordkeeping requirements associated with the proposed amendments to the Advisers Act custody rule that would require investment advisers to maintain records related to client accounts including, but not limited to, certain records related to the proposed self-custody and State trust custody rules discussed above. Rule 204–2 applies to all investment advisers, including those that are small entities.

As discussed above, Form N–CEN requires regulated funds to disclose information about entities that provided custodial services to them, including checking a box corresponding to the different types of permitted custodians for regulated funds under applicable rules and statutes. The proposed amendments to Form N–CEN would require management investment companies reporting custodians on Item C.12 of Form N–CEN to report the use of crypto asset self-custody or of a State trust company. More specifically, we are proposing to add two additional checkboxes, corresponding to the proposed crypto asset self-custody and State trust company rules to Item C.12 that would provide comparable information for these new classes of custodians as exist for current custodians. The proposed rule form text also would add Item D.14 for small business investment companies. Our proposal to create new Item C.23 on Form N–CEN would require disclosure regarding whether a fund is tokenized.

As discussed above, Form ADV is a registration and disclosure document that requires an investment adviser to provide information about their business, fees, and other matters. The proposed amendments to Form ADV would, among other things, implement the proposed rule amendments related to adviser crypto asset self-custody, improve the readability of Item 9 and make conforming amendments, such as those necessary to implement the proposed redesignation of the Advisers Act custody rule to rule 223–1. More specifically, the Commission is proposing several amendments to Form ADV to (1) add new questions related to the proposed crypto asset self-custody rule, as discussed above in section II; (2) add new questions that address an adviser's reliance on certain exceptions under the Advisers Act custody rule and the use of State trust companies as qualified custodians for crypto assets; (3) add new questions to collect information regarding tokenized private funds; and (4) make certain conforming amendments to reflect the proposed amendments to the Advisers Act custody rule.[1363]

The proposed amendments related to adviser self-custody of crypto assets are designed to provide the Commission and investors with important identifying information about the adviser's crypto asset custodial practices, in light of the novel risks associated with adviser self-custody and safeguarding crypto assets. The remaining proposed amendments are designed to provide the Commission staff with more accurate and consistent information about adviser custodial practices and streamline reporting for advisers. Because Form ADV data is publicly available, these proposed amendments will also enhance the information available to investors and support investor protection by providing better information about

[1361] For a complete discussion of the proposals related to custody rules modernization, please see section II.F of this release.

[1362] As discussed above, for purposes of the proposed amendments under the Investment Company Act recordkeeping rules, the term, ''regulated fund,'' includes all registered investment companies and BDCs, including UITs and FACCs.

[1363] As discussed above in section II.J.1, rule 204–1 under the Advisers Act requires any adviser that is required to complete Form ADV to update the form at least annually, including ERAs that report to the Commission pursuant to rule 204–4, and requires advisers to submit electronic filings through the IARD. Therefore, even though ERAs are not subject to the Advisers Act custody rule, some of the proposed amendments to Form ADV would—as detailed in section II.J.1 above—affect ERAs.

adviser custodial practices. We are proposing to make amendments to Form ADV that would require advisers to report whether any reported private fund (or series or class thereof) is a tokenized fund. Advisers would also be required to provide the names of any crypto networks used to record ownership of the fund or class or series of the private fund.

Form ADV–E requires that the independent public accountant conducting the annual surprise examination of custodied assets file a certificate on Form ADV–E with the Commission within 120 days of the time chosen by the independent public accountant for the surprise examination. As discussed earlier, the proposed amendments to Form ADV–E would not substantively modify Form ADV–E, as we are only proposing conforming amendments to Form ADV–E in connection with the proposed redesignation of the Advisers Act custody rule to rule 223–1. All registered investment advisers, including those that are small entities, must file Form ADV. Only registered investment advisers with custody of client assets need to file Form ADV–E.

In addition to the amendments related to recordkeeping, reporting, and disclosure, the proposed amendments would impose other compliance burdens on regulated funds and advisers. For example, the proposed amendments would create compliance obligations related to the following aspects of the proposal: (1) adviser and regulated fund self-custody practices; (2) the custody of crypto assets by State trust companies; (3) the investment company custody rule modernization; and (4) investment adviser custody rule modernization.

The proposed amendment's compliance requirements in connection with adviser and regulated fund self-custody of crypto assets are generally related to the features of crypto assets that make their custody different from those of other types of assets. For example, the Commission's proposed adviser self-custody rule would require heightened safeguards to help ensure the protection of the key materials that are critical to the safekeeping of a client's crypto asset because, unlike mechanisms used to transact in more traditional assets, access to crypto assets generally requires the use of public and private cryptographic key pairings, and the loss or theft of key materials can result in the irreversible loss of crypto assets. As discussed in more detail earlier, the proposed adviser self-custody rule would require, among other things, that advisers engage in certain safeguarding measures, including implementing cybersecurity controls and obtaining an annual internal control report prepared by an independent public accountant. Another compliance requirement under the proposed adviser self-custody rule would be that an adviser that custodies crypto assets would have to have expertise regarding the safeguarding of each crypto asset and to document in writing the basis for its determination that it has the expertise. The proposed adviser self-custody rule also would require an adviser to adopt, implement, and maintain the systems, including the appropriate technology, software, hardware, and other associated systems and processes around their use, necessary to safeguard each crypto asset against loss, theft, misuse and misappropriation. Further, in addition to the safeguards required of registered advisers with self-custody of crypto assets under the proposed self-custody rule, under the proposed amendments, a regulated fund's board of directors would need to engage in the oversight of the self-custody arrangement as required under the proposed fund self-custody rule under the Investment Company Act. This would allow regulated funds to place and maintain crypto assets with an adviser to the regulated fund, but subject both to the protections in the proposed adviser self-custody rule and the regulated fund's board of director's oversight of the arrangement under the proposed fund self-custody rule. More specifically, the proposal would permit a regulated fund to maintain its crypto assets with the regulated fund's adviser if the adviser complies with the adviser self-custody rule (as described above), and if the regulated fund's board of directors engages in oversight of the custody arrangement as required under proposed rule 17f–9, the fund self-custody rule. The Commission tailored these new compliance requirements in the proposed amendments to the specific risks posed by self-custody of crypto assets by advisers and regulated funds.

With regard to custody of crypto assets by State trust companies, as discussed above, the Commission is proposing amendments to the Advisers Act custody rule and a new custody rule under the Investment Company Act to add State trust companies as an additional category of permitted custodian for crypto assets, subject to certain conditions designed to safeguard client crypto assets from loss, theft, misuse, and misappropriation. The proposed compliance conditions are designed to address common custodial risks that bank regulations generally address, as well as to address the custodial risks that are unique to the custody of crypto assets. More specifically, the proposed conditions are designed to provide that the adviser or regulated fund has made a determination that the State trust company is authorized and regulated by an applicable State authority and that certain protective conditions apply that are designed to help ensure that the State trust company is an appropriate custodian for crypto assets.

Under the proposed State trust company rules, prior to engaging a State trust company as a custodian for crypto assets and related cash and/or cash equivalents, and on an annual basis thereafter, the adviser or regulated fund would need to determine in writing that it has a reasonable basis, after due inquiry, for believing that the State trust company: (1) is authorized by the relevant State banking authority to provide custody services for crypto assets and related cash and/or cash equivalents, and (2) maintains and implements written policies and procedures reasonably designed to safeguard crypto assets and related cash and/or cash equivalents from the risk of theft, loss, misuse, and misappropriation. The adviser or regulated fund also would be required to receive and review the State trust company's audited financial statements and internal control reports, and a regulated fund would be required to enter into a custodial agreement with the State trust company that provides for the segregation of the regulated fund's crypto assets (and related cash and/or cash equivalents) from the State trust company's proprietary assets. The compliance requirements around the proposed State trust company rules are, as with other elements of our proposal, designed to address the unique risks posed by custodying crypto assets while providing regulatory clarity for advisers and regulated funds.

In connection with Investment Company Act custody rule modernization, we are proposing to amend the Investment Company Act custody rules to modernize the rules and correct certain errors or inconsistencies. These amendments would, among other things, add references to BDCs to certain Investment Company Act rules, remove the conditions in current rule 17f–1 and make it permissible for regulated funds to custody securities and similar investments with broker-dealers registered under section 15(b)(1) of the Exchange Act where the broker-dealer's custody of those securities or similar

investments is subject to rule 15c3–3 under the Exchange Act or such other rule that the Commission determines provides similar customer protections, and correct the cross-reference in the definition of a ''Eligible Securities Depository'' in rule 17f–7. Various provisions of the Investment Company Act, including section 17(f) governing custody of securities and section 31 prescribing recordkeeping requirements, are incorporated by statute to apply to BDCs to the same extent as if the BDC was a registered closed-end investment company. While industry practice has been to interpret the Investment Company Act's application of section 17(f) to BDCs to allow BDCs to rely on the Investment Company Act custody rules to the same extent as registered closed-end investment companies, but the rules' conditions do not turn on the distinction of whether a fund is registered under the Investment Company Act or regulated under the Act in the case of a BDC, which is why we are proposing to add appropriate references to BDCs in the Investment Company Act custody rules to make clear that BDCs may rely on them. Additionally, due to the comprehensive modern broker-dealer financial responsibility rules, including the customer protection rule, which the Commission adopted after the adoption of rule 17f–1 in 1940, the risks to clients that use broker-dealers for custodial services are very different than in 1940. In connection with Commission efforts to update its rulebook, the proposal would amend rule 17f–1 to permit regulated funds to custody securities and similar investments at a broker or dealer registered under section 15(b)(1) of the Exchange Act without requiring specific enumerated conditions where the custody of the securities or similar investments is subject to the requirements of rule 15c3–3 under the Exchange Act or such other rule that the Commission determines provides similar customer protections. The proposed amendments would improve the utility of rule 17f–1 as a pathway for broker-dealer custody of regulated fund assets by making the compliance obligations of such custody suitable for modern regulatory practices on broker-dealers.

The proposed amendments that seek to implement Advisers Act custody rule modernization aim to address certain longstanding questions relating to the application of the Advisers Act custody rule. As discussed above, we are proposing a number of modernizing amendments to the rule and proposing to provide guidance on certain known custody issues. These proposed modernizations include rule amendments to, among other things, (1) except discretionary trading authority from the Advisers Act custody rule subject to conditions that limit executions to designated client accounts and prohibit transfers to accounts controlled by the adviser or related persons, (2) eliminate the requirements for accountants engaged to perform audit and examination services under the Advisers Act custody rule to be registered with, and subject to regular inspection by, the PCAOB, (3) modernize the audit requirements for pooled investment vehicles, (4) except accounts subject to standing letters of authorization from asset verification requirements, (5) explicitly except accounts of BDCs from the Advisers Act custody rule since they are subject to Investment Company Act custody requirements, (6) require an account number be included in the notice sent to the client by an adviser upon opening an account with a qualified custodian, (7) modernize rule language related to the notice an accountant must provide to the Commission upon the finding of any material discrepancies during the course of an independent verification, and (8) except advisers from the rule with respect to inadvertent custody of client funds or securities.

E. Duplicative, Overlapping, or Conflicting Federal Rules

We do not believe that the proposed amendments would duplicate, overlap, or conflict with other existing Federal rules.

F. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant economic impact on small entities. We considered the following alternatives for small entities in relation to the proposed rules and rule amendments: (1) establishing different requirements that take into account the resources available to small entities; (2) exempting small entities from all or part of the requirements; (3) clarifying, consolidating, or simplifying requirements under the rules for small entities; and (4) using performance rather than design standards.

We do not believe that exempting small regulated funds or advisers from the proposed amendments and new rules related to the custody of crypto assets would permit us to achieve our stated objectives. For example, we believe that all regulated funds and advisers, regardless of size, should have the expertise, systems, and controls necessary to self-custody crypto assets. To the extent an adviser or regulated fund can satisfy the proposed conditions discussed above, the proposed new rules and amendments would, among other things, provide all regulated funds and advisers with greater flexibility to maintain crypto either in self-custody under the proposed crypto self-custody rules or with a State trust company under the proposed State trust company rules. Only those regulated funds and advisers with clients' crypto assets would be able to comply with the proposed self-custody and State trust company rules. For small regulated funds and advisers that would be more significantly affected by the proposed amendments and new rules because they are investing in crypto assets, the proposed self-custody and State trust company rules, along with the other proposed amendments, could provide small regulated funds and advisers with greater flexibility to invest in crypto assets to meet the objectives of investors interested in such investments. We also do not believe that it would be appropriate to prohibit small regulated funds and advisers from being able to use the proposed self-custody and State trust company custody rules. The proposed new rules and amendments stand to benefit small regulated funds and advisers by, among other things, providing regulatory clarity around the circumstances under which regulated funds and advisers can custody crypto assets.

Similar to the concerns discussed above, if the proposal included different requirements for small regulated funds and advisers, it could raise investor protection concerns for investors in small regulated funds or clients of a small adviser in that a small regulated fund and advisers would not be subject to crypto asset custody requirements that are as robust as those requirements for other regulated funds and advisers.

We also do not believe that clarifying, consolidating, or simplifying the compliance requirements under the proposal for small regulated funds and advisers, beyond that already proposed for regulated all funds and fund advisers, would permit us to achieve our stated objectives because this would raise investor protection concerns for investors in small funds and advisers. The conditions necessary to rely on proposed self-custody and State trust company rules are designed to maintain important investor protection benefits, including, among other things, helping to ensure that regulated fund and

advisory client crypto assets are appropriately protected.

Regarding the proposed Investment Company Act and Investment Advisers Act modernization amendments, we do not believe that we can establish different, simplified or consolidated requirements for small regulated funds and advisers without compromising our objectives. The rules we are amending provide important investor protection benefits, and these benefits should apply to investors in smaller regulated funds and advisory clients of smaller advisers as well as investors in larger regulated funds and advisory clients of larger advisers. The proposed amendments to the Advisers Act custody rule also include exceptions to the application of the rule that apply to both large and small advisers. Similarly, we do not believe it would be in the interest of regulated fund investors and advisory clients to exempt small regulated funds and advisers from the proposed recordkeeping amendments. We believe that all advisory clients and regulated investors, including investors in small regulated funds and clients of small advisers, would benefit from the proposed amendments. We note that the rules being amended do not currently distinguish between small regulated funds and advisers and other regulated funds and advisers.

The costs associated with the proposed amendments and new rules would vary depending on the particular circumstances of funds and advisers, and thus the amendments and new rules could result in different burdens on the resources of regulated funds and advisers.

Finally, with respect to the use of performance rather than design standards, the proposed amendments and new rules generally use performance standards that provide small regulated funds and advisers with an appropriate degree of flexibility. The amendments that relate to design standards—such as, for example, the addition on Forms ADV and N–CEN of a checkbox to indicate a tokenized private fund (Form ADV) or fund (Form N–CEN) and checkboxes to indicate if an adviser or regulated fund is self-custodying crypto assets or employing a State trust company to do so—are straightforward, minimally burdensome, and consistent with existing information requirements associated with the form.

G. Solicitation of Comments

The Commission requests comments regarding this IRFA. We request comments on the number of small entities that may be affected by our proposed amendments and whether the proposed amendments would have any effects not considered in this analysis. We request that commenters describe the nature of any effects on small entities subject to the rules and forms, and provide empirical data to support the nature and extent of such effects. We also request comment on the proposed compliance burdens and the effect these burdens would have on smaller entities.

VII. Congressional Review Act

For purposes of Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act),[1364] the Commission must seek the OMB's determination whether a final regulation constitutes a ''major'' rule. Under the Congressional Review Act, a rule is considered ''major'' where, if adopted, it results in or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.[1365]

To help inform OMB's determination whether any final rule that results from the proposal would be a ''major rule,'' the Commission solicits comment and data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment, or innovation.

Commenters are requested to provide empirical data and other factual support for their views, to the extent possible, to inform OMB's determination regarding whether any final rule following this proposal is likely to be a ''major rule'' for the purposes of the Congressional Review Act.

VIII. Other Matters

This action is an economically significant regulatory action under section 3(f)(1) of Executive Order 12866 and has been reviewed by OMB, consistent with Executive Order 14215. This action, if finalized as proposed, is expected to be an Executive Order 14192 deregulatory action.

Incorporation by Reference

The Uniform Commercial Code governs commercial transactions in the United States, and Article 8 of the Uniform Commercial Code governs transfers of investment securities. The Uniform Commercial Code is reasonably available from the Uniform Law Commission (ULC, also known as National Conference of Commissioners on Uniform State Laws) at *https://www.uniformlaws.org*.

Statutory Authority

The Commission is proposing amendments to rules 17f–1, 17f–2, 17f–4, 17f–5, 17f–6, 17f–7, 31a–1, and 31a–2 under the Investment Company Act pursuant to authority set forth in sections 6(c), 7(d), 17(f), 31(a), and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–7(d), 80a–17(f), 80a–30(a) and 80a–37(a)]. The Commission is proposing new rules 17f–8 and 17f–9 under the Investment Company Act pursuant to authority set forth in sections 6(c), 7(d), 17(f), and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–7(d), 80a–17(f) and 80a–37(a)]. The Commission is proposing to rescind rule 17f–3 and Form N–17f–1 under the Investment Company Act. The Commission is proposing amendments to Form N–CEN under the authority set forth in sections 8, 30, 35, and 38 of the Investment Company Act of 1940 [15 U.S.C. 80a–8, 80a–18, 80a–34, and 80a–37].

The Commission is proposing new rule 223–1 by a redesignation of rule 206(4)–2 under the Advisers Act under the authority set forth in sections 206(4), 211(a), and 223 of the Advisers Act [15 U.S.C. 80b–6(4), 80b–11(a), and 80b–18b]. The Commission is proposing corresponding amendments to rule 204–2 under the Advisers Act under the authority set forth in sections 204, 206(4), and 211(a) of the Advisers Act [15 U.S.C. 80b–4, 80b–6(4), and 80b–11(a)]. The Commission is proposing to amend Form ADV pursuant to the authority set forth in sections 203(c)(1), 204, 211(a), and 223 of the Advisers Act [15 U.S.C. 80b–3(c)(1), 80b–4, 80b–11(a), and 80b–18b]. The Commission is proposing to amend Form ADV–E pursuant to authority set forth in sections 204, 206, and 211(a) of the Advisers Act [15 U.S.C. 80b–4, 80b–6, and 80b–11(a))].

List of Subjects

17 CFR Part 270

Incorporation by reference, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

[1364] *See* 5 U.S.C. chapter 8.

[1365] *See* 5 U.S.C. 804(2) (defining ''major rule'').

17 CFR Parts 275 and 279

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules and Rule and Form Amendments

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, 1681w(a)(1), 6801–6809, 6825, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 2. Amend § 270.17f–1 by:
■ a. Revising the section heading.
■ b. Revising paragraph (a).
■ c. Removing paragraphs (b) through (d).

The revisions read as follows:

§ 270.17f–1 Custody of investment company assets with brokers or dealers.

An investment company registered under the Investment Company Act (15 U.S.C. 80a) or a business development company may place or maintain its securities and similar investments at a broker or dealer registered under section 15(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(1)) where the broker-dealer's custody of the securities or similar investments is subject to the requirements of rule 15c3–3 under the Securities Exchange Act of 1934 (17 CFR 240.15c3–3) or such other rule that the Commission determines provides similar customer protections.

■ 3. Amend § 270.17f–2 by:
■ a. Revising the section heading.
■ b. Revising paragraph (a).

The revisions read as follows:

§ 270.17f–2 Custody of investments by registered management investment companies and business development companies.

(a) The securities and similar investments of a registered management investment company or a business development company may be maintained in the custody of such company only in accordance with the provisions of this section. Investments maintained by such a company with a bank or other company whose functions and physical facilities are supervised by Federal or State authority under any arrangement whereunder the directors, officers, employees or agents of such company are authorized or permitted to withdraw such investments upon their mere receipt are deemed to be in the custody of such company and may be so maintained only upon compliance with the provisions of this section.

* * * * *

■ 4. Amend § 270.17f–3 by removing and reserving.

The revisions read as follows:

§ 270.17f–3 [Reserved]

■ 5. Amend § 270.17f–4 by:
■ a. Revising paragraph (c)(1).
■ b. Revising paragraph (c)(3).

The revisions read as follows:

§ 270.17f–4 Custody of investment company assets with a securities depository.

* * * * *

(c) *Definitions.* For purposes of this section the terms:

(1) *Clearing corporation, financial asset, securities intermediary, and security entitlement* have the same meanings as is attributed to those terms in § 8–102, § 8–103, and §§ 8–501 through 8–511 of the Uniform Commercial Code, 2002 Official Text and Comments, which is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the Securities and Exchange Commission (Commission) and at the National Archives and Records Administration (NARA). Contact the Commission at: 100 F Street NE, Washington, DC 20549–1090, (202) 551–6787, *IMRulemaking@sec.gov, https://www.sec.gov*. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov*. You may obtain a copy of the Uniform Commercial Code from the Uniform Law Commission (ULC, also known as National Conference of Commissioners on Uniform State Laws) at (312) 450–6600; *info@uniformlaws.org*; *https://www.uniformlaws.org*.

* * *

(3) *Fund* means an investment company registered under the Act or a business development company and, where the context so requires with respect to a fund that is a unit investment trust or a face-amount certificate company, includes the fund's trustee.

* * * * *

■ 6. Amend § 270.17f–5 by:
■ a. Revising paragraph (a)(4).

The revisions read as follows:

§ 270.17f–5 Custody of investment company assets outside the United States.

(a) *Definitions.* For purposes of this section:

* * *

(4) *Fund* means a management investment company registered under the Act (15 U.S.C. 80a) or a business development company and incorporated or organized under the laws of the United States or of a state.

* * * * *

■ 7. Amend § 270.17f–6 by revising paragraph (b)(3).

The revisions read as follows:

§ 270.17f–6 Custody of investment company assets with Futures Commission Merchants and Commodity Clearing Organizations.

* * * * *

(b) For purposes of this section:

* * *

(3) *Fund* means an investment company registered under the Act (15 U.S.C. 80a–1 *et seq.*) or a business development company.

■ 8. Amend § 270.17f–7 by revising paragraph (b).

The revisions read as follows:

§ 270.17f–7 Custody of investment company assets with a foreign securities depository.

* * * * *

(b) *Definitions.* The terms *Foreign Assets, Fund, Qualified Foreign Bank, Registered Canadian Fund, and U.S. Bank* have the same meanings as in § 270.17f–5. In addition:

(1) *Eligible Securities Depository* means a system for the central handling of securities where all securities of any particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of securities that:

(i) Acts as or operates a system for the central handling of securities or equivalent book-entries in the country where it is incorporated, or a transnational system for the central handling of securities or equivalent book-entries;

(ii) Is regulated by a foreign financial regulatory authority as defined under section 2(a)(50) of the Act (15 U.S.C. 80a–2(a)(50));

(iii) Holds assets for the custodian that participates in the system on behalf of the Fund under safekeeping conditions no less favorable than the conditions that apply to other participants;

(iv) Maintains records that identify the assets of each participant and segregate the system's own assets from the assets of participants;

(v) Provides periodic reports to its participants with respect to its safekeeping of assets, including notices of transfers to or from any participant's account; and

(vi) Is subject to periodic examination by regulatory authorities or independent accountants.

■ 9. Add § 270.17f–8 to read as follows:

§ 270.17f–8 Custody of Crypto Assets by State Trust Companies.

A fund may place and maintain the fund's crypto assets and related cash and/or cash equivalents with a state trust company, provided that it satisfies the conditions of paragraph (a) of this section. A fund may rely on section 17(f) of the Act (15 U.S.C. 80a–17(f)), in lieu of this section, to place and maintain crypto assets and related cash and cash equivalents with a state trust company that is a bank as defined in section 2(a)(5) of the Act (15 U.S.C. 80a–2(a)(5)).

(a) Prior to engaging the state trust company and on an annual basis thereafter, the fund must:

(1) Determine in writing that it has a reasonable basis, after due inquiry, for believing that the state trust company:

(i) Is authorized by the relevant state banking authority to provide custody services for crypto assets and related cash and/or cash equivalents; and

(ii) Maintains and implements written policies and procedures reasonably designed to safeguard crypto assets and related cash and/or cash equivalents from the risk of theft, loss, misuse and misappropriation, with such policies and procedures addressing, at a minimum, private key management and cybersecurity; and

(2) Receive and review the state trust company's most recent annual financial statements and confirm that such financial statements are prepared in accordance with U.S. GAAP and are subject to an audit (as defined in rule 1–02(d) of Regulation S–X (17 CFR 210.1–02(d))) that is performed by an independent public accountant; and

(3) Receive and review the state trust company's most recent written internal control report prepared by an independent public accountant during the current or prior calendar year and confirm that such internal control report contains an opinion of such independent public accountant as to whether controls were suitably designed and implemented and operating effectively throughout the period to achieve control objectives relating to custodial services, including the safeguarding of client crypto assets and related cash and/or cash equivalents.

(b) The fund enters into a custodial services agreement with the state trust company, providing that all crypto assets (and related cash and/or cash equivalents) held in custody for the fund will be held in accounts that are segregated from the state trust company's proprietary assets.

(c) *Definitions.* For purposes of this section:

Crypto Asset has the same meaning as in 17 CFR 275.223–1(d)(3).

Fund means a management investment company registered under the Act (15 U.S.C. 80a) or a business development company.

Independent public accountant has the same meaning as in 17 CFR 275.223–1(d)(8).

State trust company means a legal entity organized under state law that is supervised and examined by a state authority having supervision over banks and permitted to exercise fiduciary powers under applicable state law.

U.S. Generally Accepted Accounting Principles (U.S. GAAP) has the same meaning as in 17 CFR 275.223–1(d)(19).

■ 10. Add § 270.17f–9 to read as follows:

§ 270.17f–9 Custody of Crypto Assets by Registered Investment Companies and Business Development Companies.

(a) *Safekeeping Required.*

(1) A fund may place and maintain a crypto asset of the fund with an investment adviser to the fund that complies with 17 CFR 275.223–1(b)(7) with respect to the crypto asset, if the fund satisfies the provisions of paragraph (b) of this section with respect to the arrangement. A crypto asset placed and maintained with an investment adviser under this section will be deemed to be in the custody of the fund and subject to this section in lieu of 17 CFR 270.17f–2.

(b) *Investment Adviser Custody Conditions.*

(1) Board oversight of custody arrangement.

(i) Quarterly review of qualified custodian determination. Prior to the investment adviser maintaining the crypto asset and quarterly thereafter, the fund's board of directors, including a majority of directors who are not interested persons of the fund, reviews the written report documenting the basis for the investment adviser's determination for believing that no qualified custodian will maintain the crypto asset pursuant to 17 CFR 275.223–1(b)(7)(i) with respect to the fund's crypto asset; and

(ii) Annual review. Prior to the investment adviser maintaining the crypto asset and annually thereafter, the fund's board of directors, including a majority of directors who are not interested persons of the fund, determines that the crypto asset will be subject to reasonable care, if maintained with the investment adviser, after considering the factors relevant to the safekeeping of the crypto asset. To facilitate the board's assessment, the investment adviser must furnish, and the fund's board of directors must evaluate, such information as may reasonably be necessary for the board to evaluate the fund's custody arrangement, including at a minimum:

(A) A written report documenting the basis for the investment adviser's determination under 17 CFR 275.223–1(b)(7)(ii) that it has expertise regarding the safeguarding of the crypto asset and the systems, including the appropriate technology, software, hardware, and other associated systems and processes, necessary to safeguard the crypto asset against loss, theft, misuse, and misappropriation;

(B) The most recent written annual review of the adviser's safeguarding systems and cybersecurity controls pursuant to 17 CFR 275.223–1(b)(7)(v) if a written annual review of the adviser's safeguarding systems is available at the time of the board's determination; and

(C) The most recent written internal control report as required by 17 CFR 275.223–1(b)(7)(iv), if a written internal control report is available at the time of the board's determination; and

(D) If the most recent written annual review of the adviser's safeguarding systems and cybersecurity controls or the adviser's most recent written internal control report are not available at the time required in paragraphs (b)(1)(ii)(B) or (b)(1)(ii)(C) of this section, such information shall be furnished by the adviser to the board for its evaluation by the next regularly scheduled board meeting after the information becomes available.

(c) *Distributed crypto assets.* The receipt of a distributed crypto asset will be deemed to not be in violation of section 17(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–17(f)) and the rules thereunder, provided that, as soon as reasonably practicable, the fund places and maintains the distributed crypto asset with (A) an investment adviser to the fund in compliance with 17 CFR 270.17f–9(b); or (B) a custodian permitted to hold the distributed crypto asset in compliance with section 17(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–17(f)) or the rules thereunder.

(d) *Definitions.* For purposes of this section:

Crypto asset has the same meaning as in 17 CFR 275.223–1(d)(3).

Distributed crypto asset has the same meaning as in 17 CFR 275.223–1(d)(7).

Fund means a management investment company registered under the Act (15 U.S.C. 80a) or a business development company.

■ 11. Amend § 270.31a–1 to read as follows:

§ 270.31a–1 Records to be maintained by investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with investment companies.

(a) Every investment company, and every underwriter, broker, dealer, or investment adviser which is a majority-owned subsidiary of such a company, shall maintain and keep current the accounts, books, and other documents relating to its business which constitute the record forming the basis for financial statements required to be filed pursuant to section 30 of the Investment Company Act of 1940 and of the auditor's certificates relating thereto. In the case of an investment company that is a business development company, the financial statements required to be filed are pursuant to section 13 of the Securities Exchange Act of 1934.

(b) Every investment company shall maintain and keep current the following books, accounts, and other documents:

(1) Journals (or other records of original entry) containing an itemized daily record in detail of all purchases and sales of securities (including sales and redemptions of its own securities), all receipts and deliveries of securities (including certificate numbers if such detail is not recorded by custodian or transfer agent), all receipts and disbursements of cash and all other debits and credits. Such records shall show for each such transaction the name and quantity of securities, the unit and aggregate purchase or sale price, commission paid, the market on which effected, the trade date, the settlement date, and the name of the person through or from whom purchased or received or to whom sold or delivered. In the case of a money market fund, also identify the provider of any Demand Feature or Guarantee (as defined in § 270.2a–7(a)(9) or § 270.2a–7(a)(16) respectively) and give a brief description of the nature of the Demand Feature or Guarantee (*e.g.,* unconditional demand feature, conditional demand feature, letter of credit, or bond insurance) and, in a subsidiary portfolio investment record, provide the complete legal name and accounting and other information (including sufficient information to calculate coupons, accruals, maturities, puts, and calls) necessary to identify, value, and account for each investment.

(2) General and auxiliary ledgers (or other records) reflecting all assets, liability, reserve, capital, income and expense accounts, including:

(i) Separate ledger accounts (or other records) reflecting the following:

(*a*) Securities in transfer;

(*b*) Securities in physical possession;

(*c*) Securities borrowed and securities loaned;

(*d*) Monies borrowed and monies loaned (together with a record of the collateral therefor and substitutions in such collateral);

(*e*) Dividends and interest received;

(*f*) Dividends receivable and interest accrued.

Instruction.

(a) and (b) of this subdivision shall be stated in terms of securities quantities only; (c) and (d) of this subdivision shall be stated in dollar amounts and securities quantities as appropriate; (e) and (f) of this subdivision shall be stated in dollar amounts only.

(ii) Separate ledger accounts (or other records) for each portfolio security, showing (as of trade dates)

(a) the quantity and unit and aggregate price for each purchase, sale, receipt, and delivery of securities and commodities for such accounts, and

(b) all other debits and credits for such accounts. Securities positions and money balances in such ledger accounts (or other records) shall be brought forward periodically but not less frequently than at the end of fiscal quarters. Any portfolio security, the salability of which is conditioned, shall be so noted. A memorandum record shall be available setting forth, with respect to each portfolio security account, the amount and declaration ex-dividend, and payment dates of each dividend declared thereon.

(iii) Separate ledger accounts (or other records) for each broker-dealer bank or other person with or through which transactions in portfolio securities are effected, showing each purchase or sale of securities with or through such persons, including details as to the date of the purchase or sale, the quantity and unit and aggregate price of such securities, and the commissions or other compensation paid to such persons. Purchases or sales effected during the same day at the same price may be aggregated.

(iv) Separate ledger accounts (or other records), which may be maintained by a transfer agent or registrar, showing for each shareholder of record of the investment company the number of shares of capital stock of the company held. In respect of share accumulation accounts (arising from periodic investment plans, dividend reinvestment plans, deposit of issued shares by the owner thereof, etc.), details shall be available as to the dates and number of shares of each accumulation, and except with respect to already issued shares deposited by the owner thereof, prices of each such accumulation.

(3) A securities record or ledger reflecting separately for each portfolio security as of trade date all ''long'' and ''short'' positions carried by the investment company for its own account and showing the location of all securities long and the off-setting position to all securities short. The record called for by this paragraph shall not be required in circumstances under which all portfolio securities are maintained by a bank or banks or a member or members of a national securities exchange as custodian under a custody agreement or as agent for such custodian.

(4) Corporate charters, certificates of incorporation or trust agreements, and by-laws, and minute books of stockholders' and directors' or trustees' meetings; and minute books of directors' or trustees' committee and advisory board or advisory committee meetings.

(5) A record of each brokerage order given by or in behalf of the investment company for, or in connection with, the purchase or sale of securities, whether executed or unexecuted. Such record shall include the name of the broker, the terms and conditions of the order and of any modification or cancellation thereof, the time of entry or cancellation, the price at which executed, and the time of receipt of report of execution. The record shall indicate the name of the person who placed the order in behalf of the investment company.

(6) A record of all other portfolio purchases or sales showing details comparable to those prescribed in paragraph (b)(5) of this section.

(7) A record of all puts, calls, spreads, straddles, and other options in which the investment company has any direct or indirect interest or which the investment company has granted or guaranteed; and a record of any contractual commitments to purchase, sell, receive or deliver securities or other property (but not including open orders placed with broker-dealers for the purchase or sale of securities, which may be cancelled by the company on notices without penalty or cost of any kind); containing, at least, an identification of the security, the number of units involved, the option

price, the date of maturity, the date of issuance, and the person to whom issued.

(8) A record of the proof of money balances in all ledger accounts (except shareholder accounts), in the form of trial balances. Such trial balances shall be prepared currently at least once a month.

(9) A record for each fiscal quarter, which shall be completed within ten days after the end of such quarter, showing specifically the basis or bases upon which the allocation of orders for the purchase and sale of portfolio securities to named brokers or dealers and the division of brokerage commissions or other compensation on such purchase and sale orders among named persons were made during such quarter. The record shall indicate the consideration given to

(i) sales of shares of the investment company by brokers or dealers,

(ii) the supplying of services or benefits by brokers or dealers to the investment company, its investment adviser or principal underwriter or any persons affiliated therewith, and

(iii) any other considerations other than the technical qualifications of the brokers and dealers as such. The record shall show the nature of the services or benefits made available, and shall describe in detail the application of any general or specific formula or other determinant used in arriving at such allocation of purchase and sale orders and such division of brokerage commissions or other compensation. The record shall also include the identities of the persons responsible for the determination of such allocation and such division of brokerage commissions or other compensation.

(10) A record in the form of an appropriate memorandum identifying the person or persons, committees, or groups authorizing the purchase or sale of portfolio securities. Where an authorization is made by a committee or group, a record shall be kept of the names of its members who participated in the authorization. There shall be retained as part of the record required by this paragraph any memorandum, recommendation, or instruction supporting or authorizing the purchase or sale of portfolio securities. The requirements of this paragraph are applicable to the extent they are not met by compliance with the requirements of paragraph (b)(4) of this section.

(11) Files of all advisory material received from the investment adviser, any advisory board or advisory committee, or any other persons from whom the investment company accepts investment advice, other than material which is furnished solely through uniform publications distributed generally.

(12) The term ''other records'' as used in the expressions ''journals (or other records of original entry)'' and ''ledger accounts (or other records)'' shall be construed to include, where appropriate, copies of voucher checks, confirmations, or similar documents which reflect the information required by the applicable rule or rules in appropriate sequence and in permanent form, including similar records developed by the use of automatic data processing systems.

(13)

(i) The written policies and procedures required to be adopted and implemented pursuant to § 248.30(a)(1);

(ii) The written documentation of any detected unauthorized access to or use of customer information, as well as any response to, and recovery from such unauthorized access to or use of customer information required by § 248.30(a)(3);

(iii) The written documentation of any investigation and determination made regarding whether notification is required pursuant to § 248.30(a)(4), including the basis for any determination made, any written documentation from the United States Attorney General related to a delay in notice, as well as a copy of any notice transmitted following such determination;

(iv) The written policies and procedures required to be adopted and implemented pursuant to § 248.30(a)(5)(i);

(v) The written documentation of any contract or agreement entered into pursuant to § 248.30(a)(5); and

(vi) The written policies and procedures required to be adopted and implemented pursuant to § 248.30(b)(2).

(14) The records required to be maintained and preserved under this section related to a crypto asset (as defined in § 275.223–1(d)(3)) may be maintained and preserved by the investment company on a crypto network (as defined in § 275.223–1(d)(5)), provided that such records can be provided promptly upon request by the Commission (including its examiners and others representatives) in a human-readable and reasonably usable electronic format during the period that such book or record is required to be maintained and preserved under 17 CFR 270.31a–2.

(c) Every underwriter, broker, or dealer which is a majority-owned subsidiary of an investment company shall maintain in the form prescribed therein such accounts, books and other documents as are required to be maintained by brokers and dealers by rule adopted under section 17 of the Securities Exchange Act of 1934.

(d) Every depositor of any investment company, and every principal underwriter for any investment company other than a closed-end investment company, shall maintain such accounts, books and other documents as are required to be maintained by brokers and dealers by rule adopted under section 17 of the Securities Exchange Act of 1934, to the extent such records are necessary or appropriate to record such person's transactions with such investment company.

(e) Every investment advisor which is a majority-owned subsidiary of an investment company shall maintain in the form prescribed therein such accounts, books and other documents as are required to be maintained by registered investment advisers by rule adopted under section 204 of the Investment Advisers Act of 1940.

(f) Every investment adviser not a majority-owned subsidiary of an investment company shall maintain such accounts, books and other documents as are required to be maintained by registered investment advisers by rule adopted under section 204 of the Investment Advisers Act of 1940, to the extent such records are necessary or appropriate to record such person's transactions with such investment company.

(g) *Definitions.* For purposes of this section the term:

Investment company means a registered investment company or a business development company.

■ 12. Amend § 270.31a–2 to read as follows:

§ 270.31a–2 Records to be preserved by investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with investment companies.

(a) Every investment company shall:

(1) Preserve permanently, the first two years in an easily accessible place, all books and records required to be made pursuant to paragraphs (1) through (4) of § 270.31a–1(b);

(2) Preserve for a period not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, all books and records required to be made pursuant to § 270.31a–1(b)(5) through (12) and all vouchers, memoranda, correspondence, checkbooks, bank statements, cancelled checks, cash reconciliation, cancelled stock certificates, and all schedules

evidencing and supporting each computation of net asset value of the investment company shares, including schedules evidencing and supporting each computation of an adjustment to net asset value of the investment company shares based on swing pricing policies and procedures established and implemented pursuant to § 270.22c–1(a)(3), all schedules evidencing and supporting each computation of a liquidity fee by a money market fund pursuant to § 270.2a–7(c)(2), and other documents required to be maintained by § 270.31a–1(a) and not enumerated in § 270.31a–1(b).

(3) Preserve for a period not less than 6 years from the end of the fiscal year last used, the first 2 years in an easily accessible place, any advertisement, pamphlet, circular, form letter or other sales literature addressed to or intended for distribution to prospective investors;

(4) Preserve for a period not less than six years, the first two years in an easily accessible place, any record of the initial determination that a director is not an interested person of the investment company, and each subsequent determination that the director is not an interested person of the investment company. These records must include any questionnaire and any other document used to determine that a director is not an interested person of the company;

(5) Preserve for a period not less than six years, the first two years in an easily accessible place, any materials used by the disinterested directors of an investment company to determine that a person who is acting as legal counsel to those directors is an independent legal counsel;

(6) Preserve for a period not less than six years, the first two years in an easily accessible place, any documents or other written information considered by the directors of the investment company pursuant to section 15(c) of the Act (15 U.S.C. 80a–15(c)) in approving the terms or renewal of a contract or agreement between the company and an investment adviser; and

(7) Preserve for a period not less than six years, the first two years in an easily accessible place, any shareholder report required by § 270.30e–1 (including any version posted on a website or otherwise provided electronically) that is not filed with the Commission in the exact form in which it was used; and

(8) Preserve for a period not less than six years, the first two years in an easily accessible place, the records required by § 270.31a–1(b)(13) apart from any policies and procedures thereunder and, in the case of policies and procedures required under § 270.31a–1(b)(13), preserve a copy of such policies and procedures in effect, or that at any time within the past six years were in effect, in an easily accessible place.

(9) For a fund as defined in defined in § 270.17f–8, and with respect to each crypto asset of the fund and related cash and/or cash equivalents held in custody under § 270.17f–8, preserve for a period not less than six years, the first two years in an easily accessible place:

(i) A memorandum describing the basis upon which the fund has made the determinations as required by § 270.17f–8(a).

(ii) Records of the audited financial statements obtained or received as required by § 270.17f–8(a)(2).

(iii) A copy of any internal control report obtained or received as required by § 270.17f–8(a)(3).

(10) For a fund as defined in § 270.17f–9, and with respect to each crypto asset of the fund held in custody under § 270.17f–9, preserve for a period not less than six years, the first two years in an easily accessible place, any report or other information that is provided to the fund's board of directors as required under § 270.17f–9(b)(1).

(b) Every underwriter, broker, or dealer which is a majority-owned subsidiary of an investment company shall preserve for the periods prescribed therein such accounts, books and other documents as are required to be preserved by brokers and dealers by rule adopted under section 17 of the Securities Exchange Act of 1934.

(c) Every depositor of any investment company, and every principal underwriter for any investment company other than a closed-end company, shall preserve for a period of not less than six years such accounts, books and other documents as are required to be maintained by brokers and dealers by rule adopted under section 17 of the Securities Exchange Act of 1934, to the extent such records are necessary or appropriate to record such person's transactions with such investment company.

(d) Every investment adviser which is a majority-owned subsidiary of an investment company shall preserve for the periods prescribed therein such accounts, books and other documents as are required to be preserved by investment advisers by rule adopted under section 204 of the Investment Advisers Act of 1940.

(e) Every investment adviser not a majority-owned subsidiary of an investment company shall preserve for a period of not less than six years such accounts, books and other documents as are required to be maintained by registered investment advisers by rule adopted under section 204 of the Investment Advisers Act of 1940, to the extent such records are necessary or appropriate to record such person's transactions with such investment company.

(f) *Micrographic and electronic storage permitted—*

(1) *General.* The records required to be maintained and preserved under this part may be maintained and preserved for the required time by, or on behalf of, an investment company on:

(i) Micrographic media, including microfilm, microfiche, or any similar medium; or

(ii) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) *General requirements.* The investment company, or person that maintains and preserves records on its behalf, must:

(i) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(ii) Provide promptly any of the following that the Commission (by its examiners or other representatives) or the directors of the company may request:

(A) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(B) A legible, true, and complete printout of the record; and

(C) Means to access, view, and print the records; and

(iii) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(3) *Special requirements for electronic storage media.* In the case of records on electronic storage media, the investment company, or person that maintains and preserves records on its behalf, must establish and maintain procedures:

(i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(ii) To limit access to the records to properly authorized personnel, the directors of the investment company, and the Commission (including its examiners and other representatives); and

(iii) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(4) Notwithstanding the provisions of paragraphs (a) through (e) of this section, any record, book or other document may be destroyed in accordance with a plan previously

submitted to and approved by the Commission. A plan shall be deemed to have been approved by the Commission if notice to the contrary has not been received within 90 days after submission of the plan to the Commission.

(g) *Definitions.* For purposes of this section the term:

Investment company means a registered investment company or a business development company.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 13. The general authority citation for part 274 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 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.

■ 14. Amend Form N–CEN (referenced in § 274.101) by:

■ a. Amending General Instruction E;

■ b. Adding Items B.24, C.12.a.vii.9, C.12.a.vii.10, D.14.a.vii.9, and D.14.a.vii.10;

■ c. Amending Items C.12.a.vii.2 and Item D.14.a.vii.2;

■ d. Redesignating Item C.12.a.vii.9 as Item C.12.a.vii.11;

■ e. Redesignating Item D.14.a.vii.9 as Item D.14.a.vii.11.

Note: Form N–CEN is attached as Appendix A to this document. Form N–CEN will not appear in the Code of Federal Regulations.

■ 15. Remove and reserve § 274.219.

§ 274.219 [Removed and Reserved]

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 16. The general authority citation for part 275 is revised, to read in part and add a sectional authority for § 275.223–1, as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(11)(H), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

§ 275.204–2 is also issued under 15 U.S.C. 80b–6.

* * * * *

§ 275.223–1 is also issued under 15 U.S.C. 80–18b.

■ 17. Amend § 275.204–2(a)(17)(iii) to read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

(a) * * *

(17) * * *

(iii) A copy of any internal control report obtained or received pursuant to § 275.223–1(a)(6).

* * * * *

■ 18. Add §§ 275.204–2(a)(26) and (a)(27) to read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

* * * * *

(a) * * *

(26)

(i) A memorandum describing the basis upon which you have made the determinations as required by § 275.223–1(b)(7)(i).

(ii) A memorandum describing the basis upon which you have made the determination as to its safeguarding expertise required under § 275.223–1(b)(7)(ii).

(iii) Records identifying persons that have been designated pursuant to § 275.223–1(b)(7)(ii)(A).

(iv) A copy of the written assessment of cybersecurity risks as required by § 275.223–1(b)(7)(iii)(A).

(v) A copy of any internal control report obtained as required by § 275.223–1(b)(7)(iv).

(vi) Records documenting the investment adviser's annual review as required by § 275.223–1(b)(7)(v).

(vii) Account statements provided to clients as required by § 275.223–1(b)(7)(vi), and records of any transmissions and notices sent to clients pursuant to § 275.223–1(b)(7)(vi).

(viii) A copy of any financial asset election made pursuant to § 275.223–1(b)(7)(viii).

(ix) For each client for whom you maintain client crypto assets under § 275.223–1(b)(7), records that include such information as may be reasonably necessary to reconstruct all financial positions and transactions related to such client crypto assets, including, at minimum, client name, client account number, crypto asset address, transaction amount, transaction destination, transaction authorization, and relevant metadata.

(x) Any records required to be made and kept under paragraph (b) of this section related to client crypto assets that you maintain under § 275.223–1(b)(7), provided that references to securities in paragraph (b) shall be understood to also include any ''crypto asset'' of a ''registered investment company'' or ''business development company,'' as those terms are defined in § 275.223–1, maintained by you under § 275.223–1(b)(7).

(27)

(i) A memorandum describing the basis upon which the investment adviser made the determinations as required by § 275.223–1(d)(13)(v).

(ii) Records of the audited financial statements obtained or received as required by § 275.223–1(d)(13)(v)(B).

(iii) A copy of any internal control report obtained or received as required by § 275.223–1(d)(13)(v)(C).

* * * * *

■ 19. Amend § 275.204–2(b)(5) to read as follows:

(b) * * *

(5) A memorandum describing the basis upon which you have determined that the presumption that any related person is not operationally independent under § 275.223–1(d)(12) has been overcome.

* * * * *

■ 20. Add § 275.204–2(b)(6) to read as follows:

* * * * *

(b) * * *

(6) Any standing letter of authorization (as defined in § 275.223–1(d)(17) of this chapter) and any related records pursuant to § 275.223–1(b)(8), that is in effect, or at any time within the past five years was, in effect.

* * * * *

■ 21. Revise § 275.204–2(e)(1) as follows:

* * * * *

(e) (1) All books and records required to be made under the provisions of paragraphs (a) to (c)(1)(i), inclusive, and (c)(2) of this section (except for books and records required to be made under the provisions of paragraphs (a)(11), (a)(12)(i), (a)(12)(iii), (a)(13)(ii), (a)(13)(iii), (a)(16), (a)(17)(i), and (b)(6) of this section), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.

* * * * *

■ 21. Revise § 275.204–2(g) as follows:

* * * * *

(g) *Micrographic, electronic storage, and crypto network permitted*—(1) General. The records required to be maintained and preserved pursuant to this part may be maintained and preserved for the required time by an investment adviser on:

(i) Micrographic media, including microfilm, microfiche, or any similar medium;

(ii) Electronic storage media, including any digital storage medium or system that meets the terms of this section; or

(iii) A crypto network (as defined in § 275.223–1(d)(5) of this chapter) related to a crypto asset (as defined in

§ 275.223–1(d)(3) of this chapter) that meets the terms of this section.

(2) *General requirements.* Except for records maintained on a crypto network pursuant to paragraph (g)(4) of this section, the investment adviser must:

(i) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(ii) Provide promptly any of the following that the Commission (by its examiners or other representatives) may request:

(A) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(B) A legible, true, and complete printout of the record; and

(C) Means to access, view, and print the records; and

(iii) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(3) *Special requirements for electronic storage media.* In the case of records on electronic storage media under paragraph (g)(1)(ii) of this section, the investment adviser must establish and maintain procedures:

(i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(ii) To limit access to the records to properly authorized personnel and the Commission (including its examiners and other representatives); and

(iii) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(4) *Special requirements for records on a crypto network.* In the case of records on a crypto network under paragraph (g)(1)(iii) of this section, the investment adviser must provide, promptly upon request by the Commission (including its examiners and others representatives), such records in a human-readable and reasonably usable electronic format during the period that such book or record is required to be maintained and preserved under this section.

■ 22. Revise § 275.204–2(h)(2) as follows:

* * * * *

(h) * * *

(2) A record made and kept pursuant to any provision of paragraph (a) or (b) of this section, which contains all the information required under any other provision of paragraph (a) or (b) of this section, need not be maintained in duplicate in order to meet the requirements of the other provision of paragraph (a) or (b) of this section.

* * * * *

■ 23. Remove and reserve § 275.206(4)–2.

§ 275.206(4)–2 [Reserved]

■ 24. Add § 275.223–1 to read as follows:

* * * * *

§ 275.223–1 Safeguarding client assets.

(a) *Safekeeping required.* If you are an investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3), you must take the following steps to safeguard client funds and securities of which you have custody, provided that, where this section (17 CFR 275.223–1) applies to the account of a registered investment company or a business development company, references to funds and securities shall be understood to refer to the securities and similar investments held for such account:

(1) *Qualified custodian.* A qualified custodian must maintain client funds and securities:

(i) In a separate account for each client under that client's name; or

(ii) In accounts that contain only your clients' funds and securities, under your name as agent or trustee for the clients.

(2) *Notice to clients.* If you open an account with a qualified custodian on your client's behalf, either under the client's name or under your name as agent, you must promptly notify the client in writing of the qualified custodian's name, address, account number, and the manner in which the funds or securities are maintained, when the account is opened and following any changes to this information. If you send account statements to a client to which you are required to provide this notice, include in the notification provided to that client and in any subsequent account statement you send that client a statement urging the client to compare the account statements from the custodian with those from the adviser.

(3) *Account statements to clients.* You must have a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each of your clients for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period.

(4) *Independent verification.* The client funds and securities of which you have custody must be verified by actual examination at least once during each calendar year, except as provided below, by an independent public accountant, pursuant to a written agreement between you and the accountant, at a time that is chosen by the accountant without prior notice or announcement to you and that is irregular from year to year. The written agreement must provide for the first examination to occur within six months of becoming subject to this paragraph, except that, if you maintain client funds or securities pursuant to this section as a qualified custodian, the agreement must provide for the first examination to occur no later than six months after obtaining the internal control report. The written agreement must require the accountant to:

(i) File a certificate on Form ADV–E (17 CFR 279.8) with the Commission within 120 days of the time chosen by the accountant in paragraph (a)(4) of this section, stating that it has examined the funds and securities and describing the nature and extent of the examination;

(ii) Upon finding any material discrepancies during the course of the examination, notify the Commission within one business day of the finding, by electronic means directed to the attention of the Division of Examinations; and

(iii) Upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, file within four business days Form ADV–E accompanied by a statement that includes:

(A) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the accountant; and

(B) An explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination.

(5) *Special rule for limited partnerships and limited liability companies.* If you or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), the account statements required under paragraph (a)(3) of this section must be sent to each limited partner (or member or other beneficial owner).

(6) *Investment advisers acting as qualified custodians.* If you maintain, or if you have custody because a related person maintains, client funds or securities pursuant to this section as a

qualified custodian in connection with advisory services you provide to clients, you must obtain, or receive from your related person, within six months of becoming subject to this paragraph and thereafter no less frequently than once each calendar year a written internal control report prepared by an independent public accountant:

(i) The internal control report must include an opinion of an independent public accountant as to whether controls were suitably designed and implemented and operating effectively throughout the period to achieve control objectives relating to custodial services, including the safeguarding of funds and securities held by either you or a related person on behalf of your advisory clients; and

(ii) The independent public accountant must verify that the funds and securities are reconciled to a custodian other than you or your related person.

(7) *Independent representatives.* A client may designate an independent representative to receive, on its behalf, notices and account statements as required under paragraphs (a)(2) and (a)(3), any financial statements pursuant to paragraph (b)(4), and any account statements, transmissions and notices sent pursuant to paragraph (b)(7)(vi) of this section.

(b) *Exceptions.*

(1) *Shares of mutual funds.* With respect to shares of an open-end company as defined in section 5(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–5(a)(1)) (''mutual fund''), you may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with paragraph (a) of this section.

(2) *Certain privately offered securities.* (i) You are not required to comply with paragraph (a)(1) of this section with respect to securities that are:

(A) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(B) Uncertificated, and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client; and

(C) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(ii) Notwithstanding paragraph (b)(2)(i) of this section, the provisions of this paragraph (b)(2) are available with respect to securities held for the account of a limited partnership (or a limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, and the audited financial statements are distributed, as described in paragraph (b)(4) of this section.

(3) *Fee deduction.* Notwithstanding paragraph (a)(4) of this section, you are not required to obtain an independent verification of client funds and securities maintained by a qualified custodian if:

(i) you have custody of the funds and securities solely as a consequence of your authority to make withdrawals from client accounts to pay your advisory fee; and

(ii) if the qualified custodian is a related person, you can rely on paragraph (b)(6) of this section.

(4) *Pooled investment vehicles subject to annual audit.* (i) You are not required to comply with paragraphs (a)(2) and (a)(3) of this section and you shall be deemed to have complied with paragraph (a)(4) of this section with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that undergoes a financial statement audit at least annually and upon liquidation as follows:

(A) The audit meets the definition in rule 1–02(d) of Regulation S–X (17 CFR 210.1–02(d)) and is performed by an independent public accountant;

(B) Audited financial statements are prepared in accordance with U.S. Generally Accepted Accounting Principles (''U.S. GAAP'') or, in the case of financial statements of pooled investment vehicles organized under non-U.S. law or that have a general partner or other manager with a principal place of business outside the United States, such financial statements may be prepared according to accounting principles other than U.S. GAAP provided they contain information substantially similar to the information contained in financial statements prepared in accordance with U.S. GAAP, including a reconciliation to U.S. GAAP for material differences; and

(C) Within 120 days (or 180 days in the case of a fund of funds or 260 days in the case of a fund of funds of funds) of a pooled investment vehicle's fiscal year end, and promptly following its liquidation, the pooled investment vehicle's audited financial statements are distributed to the investors in the pooled investment vehicle (or their independent representatives), including any reconciliations to U.S. GAAP (which are required to be distributed to the U.S. investors in the pooled investment vehicle (or their independent representatives)).

(ii) Notwithstanding paragraph (b)(4)(i)(C), for a pooled investment vehicle that is formed within the 90 day period prior to the pooled investment vehicle's fiscal year end, the pooled investment vehicle's audited financial statements shall not be required to be distributed to investors in the pooled investment vehicle (or their independent representatives) within 120 days of the pooled investment vehicle's fiscal year end for the first fiscal year of the pooled investment vehicle, provided that (A) financial statements (which may be unaudited) are distributed to investors in the pooled investment vehicle (or their independent representatives) within 90 days of the pooled investment vehicle's fiscal year end and (B) the audited financial statements related to the following fiscal year are distributed pursuant to paragraph (b)(4)(i) and cover both that fiscal year and the unaudited period of the prior fiscal year.

(5) *Registered investment companies and business development companies.* Except with respect to crypto assets of which you have self-custody, you are not required to comply with this section (17 CFR 275.223–1) with respect to the account of a registered investment company or the account of a business development company. If you have self-custody of crypto assets that are securities or similar investments for the account of a registered investment company or a business development company, you are only required to satisfy the requirements of paragraph (b)(7) of this section with respect to such crypto assets.

(6) *Certain Related Persons.* Notwithstanding paragraph (a)(4) of this section, you are not required to obtain an independent verification of client funds and securities if:

(i) you have custody under this rule solely because a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services you provide to clients; and

(ii) your related person is operationally independent of you.

(7) *Crypto Assets.* If you have self-custody of client crypto assets for which you provide investment advice, you are not required to comply with paragraphs (a)(1), (a)(2) and (a)(3) of this section with respect to such crypto assets, and you must self-custody such crypto assets in accordance with this paragraph (b)(7) as follows:

(i) *Qualified Custodian Determination.* Prior to taking self-custody of each crypto asset, and no less frequently than quarterly thereafter with respect to crypto assets in your self-custody, you must determine in writing

that you have a reasonable basis, after due inquiry, for believing that no qualified custodian will maintain the crypto asset. For purposes of any qualified custodian determination made under this paragraph with respect to the account of a registered investment company or a business development company, qualified custodian shall be understood to refer to a bank or other person authorized to hold assets for the registered investment company or business development company under section 17(f) of the Investment Company Act (15 U.S.C. 80a–17(f)) or the rules thereunder. If you determine that a qualified custodian has become available to maintain the client's crypto asset, you must place such crypto asset with the qualified custodian as soon as reasonably practicable.

(ii) *Safeguarding Expertise and Systems.* You must have expertise regarding the safeguarding of each crypto asset, and document in writing the basis for your determination that you have such safeguarding expertise, and adopt, implement, and maintain the systems, including the appropriate technology, software, hardware, and other associated systems and processes around their use, necessary to safeguard each crypto asset against loss, theft, misuse and misappropriation. Such systems at a minimum must:

(A) *Key management.* Manage and protect key materials against loss and unauthorized access, including by limiting access to key materials to only persons that are supervised persons designated by the adviser, provided that with respect to crypto assets held for an account of a registered investment company or a business development company, such supervised persons shall be designated by resolution of the board of directors of such registered investment company or business development company;

(B) *Joint Authorization.* Prevent unauthorized transfers of crypto assets including by requiring joint authorization of transfers of crypto assets by two or more persons designated pursuant to paragraph (b)(7)(ii)(A), at least one of which shall be a management person and, in the case of crypto assets held for an account of a registered investment company or a business development company, such management person shall be an officer of such registered investment company or business development company;

(C) *Segregation.* Maintain each client's crypto assets in one or more crypto asset addresses on the crypto network storing only such client's crypto assets.

(iii) *Cybersecurity.* You must mitigate any cybersecurity risks to the safeguarding of each crypto asset of which you have self-custody, including by implementing:

(A) periodic but no less than annual written assessments of cybersecurity risks to crypto assets in the adviser's self-custody and cybersecurity risks associated with the safeguarding systems implemented pursuant to paragraph (b)(7)(ii);

(B) measures reasonably designed to detect, mitigate and remediate any cybersecurity threats and vulnerabilities with respect to the safeguarding systems implemented pursuant to paragraph (b)(7)(ii); and

(C) measures reasonably designed to detect, respond to, and recover from a cybersecurity incident relating to your safeguarding systems implemented pursuant to paragraph (b)(7)(ii).

(iv) *Internal control report.* You must obtain within six months of taking self-custody of a client crypto asset and thereafter no less frequently than once each calendar year a written internal control report prepared by an independent public accountant:

(A) The internal control report must include an opinion of an independent public accountant as to whether controls were suitably designed and implemented and operating effectively throughout the period to achieve control objectives relating to custodial services, including the safeguarding of crypto assets held by you on behalf of your advisory clients; and

(B) the independent public accountant must verify that the crypto assets are reconciled to the crypto network;

(v) *Annual review.* Within a year of taking self-custody of each crypto asset and no less frequently than annually thereafter, you must review, and document in writing your review of, the following including the effectiveness of their implementation: (A) the safeguarding systems implemented pursuant to paragraph (b)(7)(ii), and (B) the cybersecurity controls implemented pursuant to paragraph (b)(7)(iii).

(vi) *Account statements or transmissions.* Account statements must be provided, at least quarterly, to each of your clients whose crypto assets you have self-custody of, identifying the crypto asset address on the crypto network that stores the client's crypto assets and the crypto network on which such crypto asset address operates, the amounts of crypto assets stored in the client's crypto asset address at the end of the period and setting forth all transactions from that crypto asset address during that period, and a statement urging the client to compare the account statements from the adviser with the crypto asset balances and transaction information indicated under the client's crypto asset address. You may satisfy the requirement to send an account statement under this paragraph by transmitting, or arranging for the transmission, of the information required under this paragraph (b)(7)(vi) in a human-readable and reasonably usable electronic format, at least quarterly in lieu of a consolidated account statement, provided that a notice is sent to the client identifying the crypto asset address that stores the client's crypto assets and the crypto network on which such crypto asset address operates. If you are, or a related person is, a general partner of a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), the account statements, transmissions and any notices required under this paragraph must be sent to each limited partner (or member or other beneficial owner).

(vii) *Pooled investment vehicles with crypto assets.* You are not required to comply with paragraph (b)(7)(vi) of this section with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that undergoes a financial statement audit at least annually and upon liquidation in accordance with paragraphs (b)(4)(i) through (b)(4)(ii) of this section, or with respect to the account of any registered investment company or business development company.

(viii) *Financial asset election.* You and the client must agree, in writing, to treat each crypto asset held in your self-custody for such client as a financial asset, and that the adviser holding the client's crypto asset in self-custody is a securities intermediary, pursuant to applicable State law that governs the written agreement between you and the client.

(8) *Standing letters of authorization.* Notwithstanding paragraph (a)(4) of this section, you are not required to obtain an independent verification of client assets if you have custody of client assets solely because of a standing letter of authorization.

(9) *Discretionary trading authority.* You are not required to comply with this section (17 CFR 275.223–1) with respect to funds and securities over which you have custody due to your authority to trade at your discretion provided that:

(i) you execute (and only have authority to execute) such trades only from and into designated client

accounts in the client's name or the transfer is recorded in the client's name by the issuer;

(ii) you have no authority (under the discretionary trading arrangement or otherwise) to transfer client funds and securities from the designated client account to an account in your own name, to an account you control, to an account controlled by your related person as defined in rule 223–1(d)(15), or to any account that is not the client's unless such transfer is directed by the client in connection with such trading, nor do you have the authority to have the transfer recorded by the issuer in your own name or that of a related person; and

(iii) you comply with this section for any other activities, rights, or authorities that otherwise cause you to have custody of such funds or securities separate from such discretionary trading authority and with the requirements of any corresponding exceptions under this section that you may exercise pursuant to such custody.

(10) *Inadvertent Custody.* You are not required to comply with this section (17 CFR 275.223–1) with respect to funds and securities over which you have custody solely to the extent such custody arises from custodial agreements under which:

(i) you did not recommend, request, or require that the client select the qualified custodian maintaining such funds and securities; and

(ii) either (A) you do not have a copy of the client's custodial agreement, nor actual knowledge or reason to know that any custodial agreement between the client and such qualified custodian confers custody upon you; or (B) if you know or have reason to know that a custodial agreement confers custody on you, you promptly notify the client and qualified custodian in writing of such unwanted authority and repudiate such authority to the client and qualified custodian and request in writing that such authority be removed from the custodial agreement or be superseded by a new agreement, consented to by both the client and the qualified custodian, that does not confer custody on you.

(11) *Distributed crypto assets.* The receipt of a distributed crypto asset will be deemed to not be in violation of this section, provided that, as soon as reasonably practicable, you either (A) come into compliance with the requirements of paragraph (b)(7) of this section with respect to such distributed crypto asset; or (B) place and maintain the distributed crypto asset with a qualified custodian.

(c) *Delivery to Related Person.* Sending an account statement under paragraphs (a)(5) and any account statement, transmissions and notices required under paragraph (b)(7)(vi) of this section or distributing audited financial statements under paragraph (b)(4) of this section (or distributing financial statements under paragraph (b)(4)(ii) of this section) shall not satisfy the requirements of this section if such account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are your related persons.

(d) *Definitions.* For the purposes of this section:

(1) *Business development company* means an entity that has elected to be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a–53) and has not withdrawn the election.

(2) *Control* means the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise. Control includes:

(i) Each of your firm's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control your firm;

(ii) A person is presumed to control a corporation if the person:

(A) Directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or

(B) Has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities;

(iii) A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership;

(iv) A person is presumed to control a limited liability company if the person:

(A) Directly or indirectly has the right to vote 25 percent or more of a class of the interests of the limited liability company;

(B) Has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the limited liability company; or

(C) Is an elected manager of the limited liability company; or

(v) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

(3) *Crypto asset* means any digital representation of value that is recorded on a cryptographically secured distributed ledger.

(4) *Crypto asset address* means the unique identifier on the crypto network that designates the destination for sending, receiving, and storing a crypto asset on the crypto network.

(5) *Crypto network* means a blockchain or similar distributed ledger technology network.

(6) *Custody* means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them. You have custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services you provide to clients. Custody includes:

(i) Possession of client funds or securities (including possession of client crypto assets via self-custody) (but not of checks drawn by clients and made payable to third parties) unless you receive them inadvertently and you return them to the sender promptly but in any case within three business days of receiving them;

(ii) Any arrangement (including a general power of attorney) under which you are authorized or permitted to withdraw client funds or securities maintained with a custodian upon your instruction to the custodian; and

(iii) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives you or your supervised person legal ownership of or access to client funds or securities.

(7) *Distributed crypto asset* means a crypto asset received as a distribution for no or nominal consideration in connection, or as a result of activity associated, with a client's crypto asset in your custody.

(8) *Independent public accountant* means a public accountant that meets the standards of independence described in rule 2–01(b) and (c) of Regulation S–X (17 CFR 210.2–01(b) and (c)).

(9) *Independent representative* means a person that:

(i) Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership (or members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle) and by law or contract is obliged to act in the best interest of the advisory client or the limited partners (or members, or other beneficial owners);

(ii) Does not control, is not controlled by, and is not under common control with you; and

(iii) Does not have, and has not had within the past two years, a material business relationship with you.

(10) *Key materials* means the cryptographic private keys or any part thereof that is necessary to access and effectuate transactions in the corresponding crypto asset.

(11) *Management persons* has the same meaning as set forth in Form ADV, Glossary of Terms.

(12) *Operationally independent:* for purposes of paragraph (b)(6) of this section, a related person is presumed not to be operationally independent unless each of the following conditions is met and no other circumstances can reasonably be expected to compromise the operational independence of the related person: (i) client assets in the custody of the related person are not subject to claims of the adviser's creditors; (ii) advisory personnel do not have custody or possession of, or direct or indirect access to client assets of which the related person has custody, or the power to control the disposition of such client assets to third parties for the benefit of the adviser or its related persons, or otherwise have the opportunity to misappropriate such client assets; (iii) advisory personnel and personnel of the related person who have access to advisory client assets are not under common supervision; and (iv) advisory personnel do not hold any position with the related person or share premises with the related person.

(13) *Qualified custodian* means:

(i) A bank as defined in section 202(a)(2) of the Advisers Act (15 U.S.C. 80b–2(a)(2)) or a savings association as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)) that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. 1811);

(ii) A broker-dealer registered under section 15(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(1)), holding the client assets in customer accounts;

(iii) A futures commission merchant registered under section 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a)), holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon;

(iv) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets;

(v) A state trust company, but only with respect to the clients' crypto assets and related cash and/or cash equivalents, provided that the following conditions are met. An adviser may rely on section 223–1(d)(13)(i), in lieu of this section, to place and maintain client crypto assets and related cash and/or cash equivalents with a state trust company that is a bank as defined in section 202(a)(2) of the Advisers Act (15 U.S.C. 80b–2(a)(2)) or a savings association as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)) that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. 1811). Prior to engaging a state trust company as a qualified custodian and on an annual basis thereafter, the adviser must:

(A) Determine in writing that it has a reasonable basis, after due inquiry, for believing that the state trust company:

1. Is authorized by the relevant state banking authority to provide custody services for crypto assets and related cash and cash equivalents; and

2. Maintains and implements written policies and procedures reasonably designed to safeguard crypto assets and related cash and/or cash equivalents from the risk of theft, loss, misuse, and misappropriation, with such policies and procedures addressing, at a minimum, private key management and cybersecurity; and

(B) Receive and review the state trust company's most recent annual financial statements and confirm that such financial statements are prepared in accordance with U.S. GAAP and are subject to an audit (as defined in rule 1–02(d) of Regulation S–X (17 CFR 210.1–02(d))) that is performed by an independent public accountant; and

(C) Receive and review the state trust company's most recent written internal control report prepared by an independent public accountant during the current or prior calendar year and confirm that such internal control report contains an opinion of such independent public accountant as to whether controls were suitably designed and implemented and operating effectively throughout the period to achieve control objectives relating to custodial services, including the safeguarding of client crypto assets and related cash and/or cash equivalents.

(14) *Registered investment company* means an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 to 80a–64).

(15) *Related person* means any person, directly or indirectly, controlling or controlled by you, and any person that is under common control with you.

(16) *Self-custody* means, with respect to crypto assets, possession of any portion of a client crypto asset's key materials, provided that you do not have self-custody of a crypto asset if you possess, or a related person possesses, key materials associated with the crypto asset solely in your or your related person's capacity as a qualified custodian maintaining the crypto asset under paragraph (a)(6) of this section.

(17) *Standing letter of authorization* means an arrangement among you, the client, and the client's qualified custodian in which you are authorized, in writing, to direct the qualified custodian to transfer funds and securities to a third-party recipient on a specified schedule or from time to time, provided:

(i) The client's qualified custodian is not you or your related person;

(ii) The client's authorization includes the client's signature, the third-party recipient's name, and either the third party recipient's address or account number at a custodian to which the transfer should be directed; and

(iii) You have no ability or authority to designate or change any information about the third-party recipient, including name, address, and account number.

(18) *State trust company* means a legal entity organized under state law that is supervised and examined by a state authority having supervision over banks and permitted to exercise fiduciary powers under applicable state law.

(19) *U.S. Generally Accepted Accounting Principles (U.S. GAAP)* means accounting principles promulgated, or recognized by the Commission as generally accepted, in accordance with section 19 of the Securities Act of 1933 (15 U.S.C. 77s).

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PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

■ 25. The authority citation for part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.,* Pub. L. 111–203, 124 Stat. 1376.

■ 26. Amend Form ADV (referenced in § 279.1) by:

■ a. In Part 1A, adding Item 5.K.(5);

■ b. In Part 1A, revising Items 7.A. and 9;

■ c. In Schedule D, revising sections 7.B(1) and 9.C;

■ d. In General Instructions for Part 1 of Form ADV, adding the defined terms ''crypto asset'' and ''self-custody'' and revising the definitions of ''custody'' and ''related person.''

■ e. In General Instructions for Part 2 of Form ADV, revising Instruction to Item 18.A.

Note: Form ADV is attached as Appendix B to this document. Form ADV will not appear in the Code of Federal Regulations.

■ 27. Amend Form ADV–E (referenced in § 279.1) by:

■ a. In the sub-heading to Form ADV–E (beginning ''Certificate of Accounting of Client Securities . . .''), revising the reference to ''rule 206(4)–2 [17 CFR 275.206(4)–2]'' to read ''rule 223–1 [17 CFR 275.223–1]''

■ b. In Instructions 2 and 3, revising references to ''rule 206(4)–2'' to read ''rule 223–1'';

■ c. In the paragraph with the heading ''SEC's Collection of Information,'' revising references to ''rule 206(4)–2(a)(4)(i)'' to read ''rule 223–1(a)(4)(i)''.

■ d. In the paragraph with the heading ''SEC's Collection of Information,'' revising reference to ''Adviser Act'' to read ''Advisers Act''.

Note: Form ADV–E is attached as Appendix C to this document. Form ADV–E will not appear in the Code of Federal Regulations.

By the Commission.

Dated: October 1, 2026.

Vanessa A. Countryman,

Secretary.

Note: The following appendices will not appear in the Code of Federal Regulations.

BILLING CODE 8011–01–P

Form N-CEN

* * * * *

General Instructions

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E. Definitions

Except as defined below or where the context clearly indicates the contrary, terms used in Form N-CEN have meanings as defined in the Act and the rules and regulations thereunder. Unless otherwise indicated, all references in the form or its instructions to statutory sections or to rules are sections of the Act and the rules and regulations thereunder.

In addition, the following definitions apply:

"Class" means a class of shares issued by a Fund that has more than one class that represents interest in the same portfolio of securities under rule 18f-3 under the Act (17 CFR 270.18f-3) or under an order exempting the Fund from provisions of section 18 of the Act (15 U.S.C. 80a-18).

"CRD number" means a central licensing and registration system number issued by the Financial Industry Regulatory Authority.

"Crypto Asset" This term has the same meaning as in rule 223-1(d)(3) under the Advisers Act.

"Crypto Network" This term has the same meaning as in rule 223-1(d)(5) under the Advisers Act.

* * * * *

Item B.24 Tokenization

a. Is any Fund (or Series or Class thereof) a tokenized fund? _____ If yes

   i. Provide the Series and/or Class identification number(s) (if any) of the tokenized Fund or Class(es) thereof, as applicable. :_____

   ii. Provide the name of the crypto network(s) used to record ownership for the Fund or each Series or Class, as applicable. :_____

Instructions
For the purpose of this item, a "tokenized fund" is an investment company or series thereof registered under the Act that has issued shares in the format of a crypto asset, where the record of ownership is maintained in whole or in part on or through one or more crypto networks.

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Item C.12. Custodians

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2. Broker or dealer — rule 17f-1 (17 CFR 270.17f-1): ___

* * * * *

9. State Trust Companies (for Crypto Assets only) — rule 17f-8 (17 CFR 270.17f-8): ___

10. Self (for Crypto Assets only) — rule 17f-9 (17 CFR 270.17f-9): ____

* * * * *

Item D.14. Custodians (small business investment companies only).

* * * * *

2. Broker or dealer — rule 17f-1 (17 CFR 270.17f-1): ___

* * * * *

9. State Trust Companies (for Crypto Assets only) — rule 17f-8 (17 CFR 270.17f-8): ___

10. Self (for Crypto Assets only) — rule 17f-9 (17 CFR 270.17f-9): ____

* * * * *

</EXTRACT><HD1>Appendix B – Form ADV<EXTRACT>

* * * * *

Form ADV: General Instructions

* * * * *

4. When am I required to update the ADV?

* * * * *

- Other-than-annual amendments: In addition to your *annual updating amendment*,
  - If you are registered with the SEC or a *state securities authority*, you must amend Part 1A, 1B, 2A and 2B (as applicable) of your Form ADV, including corresponding sections of Schedules A, B, C, D, and R, by filing additional amendments (other-than-annual amendments) promptly, if:
    - you are adding or removing a *relying adviser* as part of your *umbrella registration;*
    - information you provided in response to Items 1 (except 1.O. and Section

1.F. of Schedule D), 3, 9 (except 9.A.(3), 9.B.(2), 9.E. and 9.F.(2)(a)), or 11 of Part 1A or Items 1, 2.A. through 2.F., or 2.I. of Part 1B or Sections 1 or 3 of Schedule R becomes inaccurate in any way;

- information you provided in response to Items 4, 8, or 10 of Part 1A, or Item 2.G. of Part 1B, or Section 4 of Schedule R becomes materially inaccurate; or information you provided in your *brochure* becomes materially inaccurate (see note below for exceptions).

* * * * *

GLOSSARY OF TERMS

* * * * *

12. **Crypto Asset:** This term has the same meaning as in rule 223-1(d)(3) under the Advisers Act. *[Used in: Part 1A, Item 5, Item 9, Schedule D]*

13. **Crypto Asset Address**: This term has the same meaning as in rule 223-1(d)(4) under the Advisers Act. *[Used in: Part 1A, Item 5, Item 9, Schedule D]*

14. **Crypto Network**: This term has the same meaning as in rule 223-1(d)(5) under the Advisers Act. *[Used in: Part 1A, Schedule D]*

15. **Custody:** This term has the same meaning as in rule 223-1(d)(6) under the Advisers Act. *[Used in: Part 1A, Item 9, Schedule D; Part 1B, Instructions, Item 2; Part 2A, Items 15, 18]*

* * * * *

58. **Related Person:** Any ***advisory affiliate*** and any ***person*** that is under common ***control*** with your firm. *[Used in: Part 1A, Items 1, 5, 7, 8 and 9; Schedule D; Form ADV-W, Item 3; Part 2A, Items 10, 11, 12 and 14; Part 2A, Appendix 1, Item 6]*

* * * * *

60. **Self-Custody:** See rule 223-1(d)(16) under the Advisers Act *[Used in: Part 1A, Item 5, Item 9, Schedule D.]*

* * * * *

68. **Tokenized Fund**: A pooled investment vehicle or any series thereof that has issued shares in the format of a *crypto asset*, where the record of ownership is maintained in whole or in part on or through one or more *crypto networks*. *[Used in: Part 1A, Schedule D]*

* * * * *

FORM ADV (Paper Version)

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION AND REPORT BY EXEMPT REPORTING ADVISERS

PART 1A

* * * * *

Item 1 Identifying Information

* * * * *

I. Do you have one or more websites or accounts on publicly available social media platforms?

☐ Yes ☐ No

If "yes," list all firm website addresses and the address for each of the firm's accounts on publicly available social media platforms on Section 1.I. of Schedule D. If a website address serves as a portal through which to access other information you have published on the web, you may list the portal without listing addresses for all of the other information. You may need to list more than one portal address. Do not provide the addresses of websites or accounts on publicly available social media platforms where you do not control the content. Do not provide the individual electronic mail (e-mail) addresses of employees or the addresses of employee accounts on publicly available social media platforms.

* * * * *

Item 5 Information About Your Advisory Business

* * * * *

K. Separately Managed Account *Clients*

* * * * *

(5) (a) Do you have *self-custody* of *crypto assets* on behalf of any separately managed account *clients* that you advise? Crypto assets *for purposes of Item 5.K. means crypto assets that are funds or securities. Do not check "Yes" to Item 5.K.(5)(a) if you or your related persons maintain crypto assets solely as a qualified custodian(s).*

□ Yes □ No

(b) If you answered "yes" to Item 5.K.(5)(a), please indicate the approximate amount of such *crypto assets* that you have *self-custody* of, the total number of separately managed account *clients* for which you have *self-custody* of *crypto assets*, and the total number of *crypto asset addresses* that store the *client crypto assets* of which you have *self-custody*.

U.S. Dollar Amount	Total Number of Separately Managed Account *Clients*

(i) $_____ (ii) _____

Total Number of *Crypto Asset Addresses*

(iii) _____

* * * * *

Item 7 Financial Industry Affiliations and *Private Fund* Reporting

* * * * *

A. This part of Item 7 requires you to provide information about you and your *related persons*, including foreign affiliates. Your *related persons* are all of your *advisory affiliates* and any *person* that is under common *control* with you.

You have a *related person* that is a (check all that apply):

(1) broker-dealer, municipal securities dealer, or government securities broker or dealer (registered or unregistered)
(2) other investment adviser (including financial planners)
(3) registered municipal advisor
(4) registered security-based swap dealer
(5) major security-based swap participant
(6) commodity pool operator or commodity trading advisor (whether registered or exempt from registration)
(7) futures commission merchant
(8) banking or thrift institution
(9) trust company
(10) accountant or accounting firm
(11) lawyer or law firm
(12) insurance company or agency
(13) pension consultant
(14) real estate broker or dealer
(15) sponsor or syndicator of limited partnerships (or equivalent), excluding pooled investment vehicles
(16) sponsor, general partner, managing member (or equivalent) of pooled investment vehicles

Note that Item 7.A. should not be used to disclose that some of your employees perform investment advisory functions or are registered representatives of a broker-dealer. The number of your firm's employees who perform investment advisory functions should be disclosed under Item 5.B.(1). The number of your firm's employees who are registered representatives of a broker-dealer should be disclosed under Item 5.B.(2).

Note that if you are filing an umbrella registration, you should not check Item 7.A.(2) with respect to your relying advisers, and you do not have to complete Section 7.A. in

Schedule D for your relying advisers. You should complete a Schedule R for each relying adviser.

For each related person, including foreign affiliates that may not be registered or required to be registered in the United States, complete Section 7.A. of Schedule D. You do not need to complete Section 7.A. of Schedule D for any related person if: (1) you have no business dealings with the related person in connection with advisory services you provide to your clients; (2) you do not conduct shared operations with the related person; (3) you do not refer clients or business to the related person, and the related person does not refer prospective clients or business to you; (4) you do not share supervised persons or premises with the related person; and (5) you have no reason to believe that your relationship with the related person otherwise creates a conflict of interest with your clients.

You must complete Section 7.A. of Schedule D for each related person acting as qualified custodian in connection with advisory services you provide to your clients (other than any mutual fund transfer agent pursuant to rule 223-1(b)(1)), regardless of whether you have determined the related person to be operationally independent under rule 223-1 of the Advisers Act.

* * * * *

Item 9 Custody

* * * * *

In this Item, we ask you whether you or a *related person* has *custody* of *client* funds or securities and about your custodial practices. For Items 9.A through 9.E, **exclude** *clients* that are investment companies registered under the Investment Company Act of 1940 or business development companies that have elected to be regulated or are regulated as business development companies pursuant to section 54 of the Investment Company Act of 1940 and have not withdrawn their elections. For Item 9.F, **include** *clients* that are investment companies registered under the Investment Company Act of 1940 and business development companies that have elected to be regulated or are regulated as business development companies pursuant to section 54 of the Investment Company Act of 1940 and have not withdrawn their elections.

A. (1) Do you have *custody* of any advisory *clients*':	Yes	No
(a) funds (*e.g.*, cash or bank accounts)?	☐	☐
(b) securities?	☐	☐

If you answered "no" to Item 9.A.(1)(a) and (b), do not complete the remainder of Item 9.A. If you are registering or registered with the SEC, you must answer "yes" to Item 9.A.(1) if you or a related person has custody of client funds or securities notwithstanding whether you meet any of the exceptions listed below under Item 9.A.(2).

(2) (a) Do you rely on any of the following exceptions under Advisers Act rule 223-1? Please check all that apply.

☐ (i) Exception for privately offered securities under Advisers Act rule 223-1(b)(2)

☐ (ii) Exception for fee deduction authority under Advisers Act rule 223-1(b)(3)

☐ (iii) Exception under Advisers Act rule 223-1(b)(6) for having *custody* because an operationally independent related person has *custody* of *client* funds and securities in connection with advisory services you provide to clients, and you have overcome the presumption that you are not operationally independent (pursuant to Advisers Act rule 223-1(d)(12)) from the related person

☐ (iv) Exception for standing letters of authorization under Advisers Act rule 223-1(b)(8)

☐ (v) Exception for discretionary trading authority under Advisers Act rule 223-1(b)(9)

☐ (vi) Exception for inadvertent custody under Advisers Act rule 223-1(b)(10), and you know or have reason to know that a custodial agreement confers *custody* on you and you have taken the steps described in Advisers Act rule 223-1(b)(10)(ii)(B) to repudiate such unwanted authority

(b) If you checked Item 9.A.(2)(a)(v) and/or Item 9.A.(2)(a)(vi), do you have *custody* of *client* funds or securities *solely* because you have authority to trade at your discretion as described under Advisers Act rule 223-1(b)(9) and/or due to inadvertent custody as described under Advisers Act rule 223-1(b)(10) (*i.e.*, you do not have *custody* of any *client* funds or securities for any other reason, including fee deduction)?

Yes	No
☐	☐

If you checked "yes" to Item 9.A.(2)(b), do not complete the remainder of Item 9.

(3) If you checked "yes" to Item 9.A.(1)(a) or (b), what is the approximate amount of *client* funds and securities and total number of *clients* for which you have *custody*? (include in your response to Item 9.A.(3) the amount of any *client* funds and securities and the number of *clients* for which your related persons have *custody*).

If you are registering or registered with the SEC, ***do not include*** *in your response to Item 9.A.(3) the amount of client funds and securities and the number of clients for which you have custody* ***solely*** *as a result of the custodial arrangements described in the exceptions listed under Items 9.A.(2)(a)(ii) through (vi) above*):

U.S. Dollar Amount	Total Number of *Clients*
(a) $_____	(b) _____

B. (1) In connection with advisory services you provide to *clients*, do any of your *related persons* have *custody* of any of your advisory *clients'*:

	Yes	No
(a) funds (*e.g.*, cash or bank accounts)?	☐	☐
(b) securities?	☐	☐

(2) If you checked "yes" to Item 9.B.(1)(a) or (b), of those reported in Item 9.A.(3), what is the approximate amount of *client* funds and securities and total number of *clients* for which you have custody **only** because your *related persons* have *custody*?

U.S. Dollar Amount	Total Number of *Clients*
(a) $_____	(b) _____

Do not include in your response to Item 9.B.(2) the amount of client funds and securities and number of clients for which you have custody directly. Instead, include that information in your response to Item 9.A.(3).

C. If you or your *related persons* have *custody* of *client* funds or securities in connection with advisory services you provide to *clients*, check all the following that apply:

☐ (1) A qualified custodian(s) sends account statements at least quarterly to the investors in the pooled investment vehicle(s) you manage.

☐ (2) An *independent public accountant* audits annually the pooled investment vehicle(s) that you manage and the audited financial statements are distributed to the investors in the pools.

☐ (3) An *independent public accountant* conducts an annual surprise examination of *client* funds and securities.

☐ (4) An *independent public accountant* prepares an internal control report with respect to custodial services when you or your *related persons* are qualified custodians for *client* funds and securities.

☐ (5) A state trust company (as defined in Advisers Act rule 223-1(d)(18)) maintains client funds or securities in accordance with Advisers Act rule 223-1(d)(13)(v).

If you checked Item 9.C.(2), C.(3) or C.(4), list in Section 9.C. of Schedule D the accountants that are engaged to perform the audit or examination or prepare an internal control report. (If you checked Item 9.C.(2), you do not have to list auditor information in Section 9.C. of Schedule D if you already provided this information with respect to the private funds you advise in Section 7.B.(1) of Schedule D).

D. Do you or your *related person*(s) act as qualified custodians for your *clients* in connection with advisory services you provide to *clients*?

	Yes	No
(1) you act as a qualified custodian	☐	☐
(2) your *related person(s)* act as qualified custodian(s)	☐	☐

If you checked "yes" to Item 9.D.(2), all related persons that act as qualified custodians (other than any mutual fund transfer agent pursuant to rule 223-1(b)(1)) must be identified in Section 7.A. of Schedule D, regardless of whether you have determined the related person to be operationally independent under rule 223-1 of the Advisers Act.

E. If you or your *related persons* have *custody* of *client* funds or securities, how many *persons*, including, but not limited to, you and your *related persons*, act as qualified custodians for your *clients* in connection with advisory services you provide to *clients*?

_____

F. (1) In connection with advisory services you provide to *clients*, do you have *self-custody* of any *client crypto assets*?

Yes	No
☐	☐

Clients for purposes of this Item 9.F. include investment companies registered under the Investment Company Act of 1940 and business development companies that have elected to be regulated or are regulated as business development companies pursuant to section 54 of the Investment Company Act of 1940 and have not withdrawn their elections. Crypto assets for purposes of Item 9.F. means crypto assets that are funds or securities, or with respect to the account of an investment company registered under the Investment Company Act of 1940 or the account of a business development company that has elected

to be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940 and has not withdrawn its election, crypto assets that are securities or similar investments. Do not check "yes" to Item 9.F.(1) if you or your related persons maintain crypto assets solely as qualified custodian(s).

(2) If you checked "yes" to Item 9.F.(1):

(a) Please indicate the approximate amount of such *client crypto assets* that you have *self-custody* of, the total number of *clients* for which you have *self-custody* of *crypto assets*, and the total number of *crypto asset addresses* that store the *client crypto assets* of which you have *self-custody.*

U.S. Dollar Amount — Total Number of *Clients*

(i) $_____ (ii) _____

Total Number of *Crypto Asset Addresses*

(iii) _____

(b) Does an *independent public accountant* prepare an internal control report with respect to custodial services in connection with you having *self-custody* of *client crypto assets*?

Yes	No
☐	☐

If you checked "yes" to Item 9.F.(2)(b), list in Section 9.C. of Schedule D the accountants that are engaged to prepare an internal control report.

(c) Pursuant to rule 223-1(b)(7), are account statements sent at least quarterly to your *clients*, or alternatively, in lieu of sending a consolidated account statement, do you transmit, or arrange for the transmission of, the information required in an account statement at least quarterly in a human-readable and reasonably usable electronic format to your *clients*?

Yes	No
☐	☐

(d) Do you have *self-custody* of *client crypto assets* for a pooled investment vehicle(s) other than an investment company registered under the Investment Company Act of 1940 or a

business development company that has elected to be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940 and has not withdrawn its election?

Yes	No
☐	☐

(e) (i) If you checked "yes" to Item 9.F.(2)(d), does an *independent public accountant* audit annually such pooled investment vehicle(s) for which you have *self-custody* of *crypto assets*?

Yes	No
☐	☐

If you checked "yes" to Item 9.F.(2)(e)(i) list in Section 9.C. of Schedule D the accountants that are engaged to perform the audit. (If you checked "yes" to Item 9.F.(2)(e)(i), you do not have to list auditor information in Section 9.C. of Schedule D if you already provided this information with respect to the private funds you advise in Section 7.B.(1) of Schedule D).

(ii) If you checked "yes" to Item 9.F.(2)(e)(i), are the audited financial statements distributed to the investors in the pools?

Yes	No
☐	☐

* * * * *

Schedule D

* * * * *

SECTION 1.I. Website Addresses

List your website addresses, including addresses for accounts on publicly available social media platforms where you control the content. You must complete a separate Schedule D Section 1.I. for each website or account on a publicly available social media platform.

Check only one box: ☐ Add ☐ Delete

Address of Website/Account on Publicly Available Social Media Platform:

_____

* * * * *

Section 7.A. Financial Industry Affiliations

* * * * *

8. * * * * *

* * * * *

(b) If you are registering or registered with the SEC and you have answered "yes" to question 8.(a) above, have you overcome the presumption that you are not operationally independent (pursuant to rule 223-1(d)(12)) from the *related person* and thus are not required to obtain a surprise examination for your *clients'* funds or securities that are maintained at the *related person*?

□ Yes □ No

* * * * *

Section 7.B.(1) Private Fund Reporting

* * * * *

23. * * * * *

(a) (1) Are the *private fund's* financial statements subject to an annual audit? ☐ Yes ☐ No

(2) If the answer to question 23.(a)(1) is "yes," are the financial statements prepared in accordance with U.S. GAAP? ☐ Yes ☐ No

If the answer to question 23.(a)(1) is "yes," respond to questions (b) through (f) below. If the *private fund* uses more than one auditing firm, you must complete questions (b) through (d) separately for each auditing firm.

Check only one box: ☐ Add ☐ Delete ☐ Amend

(b) Name of the auditing firm: _____

(c) The location of the auditing firm's office responsible for the *private fund's* audit (city, state and country): _____

(d) Is the auditing firm an *independent public accountant*? ☐ Yes ☐ No

(e) Are the *private fund's* audited financial statements for the most recently completed fiscal year distributed to the *private fund's* investors? ☐ Yes ☐ No

(f) Do all of the reports prepared by the auditing firm for the *private fund* since your last *annual updating amendment* contain unmodified opinions?

□ Yes □ No □ Report Not Yet Received

If you check "Report Not Yet Received," you must promptly file an amendment to your Form ADV to update your response when the report is available.

* * * * *

25. * * * * *

* * * * *

(h) (1) Do you have *self-custody* of any *crypto assets* for the *private fund*? Crypto assets *for purposes of this question 25.(h) means crypto assets that are funds or securities. Do not check "yes" to question 25.(h)(1) if you or your related persons maintain crypto assets for the private fund solely as qualified custodians. You are not required to respond to this question 25.(h)(1) if you are an exempt reporting adviser.*

□ Yes □ No

(2) If the answer to question 25.(h)(1) is "yes," please provide the approximate amount of such *crypto assets* in U.S. dollars that you have *self-custody* of for the *private fund* and the total number of *crypto asset addresses* that store the *crypto assets* of which you have *self-custody* for the *private fund*:

(i) $_____ Total Number of *Crypto Asset Addresses*: (ii) _____

* * * * *

Tokenization

29. (a) Is this *private fund* (or series or class thereof) a *tokenized fund*?

Yes ☐ No ☐

(b) If yes, and to the extent the response relates only to certain series or classes of the *private fund*, indicate the series or class that is involved: _____

(c) If yes, what *crypto network* is used to record the ownership of the *private fund*? If more than one *crypto network* is used to record ownership, provide all applicable *crypto networks*:

_____

* * * * *

Section 9.C. Independent Public Accountant

* * * * *

You must complete the following information for each *independent public accountant* engaged to perform a surprise examination, perform an audit of a pooled investment vehicle that you manage, or prepare an internal control report. You must complete a separate Schedule D Section 9.C. for each *independent public accountant*.

Check only one box: ☐ Add ☐ Delete ☐ Amend

(1) Name of the *independent public accountant*: _____

(2) The location of the *independent public accountant's* office responsible for the services provided:

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

(3) The *independent public accountant* is engaged to:

☐ A. audit a pooled investment vehicle
☐ B. perform a surprise examination of *clients'* assets
☐ C. prepare an internal control report because you or your *related person*(s) act as a qualified custodian
☐ D. prepare an internal control report because you have *self-custody* of *client crypto assets* (*do not check this box if you or your related persons maintain client funds or securities that are crypto assets solely as qualified custodian(s)*)

(4) Since your last *annual updating amendment*, did all of the reports prepared by the *independent public accountant* that audited the pooled investment vehicle or that examined internal controls contain unmodified opinions?

☐ Yes ☐ No ☐ Report Not Yet Received

If you check "Report Not Yet Received," you must promptly file an amendment to your Form ADV to update your response when the accountant's report is available.

* * * * *

Part 2: Uniform Requirements for the Investment Adviser *Brochure* and *Brochure Supplements*

* * * * *

Part 2A of Form ADV: Firm Brochure

* * * * *

Item 18 Financial Information

A. If you require or solicit prepayment of more than $1,200 in fees per client, six months or more in advance, include a balance sheet for your most recent fiscal year.

1. The balance sheet must be prepared in accordance with generally accepted accounting principles, audited by an independent public accountant, and accompanied by a note stating the principles used to prepare it, the basis of securities included, and any other explanations required for clarity.

2. Show parenthetically the market or fair value of securities included at cost.

3. Qualifications of the independent public accountant and any accompanying independent public accountant's report must conform to Article 2 of SEC Regulation S-X.

Note: If you are a sole proprietor, show investment advisory business assets and liabilities separate from other business and personal assets and liabilities. You may aggregate other business and personal assets unless advisory business liabilities exceed advisory business assets.

Note: If you have not completed your first fiscal year, include a balance sheet dated not more than 90 days prior to the date of your brochure.

Exception: You are not required to respond to Item 18.A of Part 2A if you also are: (i) a qualified custodian as defined in SEC rule 223-1 or similar state rules; or (ii) an insurance company.

* * * * *

<HD1>Appendix C – Form ADV-E

* * * * *

FORM ADV-E

Certificate of Accounting of Client Securities and Funds in the Possession or Custody of an Investment Adviser
Pursuant to Rule 223-1 [17 CFR 275.223-1]

* * * * *

Investment Adviser

* * * * *

2. Give this Form to the independent public accountant that, in compliance with rule 223-1 under the Investment Advisers Act of 1940 (the "Act") or applicable state law, examines client funds and securities in the custody of the investment adviser within 120 days of the time chosen by the accountant for the surprise examination and upon such accountant's resignation or dismissal from, or other termination of, the engagement, or if the accountant removes itself or is removed from consideration for being reappointed.

* * * * *

Accountant

* * * * *

3. The independent public accountant performing the surprise examination must submit electronically on the Investment Adviser Registration Depository:

(i) this Form and a certificate of accounting (*i.e.*, accountant's report) required by rule 223-1 under the Act or applicable state law within 120 days of the time chosen by the accountant for the surprise examination, and

* * * * *

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. Sections 203(c)(1) and 204 of the Advisers Act authorize the Commission to collect the information on this Form from applicants. *See* 15 U.S.C. §§ 80b-3(c)(1) and 80b-4. Filing of this Form is mandatory. The principal purpose of this collection of information is to make the examination certificates filed by an accountant pursuant to Rule 223-1(a)(4)(i) under the Advisers Act (after that accountant has verified by actual examination the securities and funds of clients in the custody of an investment adviser) more accessible for inspection by the Commission staff and the public and will facilitate verification of compliance with examination requirements. *See* 17 CFR § 275.223-1(a)(4)(i). The Commission will maintain files of the information on Form ADV-E and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on page one of Form ADV-E, 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 applicable Private Act system of records is SEC-2, and the routine uses of the records are set forth at 40 FR 39255 (Aug. 27, 1975) and 41 FR 5318 (Feb. 5, 1976).

* * * * *

[FR Doc. 2026–20466 Filed 10–5–26; 8:45 am]
BILLING CODE 8011–01–C

Reader Aids

Federal Register

Vol. 91, No. 192

Tuesday, October 6, 2026

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–741–6000**

Laws **741–6000**

Presidential Documents

Executive orders and proclamations **741–6000**

The United States Government Manual **741–6000**

Other Services

Electronic and on-line services (voice) **741–6020**

Privacy Act Compilation **741–6050**

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FEDERAL REGISTER PAGES AND DATE, OCTOBER

62297–62634 1
62635–63132 2
63133–63474 5
63475–64104 6

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
14432.....63121
14433.....63125
14434.....63129

Administrative Orders:
Notices:
Notice of September 30, 2026.....63131
Presidential Determinations:
2026–24 of September 25, 2026.....63119
2026–25 of September 30, 2026.....63473

7 CFR

4280.....62600

10 CFR

20.....63133
30.....63133
40.....63133
70.....63133
150.....62635

Proposed Rules:
20.....63168
30.....63168
40.....63168
70.....63168

12 CFR

225.....62636, 62870
238.....62636, 62870
252.....62636, 62870

14 CFR

39 .....62297, 62299, 62301, 62304, 62307
71.....63475
97.....62309, 62311

Proposed Rules:
23.....63170
39 .....62344, 63172, 63175
71 .....62680, 63178, 63509
401.....63180, 63185
404.....63180
413.....63180
414.....63180
450 .....63185, 63190, 63199, 63204

15 CFR

Proposed Rules:
60.....63207
70.....63207

16 CFR

Proposed Rules:
461.....62347
1112.....63208
1265.....63208

17 CFR

200.....62654
232.....63476

Proposed Rules:
239.....63388, 63676
249.....63388, 63676
270.....63388, 63870
274 .....63388, 63676, 63870
275.....63676, 63870
279.....63870

18 CFR

Proposed Rules:
410.....63511

21 CFR

862.....63478
866.....63487
870.....63491
878.....63493

Proposed Rules:
1312.....62357

22 CFR

126.....62313

Proposed Rules:
120.....62361
121.....62361
123.....62361

24 CFR

75.....63146

26 CFR

1.....62655
54.....63748

Proposed Rules:
1.....62818

29 CFR

2590.....63748

31 CFR

1.....63495

Proposed Rules:
1010 .....63208, 63513, 63514
1020.....63514
1022.....63514

33 CFR

100 .....62314, 62672, 62673, 63147
165.....62314, 63497

Proposed Rules:
165.....62368, 63515

36 CFR

Proposed Rules:
7.....62682

40 CFR

52.....62316, 62320

97.....62322
180.....62673
Proposed Rules:
52.....62371, 62380
81.....63516

42 CFR

412.....62323, 62327
414.....62327
513.....62936

45 CFR

147.....63748

Proposed Rules:
1355.....63226
1357.....63226

46 CFR

Proposed Rules:
11.....62383
12.....62383

47 CFR

Ch. IV.....63500
51.....62334
63.....62334
64.....63149
73.....63499

48 CFR

Proposed Rules:
541.....63243
552.....63243

49 CFR

Proposed Rules:
40.....62409
390.....63156

50 CFR

622.....63160, 63502
648.....63166
660.....62677
665.....62340
679 .....62341, 62343, 63166
Proposed Rules:
10.....62411
17.....63250
21.....62411

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List October 2, 2026

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