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

**Federal Register**

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# Presidential Documents

**Title 3—**

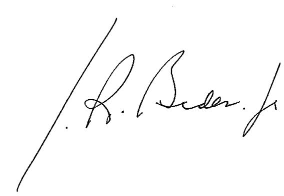
## The President

**Executive Order 14102 of July 13, 2023**

## Ordering the Selected Reserve and Certain Members of the Individual Ready Reserve of the Armed Forces to Active Duty

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 121 and 12304 of title 10, United States Code, I hereby determine that it is necessary to augment the active Armed Forces of the United States for the effective conduct of Operation Atlantic Resolve in and around the United States European Command's area of responsibility. In furtherance of this operation, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, under their respective jurisdictions, to order to active duty any units, and any individual members not assigned to a unit organized to serve as a unit of the Selected Reserve, or any member in the Individual Ready Reserve mobilization category and designated as essential under regulations prescribed by the Secretary concerned, not to exceed 3,000 total members at any one time, of whom not more than 450 may be members of the Individual Ready Reserve, as they deem necessary, and to terminate the service of those units and members ordered to active duty.

This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
*July 13, 2023.*

[FR Doc. 2023–15347

Filed 7–17–23; 8:45 am]

Billing code 3395–F3–P

# Rules and Regulations

Federal Register

Vol. 88, No. 136

Tuesday, July 18, 2023



## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### 7 CFR Part 3550

**[Docket No. RHS–23–SFH–0017]**

## Single Family Housing Section 504 Home Repair Loans and Grants in Presidentially Declared Disaster Areas Pilot Program

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Notification.

**SUMMARY:** The Rural Housing Service (RHS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is issuing this notification to waive four regulatory requirements for the Section 504 Home Repair Loans and Grants in a Presidentially Declared Disaster Areas (PDDAs) pilot program. The Agency's intention is to evaluate the existing regulations and remove regulatory barriers to assist eligible applicants in PDDAs to improve the program usage for very-low-income homeowners that are seeking to repair their damaged homes that are in PDDAs. This notification briefly discusses the four waivers and provides contact information for additional details about the pilot.

**DATES:** The effective date for the four regulatory waivers is July 18, 2023. The duration of the pilot is anticipated to continue until July 18, 2025.

**FOR FURTHER INFORMATION CONTACT:** Anthony Williams, Management and Program Analyst, Special Programs, Single Family Housing Direct Loan Division, Rural Development,1400 Independence Ave., Washington, DC 20250, U.S. Department of Agriculture, Email: *anthonyl.williams@usda.gov*; Phone: (202) 720–9649.

**SUPPLEMENTARY INFORMATION:**

### Authority

The RHS Single Family Housing Direct Loan Division program administers the Section 504 Loans and Grants program under the authority of the Title V, Section 504(a), of the Housing Act of 1949, as amended 42 U.S.C. 1474; and implemented under 7 CFR part 3550. As set forth in 7 CFR 3550.7, RHS may authorize limited demonstration programs to test new approaches to offering housing under the statutory authority granted to the Secretary. Such demonstration programs may not be consistent with some of the provisions contained in this part. However, any program requirements that are statutory will remain in effect.

### Background

The RHS offers a variety of programs to build or improve housing and essential community facilities in rural areas. RHS offers loans, grants, and loan guarantees for single and multifamily housing, child-care centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, housing for farm laborers, and much more. RHS also provides technical assistance loans and grants in partnership with non-profit organizations, Indian tribes, state and federal government agencies, and local communities.

The RHS administers the Section 504 Loan and Grant program with the objective to assist very low-income owner-occupants of modest single-family homes in rural areas to repair their homes. Loan funds are available for repairs to improve or modernize a home, make it safer or more sanitary, or remove health and safety hazards. For homeowners 62 years old and over who cannot repay a loan, grant funds are available to remove health or safety hazards, or remodel dwellings to make them accessible to a household member with a disability.

The following twenty-four (24) States and U.S. Territories are selected based on presidentially declared disasters in calendar year 2022, involvement in the Rural Partners Network, and to provide wide geographic and historic production variation for the pilot: Alabama, Alaska, American Samoa, California, Florida, Georgia, Kansas, Kentucky, Minnesota, Mississippi, Montana, North Carolina, North Dakota, Nebraska, New Mexico, New York, Puerto Rico, South Carolina, South Dakota, Tennessee, Texas, Washington, West Virginia, and Wisconsin.

### New Section 504 Pilot Regulatory Waivers

RHS has determined that the following four waivers are to be tested under the new pilot (demonstration) program for the Single-Family Housing Section 504 Home Repair Loans and Grants in PDDAs, under the waiver authority provided at 7 CFR 3550.7:

- The first waiver is for pilot applicants not to be subject to the age requirement, with an exception to the requirement that applicants at least 18 years of age or older, to be eligible to apply for grants. The current regulation states that to be eligible for grant assistance, an applicant must be 62 years of age or older at the time of application (see, 7 CFR 3550.103(b)).
- The second waiver is for pilot applicants not to be subject to the restricted use of Section 504 funds (see, 7 CFR 3550.102(e)(5)) which excludes refinancing any debt or obligation of the applicant incurred before the date of application, except for the installation and assessment costs of utilities. With an exception to this requirement, repair costs that are incurred mainly as a result of disaster-related damages could be covered by the 504 programs, which traditionally excludes pre-application costs. Repairs necessitated by disaster events are often emergency in nature, and program applicants incur the costs prior to their 504 application. An exception to this requirement will enable applicants to repair disaster-caused damages and address other needed repairs.
- The third and fourth waivers are mainly in place to coordinate efforts with Federal Emergency Management Agency's (FEMA) Individual Assistance Program to provide manufactured homes as replacement housing in PDDAs:

a. Pilot applicants are not subject to the restricted use of Section 504 funds found at 7 CFR 3550.102(e)(3), which excludes the cost of moving a mobile or manufactured home from one site to another;

b. Applicants in need of total home replacement after a disaster often need funding for the delivery of a mobile or manufactured home.

This waiver will permit Section 504 funding to pay this expense and be leveraged in replacement housing efforts. Pilot applicants are not subject to the same occupancy guidelines in 7

CFR 3550.103(a), which states, applicants must, 'own and occupy the property' to be eligible for the Section 504 program. The pilot removes this guideline when the applicant owns the site and will occupy the unit once installed or a permanent housing solution on the applicant's site is anticipated within 12 months from the date of closing. This will enable applicants affected by the disaster who are anticipated to become current owners and occupiers of the property to receive assistance without meeting the stipulation upfront.

The duration of the pilot is anticipated to continue until July 18, 2025, at which time the RHS may extend the pilot program (with or without modifications) or terminate it depending on the workload and resources needed to administer the program, feedback from the public, and the effectiveness of the program. If the pilot program is extended or terminated, the RHS will notify the public by publishing a notice in the **Federal Register**. After RHS analyzes the findings from the results of the program, if the RHS concludes that the testing was successful, it will codify the waivers into 7 CFR part 3550 to be applied programwide.

## Eligibility Requirements

Eligible participants in the Section 504 program must abide by the statutory requirements set forth in 7 CFR part 3550. Eligible PDDAs (individual and public assistance) can be found on the FEMA website at: *https://www.fema.gov/disaster/declarations.*

## Paperwork Reduction Act

The regulatory waivers for this pilot contains no new reporting or recordkeeping burdens under OMB control number 0575–0172 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

## Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its mission areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, staff office; the or the Federal Relay Service at (800) 877–8339.

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

The completed AD–3027 form or letter must be submitted to USDA by:

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

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

(3) *Email: program.intake@usda.gov.*

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

**Cathy Glover,**

*Acting Administrator, Rural Housing Service, Rural Development, USDA.*

[FR Doc. 2023–15174 Filed 7–17–23; 8:45 am]

BILLING CODE 3410–XV–P

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# DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2022–1796; Airspace Docket No. 22–AAL–30]**

**RIN 2120–AA66**

## Revocation of Colored Federal Airway Red 39 (R–39); Bethel, AK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action revokes Colored Federal airway Red 39 (R–39) in the vicinity of Bethel, AK, due to the pending decommissioning of the Oscarville (OSE) Non-directional Beacon (NDB), Takotna River NDB (VTR), and Ice Pool NDB (ICW) in Alaska.

**DATES:** Effective date 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

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

**SUPPLEMENTARY INFORMATION:**

## Authority for This Rulemaking

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

## History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2022–1796 in the **Federal Register** (88 FR 5823; January 30, 2023), proposing to revoke Colored Federal airway R–39 in the vicinity of Bethel, AK. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

## Incorporation by Reference

Colored Federal airways are published in paragraph 6009 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 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

## The Rule

This action amends 14 CFR part 71 by revoking Colored Federal airway R–39 in the vicinity of Bethel, AK due to the decommissioning of the OSE, VTR, and ICW NDBs. R–39 currently navigates between OSE and ICW. This action revokes R–39 in its entirety.

## 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 Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## Environmental Review

The FAA has determined that the revoking of Colored Federal Airway R–39 qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, 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 5–6.5k, which categorically excludes from further environmental 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. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

## Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## Adoption of 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 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

*Paragraph 6009 Colored Federal Airways.*

* * * * *

**R–39 [Removed]**

* * * * *

Issued in Washington, DC, on July 12, 2023.

**Karen Chiodini,**

*Acting Manager, Airspace Rules and Regulations.*

[FR Doc. 2023–15204 Filed 7–17–23; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2023–0837; Airspace Docket No. 23–ANE–05]**

**RIN 2120–AA66**

## Amendment of Class E Airspace; Carrabassett, ME

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace extending upward from 700 feet above the surface for Sugarloaf Regional Airport, Carrabassett, ME, as an airspace evaluation determined a southern extension is necessary for this airport. This action also removes the airport's existing extension and updates the airport's geographic coordinates.

**DATES:** Effective 0901 UTC, October 5, 2023. 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 helps and guidelines are available on the website. It is available 24 hours a day, 365 days a year.

FAA Order JO 7400.11G 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:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

**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 amends Class E airspace for Sugarloaf Regional Airport, Carrabassett, ME, to support IFR operations in the area.

### History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2023–0837 in the **Federal Register** (88 FR 29562; May 8, 2023), proposing to amend Class E airspace at Sugarloaf Regional Airport, Carrabassett, ME. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

### Incorporation by Reference

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, incorporated by reference in 14 CFR 71.1 annually. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

### The Rule

This action amends 14 CFR part 71 by amending Class E airspace extending upward from 700 feet above the surface for Sugarloaf Regional Airport, Carrabassett, ME, to accommodate area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this airport. This action amends the existing extension from the airport to the 166° bearing (previously 346°), as an airspace evaluation determined the existing extension was determined in error, as no instrument approaches exist for runway 17. The GPS–A approach for runway 35 requires the 166° bearing extension. This action also updates the airport's geographic coordinates to coincide with the FAA's database. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

### Regulatory Notices and Analyses

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

### Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a.

This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances warrant the preparation of an environmental assessment.

### Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Amendment

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

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

■ 1. The authority citation for 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 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

**ANE ME E5 Carrabassett, ME [Amended]**

Sugarloaf Regional Airport, ME
(Lat 45°05′07″ N, long 70°12′59″ W)
Point in Space Coordinates
(Lat 45°06′26″ N, long 70°12′30″ W)

That airspace extending upward from 700 feet above the surface of the earth within a 6-mile radius of the Point in Space Coordinates (lat. 45°06′26″ N, long. 70°12′30″ W) serving the Sugarloaf Regional Airport, and within a 7-mile radius of the airport, and 1 mile each side of the 166° bearing from the airport, extending from the 7-mile radius to 14.3-miles south of the airport.

* * * * *

Issued in College Park, Georgia, on July 13, 2023.

**Lisa E. Burrows,**

*Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2023–15168 Filed 7–17–23; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2023–1533; Airspace Docket No. 23–AWA–4]**

**RIN 2120–AA66**

## Amendment of Class C Airspace; Palm Beach International Airport, West Palm Beach, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action makes an editorial change to the Palm Beach International Airport, FL Class C airspace description as published in FAA Order JO 7400.11G, dated August 19, 2022. This action removes the words ''Palm Beach International Airport'' from the first line in the Class C description and replaces them with the words ''West Palm Beach''. This complies with the formatting standard for airspace descriptions. This editorial change does not alter the currently published geographic coordinates, boundaries, or altitudes of the Class C airspace area.

**DATES:** Effective date 0901 UTC, October 5, 2023. 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 this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11G, 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:** Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it updates the information in the Palm Beach International Airport, FL Class C airspace description.

### History

During a review of the Palm Beach International Airport, FL Class C airspace description, the FAA identified the need to update the text header format for the Palm Beach International Airport Class C airspace description as published in FAA Order JO 7400.11G.

### Incorporation by Reference

Class C airspace areas are published in paragraph 4000 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 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

### The Rule

This action amends 14 CFR part 71 by making an editorial change to the Palm Beach International Airport, FL Class C airspace description as published in FAA Order JO 7400.11G. The words "Palm Beach International Airport" are removed from the first line in the Class C description and replaced by the words "West Palm Beach". This change aligns with the current formatting standard which requires that the city location of the airport be stated in the first line of the description and the airport name be stated on the second line. The action does not make any changes to the remainder of the Class C description as currently published in FAA Order JO 7400.11G.

This action consists of administrative changes only and does not affect the geographic coordinates, boundaries, or altitudes of the airspace. Therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

### 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 Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### Environmental Review

The FAA has determined that this action of making administrative edits to the West Palm Beach, FL Class C airspace description qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, 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). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Amendment

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

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, effective September 15, 2022, is amended as follows:

*Paragraph 4000 Class C Airspace.*

* * * * *

**ASO FL C West Palm Beach, FL**

Palm Beach International Airport, FL
(Lat. 26°40′59″ N, long. 80°05′44″ W)

Palm Beach County Park Airport
(Lat. 26°35′35″ N, long. 80°05′06″ W)

*Boundaries.*

*Area A.* That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Palm Beach International Airport, excluding that airspace within a 2-mile radius of the Palm Beach County Park Airport.

*Area B.* That airspace extending upward from 1,600 feet MSL to and including 4,000 feet MSL within an area bounded on the north by a line direct from the intersection of the Florida Turnpike (highway 91) and Lantana Road to the intersection of a 5-mile radius of the Palm Beach International Airport and a 2-mile radius west of the Palm Beach County Park Airport and a 2-mile radius north of the Palm Beach County Park Airport, on the east by a line direct from the intersection of a 5-mile radius of the Palm Beach International Airport and a 2-mile radius east of the Palm Beach County Park Airport to the intersection of a 10-mile radius of the Palm Beach International Airport and US 1, on the south by a 10-mile radius of the Palm Beach International Airport, and on the west by the Florida Turnpike.

* * * * *

Issued in Washington, DC, on July 13, 2023.

**Karen L. Chiodini,**

*Acting Manager, Airspace Rules and Regulations.*

[FR Doc. 2023–15147 Filed 7–17–23; 8:45 am]

**BILLING CODE 4910–13–P**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 232

**[Release Nos. 33–11205; 34–97735; 39–2550; IC–34942]**

## 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 (''EDGAR'') Filer Manual (''Filer Manual'') and related rules and forms. EDGAR Release 23.2 will be deployed in the EDGAR system on June 20, 2023.

**DATES:** *Effective date:* July 18, 2023. The incorporation by reference of the revised Filer Manual is approved by the Director of the **Federal Register** as of July 18, 2023.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding the amendments to Volume II of the Filer Manual and related rules, please contact Rosemary Filou, Deputy Director and Chief Counsel, or Jane Patterson, Senior Special Counsel, in the EDGAR Business Office at (202) 551–3900. For questions regarding the Forms SD and SD/A new exhibit types, please contact Christian Windsor, Senior Special Counsel, in the Division of Corporation Finance at (202) 551–3419 and Elliott Staffin, Special Counsel, in the Division of Corporation Finance at (202) 551–3243. For questions concerning taxonomies or schemas, please contact the Office of Structured Disclosure in the Division of Economic and Risk Analysis at (202) 551–5494.

**SUPPLEMENTARY INFORMATION:** We are adopting an updated Filer Manual, Volume II: ''EDGAR Filing,'' Version 66 (June 2023) and amendments to 17 CFR 232.301 (''Rule 301''). The updated Filer Manual 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. EDGAR System Changes and Associated Modifications to Volume II of the Filer Manual

EDGAR is being updated in EDGAR Release 23.2, and corresponding amendments to Volume II of the Filer Manual are being made to reflect these changes, as described below.[2]

On December 16, 2020, the Commission adopted 17 CFR 240.13q–1 (''Rule 13q–1'') and an amendment to Form SD pursuant to section 13(q) of the Exchange Act,[3] which directs the Commission to issue rules requiring resource extraction issuers to include in their annual report, submitted in an interactive data format, information relating to payments made to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals.[4]

In accordance with Rule 13q–1 as amended, Forms SD and SD/A will be updated to allow filers to submit two new exhibit types: Exhibit 2.01—Resource Extraction Payment Report, as required by Item 2.01 of this Form; and Exhibit 3.01—Opinion of Counsel, as required by Rule 13q–1(d)(1) or (2).[5] Pursuant to the rules, EDGAR requires an Exhibit 2.01 in order to accept a Form SD submission unless a resource extraction issuer is controlled by another resource extraction issuer that has submitted a Form SD disclosing the information required by Item 2.01 for the controlled entity, and the controlled entity submits a notice on Form SD identifying the controlling entity and the date it submitted the disclosure. In such cases, the reporting controlling entity must note that it is submitting the required disclosure for a controlled entity and must identify the controlled entity on its Form SD submission.

In conjunction with the amendment, the taxonomy for Resource Extraction Payments (RXP) and Sub-national Jurisdiction (SNJ) for Form SD is updated to address the new tagging requirements.[6]

EDGAR Release 23.2 also makes general functional enhancements to EDGAR, for which revisions are made to the Filer Manual as described below.

The EDGAR system is being updated to support the 2023 versions of the following taxonomies:

- Open End Fund (OEF) for Forms N–CSR, N–CSRS, and N–1A;[7]
- International Financial Reporting Standards (IFRS);
- U.S. Generally Accepted Accounting Principles (GAAP) Financial Reporting;
- SEC Reporting taxonomy; and
- Other XBRL taxonomies accepted in EDGAR.[8]

EDGAR will no longer accept the 2021 versions of taxonomies (all taxonomies currently accepted in EDGAR including the quarterly releases in 2021). Further, the version of all taxonomies within a submission must now be from the same year (including quarterly releases).

In addition, as part of the upcoming EDGAR Release 23.2, we plan to remove the following content from Volume II of the Filer Manual:

- List of prior EDGAR releases (pp. xvi to xxvi of the current version)—this information is available on the SEC's Rulemaking Index on *SEC.gov* at *https://*

[1] *See* Rule 301 of Regulation S–T.

[2] EDGAR Release 23.2 will be deployed on June 20, 2023.

[3] 17 CFR 240.13q–1(d)(1) or (2).

[4] Disclosure of Payments by Resource Extraction Issuers, Release 34–90679 (Dec. 16, 2020) [86 FR 4662 (Jan. 15, 2021)].

[5] Form SD already required submission of Exhibit 1.01—Conflict Minerals Report—as required by Items 1.01 and 1.02 of this Form.

[6] Filer Manual, Volume II, Sections 6.5.58, 6.14.10, 6.16.14, and 6.24.23.

[7] Filer Manual, Volume II, Sections 6.5.57, 6.14.9, and 6.16.13.

[8] Filer Manual, Volume II, Section 6.22 refers to the *SEC.gov* web page that contains a complete list of supported taxonomies and accompanying information, *https://www.sec.gov/info/edgar/edgartaxonomies.shtml.*

*www.sec.gov/rules/rulemaking-index.shtml;*

• Chapter 10 (Determining the Status of Your Filing)—this information will be moved to the EDGAR-Information for Filers web page on *SEC.gov* at *https://www.sec.gov/edgar/filer-information;* and

• Appendix B (EDGAR—Information for Filers)—this information will be incorporated in the text of Volume II of the Filer Manual, ''2.3—General Information for Filers.''

*Minor Update To Improve Payment Information in Filer's EDGAR Account*

On April 17, 2023, EDGAR Release 23.1.1 introduced a change related to the Processing of Debit/Credit Card Cash Receipts. The ''Retrieve Balance Information'' screen was updated to reflect the processing of *pay.gov* payments in real time. The ''Account Balance'' field now displays credit/debit card payments within 15 minutes of payment confirmation. The ''Amount of Last Deposit'' and ''Date of Last Deposit'' fields were also updated accordingly.[9]

*Minor Corrections to EDGAR Filer Manual*

Sections 5.2.2.2 and 5.2.2.4 of the EDGAR Filer Manual Volume II were edited to add tags that identify potential problems that could cause Blind XSS payload issues. When a filer uploads an htm file as an attachment with any of these tags, EDGAR will reject the document as ''Invalid Content.''[10]

Finally, revisions have been made in EDGAR Filer Manual Volume II at sections 6.5.40, 6.5.56 and 6.12.10 to correct errors from the previous Release 23.1 changes.[11]

## III. Amendments 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 into the Code of Federal Regulations of the current revisions. This incorporation by reference was 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/filerinformation/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'').[12] It follows that the amendments do not require analysis under requirements of the Regulatory Flexibility Act[13] or a report to Congress under the Small Business Regulatory Enforcement Fairness Act of 1996.[14]

The effective date for the updated Filer Manual and related rule amendments is July 18, 2023. In accordance with the APA,[15] 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,[16] sections 3, 12, 13, 14, 15, 15B, 23 and 35A of the Securities Exchange Act of 1934,[17] section 319 of the Trust Indenture Act of 1939,[18] and sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[19]

## 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:

## 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, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 80b–4, 80b–6a, 80b–10, 80b–11, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 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 41 (December 2022). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 66 (June 2023). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 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 available for inspection at the Commission and at the National Archives and Records Administration (NARA). The EDGAR Filer Manual is available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's Public Reference Room. For information on the availability of the EDGAR Filer Manual at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The EDGAR Filer Manual may also be obtained from *https://www.sec.gov/edgar/filerinformation/current-edgar-filer-manual.*

By the Commission.

Dated: June 15, 2023.

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2023–15171 Filed 7–17–23; 8:45 am]

BILLING CODE 8011–01–P

[9] This minor update was made in EDGAR Release 23.1.1 on Apr. 17, 2023.

[10] Technical corrections to Volume II were made in EDGAR Update 23.0.1.ul on Feb. 16, 2023.

[11] Text corrections to Volume II were made in EDGAR Release 23.1.1 on Apr. 17, 2023.

[12] 5 U.S.C. 553(b)(A).

[13] 5 U.S.C. 601 through 612.

[14] 5 U.S.C. 804(3)(c).

[15] 5 U.S.C. 553(d)(3).

[16] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[17] 15 U.S.C. 78c, 78l, 78m, 78n, 78*o,* 78o-4, 78w, and 78*ll.*

[18] 15 U.S.C. 77sss.

[19] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

## DEPARTMENT OF THE TREASURY

## Office of Foreign Assets Control

## 31 CFR Part 525

## Publication of Burma Sanctions Regulations Web General License 5

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Publication of a web general license.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing one general license (GL) issued pursuant to the Burma Sanctions Regulations: GL 5, which was previously made available on OFAC's website.

**DATES:** GL 5 was issued on June 21, 2023. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

**FOR FURTHER INFORMATION CONTACT:** OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Compliance, 202–622–2490.

**SUPPLEMENTARY INFORMATION:**

### Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *https://ofac.treasury.gov.*

### Background

On June 21, 2023, OFAC issued GL 5 to authorize certain transactions otherwise prohibited by the Burma Sanctions Regulations, 31 CFR part 525. The GL was made available on OFAC's website (*https://ofac.treasury.gov*) when it was issued. The GL has an expiration date of August 5, 2023. The text of the GL is provided below:

**OFFICE OF FOREIGN ASSETS CONTROL**

**Burma Sanctions Regulations**

*31 CFR part 525*

**GENERAL LICENSE NO. 5**

**Authorizing the Wind Down of Transactions Involving Myanma Investment and Commercial Bank or Myanma Foreign Trade Bank**

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by Executive Order 14014 that are ordinarily incident and necessary to the wind down of transactions involving Myanma Investment and Commercial Bank (MICB), Myanma Foreign Trade Bank (MFTB), or any entity in which MICB or MFTB owns, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest, are authorized through 12:01 a.m. eastern daylight time, August 5, 2023, provided that any payment to a blocked person must be made into a blocked account in accordance with the Burma Sanctions Regulations, 31 CFR part 525 (BuSR).

(b) This general license does not authorize any transactions otherwise prohibited by the BuSR, including transactions involving any person blocked pursuant to the BuSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Andrea M. Gacki,
*Director, Office of Foreign Assets Control.*

Dated: June 21, 2023.

**Andrea M. Gacki,**
*Director, Office of Foreign Assets Control.*

[FR Doc. 2023–15201 Filed 7–17–23; 8:45 am]
**BILLING CODE 04810–AL–P**

## DEPARTMENT OF THE TREASURY

## Office of Foreign Assets Control

## 31 CFR Parts 542, 560, 591 and 594

## Publication of Covid-Related Web General Licenses Related to Syria Sanctions Regulations, Iranian Transactions and Sanctions Regulations, Global Terrorism Sanctions Regulations, and Venezuela Sanctions Regulations.

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Publication of web general licenses.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing three web general licenses (GLs) issued in the Syria Sanctions Regulations, Iran Transactions and Sanctions Regulations and Global Terrorism Sanctions Regulations, and Venezuela Sanctions Regulations, respectively: Syria GL 21B, Iran GL N–2, and Venezuela GL 39B, each of which was previously made available on OFAC's website.

**DATES:** Syria GL 21B, Iran GL N–2, and Venezuela GL 39B were issued on June 14, 2023. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

**FOR FURTHER INFORMATION CONTACT:** OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Compliance, 202–622–2490.

**SUPPLEMENTARY INFORMATION:**

### Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *https://ofac.treasury.gov.*

### Background

On June 14, 2023, OFAC issued Syria GL 21B, Iran GL N–2, and Venezuela GL 39B to extend the authorization for certain transactions otherwise prohibited by, respectively: the Syria Sanctions Regulations, 31 CFR part 542; the Iranian Transactions and Sanctions Regulations, 31 CFR part 560, and the Global Terrorism Sanctions Regulations, 31 CFR part 594; and the Venezuela Sanctions Regulations, 31 CFR part 591. At the time of issuance, OFAC made all three GLs, each of which has an expiration date of June 14, 2024, available on its website (*https://ofac.treasury.gov*). The texts of the three GLs are provided below:

**OFFICE OF FOREIGN ASSETS CONTROL**

**Syrian Sanctions Regulations**

*31 CFR part 542*

**GENERAL LICENSE NO. 21B**

**Authorizing Certain Activities To Respond to the Coronavirus Disease 2019 (COVID–19)**

(a) *Authorizing certain COVID–19-related transactions prohibited by the Syrian Sanctions Regulations.* Except as provided in paragraph (b) of this general license, the following transactions and activities that are prohibited by the Syrian Sanctions Regulations, 31 CFR part 542 (SySR), are authorized through 12:01 a.m. eastern daylight time, June 14, 2024:

(1) *Exportation of services related to COVID–19.* All transactions and activities related to the exportation, reexportation, sale, or supply, directly or indirectly, of services to Syria that are related to the prevention, diagnosis, or treatment of COVID–19 (including research or clinical studies relating to COVID–19); and

(2) *COVID–19-related transactions involving certain blocked persons.* All transactions and activities involving the Government of Syria, Polymedics LLC, Letia Company, or any entity in which Polymedics LLC or Letia Company owns, whether individually or in the aggregate, directly or indirectly, a 50 percent or greater interest, that are related to the prevention, diagnosis, or treatment of COVID–19 (including research or clinical studies relating to COVID–19), provided that any exportation or reexportation of items to Syria must be licensed or otherwise authorized by the Department of Commerce.

(b) This general license does not authorize:

(1) The exportation or reexportation of any goods, technology, or services to military, intelligence, or law enforcement purchasers or importers;

(2) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V; or

(3) Any transactions or activities otherwise prohibited by the SySR, or prohibited by any other part of 31 CFR chapter V, statute, or Executive order, or involving any blocked person other than the blocked persons identified in paragraph (a) of this general license.

(c) Effective June 14, 2023, General License 21A, dated June 10, 2022, is replaced and superseded in its entirety by this General License 21B.

**Note 1 to General License 21B**. Nothing in this general license relieves any person from compliance with the requirements of other Federal agencies, including the Department of Commerce's Bureau of Industry and Security or the Department of State's Directorate of Defense Trade Controls.

Andrea M. Gacki,
*Director, Office of Foreign Assets Control.*

Dated: June 14, 2023

**OFFICE OF FOREIGN ASSETS CONTROL**

**Iranian Transactions and Sanctions Regulations**

*31 CFR part 560*

**Global Terrorism Sanctions Regulations**

*31 CFR part 594*

**GENERAL LICENSE N–2**

**Authorizing Certain Activities To Respond to the Coronavirus Disease 2019 (COVID–19)**

(a) *Authorizing certain COVID–19-related transactions prohibited by the Iranian Transactions and Sanctions Regulations.* Except as provided in paragraphs (d) and (e) of this general license, the following transactions and activities that are prohibited by the Iranian Transactions and Sanctions Regulations, 31 CFR part 560 (ITSR), are authorized through 12:01 a.m. eastern daylight time, June 14, 2024:

(1) *Exportation of goods or technology.* All transactions and activities related to the exportation, reexportation, sale, or supply, directly or indirectly, of goods or technology for use in connection with the prevention, diagnosis, or treatment of COVID–19 (including research or clinical studies related to COVID–19) to Iran or the Government of Iran, or to persons in third countries purchasing specifically for resale to Iran or the Government of Iran;

(2) *Importation of or dealings in certain COVID–19-related goods.* All transactions and activities related to the importation into the United States of, or dealings in or related to, goods that previously were exported or reexported to Iran or the Government of Iran pursuant to this general license and that are broken, defective, or non-operational, or are connected to product recalls, adverse events, or other safety concerns, or for routine maintenance or the permanent return of such items to the United States or a third country; and

(3) *Exportation or importation of services.* All transactions and activities related to the exportation, reexportation, sale, or supply, directly or indirectly, of services to Iran or the Government of Iran, or the importation into the United States of, or dealings in or related to, Iranian-origin services, in each case that are related to the prevention, diagnosis, or treatment of COVID–19 (including research or clinical studies relating to COVID–19).

(b) *Authorizing certain transactions involving the Central Bank of Iran (CBI) or the National Iranian Oil Company (NIOC).* Except as provided in paragraph (e) of this general license, all transactions and activities described in paragraph (a) of this general license involving CBI, NIOC, or any entity in which NIOC owns, directly or indirectly, a 50 percent or greater interest, that are prohibited by the ITSR or the Global Terrorism Sanctions Regulations, 31 CFR part 594 (GTSR) are authorized through 12:01 a.m. eastern daylight time, June 14, 2024.

(c) *Authorizing certain financial transactions.* Except as provided in paragraph (e) of this general license, the processing of funds transfers or trade finance transactions that are ordinarily incident and necessary to give effect to the transactions and activities authorized in paragraphs (a) and (b) of this general license that are prohibited by the ITSR or the GTSR are authorized through 12:01 a.m. eastern daylight time, June 14, 2024.

(d) Any exportation or reexportation of goods or technology pursuant to paragraph (a) of this general license is subject to the following conditions:

(1) Any goods or technology exported or reexported must:

(i) Be designated as EAR99 under the Export Administration Regulations, 15 CFR parts 730 through 774 (EAR); or

(ii) In the case of goods or technology that are not subject to the EAR, not be listed on any multilateral export control regime; and

(2) All exports or reexports made pursuant to this general license must be concluded prior to the expiration date of this general license.

(e) This general license does not authorize:

(1) The exportation or reexportation of goods or technology to CBI, NIOC, or any entity in which NIOC owns, directly or indirectly, a 50 percent or greater interest;

(2) The exportation or reexportation of any goods, technology, or services to military, intelligence, or law enforcement purchasers or importers;

(3) The exportation or reexportation of any goods, technology, or services used to facilitate the development or production of a chemical or biological weapon or weapon of mass destruction;

(4) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V; or

(5) Any transactions or activities otherwise prohibited by the ITSR or the GTSR, or prohibited by any other part of 31 CFR chapter V, involving any person blocked pursuant to the GTSR except as identified in paragraph (b) of this general license.

(f) Effective June 14, 2023, General License N–1, dated June 10, 2022, is replaced and superseded in its entirety by this General License N–2.

**Note 1 to General License N–2**. The export or reexport to Iran of certain food, medicine, medical devices, and agricultural commodities, as well as certain related transactions such as payments and brokering, are broadly authorized under sections 560.530, 560.532, and 560.533 of the ITSR, subject to certain conditions. In addition, transactions or activities authorized under those provisions that involve CBI, NIOC, or any entity in which NIOC owns, directly or indirectly, a 50 percent or greater interest, are also authorized pursuant to Counter Terrorism- and Iran-related General License No. 8A. Those authorizations remain in effect, including with respect to exports or reexports of food, medicine, medical devices, and agricultural commodities intended to respond to COVID–19 that satisfy the applicable criteria of those authorizations.

**Note 2 to General License N–2**. Nothing in this general license relieves any person from compliance with the requirements of other Federal agencies, including the Department of Commerce's Bureau of Industry and Security or the Department of State's Directorate of Defense Trade Controls.

Andrea M. Gacki,
*Director, Office of Foreign Assets Control.*

Dated: June 14, 2023.

**OFFICE OF FOREIGN ASSETS CONTROL**

**Venezuela Sanctions Regulations**

*31 CFR part 591*

**GENERAL LICENSE NO. 39B**

**Authorizing Certain Activities To Respond to the Coronavirus Disease 2019 (COVID–19)**

(a) *Authorizing certain COVID–19-related transactions involving the Government of Venezuela.* Except as provided in paragraph (c) of this general license, all transactions and activities involving the Government of Venezuela that are related to the prevention, diagnosis, or treatment of COVID–19 (including research or clinical studies relating to COVID–19), that are prohibited by Executive Order (E.O.) 13808 of August 27, 2017, as amended by E.O. 13857 of January 25, 2019, or E.O. 13884 of August 5, 2019, each as incorporated into the Venezuela Sanctions Regulations, 31 CFR part 591 (the VSR), are authorized through 12:01 a.m. eastern daylight time, June 14, 2024.

(b) *Authorizing certain COVID–19-related transactions involving certain banks.* Except as provided in paragraph (c) of this general license, all transactions and activities described in paragraph (a) of this general license involving Banco Central de Venezuela (BCV), Banco de Venezuela, S.A. Banco Universal (Banco de Venezuela), Banco Bicentenario del Pueblo, de la Clase Obrera, Mujer y Comunas, Banco Universal C.A. (Banco Bicentenario del Pueblo), or any entity in which BCV, Banco de Venezuela, or Banco Bicentenario del Pueblo owns, whether individually or in the aggregate, directly or indirectly, a 50 percent or greater interest, that are prohibited by E.O. 13850 of November 1, 2018, as amended by E.O. 13857, each as incorporated into the VSR, are authorized through 12:01 a.m. eastern daylight time, June 14, 2024.

(c) This general license does not authorize:

(1) The exportation or reexportation of any goods, technology, or services to military, intelligence, or law enforcement purchasers or importers;

(2) Any transactions or activities involving Petróleos de Venezuela, S.A. (PdVSA), Banco de Desarrollo Economico y Social de Venezuela (BANDES), or Banco Bandes Uruguay S.A. (Bandes Uruguay), or any entity in which PdVSA, BANDES, or Bandes Uruguay owns, whether individually or in the aggregate, directly or indirectly, a 50 percent or greater interest;

(3) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V; or

(4) Any transactions or activities otherwise prohibited by the VSR, or prohibited by any other part of 31 CFR chapter V, statute, or E.O., or involving any blocked persons other than Government of Venezuela persons blocked solely pursuant to E.O. 13884 or the blocked persons identified in paragraph (b) of this general license.

(d) Effective June 14, 2023, General License 39A, dated June 10, 2022, is replaced and superseded in its entirety by this General License 39B.

**Note 1 to General License 39B**. Nothing in this general license relieves any person from compliance with the requirements of other Federal agencies, including the Department of Commerce's Bureau of Industry and Security or the Department of State's Directorate of Defense Trade Controls.

Andrea M. Gacki,

*Director, Office of Foreign Assets Control.*

Dated: June 14, 2023.

**Andrea M. Gacki,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2023–15137 Filed 7–17–23; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2023–0502]**

### Safety Zone; Hemingway Paddleboard Race, Key West, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notification of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce a safety zone for the Hemingway Paddleboard Race, Key West, Florida to provide for the safety of life on the navigable waterways during this event. This action is necessary to ensure the safety of event participants and spectators. During the enforcement period, no person or vessel may enter, transit through, anchor in, or remain within the regulated area without approval from the Captain of the Port Key West or a designated representative.

**DATES:** The regulations in 33 CFR 165.786 will be enforced for the location identified in Item 7.1 of the Table to § 165.786, from 5:30 until 7:30 p.m. on July 22, 2023.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notification of enforcement, call or email Hailye Wilson, Sector Key West Waterways Management Department, Coast Guard; telephone 305–292–8768; email: *hailye.m.wilson@uscg.mil*.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone in 33 CFR 165.786, Table to § 165.786, Item 7.1, for the Annual Hemingway Paddleboard Race in Key West, Florida from 5:30 until 7:30 p.m. on July 22, 2023. This action is being taken to provide for the safety of life on navigable waterways during this event. The regulation for recurring marine events within Sector Key West Captain of the Port (COTP) zone, Table to § 165.786, Item 7.1, specifies the location of the regulated area for the Hemingway Sunset Run and Paddleboard Race event. During the enforcement period, no person or vessel may enter, transit through, anchor in, or remain within the established regulated areas without approval from the Captain of the Port Key West or designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

The Coast Guard will provide notice of the regulated area by Local Notice to Mariners and Broadcast Notice to Mariners. If the Captain of the Port Key West determines that the regulated area need not be enforced for the full duration stated in this publication, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

**Jason D. Ingram,**

*Captain, U.S. Coast Guard, Captain of the Port Key West.*

[FR Doc. 2023–15112 Filed 7–17–23; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 21

**RIN 2900–AQ11**

### VA Vocational Rehabilitation and Employment Nomenclature Change for Position Title—Revision

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts, without change, an interim final rule published in the **Federal Register** on November 17, 2017, which affirmed a May 2, 2016, final rule amending Department of Veterans Affairs (VA) regulations to reflect a nomenclature change in the title of certain personnel hired by VA's Veteran Readiness and Employment (VR&E) Service, previously known as Vocational Rehabilitation and Employment Service. The preamble to the interim final rule corrected inaccuracies in the preamble to the 2016 final rule and provided additional explanation of the basis for the rule.

**DATES:** This rule is effective July 18, 2023.

**FOR FURTHER INFORMATION CONTACT:** Allison Bernheimer, Senior Policy Analyst, Veteran Readiness and Employment Service (28), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9600. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:** On May 2, 2016, VA published a final rule (referred to as ''May 2016 final rule'' or ''final rule'') in the **Federal Register** at 81 FR 26130, amending its regulations to reflect a nomenclature change in the title of certain personnel hired by VA's VR&E Program. On November 17, 2017, VA published an interim final rule (referred to as ''November 2017 interim final rule'' or ''interim final rule'') in the **Federal Register** at 82 FR 54295 affirming the May 2016 final rule. In the preamble to the November 2017 interim final rule, VA corrected some inaccurate statements and citations in the preamble of the May 2016 final rule and provided additional explanation of the basis for the rule. Although the interim final rule was effective upon publication, VA provided a 30-day comment period, which ended on December 18, 2017.

VA received a multitude of comments, including comments on the May 2016 final rule, from one individual. The one commenter had challenged promulgation of both the May 2016 final rule and the November 2017 interim final rule under 38 U.S.C. 502 as arbitrary, capricious, an abuse of discretion, and otherwise contrary to law, in the United States Court of Appeals for the Federal Circuit (Federal Circuit), and also claimed there was not good cause for dispensing with a notice-and-comment period and a delayed effective date. The Federal Circuit found that promulgating the rule was not arbitrary, capricious, or a violation of law, and that VA had good cause to expedite implementation of the rule. *Conyers* v. *Sec'y of Veterans Affairs,* 750 Fed. Appx. 993 (Fed. Cir. 2018).

First, the commenter indicates three ''distinct factors'' to oppose promulgation of the interim final rule. The first factor addresses the differences between the duties and responsibilities of the two positions of counseling psychologist (CP) and vocational rehabilitation counselor (VRC). The commenter states, ''it is indisputable that there are several critical distinctions in the unique training matrices, core competencies and knowledge, and qualifications that are unique for each of said professions.'' In addition, the commenter states that VA ''conflat[ed] the diverse diagnostic, psychotherapeutic, and paraprofessional credentials, duties, and responsibilities inherent for such professions'' and that VA ''fail[ed] to either acknowledge or account for the apposite governing standards of certification requisites, licensure criterions, and methodological practices for said professions.''

While the education, qualifications, and experience for CPs and VRCs may not be absolutely identical, VRCs are qualified to meet VA's statutory requirements to provide rehabilitative services and perform the duties of the position, as outlined in the regulatory amendments made by the final rule. As stated in the November 2017 interim final rule, the requirements for the VRC position ''are comparable to the requirements applicable to CP positions but are more accurately aligned with the needs of the VR&E program, which is focused on helping Veterans obtain and maintain suitable employment.'' 82 FR 54296. The commenter's assertions of differences between CPs and VRCs does not change that assessment. The Federal Circuit concluded that the difference in hiring standards does not violate any laws that would render the rule unlawful. *Conyers,* 750 Fed. Appx. at 998. Therefore, we will not make any changes based on this comment.

The second factor stated by the commenter is that VA ''conflat[ed] the duties and responsibilities of CPs hired in GS–0180 positions and VRCs hired in GS–0101 positions to provide the same type of rehabilitation services and perform the same work.'' In addition, the commenter states that VA did not collaborate with the Office of Personnel Management (OPM) in ''effecting modifications of, amendments to, or deviations from the Federal classification standards for said positions prior to [VA] implementing such amalgamation.'' The commenter's statements again focus on the differences in the roles and responsibilities between a CP and a VRC. Under 38 U.S.C. 3118(c), VA has the discretion to establish qualifications for personnel providing evaluation and rehabilitation services. Also, there is no requirement that the VA Secretary collaborate with OPM when developing policies and procedures relating to the establishment and maintenance of standards. The Federal Circuit confirmed that there is no requirement to consult with OPM before making hiring changes. *Id.* With regard to conflating the duties and responsibilities of CPs and VRCs, the Federal Circuit stated that VA ''has shown a rational connection between the facts found and the choice made.'' *Id.* at 999. Therefore, we will not make any changes based on these comments.

The third factor stated by the commenter asserts ''highly dubious acts and omissions committed by [VA] in the course of promulgating regulations, policies, and procedures governing the administration and provisioning of Chapter 31 vocational rehabilitation benefits, services, and assistance.''

With regard to this factor, the commenter raises three assertions, the first of which concerns the position description for VRCs. The commenter claims that the qualification requirements for the VRC position, as indicated in VR&E Letter 28–14–13, are ''on par with the universally-recognized core competencies, duties, and responsibilities commonly performed by a Counseling Psychologist even though such an expectation esoterically transcends commonly acknowledged and recognized standards regarding the curriculum, core competencies, certification requisites, and licensing criteria applicable in the training and qualifications of Vocational Rehabilitation Counselors/Specialists.'' As the interim final rule does not utilize the term ''Vocational Rehabilitation Specialists,'' we will assume the commenter is referring to the VRC position when he refers to ''Vocational Rehabilitation Specialists.'' The qualifications for VRCs are found in VA's Staffing Handbook (VA Handbook 5005/6, Part II, Appendix F2 (June 3, 2004)), and the knowledge they must possess is described in the position description released with VR&E Letter 28–14–13 on February 20, 2014. As we explained in the interim final rule, VRCs ''can capably and competently perform the required counseling, rehabilitation, and employment assistance tasks'' and are, therefore, qualified to provide vocational rehabilitation services and benefits to participants of the VR&E program. 82 FR 54296. And the Federal Circuit confirmed that VRCs, in performing their duties, ''meet VA's statutory obligations to provide rehabilitation services to veterans.'' *Conyers,* 750 Fed. Appx. at 998. Therefore, we will not make any changes based on this comment.

Second, the commenter asserts that the administrative record, apparently referring to the administrative record of the final rule, published in the **Federal Register** at 81 FR 26130, is ''tenebrous.'' The commenter states that, since the December 16, 2003, Performance Plan never existed, it ''evinces [VA] committed acts and omissions that are arbitrary, capricious, and abuse of agency discretion, and otherwise contrary to law while promulgating regulatory amendments.'' VA acknowledged deficiencies in the record associated with the final rule and published an interim final rule at 82 FR 54295 to address any inaccuracies in that record and to explain the basis for the final rule more clearly. Specifically, the preamble to the interim final rule addressed the inaccurate statements concerning the December 16, 2003, Performance Plan. 82 FR 54295. As explained in the interim final rule, the performance plan referenced as being released on December 16, 2003, was delayed and subsequently released on July 1, 2004. There was no arbitrary or capricious act of omission, or an abuse of agency discretion. Rather, VA simply made inadvertent misstatements in the final rule preamble, including stating that the performance plan demonstrated that the duties of a CP and a VRC were the same; however, in the interim final rule, VA acknowledged and corrected all misstatements. Indeed, the Federal Circuit concluded that ''the Secretary's actions in promulgating the rules at issue [were not] arbitrary and capricious.'' *Conyers,* 750 Fed. Appx. at 998–999. Thus, we will not make any changes based on these comments.

Related to the second assertion, the commenter states that, notwithstanding VA's ''insistence that failure to maintain the 02 May 2016 Final Rule's regulatory amendments will adversely affect the processing and provisioning of Chapter 31 vocational rehabilitation benefits, services, and assistance to Veterans, it is abundantly clear that Veterans have long been, and will continue to be, harmed by [VA's] failure to comply [with] APA rulemaking procedures.'' We noted in the interim final rule that we did not have enough CPs in our national workforce (at the time of publication, only 10 CPs were employed across the nation) to fulfill all required duties, and that we were no longer hiring under the CP title. Thus, to provide benefits effectively and efficiently, we needed to amend the regulations to grant VRCs authority previously exercised by CPs. The Federal Circuit found that the facts sufficiently supported this grant of authority. *Conyers,* 750 Fed. Appx. at 999. And, given the shortage of CPs, the Federal Circuit further found that VA had sufficiently good cause to expedite implementation of the regulatory amendments while completing the rulemaking process. Therefore, we will not make any changes based on this comment.

The commenter's third assertion expresses concern that VA had ''prior knowledge of deficiencies in the VR&E Program'' and references documents that were part of the administrative record of the interim final rule that indicate that VA knew the 38 CFR part 21 regulatory guidance only referenced CPs and not CPs and VRCs when it discussed certain job duties that are part of the rehabilitation process. The commenter is correct that certain sections of the CFR referenced only CPs. Publication of the final rule amended the CFR to include references to VRCs as well. It is not clear to what deficiencies the commenter refers, but we previously explained that, in the interim final rule published at 82 FR 54295, we addressed any misstatements and were revising the CFR to address any deficiencies. Thus, we will not make any changes based on this comment.

The commenter offers four additional reasons for not promulgating the final rule. The first reason concerns an email correspondence between a Veteran's advocate and a VR&E staff member from September 2014. The commenter states that the ''narration of a Veterans advocate contacting VR&E Service regarding the roles of CPs and VRCs is inexact as it disingenuously fails to convey the full substance of said interaction.'' The commenter seems to be dissatisfied with VR&E Service's response to the Veteran's advocate. The response indicated that we were addressing the issue with VA's Office of General Counsel and would likely make a regulatory change as soon as possible. The regulatory change was made in May 2016 by final rule, and, by interim final rule in November 2017, VA corrected all inaccuracies. Therefore, we will not make any changes based on this reason.

The second reason states ''notwithstanding the lack of any qualifying information regarding the number of remanded cases or the period such remands were rendered, proclaiming that because BVA remanded VR&E cases with instructions for a CP instead of VRC to render the determinations required by apposite regulations necessitated the regulatory amendments initially pronounced in the 02 May 2017 Final Rule [81 FR 26130] and fully adopted in the 17 November 2017 Interim Final Rule is spurious reasoning.'' We explained in the interim final rule that the Board of Veterans' Appeals (BVA) had been remanding cases to VR&E regional offices with instructions to have a CP make a specific decision as required by regulatory guidance, and that, consequently, we were amending our regulations because we did not have enough CPs to comply with the BVA's remand instructions. The Federal Circuit found this reasoning to be rational and our actions not to be arbitrary and capricious. *Conyers,* 750 Fed. Appx. at 999. Therefore, we will not make any changes based on this reason.

The commenter asserts as third and fourth reasons that VA's position that ''the regulations codified in Part 21 required amendment to 'clear[ ] up confusion among VR&E program participants' regarding the roles of a CP and a VRC explicitly delegated by the apposite regulations is beyond fallacious. It is highly obvious such 'confusion' directly resulted not from VR&E program participants' misunderstanding or misconstruing the regulations but from [VA's] noncompliance with Part 21.'' The commentor also mentions ''purported confused VR&E program participants.'' We did not state or imply that VR&E's population was uninformed or misled; rather we acknowledged a lack of consistency between the regulatory guidance in 38 CFR part 21 and VR&E's actual practice, and then addressed the inconsistency by amending the regulations to more accurately reflect VR&E's practice and clearly, concisely, and correctly state who will be making benefit determinations. Therefore, we will not make any changes based on these reasons.

These four reasons culminate in the commenter's statement that VA had ''long possessed more-than-adequate knowledge of the systemic noncompliance with Part 21 in order to reasonable facilitate reasoned decision making and allow for a sufficient notice-and-comment period instead of promulgating and immediately effecting the 02 May 2016 Final Rule [81 FR 26130] upon conclusory and illusory rationale.'' Finally, the commenter discusses three ''circumstances''—which he describes as ''mendacious stratagem,'' ''unpersuasive reasoning,'' and ''harmful effects to Veterans''—''which further demonstrates [VA] committed acts and omissions that were arbitrary, capricious, an abuse of agency discretion, and otherwise contrary to law in promulgating the subject amendments.'' He further claims that VA's ''hasty, headlong effort to avoid scrutiny of the VR&E program continued harming Veterans through improper evaluations, inappropriate counseling, and delayed rehabilitation programs conducted by unqualified VRCs.'' In essence, the commenter restates previous comments concerning what he believes to be improper (harmful and arbitrary and capricious) acts. However, if the rule changes were not promulgated, effective immediately, and CPs were required to make all rehabilitation determinations, it would have been impossible for VR&E to provide rehabilitation services to our beneficiaries. And, as the Federal Circuit found, the Secretary of Veterans Affairs has the discretion to determine the qualifications for personnel providing rehabilitation services and the rules promulgated are in accordance with law and not arbitrary and capricious. *Conyers,* 750 Fed. Appx. at 997–999. Ultimately, the Federal Circuit concluded, ''[b]ecause Mr. Conyers has not sufficiently shown a violation of federal law or that the Secretary's actions were arbitrary and capricious, we cannot now say that the Secretary was acting beyond the scope of his authority by promulgating the November 2017 Revised Rule with an immediate effective date.'' *Id.* at 999.

Therefore, based on the rationale set forth in the interim final rule and in this document, VA is adopting the provisions of the interim final rule as a final rule with no changes. VA appreciates the comments submitted in response to the interim final rule.

## Administrative Procedure Act

On November 17, 2017, VA published an interim final rule (82 FR 54295) and determined that there was a basis under the Administrative Procedure Act for issuing the interim final rule with immediate effect. VA has considered all relevant input and information contained in the comments submitted in response to the interim final rule and has concluded that no changes to the interim final rule are warranted. VA is adopting the provisions of the interim final rule as a final rule with no changes.

## Executive Orders 12866, 13563 and 14094

Executive Orders 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order

14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

**Paperwork Reduction Act**

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will not directly affect any small entities; only individuals will be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.116, Vocational Rehabilitation for Disabled Veterans.

**Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

**List of Subjects in 38 CFR Part 21**

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

**Signing Authority:**

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on July 10, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

**Jeffrey M. Martin,**

*Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.*

## PART 21—VETERAN READINESS AND EMPLOYMENT AND EDUCATION

■ Accordingly, the interim final rule published in the **Federal Register** on November 17, 2017, at 82 FR 54295, amending 38 CFR part 21, is adopted as a final rule without change.

[FR Doc. 2023–15062 Filed 7–17–23; 8:45 am]

BILLING CODE 8320–01–P

# Proposed Rules

Federal Register

Vol. 88, No. 136

Tuesday, July 18, 2023

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

## FEDERAL MEDIATION AND CONCILIATION SERVICE

### 5 CFR Chapter CIII

**RIN 3209–AA65**

## Supplemental Standards of Ethical Conduct for Employees of the Federal Mediation and Conciliation Service

**AGENCY:** Federal Mediation and Conciliation Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Mediation and Conciliation Service (FMCS), with the concurrence of the Office of Government Ethics (OGE), is issuing this proposed rule for FMCS employees. This rule supplements the Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards) issued by OGE and is necessary because it addresses ethical issues unique to the FMCS. This rule sets forth prior approval requirements for certain outside employment and outside activities for all FMCS employees, other than special government employees.

**DATES:** Comments must be submitted on or before August 17, 2023.

**ADDRESSES:** You may submit comments, in writing, to FMCS on this proposed rule, identified by RIN 3209–AA65, by any of the following methods:

- *Email: register@fmcs.gov.* Include the reference ''Proposed Rule FMCS Supplemental Standards, RIN 3209–AA65'' in the subject line of the message.
- *Mail:* FMCS, One Independence Square, 250 E Street SW, Washington, DC, 20427, Attention: Anna Davis, Designated Agency Ethics Official (DAEO), General Counsel.

**FOR FURTHER INFORMATION CONTACT:** Anna Davis, Designated Agency Ethics Official (DAEO), General Counsel, Office of General Counsel, Federal Mediation and Conciliation Service, 250 E Street SW, Washington, DC 20427; Office/Fax/Mobile 202–606–3737; *register@fmcs.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On August 7, 1992, OGE published the OGE Standards. *See* 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52483, and 60 FR 51167, with additional grace period extensions for certain existing provisions at 59 FR 4779–4780, 60 FR 6390–6391, and 60 FR 66857–66858. The OGE Standards, codified at 5 CFR part 2635, effective February 3, 1993, established uniform standards of ethical conduct that apply to all executive branch personnel.

Section 2635.105 of the OGE Standards authorizes an agency, with the concurrence of OGE, to adopt agency-specific supplemental regulations that are necessary to properly implement its ethics program. The FMCS, with OGE's concurrence, has determined that the following supplemental regulations are necessary for successful implementation of its ethics program in light of the FMCS' unique programs and operations.

### II. Analysis of the Regulations

In accordance with 5 CFR 2635.803, FMCS has determined it is necessary for the purpose of administering its ethics program to require its employees, other than special government employees, to obtain approval before engaging in certain outside employment and outside activities. The FMCS's mission is to promote labor-management peace and cooperation. FMCS has a large and broad range of clients external to the Government. Given the volume of public and private sector clients, there is a greater likelihood that conflicts of interest, impartiality, or other concerns may arise that employees may not be aware of and therefore it is necessary for FMCS to screen for such conflicts. The approval requirement will help to ensure that potential ethics conflicts of interest, impartiality, or others concerns are resolved before certain employees begin outside employment or outside activities. Requiring prior approval ensures the neutrality and integrity of FMCS services.

*Section 10300.101 General*

Paragraph (a) explains that the regulation applies to all FMCS employees, other than special government employees, and supplements the OGE Standards.

Paragraph (b) notes that employees must comply with ethics guidance and procedures issued by FMCS and should contact an FMCS ethics official if an ethics question arises. This paragraph also includes cross-references to other OGE ethics related regulations.

*10300.102 Definitions*

This section defines terms and phrases used throughout this supplemental regulation.

*10300.103 Prior Approval for Outside Employment and Outside Activities*

Paragraph (a) sets forth that an employee of the FMCS, other than a special government employee, is required to seek prior written approval before engaging in certain outside employment and outside activities.

Paragraph (b) sets out the standards and procedures for requesting approval to engage in certain outside employment and outside activities.

Paragraph (c) sets forth the requirement for submitting a revised request when there is a significant change in the nature, duties or scope of the outside employment or activity or to the employee's official duties or responsibilities.

Paragraph (d) provides that the DAEO may issue agency wide-policies, handbooks, or other written guidance governing the submission of requests for approval of outside employment and activities, which may exempt categories of employment and activities from the prior approval requirement of this section based on a determination that employment or activities within those categories would generally be approved and is not likely to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

### III. Matters of Regulatory Procedure

*Administrative Procedure Act*

Under 5 U.S.C. 553(a)(2), rules relating to agency management or personnel are exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act (APA). In addition, under 5 U.S.C. 553(b)(3)(A), notice and comment rulemaking requirements do not apply to rules concerning matters of agency organization, procedure, or practice. Given that the rule concerns matters of agency management or personnel, and organization, procedure, or practice, the notice and comment requirements of the APA do not apply here. Nor is a public hearing required under 45 U.S.C. 160a. In issuing a proposed rule on this matter, FMCS, will consider all written comments on this proposed rule that are submitted by the August 17, 2023 due date.

*Executive Order 12866*

This rule is not a significant rule for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

*Regulatory Flexibility Act*

FMCS has determined under the Regulatory Flexibility Act, 5 U.S.C. chapter 6, that this proposed rule would not have a significant economic impact on a substantial number of small entities because it would primarily affect FMCS employees.

*Paperwork Reduction Act*

The Paperwork Reduction Act, 44 U.S.C. chapter 35, does not apply to this proposed rule because it does not contain any information collection requirements that would require the approval of the Office of Management and Budget.

*Congressional Review Act*

FMCS has determined that this proposed rule does not meet the definition of a rule, as defined by the Congressional Review Act, 5 U.S.C. chapter 8, and thus does not require review by Congress.

**List of Subjects in 5 CFR Part 10300**

Conflicts of interests, Government employees.

For the reasons set forth in the preamble, the FMCS, with the concurrence of OGE, amends title 5 of the Code of Federal Regulations by adding a new chapter CIII, consisting of part 10300, to read as follows:

## Title 5—Administrative Personnel

## CHAPTER CIII—FEDERAL MEDIATION AND CONCILIATION SERVICE

## PART 10300—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE FEDERAL MEDIATION AND CONCILIATION SERVICE



**Authority:** 5 U.S.C. 7301, 7353; 5 U.S.C. Ch. 131 (Ethics in Government Act of 1978); 29 U.S.C. 172; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 5 CFR 2635.402(c), 5 CFR 2635.403(a), 5 CFR 2635.502, 5 CFR 2635.604, 5 CFR 2635.802, and 5 CFR 2635.803.

### § 10300.101 General.

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Federal Mediation and Conciliation Service (FMCS), other than special government employees as defined in 5 CFR 2635.102(l), and supplement the Standards of Ethical Conduct for Employees of the Executive Branch in 5 CFR part 2635 (Office of Government Ethics (OGE) Standards).

(b) *Cross-references.* In addition to the standards in 5 CFR part 2635 and this part, FMCS employees are required to comply with implementing guidance and procedures issued by the FMCS in accordance with 5 CFR 2635.105(c). FMCS employees are also subject to the regulations concerning executive branch financial disclosures contained in 5 CFR part 2634, the regulations concerning executive branch financial interests contained in 5 CFR part 2640, regulations concerning post-employment restrictions contained in 5 CFR part 2641, and the regulations concerning executive branch employee responsibilities and conduct contained in 5 CFR part 735. Employees should contact an FMCS ethics official if they have questions about any provision of this regulation or other ethics-related matters.

### § 10300.102 Definitions.

For purposes of this part:

*Outside Employment or activity* means any form of non-Federal employment or business relationship, compensated or uncompensated, involving the provision of personal services by the employee. It includes but is not limited to:

1. personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, professor, speaker, or writer.

2. active participation, including voluntary participation as defined in 5 CFR 2635.502(b)(1)(v), with a prohibited source.

3. It does not include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization, unless such activities are for compensation other than reimbursement of expenses; such activities involve the provision of professional services or advice; or the organization's activities are devoted substantially to matters relating to the employee's official duties as defined in 5 CFR 2635.807(a)(2)(i)(B) through (E).

**Note 1 to § 10300.102.** There is a special approval requirement set out in both 18 U.S.C. 203(d) and 205(e) for certain representational activities otherwise covered by the conflict-of-interest restrictions on compensation and activities of employees in claims against and other matters affecting the Government. Thus, an employee who wishes to act as an agent or attorney for, or otherwise represent the employee's parents, spouse, child, or any person for whom, or any estate for which, the employee is serving as guardian, executor, administrator, trustee, or other personal fiduciary in such matters, must obtain the approval required by law of the government official responsible for the employee's appointment, in addition to the regulatory approval required in this section.

### § 10300.103 Prior approval for outside employment and outside activities.

(a) *General Requirement.* Before engaging in any outside employment or outside activity, as it is defined in § 10300.102, an employee of the Federal Mediation and Conciliation Service (FMCS), other than a special government employee, must obtain written approval.

(b) *Procedure for requesting approval.* The employee must first obtain written approval from the employee's immediate supervisor and then the DAEO. If the employee does not obtain written approval from the employee's immediate supervisor, the employee may request review by the DAEO. Decisions by the DAEO are final and non-appealable.

(c) *Standard for approval.* Approval shall be granted only upon a determination that the outside employment or outside activity is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(d) *Revised Requests.* Upon a significant change in the nature or scope of the outside employment or outside activity or in the employee's official position with FMCS, the employee must, within 7 calendar days of the change, submit a revised request for approval. If there are no significant changes in the nature or scope of the outside employment or outside activity or in the employee's official position with FMCS, the employee does not need to reapply after FMCS' initial approval.

(e) *Implementation Guidance.* The DAEO may issue instructions or manual issuances governing the submission of requests for approval of outside employment or outside activities. The instructions or manual issuances may exempt categories of employment and activities from the prior approval requirement of this section based on a determination that employment or activity within those categories of employment or activities would generally be approved and is not likely to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635. The DAEO may include in these instructions or issuances examples of outside employment and activities that are permissible or impermissible consistent with this part and 5 CFR part 2635.

Dated: July 11, 2023.

**Anna Davis,**

*General Counsel & DAEO.*

**Emory Rounds,**

*Director, U.S. Office of Government Ethics.*

[FR Doc. 2023–15021 Filed 7–17–23; 8:45 am]

**BILLING CODE 6732–01–P**

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 35

**[NRC–2022–0218]**

**RIN 3150–AK91**

### Reporting Nuclear Medicine Injection Extravasations as Medical Events

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Preliminary proposed rule language; extension of comment period.

**SUMMARY:** On April 19, 2023, the U.S. Nuclear Regulatory Commission (NRC) solicited feedback on the preliminary proposed rule language and posed specific questions to stakeholders for a rulemaking on the reporting of nuclear medicine injection extravasations as medical events. The public comment period was originally scheduled to close on July 18, 2023. The NRC has decided to extend the public comment period to allow more time for members of the public to develop and submit their comments.

**DATES:** The due date of comments requested in the document published on April 19, 2023 (88 FR 24130) is extended. Comments should be filed no later than September 1, 2023. Comments received after this date will be considered, if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0218. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. eastern time, Federal workdays; telephone: 301–415–1677.

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:** Irene Wu, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–1951, email: *Irene.Wu@nrc.gov;* and Daniel DiMarco, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–3303, email: *Daniel.Dimarco@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2022–0218 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–2022–0218.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time, 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–2022–0218 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

### II. Discussion

On April 19, 2023, the NRC solicited feedback on the preliminary proposed rule language for a rulemaking on the reporting of nuclear medicine injection extravasations as medical events. To inform this rulemaking, the NRC also posed specific questions to obtain input from stakeholders. The public comment period was originally scheduled to close on July 18, 2023. By email dated July 10, 2023 (ADAMS Accession No. ML23193A202), the Organization of Agreement States Board requested that the NRC extend the comment period by 45 days. The NRC has decided to grant this request and extend the public comment period on this document until September 1, 2023, to allow more time for members of the public to submit their comments.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2022–0218. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) navigate to the docket folder (NRC–2022–0218); (2) click the ''Subscribe'' link; and (3) enter an email address and click on the ''Subscribe'' link.

Dated: July 12, 2023.

For the Nuclear Regulatory Commission.

**Christopher M. Regan,**

*Director, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2023–15130 Filed 7–17–23; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2023–1479; Airspace Docket No. 23–ASO–26]**

**RIN 2120–AA66**

## Amendment of Class D and Class E Airspace; Palm Coast, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class D airspace and Class E airspace extending upward from 700 feet above the surface for Flagler Executive Airport, Palm Coast, FL. This action would increase the radius, update the geographic coordinates for this airport, and amend verbiage in the Class D description.

**DATES:** Comments must be received on or before September 1, 2023.

**ADDRESSES:** Send comments identified by FAA Docket No. [FAA–2023–1479] and Airspace Docket No. [23–ASO–26] using any of the following methods:

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

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

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

FAA Order JO 7400.11G 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:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

**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 would amend Class D and Class E airspace in Palm Coast, FL. An airspace evaluation determined that this update is necessary to support IFR operations in the area.

### 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 once 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 and 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 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 editing, 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 be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA, 30337.

### Incorporation by Reference

Class D and Class E airspace designations are published in Paragraphs 5000 and 6005, respectively, of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 annually. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. These updates would be published in the next

FAA Order JO 7400.11 update. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

## The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class D airspace and Class E airspace extending upward from 700 feet above the surface for Flagler Executive Airport, Palm Coast, FL, by increasing the Class D radius to 4.2 miles (previously 4.0 miles), and the Class E airspace extending upward from 700 feet above the surface to 6.7 miles (previously 6.5 miles), and by updating the geographic coordinates for this airport to coincide with the FAA's database. This action would also update the airport name to Flagler Executive Airport (previously Flagler County Airport) and the city name to Palm Coast (previously Bunnell), as well as replacing the terms Notice to Airmen with Notice to Air Missions and Airport/Facility Directory with Chart Supplement in the Class D airspace description. Controlled airspace is necessary for the area's safety and management of instrument flight rules (IFR) operations.

## 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 Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## Environmental Review

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

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## The Proposed Amendment

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

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

■ 1. The authority citation for 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 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

*Paragraph 5000 Class D Airspace.*

* * * * *

**ASO FL D Palm Coast, FL [Amended]**

Flagler Executive Airport, FL
(Lat 29°27′55″ N, long 81°12′28″ W)

That airspace extending upward from the surface to and including 1,500 feet MSL within a 4.2-mile radius of the Flagler Executive Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

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**ASO FL E5 Palm Coast, FL [Amended]**

Flagler Executive Airport, FL
(Lat 29°27′55″ N, long 81°12′28″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Flagler Executive Airport.

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Issued in College Park, Georgia, on July 12, 2023.

**Andreese C. Davis,**

*Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2023–15150 Filed 7–17–23; 8:45 am]

BILLING CODE 4910–13–P

## COMMODITY FUTURES TRADING COMMISSION

## 17 CFR Parts 1 and 23

RIN 3038–AE59

## Risk Management Program Regulations for Swap Dealers, Major Swap Participants, and Futures Commission Merchants

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Advance notice of proposed rulemaking; request for comments.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC or Commission) is issuing this Advance Notice of Proposed Rulemaking (ANPRM or Notice) and seeking public comment regarding potential regulatory amendments under the Commodity Exchange Act governing the risk management programs of swap dealers, major swap participants, and futures commission merchants. In particular, the Commission is seeking information and public comment on several issues stemming from the adoption of certain risk management programs, including the governance and structure of such programs, the enumerated risks these programs must monitor and manage, and the specific risk considerations they must take into account; the Commission further seeks comment on how the related periodic risk reporting regime could be altered or improved. The Commission intends to use the information and comments received from this Notice to inform potential future agency action, such as a rulemaking, with respect to risk management.

**DATES:** Comments must be in writing and received by September 18, 2023.

**ADDRESSES:** You may submit comments, identified by RIN 3038–AE59, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *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:* Follow the same instruction as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in section 145.9 of the Commission's regulations. The Commission reserves the right, but shall have no obligation, to review, prescreen, filter, redact, refuse, or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act (APA) and other applicable laws and may be accessible under the FOIA.

**FOR FURTHER INFORMATION CONTACT:**

Amanda L. Olear, Director, 202–418–5283, *aolear@cftc.gov;* Pamela M. Geraghty, Deputy Director, 202–418–5634, *pgeraghty@cftc.gov;* Fern Simmons, Associate Director, 202–418–5901, *fsimmons@cftc.gov;* or Elizabeth Groover, Special Counsel, 202–418–5985, *egroover@cftc.gov;* each in the Market Participants Division at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:**

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## I. Background

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act [1] (Dodd-Frank Act) amended the Commodity Exchange Act (CEA) [2] to establish a comprehensive regulatory framework to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things, providing for the registration and comprehensive regulation of swap dealers (SDs) [3] and major swap participants (MSPs),[4] and enhancing the rulemaking and enforcement authorities of the CFTC with respect to all registered entities and intermediaries subject to its oversight, including, among others, futures commission merchants (FCMs).[5] Added by the Dodd-Frank Act, CEA section 4s(j) outlines the duties with which SDs must comply.[6] Specifically, CEA section 4s(j)(2) requires SDs to establish robust and professional risk management systems adequate for managing the day-to-day business of the registrant.[7] CEA section 4s(j)(7) directs the Commission to prescribe rules governing the duties of SDs, including the duty to establish risk management procedures.[8] In April 2012, the Commission adopted Regulation 23.600,[9] which established requirements for the development, approval, implementation, and operation of SD risk management programs (RMPs).[10]

Following two FCM insolvencies involving the misuse of customer funds in 2011 and 2012, the Commission proposed and adopted a series of regulatory amendments designed to enhance the protection of customers and customer funds held by FCMs.[11] The Commission adopted Regulation 1.11 in 2013 to establish risk management requirements for those FCMs that accept customer funds. Regulation 1.11 is largely aligned with the SD risk management requirements in Regulation 23.600 (together with Regulation 1.11, the RMP Regulations).[12] The Commission concluded at that time that it could mitigate the risks of misconduct and an FCM's failure to maintain required funds in segregation [13] with more robust risk management systems and controls.[14]

The Commission is issuing this ANPRM for several reasons. After Regulation 23.600 was initially adopted in 2012, the Commission received a number of questions from SDs concerning compliance with these requirements, particularly those concerning governance (for example, questions regarding who is properly designated as ''senior management,'' as well as issues relating to the reporting lines within the risk management unit).[15] The intervening decade of examination findings and ongoing requests for staff guidance from SDs with respect to Regulation 23.600 warrant consideration of the Commission's rules and additional public discourse on this topic.

The Commission has further identified the enumerated areas of risk that RMPs are required to take into account, and the quarterly risk exposure reports (RERs), as other areas of potential confusion and inconsistency

[1] *See* Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] 7 U.S.C. 1 *et seq.*

[3] An SD is an entity that holds itself out as a dealer in swaps; makes a market in swaps; regularly enters into swaps with counterparties as an ordinary course of business for its own account; or engages in any activity causing the entity to be commonly known in the trade as a dealer or market maker in swaps. *See* 7 U.S.C. 1a(49)(A); *see also* 17 CFR 1.3 (describing exceptions and limitations).

[4] An MSP is any person that is not an SD and maintains a substantial position in swaps for any of the major swap categories; whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or is a financial entity that is highly leveraged relative to the amount of capital it holds and that is not subject to capital requirements established by an appropriate Federal banking agency and maintains a substantial position in outstanding swaps in any major swap category. *See* 7 U.S.C. 1a(33)(A); 17 CFR 1.3. There are currently no registered MSPs; the relevant regulatory requirements discussed in this ANPRM, however, apply to both SDs and MSPs. For ease of drafting, throughout this Notice, any reference to SDs should be construed to include both SDs and MSPs.

[5] An FCM is an entity that solicits or accepts orders to buy or sell futures contracts, options on futures, retail off-exchange forex contracts or swaps, and accepts money or other assets from customers to support such orders. *See* 7 U.S.C. 1a(28); 17 CFR 1.3.

[6] 7 U.S.C. 6s(j).

[7] 7 U.S.C. 6s(j)(2).

[8] 7 U.S.C. 6s(j)(7).

[9] 17 CFR 23.600.

[10] Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 FR 20128 (Apr. 3, 2012) (2012 SD Risk Management Final Rule). For additional background, see the related notice of proposed rulemaking: Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants, 75 FR 71397 (Nov. 23, 2010).

[11] Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 77 FR 67866 (Nov. 14, 2012) (FCM Customer Protection Proposed Rule); Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 78 FR 68506 (Nov. 14, 2013) (FCM Customer Protection Final Rule).

[12] 17 CFR 1.11; FCM Customer Protection Final Rule.

[13] The statutory requirement for FCMs to segregate customer funds from their own funds is a fundamental cornerstone of customer protection. FCM Customer Protection Final Rule, 78 FR at 68506 (''The protection of customers—and the safeguarding of money, securities or other property deposited by customers with an FCM—is a fundamental component of the Commission's disclosure and financial responsibility framework.'').

[14] *Id.* at 68509.

[15] Some SDs expressed confusion to Commission staff regarding the reporting line requirements and the regulatory definitions of ''governing body'' and ''senior management.''

in the RMP Regulations for SDs and FCMs. Commission staff has observed significant variance among SD and FCM RERs with respect to how they define and report on the enumerated areas of risk (*e.g.,* market risk, credit risk, liquidity risk, etc.), making it difficult for the Commission to gain a clear understanding of how specific risk exposures are being monitored and managed by individual SDs and FCMs over time, as well as across SDs and FCMs during a specified time period. Furthermore, the Commission's implementation experiences and certain market events over the last decade indicate that it may be appropriate to consider whether to include additional enumerated areas of risk in the RMP Regulations.

The Commission has observed inefficiencies with respect to the RER requirements in the RMP Regulations. Currently, Regulations 23.600(c)(2) and 1.11(e)(2) [16] prescribe neither the format of the RER nor its exact filing schedule.[17] As a result, the Commission frequently receives RERs in inconsistent formats containing stale information, in some cases data that is at least 90 days out-of-date. Furthermore, a number of SDs have indicated that the quarterly RERs are not relied upon for their internal risk management purposes, but rather, they are created solely to comply with Regulation 23.600, indicating to the Commission that additional consideration of the RER requirement is warranted.

Finally, the Commission also reminds SDs and FCMs that their RMPs may require periodic updates to reflect and keep pace with technological innovations that have developed or evolved since the Commission first promulgated the RMP Regulations.[18] The Commission is seeking information regarding any risk areas that may exist in the RMP Regulations that the Commission should consider with respect to notable product or technological developments.

Therefore, the Commission is issuing this Notice to seek industry and public comment on these aforementioned specific aspects of the existing RMP Regulations, as discussed further below.

## II. Questions and Request for Comment

In responding to each of the following questions, please provide a detailed response, including the rationale for such response, cost and benefit considerations, and relevant supporting information. The Commission encourages commenters to include the subsection title and the assigned number of the specific request for information in their submitted responses to facilitate the review of public comments by Commission staff.

### *A. Risk Management Program Governance*

Regulations 23.600(a) and (b) set out the parameters by which an SD must structure and govern its RMPs. Regulation 23.600(a) sets forth certain definitions, including ''business trading unit,'' [19] ''governing body,'' [20] and ''senior management,'' [21] whereas Regulation 23.600(b) requires an SD to memorialize its RMP through written policies and procedures, which the SD's governing body must approve.[22] Regulation 23.600(b) further requires an SD to create a risk management unit (RMU) that: (1) is charged with carrying out the SD's RMP; (2) has sufficient authority, qualified personnel, and resources to carry out the RMP; (3) reports directly to senior management; and (4) is independent from the business trading unit.[23]

Similar to Regulation 23.600, Regulation 1.11 contains specific requirements with respect to the risk governance structure.[24] Regulation 1.11(b) defines ''business unit,'' [25] ''governing body,'' [26] and ''senior management,'' [27] while Regulation 1.11(c) requires the FCM to establish the RMP through written policies and procedures, which the FCM's governing body must approve.[28] Regulation 1.11(d) requires that an FCM establish and maintain an RMU with sufficient authority; qualified personnel; and financial, operational, and other resources to carry out the RMP, that is independent from the business unit and reports directly to senior management.[29]

The Commission seeks comment generally on the RMP structure and related governance requirements currently found in the RMP Regulations for SDs and FCMs. In addition, commenters should seek to address the following questions:

1. Do the definitions of ''governing body'' in the RMP Regulations encompass the variety of business structures and entities used by SDs and FCMs?

a. Should the Commission consider expanding the definition of ''governing body'' in Regulation 23.600(a)(4) to include other officers in addition to an SD's CEO, or other bodies other than an SD's board of directors (or body performing a similar function)?

b. Are there any other amendments to the ''governing body'' definition in

[16] 17 CFR 23.600(c)(2); 17 CFR 1.11(e)(2).

[17] The timeline for filing quarterly RERs with the Commission is tied to when such reports are given to SDs' and FCMs' senior management. Regulations 23.600(c)(2) and 1.11(e)(2) do not prescribe how soon after a quarter-end an SD or FCM must provide its RER to senior management or the format in which the SD or FCM must submit the information required in the RER to the Commission. *Id.*

[18] Since the adoption of the RMP Regulations, some SDs and FCMs have engaged in novel product offerings, such as derivatives on certain digital assets, have increased their facilitation of electronic and automated trading, and have incorporated into their operations the use of recent technological developments, including cloud-based storage and computing, and possibly artificial intelligence and machine learning technologies.

[19] ''Business trading unit'' is defined as, any department, division, group, or personnel of a swap dealer or major swap participant or any of its affiliates, whether or not identified as such, that performs, or personnel exercising direct supervisory authority over the performance of any pricing (excluding price verification for risk management purposes), trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities on behalf of a registrant. 17 CFR 23.600(a)(2).

[20] ''Governing body'' is defined as, (1) A board of directors; (2) A body performing a function similar to a board of directors; (3) Any committee of a board or body; or (4) The chief executive officer of a registrant, or any such board, body, committee, or officer of a division of a registrant, provided that the registrant's swaps activities for which registration with the Commission is required are wholly contained in a separately identifiable division. 17 CFR 23.600(a)(4).

[21] ''Senior management'' is defined as, with respect to a registrant, any officer or officers specifically granted the authority and responsibility to fulfill the requirements of senior management by the registrant's governing body. 17 CFR 23.600(a)(6).

[22] 17 CFR 23.600(b).

[23] 17 CFR 23.600(b)(5).

[24] 17 CFR 1.11.

[25] ''Business unit'' is defined as, any department, division, group, or personnel of a futures commission merchant or any of its affiliates, whether or not identified as such that: (i) Engages in soliciting or in accepting orders for the purchase or sale of any commodity interest and that, in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or (ii) Otherwise handles segregated funds, including managing, investing, and overseeing the custody of segregated funds, or any documentation in connection therewith, other than for risk management purposes; and (iii) Any personnel exercising direct supervisory authority of the performance of the activities described in paragraph (b)(1)(i) or (ii). 17 CFR 1.11(b)(1)(i)–(iii).

[26] ''Governing body'' is defined as, the proprietor, if the futures commission merchant is a sole proprietorship; a general partner, if the futures commission merchant is a partnership; the board of directors if the futures commission merchant is a corporation; the chief executive officer, the chief financial officer, the manager, the managing member, or those members vested with the management authority if the futures commission merchant is a limited liability company or limited liability partnership. 17 CFR 1.11(b)(3).

[27] ''Senior management'' is defined as, any officer or officers specifically granted the authority and responsibility to fulfill the requirements of senior management by the governing body. 17 CFR 1.11(b)(5).

[28] 17 CFR 1.11(c).

[29] 17 CFR 1.11(d).

Regulation 23.600(a)(4) that the Commission should consider?

c. Should similar amendments be considered for the ''governing body'' definition applicable to FCMs in Regulation 1.11(b)(3)?

2. Should the Commission consider amending the definitions of ''senior management'' in the RMP Regulations? Are there specific roles or functions within an SD or FCM that the Commission should consider including in the RMP Regulations' ''senior management'' definitions?

3. Should the RMP Regulations specifically address or discuss reporting lines within an SD's or FCM's RMU?

4. Should the Commission propose and adopt standards for the qualifications [30] of certain RMU personnel (*e.g.,* model validators)? [31]

5. Should the RMP Regulations further clarify RMU independence and/or freedom from undue influence, other than the existing general requirement that the RMU be independent of the business unit or business trading unit? [32]

6. Are there other regulatory regimes the Commission should consider in a holistic review of the RMP Regulations? For instance, should the Commission consider harmonizing the RMP Regulations with the risk management regimes of prudential regulators? [33]

7. Are there other portions of the RMP Regulations concerning governance that are not addressed above that the Commission should consider changing? Please explain.

*B. Enumerated Risks in the Risk Management Program Regulations*

The RMP Regulations specify certain enumerated risks that SDs' and FCMs' RMPs must consider. Specifically, Regulation 23.600(c)(1)(i) identifies specific areas of enumerated risk that an SD's RMP must take into account: market risk, credit risk, liquidity risk, foreign currency risk, legal risk, operational risk, and settlement risk.[34] Though not identical, Regulation 1.11(e)(1)(i) similarly lists specific areas of enumerated risk that an FCM's RMP must take into account: market risk, credit risk, liquidity risk, foreign currency risk, legal risk, operational risk, settlement risk, segregation risk, technological risk, and capital risk.[35]

Regulation 23.600(c)(4) requires that an SD's RMP include, but not be limited to, policies and procedures necessary to monitor and manage all of the risks enumerated in Regulation 23.600(c)(1)(i), as well as requiring that the policies and procedures for each such risk take into account specific risk management considerations.[36] In contrast, Regulation 1.11(e)(3) requires that an FCM's RMP include, but not be limited to, policies and procedures that monitor and manage segregation risk, operational risk, and capital risk, along with enumerating specific risk management considerations that are required to be included and/or addressed in the policies and procedures for these risks.[37] Unlike Regulation 23.600(c)(4), Regulation 1.11(e)(3) does not explicitly require policies and procedures, or enumerate attendant specific risk considerations, for all of the types of risk that must be taken into account by an FCM's RMP pursuant to Regulation 1.11(e)(1)(i), focusing instead on segregation, operational, and capital risks.

The Commission requests comment on SDs' and FCMs' enumerated risks generally, including: (a) whether specific risk considerations that must be taken into account with respect to certain enumerated risks should be amended; (b) whether definitions should be added for each enumerated risk; and finally, (c) whether the Commission should enumerate and define any additional types of risk in the RMP Regulations. In particular:

1. Should the Commission amend Regulation 1.11(e)(3) to require that FCMs' RMPs include, but not be limited to, policies and procedures necessary to monitor and manage *all* of the enumerated risks identified in Regulation 1.11(e)(1) that an FCM's RMP is required to take into account, not just segregation, operational, or capital risk (*i.e.,* market risk, credit risk, liquidity risk, foreign currency risk, legal risk, settlement risk, and technological risk)? If so, should the Commission adopt specific risk management considerations for each enumerated risk, similar to those described in Regulation 23.600(c)(4)?

2. Regulation 23.600(c)(4)(i) requires SDs to establish policies and procedures necessary to monitor and manage market risk.[38] These policies and procedures must consider, among other things, ''timely and reliable valuation data derived from, or verified by, sources that are independent of the business trading unit, and if derived from pricing models, that the models have been independently validated by qualified, independent external or internal persons.'' [39]

a. Does this validation requirement in Regulation 23.600(c)(4)(i)(B) warrant clarification?

b. Should validation, as it is currently required in Regulation 23.600(c)(4)(i)(B), align more closely with the validation of margin models discussed in Regulation 23.154(b)(5)? [40]

3. The policies and procedures mandated by Regulations 23.600(c)(4)(i) and (ii) to monitor and manage market risk and credit risk must take into account, among other considerations, daily measurement of market exposure, including exposure due to unique product characteristics and volatility of prices, and daily measurement of overall credit exposure to comply with counterparty credit limits.[41] To manage their risk exposures, SDs employ various financial risk management tools, including the exchange of initial margin for uncleared swaps. In that regard, the Commission has set forth minimum initial margin requirements for uncleared swaps,[42] which can be calculated using either a standardized table or a proprietary risk-based model.[43] An SD's risk exposures to certain products and underlying asset classes may, however, warrant the collection and posting of initial margin above the minimum regulatory requirements set forth in the standardized table. Should the Commission expand the specific risk management considerations listed in Regulations 23.600(c)(4)(i)–(ii) to add

[30] This could include, for example, prior risk management experience.

[31] Regulations 23.600(b)(5) and 1.11(d) require SDs and FCMs to establish and maintain RMUs with ''qualified personnel.'' 17 CFR 23.600(b)(5); 17 CFR 1.11(d).

[32] *See* 17 CFR 23.600(b)(5). This concept relates to the fact that an RMU may be wholly ''independent'' from the business unit or business trading unit in terms of physical location and reporting lines, but that does not necessarily equate to freedom from undue influence. For example, during model validation activities, an SD's business trading unit, whose staff created the model, may try to improperly influence the RMU's model reviewer employees, who are undertaking an independent assessment of it.

[33] *See* 7 U.S.C. 1a(39) (defining the term ''prudential regulator''). Non-U.S. SDs may also be subject to prudential supervision by regulatory authorities in their home jurisdiction.

[34] 17 CFR 23.600(c)(1).

[35] 17 CFR 1.11(e)(1)(i).

[36] 17 CFR 23.600(c)(4).

[37] 17 CFR 1.11(e)(3).

[38] 17 CFR 23.600(c)(4)(i).

[39] 17 CFR 23.600(c)(4)(i)(B).

[40] 17 CFR 23.154(b)(5) (outlining the process and requirements for the control, oversight, and validation mechanisms for initial margin models).

[41] 17 CFR 23.600(c)(4)(i)–(ii).

[42] 17 CFR 23.150–161. In adopting the margin requirements for uncleared swaps, the Commission noted that the initial margin amount required under the rules is a minimum requirement. *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636, 649 (Jan. 6, 2016). This is consistent with CEA section 4s(e), which directed the Commission to prescribe by rule or regulation minimum margin requirements for non-bank SDs. *See* 7 U.S.C. 6s(e)(2)(B).

[43] 17 CFR 23.154.

that an SD's RMP policies and procedures designed to manage market risk and/or credit risk must also take into account whether the collection or posting of initial margin above the minimum regulatory requirements set forth in the standardized table is warranted?

4. The RMP Regulations enumerate, but do not define, the specific risks that SDs' and FCMs' RMPs must take into account. Should the Commission consider adding definitions for any or all of these enumerated risks? If so, should the enumerated risk definitions be identical for both SDs and FCMs?

5. The Federal Reserve and Basel III define ''operational risk'' as the risk of loss resulting from inadequate or failed internal processes, people, and systems or from external events.[44] Would adding a definition of ''operational risk'' to the RMP Regulations that is closely aligned with this definition increase clarity and/or efficiencies for SD and FCM risk management practices, or otherwise be helpful? Should the Commission consider identifying specific sub-types of operational risk for purposes of the SD and FCM RMP requirements?

6. Technological risk is identified in Regulation 1.11(e)(1)(i) as a type of risk that an FCM's RMP must take into account; however, technological risk is not similarly included in Regulation 23.600(c)(1)(i) as an enumerated risk that an SD's RMP must address. Should the Commission amend Regulation 23.600(c)(1)(i) to add technological risk as a type of risk that SDs' RMPs must take into account?

a. Should technological risk, if added for SDs, be identified as a specific risk consideration within operational risk, as described by Regulation 23.600(c)(4)(vi), or should it be a standalone, independently enumerated area of risk?

b. If technological risk is added as its own enumerated area of risk, what risk considerations should an SD's RMP policies and procedures address, as required by Regulation 23.600(c)(4)?

c. Relatedly, although technological risk is included in the various types of risk that an FCM's RMP must take into account, no specific risk considerations for technological risk are further outlined in Regulation 1.11(e)(3).[45] What, if any, specific risk considerations for technological risk should be added to Regulation 1.11(e)(3)? Should the Commission categorize any additional specific risk considerations for technological risk as a subset of the existing ''operational risk'' considerations in Regulation 1.11(e)(3)(ii), or should ''technological risk'' have its own independent category of specific risk considerations in Regulation 1.11(e)(3)?

d. Should the Commission define ''technological risk'' in the RMP Regulations? For example, Canada's Office of the Superintendent of Financial Institutions (OSFI) defines ''technology risk'' as ''the risk arising from the inadequacy, disruption, destruction, failure, damage from unauthorized access, modifications, or malicious use of information technology assets, people or processes that enable and support business needs and can result in financial loss and/or reputational damage.''[46] If the Commission were to add a definition of ''technological risk'' to the RMP Regulations, should it be identical or similar to that recently finalized by OSFI?[47] If not, how should it otherwise be defined? Should the Commission consider different definitions of ''technological risk'' for SDs and FCMs? Should the Commission consider providing examples of ''information technology assets'' to incorporate risks that may arise from the use of certain emerging technologies, such as artificial intelligence and machine learning technology, distributed ledger technologies (*e.g.,* blockchains), digital asset and smart contract-related applications, and algorithmic and other model-based technology applications?

7. Are there any other types of risk that the Commission should consider enumerating in the RMP Regulations as risks required to be monitored and managed by SDs' and FCMs' RMPs? Geopolitical risk? Environmental, social and governance (ESG) risk? Climate-related financial risk, including physical risk and transition risk such as the energy transition? Reputational risk? Funding risk? Collateral risk? Concentration risk? Model risk? Cybersecurity risk? Regulatory and compliance risk arising from conduct in foreign jurisdictions? Contagion risk?

a. Should these potential new risks be defined in the RMP Regulations?

b. With respect to each newly suggested enumerated risk, what, if any, specific risk considerations should an SD's or FCM's RMP policies and procedures be required to include?

c. Are there international standards for risk management with which the Commission should consider aligning the RMP Regulations?

### *C. Periodic Risk Exposure Reporting by Swap Dealers and Futures Commission Merchants*

In accordance with Regulation 23.600(c)(2), an SD must provide to its senior management and governing body a quarterly RER containing specific information on the SD's risk exposures and the current state of its RMP; the RER shall also be provided to the SD's senior management and governing body immediately upon the detection of any material change in the risk exposure of the SD.[48] SDs are required to furnish copies of all RERs to the Commission within five (5) business days of providing such RERs on a quarterly basis to their senior management.[49] Likewise, Regulation 1.11(e)(2) has an identical RER requirement for FCMs.[50]

This Notice seeks comment generally on how the current RER regime for SDs and FCMs could be improved, as well as specific responses to the questions listed below:

1. At what frequency should the Commission require SDs and FCMs to furnish copies of their RERs to the Commission?

2. Should the Commission consider changing the RER filing requirements to require filing with the Commission by a certain day (*e.g.,* a week, month, or other specific timeframe after the quarter-end), rather than tying the filing requirement to when the RER is furnished to senior management?

3. Should the Commission consider harmonizing or aligning, in whole or in part, the RER content requirements in

[44] 12 CFR 217.101(b); Basel Committee on Banking Supervision, ''Calculation of RWA for Operational Risk'' (Dec. 2019), *available at https://www.bis.org/basel_framework/chapter/OPE/10.htm?inforce=20191215&published=20191215.*

[45] *See* 17 CFR 1.11(e)(1)(i); *cf.* 17 CFR 1.11(e)(3)(i)–(iii).

[46] *See* OSFI Guideline B–13, Technology and Cyber Risk Management (July 2022), *available at https://www.osfi-bsif.gc.ca/Eng/fi-if/rg-ro/gdn-ort/gl-ld/Pages/b13.aspx.* The final Guideline B–13 will be effective as of January 1, 2024.

[47] The prudential regulators and the Securities and Exchange Commission (SEC) have not yet proposed or adopted definitions of ''technological risk.'' Accordingly, Commission staff turned to non-U.S. financial regulators for potential definitions of this term. Canada's OSFI recently finalized its definition of ''technology risk,'' following extensive engagement with industry and the public that included the September 2020 publication of its discussion paper and a consultation period from September to December 2020; the issuance of proposed guidance in November 2021; and further consultation on its proposed guidance from November 2021 to February 2022. *See* OSFI Releases New Guideline for Technology and Cyber Risk, Balancing Innovation with Risk Management (July 13, 2022), *available at https://www.osfi-bsif.gc.ca/Eng/osfi-bsif/med/Pages/b13-nr.aspx.*

[48] 17 CFR 23.600(c)(2). SD RERs shall set forth the market, credit, liquidity, foreign currency, legal, operational, settlement, and any other applicable risk exposures of the SD; any recommended or completed changes to the RMP; the recommended time frame for implementing recommended changes; and the status of any incomplete implementation of previously recommended changes to the RMP. *Id.*

[49] 17 CFR 23.600(c)(2)(ii).

[50] 17 CFR 1.11(e)(2).

the RMP Regulations with those of the National Futures Association (NFA)'s SD monthly risk data filings? [51]

a. If so, should the Commission consider any changes or additions to the data metrics currently collected by NFA as could be required in the RMP Regulations?

b. For FCMs who are not currently required to file monthly risk data filings with NFA, were the Commission to adopt a monthly risk exposure reporting requirement, are there different risk data metrics for FCMs that it should consider including? If so, what are they?

4. Are there additional SD or FCM-specific data metrics or risk management issues that the Commission should consider adding to the content requirements of the RER?

5. Should the Commission consider prescribing the format of the RERs? For instance, should the Commission consider requiring the RER to be a template or form that SDs and FCMs fill out?

6. In furtherance of the RER filing requirement, should the Commission consider allowing SDs and FCMs to furnish to the Commission the internal risk reporting they already create, maintain, and/or use for their risk management program?

a. If so, how often should these reports be required to be filed with the Commission?

b. If the Commission allowed an SD or FCM to provide the Commission with its own risk reporting, should the Commission prescribe certain minimum content and/or format requirements?

7. Should the Commission consider prescribing the standard SDs and FCMs use when determining whether they have experienced a material change in risk exposure, pursuant to Regulations 23.600(c)(2)(i) and 1.11(e)(2)(i)? Alternatively, should the Commission continue to allow SDs and FCMs to use their own internally-developed standards for determining when such a material change in risk exposure has occurred?

8. Should the Commission clarify the requirements in Regulations 23.600(c)(2)(i) and 1.11(e)(2)(i) that RERs shall be provided to the senior management and the governing body immediately upon detection of any material change in the risk exposure of the SD or FCM?

9. Should the Commission consider setting a deadline for when an SD or FCM must notify the Commission of any material changes in risk exposure? If so, what should be the deadline?

10. Should the Commission consider additional governance requirements in connection with the provision of the quarterly RER to the senior management and the governing body of a SD, or of an FCM, respectively?

11. Should the Commission require the RERs to report on risk at the registrant level, the enterprise level (in cases where the registrant is a subsidiary of, affiliated with, or guaranteed by a corporate family), or both? What data metrics are relevant for each level?

12. Should the Commission require that RERs contain information related to any breach of risk tolerance limits described in Regulations 23.600(c)(1)(i) and 1.11(e)(1)(i)? Alternatively, should the Commission require prompt notice, outside of the RER requirement, of any breaches of the risk tolerance limits that were approved by an SD's or FCM's senior management and governing body? Should there be a materiality standard for inclusion of breaches in RERs or requiring notice to the Commission?

13. Should the Commission require that RERs contain information related to material violations of the RMP policies or procedures required in Regulations 23.600(b)(1) and 1.11(c)(1)?

14. Should the Commission require that RERs additionally discuss any known issues, defects, or gaps in the risk management controls that SDs and FCMs employ to monitor and manage the specific risk considerations under Regulations 23.600(c)(4) and 1.11(e)(3), as well as including a discussion of their progress toward mitigation and remediation?

### *D. Other Areas of Risk*

Recent market, credit, operational, and geopolitical events have highlighted the critical importance of risk management and the need to periodically review risk management practices. Therefore, the Commission is interested in feedback and comment on other RMP-related topics, specifically: (1) the segregation of customer funds and safeguarding of counterparty collateral, and (2) risks posed by affiliates, lines of business, and other trading activity. The Commission continues to have confidence in its regulations governing the segregation of customer funds in traditional derivatives markets. The questions below are intended to assist the Commission in its ongoing evaluation of whether and how RMP regulations and practices at FCMs and SDs adequately and comprehensively address risks arising from new or evolving market structures, products, and registrants.

#### a. Potential Risks Related to the Segregation of Customer Funds and Safeguarding Counterparty Collateral

The segregation of customer funds and safeguarding of counterparty collateral are cornerstones of the Commission's FCM and SD regulatory regimes, respectively. Currently, the existing RMP Regulations address the management of segregation risk and the safeguarding of counterparty collateral in different ways, given the differing business models between FCMs and SDs. Regulation 1.11(e)(3)(i) requires an FCM's RMP to include written policies and procedures reasonably designed to ensure segregated funds are separately accounted for and segregated or secured as belonging to customers.[52] This requirement further lists several subjects that must, ''at a minimum,'' be addressed by an FCM's RMP policies and procedures, including the evaluation and monitoring process for approved depositories, the treatment of related residual interest, transfers, and withdrawals, and permissible investments.

Although Regulation 23.600(c)(6) of the SD RMP Regulations requires compliance with all capital and margin requirements, Regulation 23.600 does not explicitly require an SD's RMP to include written policies and procedures to safeguard counterparty collateral. Rather, the Commission chose to adopt Regulations 23.701 through 23.703 for the purpose of establishing a separate framework for the elected segregation of assets held as collateral in uncleared swap transactions.[53] Additionally, the Commission requires certain initial margin to be held through custodial arrangements in accordance with Regulation 23.157.[54]

The Commission seeks comment generally on the risks attendant to the segregation of customer funds and the safeguarding of counterparty collateral. In addition, commenters should seek to address the following questions:

1. Do the current RMP Regulations for FCMs adequately and comprehensively require them to identify, monitor, and

[51] SDs must report certain metrics related to market and credit risk, including Value at Risk (VaR) for interest rates, credit, forex, equities, commodities, and total VaR; total stressed VaR; interest rate sensitivity by tenor bucket; credit spread sensitivity; forex market sensitivities; commodity market sensitivities; total swaps current exposure before collateral; total swaps current exposure net of collateral; total credit valuation adjustment or expected credit loss; and largest swaps counterparty current exposures. *See* NFA, Notice I–17–10: Monthly Risk Data Reporting Requirements for Swap Dealers (May 30, 2017), *available at https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4817.*

[52] 17 CFR 1.11(e)(3)(i).

[53] 17 CFR 23.701–23.703.

[54] 17 CFR 23.157.

manage the risks associated with the segregation of customer funds and the protection of customer property? Are there other Commission regulations that address these risks for FCMs?

2. Currently, the Commission understands that no FCM holds customer property in the form of virtual currencies or other digital assets such as stablecoins. To the extent that FCMs may consider engaging in this activity in the future, would the current RMP Regulations for FCMs adequately and comprehensively require them to identify, monitor, and manage the risks associated with that activity, including custody with a third-party entity?

3. Do the current RMP Regulations for SDs adequately and comprehensively require them to identify, monitor, and manage all of the risks associated with the collection, posting, and custody of counterparty collateral and the protection of such assets? Are there any other risks that should be addressed by the RMP Regulations for SDs related to the collection, posting, and custody of counterparty collateral?

4. Do the Commission's RMP Regulations adequately address risks to customer funds or counterparty collateral that may be associated with SDs and FCMs that have multiple business lines and registrations? Although the Commission understands that SDs and FCMs currently engage in limited activities with respect to digital assets, should the Commission consider additional RMP requirements applicable to SDs and FCMs that are or may become involved in, or affiliated with, the provision of digital asset financial services or products (*e.g.,* digital asset lending arrangements or derivatives)?

b. Potential Risks Posed by Affiliates, Lines of Business, and All Other Trading Activity

In light of increasing market volatility and recent market disruptions, as well as the growth of digital asset markets, the Commission generally seeks comment on the risks posed by SDs' and FCMs' affiliates and related trading activity. Generally, the RMP Regulations require SD and FCM RMPs to take into account risks posed by affiliates and related trading activity. Specifically, Regulation 23.600(c)(1)(ii) requires an SD's RMP to take into account ''risks posed by affiliates'' with the RMP integrated into risk management functions at the ''consolidated entity level.'' [55] Similarly, Regulation 1.11(e)(1)(ii) requires an FCM's RMP to take into account risks posed by affiliates, all lines of business of the FCM, and all other trading activity engaged in by the FCM.'' [56]

Some SDs and FCMs are subject to regulatory requirements designed to mitigate certain risks arising from certain affiliate activities. For example, SDs and FCMs that are affiliates or subsidiaries of a banking entity may have to comply with certain restrictions and requirements on inter-affiliate activities. Further, those SDs and FCMs that are subject to the Volcker Rule, codified and implemented in part 75 of the Commission's regulations, and incorporated into other requirements, such as Regulation 3.3, are subject to the Volcker Rule's risk management program and compliance program requirements.[57]

The Commission seeks comment generally on the requirements related to risks posed by affiliates and related trading activity found within the RMP Regulations for SDs and FCMs, including non-bank affiliated SDs or non-bank affiliated FCMs. In addition, commenters should seek to address the following questions:

1. What risks do affiliates (including, but not limited to, parents and subsidiaries) pose to SDs and FCMs? Are there risks posed by an affiliate trading in physical commodity markets, trading in digital asset markets, or relying on affiliated parties to meet regulatory requirements or obligations? Are there contagion risks posed by the credit exposures of affiliates? Are there risks posed by other lines of business of an SD, or of an FCM, respectively, that are not adequately or comprehensively addressed by the Commission's regulations, including, as applicable, the Volcker Rule regulations found in 17 CFR part 75?

2. Do the current RMP Regulations adequately and comprehensively address the risks associated with the activities of affiliates (whether such affiliates are unregulated, less regulated, or subject to alternative regulatory regimes), or of other lines of business, of an SD or of an FCM, respectively, that could affect SD or FCM operations? Alternatively, to what extent are the risks posed by affiliates discussed in this section adequately addressed through other regulatory requirements (for example, the Volcker Rule or other prudential regulations, or applicable non-U.S. laws, regulations, or standards)?

3. Should the Commission further expand on how SD and FCM RMPs should address risks posed by affiliates in the RMP Regulations, including any specific risks? Should the Commission consider enumerating any specific risks posed by affiliates or related trading activities within the RMP Regulations, either as a separate enumerated risk, or as a subset of an existing enumerated area of risk (*e.g.,* operational risk, credit risk, etc.)?

Issued in Washington, DC, on July 12, 2023, by the Commission.

**Robert Sidman,**

*Deputy Secretary of the Commission.*

**Note:** The following appendices will not appear in the Code of Federal Regulations.

## Appendices to Risk Management Program Regulations for Swap Dealers, Major Swap Participants, and Futures Commission Merchants—Voting Summary and Chairman's and Commissioners' Statements

### Appendix 1—Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

### Appendix 2—Statement of Chairman Rostin Behnam

I appreciate all of the Market Participants Division staff's hard work on this proposal. I look forward to the public's thoughtful comments on the proposal to inform a potential future rulemaking or guidance for the Commission's risk management program regulations for swap dealers and futures commission merchants.

### Appendix 3—Statement of Commissioner Christy Goldsmith Romero on Advance Notice of Proposed Rulemaking on Risk Management Program Regulations

Management of existing, evolving, and emerging risk is paramount to the financial stability of the United States and global markets. This is evidenced by the recent bank failures, followed by subsequent government action taken out of regulatory concern over possible contagion effect to other banks and broader economic spillover.[1] Federal Reserve Board Vice Chair Michael Barr recently testified before the Senate at a hearing on the bank failures, ''the events of the last few weeks raise questions about evolving risks and what more can and should be done so that isolated banking problems do not

[55] 17 CFR 23.600(c)(1)(ii).

[56] 17 CFR 1.11(e)(1)(ii).

[57] 17 CFR part 75; 17 CFR 3.3.

[1] *See Statement of Martin J. Gruenberg, Chairman Federal Deposit Insurance Corporation Chair on ''Recent Bank Failures and the Federal Regulatory Response'' before the Committee of Banking, Housing and Urban Affairs, U.S. Senate* (Mar. 28, 2023) *https://www.banking.senate.gov/imo/media/doc/Gruenberg%20Testimony%203-28-23.pdf; see also Hearing on Recent Bank Failures and the Federal Regulatory Response,* United States Senate Committee on Banking, Housing, and Urban Affairs (Mar. 28, 2023) *https://www.banking.senate.gov/hearings/recent-bank-failures-and-the-federal-regulatory-response.*

undermine confidence in healthy banks and threaten the stability of the banking system as a whole.'' [2]

Sound risk management is particularly crucial for CFTC-registered swap dealers, the majority of which are global systemically important banks on Wall Street (or their affiliates) or other prudentially-regulated banks. If there was any one issue at the center of the 2008 financial crisis, it was the failure of risk management by Wall Street. The Dodd-Frank Wall Street Reform and Consumer Protection Act required these dealers to establish and maintain risk management programs. The Commission implemented its risk management requirements for swap dealers in 2012. Then in 2013, the Commission required that brokers in the derivatives markets, known as futures commission merchants (''FCMs''), establish and maintain risk management programs after two brokers, MF Global and Peregrine Financial, misused customer funds and collapsed from a combination of hidden risks and fraud.[3]

Re-evaluating our risk management rules is responsible and necessary to keep pace with evolving markets that can give rise to emerging risk. The last three years presented unprecedented risk. The pandemic, its lingering supply chain disruptions, Russia's war against Ukraine, climate disasters that proved to be the most-costly three years on record, a spike in ransomware and other cyber attacks (including on ION Markets and Colonial Pipeline), and increasing geo-political tensions involving the U.S. and China, have emerged as often interrelated areas of significant risk. Additionally, as Chairman of the Federal Deposit Insurance Corporation (''FDIC''), Martin Gruenberg testified before the Senate, ''the financial system continues to face significant downside risks from the effects of inflation, rising market interest rates, and continuing geopolitical uncertainties.'' [4]

Evolving technologies like digital assets, artificial intelligence, and cloud services, also have emerged as areas that can carry significant risk.[5] Vice Chair Barr testified before the Senate, ''recent events have shown that we must evolve our understanding of banking in light of changing technologies and emerging risks. To that end, we are analyzing what recent events have taught us about banking, customer behavior, social media, concentrated and novel business models, rapid growth, deposit runs, interest rate risk, and other factors, and we are considering the implications for how we should be regulating and supervising our financial institutions. And for how we think about financial stability.'' [6]

The Commission should ensure that our risk management frameworks for banks and brokers reflect and keep pace with the significant evolution of financial stability risk. It is equally important for the Commission to be forward-looking to ensure that our risk management frameworks capture future risk as it could evolve or emerge.[7] The Commission is considering whether to enumerate specific areas of risk that banks and brokers would be required to address. This could include for example, geopolitical risk, cybersecurity risk, climate-related financial risk or contagion risk.

The Commission seeks public comment in its reassessment of its risk management frameworks. I am particularly interested in comment on the following areas: (1) Technology Risk; (2) Cyber Risk; (3) Affiliate Risk; (4) Risk related to segregating customer funds and safeguarding counterparty collateral; and (5) Climate-Related Financial Risk.

*Technology Risk*

Risk has emerged from the evolution of technology. Distributed ledger networks are being used or considered in certain markets; cloud data storage and computing has gone mainstream; and artificial intelligence hold the power to transform businesses. Many firms are also integrating, or are interested in integrating, digital assets into their businesses, or plan to do so. All of these emerging or evolving technologies carry risks.

Digital assets carry risks—something that has become all too clear in the past year. Silvergate Bank, which recently failed, was almost exclusively known for providing services to digital asset firms.[8] According to FDIC Chairman Gruenberg, ''Following the collapse of digital asset exchange FTX in November 2022, Silvergate Bank released a statement indicating that it had $11.9 billion in digital asset-related deposits, and that FTX represented less than 10 percent of total deposits in an effort to explain that its exposure to the digital asset exchange was limited. Nevertheless, in the fourth quarter of 2022, Silvergate Bank experienced an outflow of deposits from digital asset customers that, combined with the FTX deposits, resulted in a 68 percent loss in deposits—from $11.9 billion in deposits to $3.8 billion. That rapid loss of deposits caused Silvergate Bank to sell debt securities to cover deposit withdrawals, resulting in a net earnings loss of $1 billion. On March 1, 2023, Silvergate Bank announced it would be delaying issuance of its 2022 financial statements and indicated that recent events raised concerns about its ability to operate as a going concern, which resulted in a steep drop in Silvergate Bank's stock price. On March 8, 2023, Silvergate Bank announced that it would self-liquidate.'' [9]

Chairman Gruenberg further testified, ''Like Silvergate Bank, Signature Bank had also focused a significant portion of its business model on the digital asset industry. . . . Silvergate Bank operated a similar platform that was also used by digital asset firms. . . . In the second and third quarters of 2022, Signature Bank, like Silvergate, experienced deposit withdrawals and a drop in its stock price as a consequence of disruptions in the digital asset market due to failures of several high profile digital asset companies.'' [10]

These technological advancements, with their accompanying risks, necessitate the Commission revisiting our regulatory oversight, including our risk management requirements. This is similar to other regulators revisiting their oversight in this area. According to Vice Chair Barr, the Federal Reserve ''recently decided to establish a dedicated novel activity supervisory group, with a team of experts focused on risks of novel activities, which should help improve oversight of banks like SVB in the future.'' [11]

[2] *Statement of Michael S. Barr, Vice Chair for Supervision, Board of Governors of the Federal Reserve System before the Committee of Banking, Housing and Urban Affairs, U.S. Senate* (Mar. 28, 2023) *https://www.banking.senate.gov/imo/media/doc/Barr%20Testimony%203-28-231.pdf.*

[3] This dovetailed with Commission requirements that brokers segregate customer assets from company assets and house accounts.

[4] *See Statement of Martin J. Gruenberg, Chairman Federal Deposit Insurance Corporation Chair on ''Recent Bank Failures and the Federal Regulatory Response'' before the Committee of Banking, Housing and Urban Affairs, U.S. Senate* (Mar. 28, 2023) *https://www.banking.senate.gov/imo/media/doc/Gruenberg%20Testimony%203-28-23.pdf.*

[5] *See* Commissioner Christy Goldsmith Romero, *Opening Remarks at the Technology Advisory Committee on DeFi, Responsible Artificial Intelligence, Cloud Technology & Cyber Resilience* (Mar. 22, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement032223; see also* Department of Treasury, *The Financial Services Sector's Adoption of Cloud Services* (Feb. 8, 2023), *https://home.treasury.gov/news/press-releases/jy1252.*

[6] *See Statement of Michael S. Barr, Vice Chair for Supervision, Board of Governors of the Federal Reserve System before the Committee of Banking, Housing and Urban Affairs, U.S. Senate* (Mar. 28, 2023) *https://www.banking.senate.gov/imo/media/doc/Barr%20Testimony%203-28-231.pdf* (adding that Silicon Valley Bank ''failed to manage the risks of its liabilities. These liabilities were largely composed of deposits from venture capital firms and the tech sector, which were highly concentrated and could be volatile.'')

[7] Additionally, CFTC staff have observed significant variance in how swap dealers and brokers are defining and reporting on risk areas, making it difficult for CFTC staff to gain a clear understanding of how specific risk exposures are being monitored and managed. Furthermore, some swap dealers have indicated that they do not rely on the information in CFTC risk reporting for their internal risk management. Improving the efficacy of CFTC requirements for swap dealers' own risk management, along with the Commission's ability to monitor risk are worthwhile goals.

[8] *See Statement of Martin J. Gruenberg, Chairman Federal Deposit Insurance Corporation Chair on ''Recent Bank Failures and the Federal Regulatory Response'' before the Committee of Banking, Housing and Urban Affairs, U.S. Senate* (Mar. 28, 2023) *https://www.banking.senate.gov/imo/media/doc/Gruenberg%20Testimony%203-28-23.pdf.*

[9] *See Id.*

[10] *See Id.*

[11] *Statement of Michael S. Barr, Vice Chair for Supervision, Board of Governors of the Federal*

Continued

I am interested in comments on how the Commission should amend its risk management requirements to ensure that risks from technology are adequately identified, monitored, assessed and managed. I am also interested in public comment on any gaps in our risk management regulations that the Commission should address regarding technology.

*Cyber Risk*

I am interested in public comment about how the Commission should update its risk management frameworks to address the growing and increasingly sophisticated threat of cyber attacks. The White House's recent National Cybersecurity Strategy stated:

Our rapidly evolving world demands a more intentional, more coordinated, and more well-resourced approach to cyber defense. We face a complex threat environment, with state and non-state actors developing and executing novel campaigns to threaten our interests. At the same time, next-generation technologies are reaching maturity at an accelerating pace, creating new pathways for innovation while increasing digital interdependencies.[12]

Global cyber criminals and state-sponsored efforts can create or leverage a serious disruption to markets.

I am also interested in comment on how the Commission should address risk management related to third party service providers. As I said in a speech in November, ''Even if financial firms have strong cybersecurity systems, their cybersecurity is only as strong as their most vulnerable third-party service provider. The threat can compound where several firms use the same software or other provider.'' [13] Subsequently in February, a third-party service provider ION Markets suffered a cyber attack that compromised a number of brokers in the derivatives market. Treasury Deputy Assistant Secretary Todd Conklin, a member of the CFTC Technology Advisory Committee (''TAC'') presented at a recent TAC meeting that ION was not considered by firms to be a critical vendor.[14] Given the severe threat of cyber attacks, I am interested in commenters' views on whether the Commission should specifically enumerate cyber risk, specifically include risks associated with third-party service providers in risk management frameworks, or include other requirements to ensure that cyber risk is adequately and comprehensively identified, assessed, and managed.

*Affiliate Risk*

I am interested in commenters views on the questions related to affiliate risks, especially those related to risks that unregulated affiliates can pose to regulated entities. Currently, the Commission's rules provide that the risk management frameworks of banks and brokers shall ''take into account'' risks posed by affiliates. Affiliate risks can take many forms—from counterparty credit risk to operational risks to many others. The questions posed in this ANPRM are designed to flesh out details about affiliate risks, and whether such risks are sufficiently identified and adequately managed.

Understanding affiliate risks is critically important given lessons learned from the past and more recent events. For example, AIG Financial Products (''AIGFP'') is the poster child for how risk of a seemingly remote, unregulated affiliate could undermine the stability of a large, diversified financial institution. AIGFP's damage reached well beyond its affiliates. AIGFP was a source of contagion for other market participants, ultimately spreading risks across Wall Street, contributing to a global financial crisis and massive taxpayer bailout. Most recently, the abrupt collapse of FTX, with its alleged lack of separation between affiliates as found by new CEO John Ray, led to a bankruptcy with more than 130 affiliate debtors, tying up billions of dollars and more than one million customers and creditors. Although LedgerX, a CFTC-regulated FTX affiliate, is not a debtor in the bankruptcy, the debtors sold LedgerX as a result.

Existing Commission rules require that banks' and brokers' risk management programs ''take into account'' risks related to lines of business. That could include, for example, digital asset markets. In January, before the bank failures, federal bank regulatory agencies issued a recent joint statement outlining numerous ''key risks'' associated with bank involvement in the crypto-asset sector.[15] I am interested in public comment on those key risks as they may apply specifically to the CFTC's regulated banks and brokers. About half of all CFTC-registered swap dealers are subject to some form of oversight by the prudential regulators.

Many brokers have expressed an interest in becoming further involved in digital assets as well. Risks can arise from regulated trading in crypto derivatives. The unregulated spot markets carry additional risks as seen with the collapse of FTX, Terra Luna, Celsius and numerous others that have resulted in substantial losses. This is in addition to operational risks and risks associated with rampant fraud and illicit finance in some parts of the crypto markets.

*Risk Related to the Segregation of Customer Property and Safeguarding Counterparty Collateral in the Digital Asset Space*

Digital assets raise a host of issues about safeguarding customer property that were not contemplated at the time of the 2013 risk management rule or the Commission's customer protection rules for brokers to segregate customer assets from company assets. For example, brokers may explore holding customer property in the form of stablecoins or other digital assets that could result in unknown and unique risks. These brokers may be confronted by third-party custody and other risks that should be identified and managed. Physical delivery may also present risk, particularly given the proliferation of cyber hacks. Application of the Commission's segregation rules may also need to be updated based on future risks related to digital assets (even risks not contemplated by the Commission today). I look forward to commenters' responses in this area.

It is necessary for the CFTC to seek public comment on our risk management framework in this important area of emerging risk so that we keep pace with evolution in our markets and technology. We should not assume that our existing segregation rules and risk management framework comprehensively cover the evolving risks in the markets.[16] The Commission does not have a window into certain unregulated spaces, such as with digital assets, which could obscure risks faced by CFTC-regulated banks or brokers. Integration of digital assets with banks and brokers, and the risks that could be posed, could continue to evolve.

*Climate-Related Financial Risk*

Developments in the management of climate-related financial risk are an important example of the need for the Commission to adopt a framework that helps banks and brokers keep pace with such emerging risks. When the Climate-Related Market Risk Subcommittee of our Market Risk Advisory Committee released its report in September 2020, it was a ''first-of-its-kind effort from a U.S. government entity.'' [17] Since then, other U.S. financial regulators have not only echoed this acknowledgment,[18] but have moved ahead to

*Reserve System before the Committee of Banking, Housing and Urban Affairs, U.S. Senate* (Mar. 28, 2023) *https://www.banking.senate.gov/imo/media/doc/Barr%20Testimony%203-28-231.pdf.*

[12] The White House, *Fact Sheet: Biden-Harris Administration Announces National Cybersecurity Strategy,* (Mar. 2, 2023), *https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/02/fact-sheet-biden-harris-administration-announces-national-cybersecurity-strategy/.*

[13] *See* Commissioner Christy Goldsmith Romero, U.S. Commodity Futures Trading Commission, *Protecting Against Emerging Global Fintech Threats in Cyberspace and Cryptocurrencies* (Nov. 30, 2022), Keynote Remarks of Commissioner Christy Goldsmith Romero at the Futures Industry Association, Asia Derivatives Conference, Singapore, *https://www.cftc.gov/PressRoom/SpeechesTestimony/oparomero4.*

[14] *See Technology Advisory Committee meeting* (Mar. 22, 2023) Commissioner Goldsmith Romero Announces Technology Advisory Committee Meeting Agenda That Includes Cybersecurity, Decentralized Finance, and Artificial Intelligence, *https://www.cftc.gov/PressRoom/Events/opaeventtac032223.*

[15] *Joint Statement on Crypto-Asset Risks to Banking Organizations,* Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (Jan. 3, 2023), *https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20230103a1.pdf.*

[16] The same could be true of swap dealers related to safeguarding counterparty collateral.

[17] CFTC, *CFTC's Climate-Related Market Risk Subcommittee Releases Report* (Sept. 9, 2020), *https://www.cftc.gov/PressRoom/PressReleases/8234-20.*

[18] *See* Financial Stability Oversight Council, *Financial Stability Oversight Council Identifies Climate Change as an Emerging and Increasing Threat to Financial Stability* (October 21, 2021) *https://home.treasury.gov/news/press-releases/jy0426.*

define the risk management framework that banks and other regulated entities must adopt for addressing physical and transition risks posed by climate change.[19] Banks and brokers need frameworks that let them adapt to both the increasingly dire projections by climate scientists about the scope of physical impacts,[20] and to the massive economic impetus to a transition to a lower carbon environment created via Congressional passage of the Inflation Reduction Act, the Bipartisan Infrastructure Law, and the CHIPS and Science Act.

In just three years, climate-related financial risk management has gone from novelty to necessity. We should develop a framework that helps banks and brokers remain resilient to risks like this one, which will continue to develop for years to come. I have been advocating for the Commission to enhance its understanding of how market participants are managing climate-related financial risk.[21] To that end, over the past year, I have been working with the National Futures Association (''NFA'') on a recently completed special project to assess how some of its members are identifying and managing climate-related financial risk. NFA learned that some of its members, particularly those already subject to oversight by U.S. and foreign banking regulators, are taking steps to manage both physical and transition risks. I look forward to hearing from commenters on how best to adapt our framework to incorporate these kinds of emerging risks.

*Conclusion*

Sound risk management by banks (and other dealers) and brokers at the center of the U.S. derivatives markets is critical to financial stability. The stakes are high. These financial institutions and others take and carry significant risks that could impact financial stability. They are on the front lines of our financial markets, directly engaging with customers or counterparties. Customers have billions of dollars entrusted to these institutions. Market participants depend on liquidity, clearing and other critical functions performed by these institutions.

The Commission must fulfill its own responsibility to ensure that risk management programs at these institutions address the full scope of risks to customers, firms and markets, including keeping pace with evolving and emerging risk. We may never know how many catastrophes were avoided as a result of sound risk management programs, but we have seen what can happen when risks are not well managed.

[19] *See, e.g.,* Federal Deposit Insurance Corporation, FIL–13–2022, *Request for Comment on Statement of Principles for Climate-Related Financial Risk Management for Large Financial Institutions* (March 30, 2022), *https://www.fdic.gov/news/financial-institution-letters/2022/fil22013.html.*

[20] Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability* (2022), *https://www.ipcc.ch/report/ar6/wg2/chapter/summary-for-policymakers/.*

[21] *See* Commissioner Christy Goldsmith Romero, U.S. Commodity Futures Trading Commission, *Promoting Market Resilience* (Sept. 28, 2022), Statement of Commissioner Christy Goldsmith Romero before the Market Risk Advisory Committee, *https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement092822; Statement of CFTC Commissioner Christy Goldsmith Romero In Support of the Commission's Request for Information on Climate-Related Financial Risk* (June 2, 2022), *https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement060222.*

## Appendix 4—Statement of Commissioner Caroline D. Pham

I support the Advance Notice of Proposed Rulemaking (ANPRM) seeking public comment on potential amendments to the Risk Management Program (RMP) requirements in CFTC rules 23.600 and 1.11 [1] (collectively, RMP Rules) applicable to swap dealers and futures commission merchants (FCMs), respectively. I believe in continuous improvement for not only our market participants, but for the Commission and its regulations too.

I would like to thank the staff of the Market Participants Division for working closely with me on this ANPRM, and making revisions in response to my concerns, in particular Amanda Olear, Pamela Geraghty, Fern Simmons, Elizabeth Groover, and Samantha Ostrom. I also appreciate the opportunity to work collaboratively with the Chairman and my fellow Commissioners.

It is critical that the public has the opportunity to provide input on any potential amendment or expansion of RMP requirements that is informed by actual experience from risk management officers, other control functions, and practitioners who have implemented and complied with the RMP Rules for the past 10 years, oftentimes within a broader enterprise-wide risk management program pursuant to other requirements from other regulators.

Because the CFTC's rules are often only one part of much broader risk governance frameworks for financial institutions, the Commission must ensure that it has the full picture before coming to conclusions to ensure that our rules not only address any potential regulatory gaps or changes in risk profiles, but also avoids issuing rules that are conflicting, duplicative, or unworkable with other regulatory regimes.

For example, the CFTC currently has 106 provisionally registered swap dealers.[2] Of these 106 entities, both U.S. and non-U.S., all but a handful are also registered with and supervised by another agency or authority, such as a prudential, functional, or market regulator. Most of these swap dealers are subject to three or more regulatory regimes.

Therefore, it is imperative that the Commission and the staff consider how the CFTC's RMP Rules work in practice together with the rules of other regulators, whether foreign or domestic. This key point is easily apparent in looking at the CFTC's substituted compliance regime for non-U.S. swap dealers, where the Commission has expressly found that non-U.S. swap dealers in certain jurisdictions are subject to comparable and comprehensive regulation, and therefore permits such non-U.S. swap dealers to ''substitute'' compliance with home jurisdiction risk management regulations to satisfy CFTC rule 23.600.[3]

[1] *See* 17 CFR 23.600 and 1.11.

[2] *See* CFTC provisionally registered swap dealers, as of January 30, 2023, available at *https://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer.html.*

Issuing an ANPRM can be beneficial to initiate an open process to request information and stimulate dialogue with the public. As stated in the preamble, ''After Regulation 23.600 was initially adopted in 2012, the Commission received a number of questions from [swap dealers] concerning compliance with these requirements, particularly those concerning governance . . . . The intervening decade of examination findings and ongoing requests for staff guidance from [swap dealers] with respect to Regulation 23.600 warrant consideration of the Commission's rules and additional public discourse on this topic.'' The preamble also states, ''Furthermore, a number of [swap dealers] have indicated that the quarterly [risk exposure reports] are not relied upon for their internal risk management purposes, but rather, they are created solely to comply with Regulation 23.600, indicating to the Commission that additional consideration of the [risk exposure report] requirement is warranted.''

I commend the Commission and staff for seeking to address areas of potential confusion, inconsistency, and inefficiencies in the RMP Rules. Risk management must be more than an exercise in paperwork. And lack of regulatory clarity can actually inhibit compliance simply because our registrants are unsure of supervisory expectations and are unclear as to what to implement. That is why I am focused as a Commissioner on providing clear rules and guidance to facilitate compliance with the Commission's regulations. I also support using this opportunity to improve our RMP Rules and I encourage commenters to explore how the RMP Rules could be aligned with other risk governance and risk management frameworks, such as prudential requirements for banking organizations, in order to more effectively and efficiently address risks.

Regarding potential risks related to the segregation of customer funds and safeguarding counterparty collateral, I will note that the CFTC's existing rules are the gold standard for customer protection around the world. Further, our existing rules also address potential risks posed by affiliates, lines of business, and all other trading activity. While much attention has been paid to widespread fraud and failures of risk management in the cryptocurrency sector, it bears reminding that a so-called crypto exchange is a very different type of organization and business model from a highly regulated financial institution. The public should take care to avoid conflating these completely different entities—it is at least as wholly unlike one another as a domesticated housecat and a wild tiger. I look forward to comments on these two other areas of risk.

[3] On December 27, 2013, the Commission issued comparability determinations for certain entity-level requirements, including risk management, for the following jurisdictions: European Union; Canada; Switzerland; Japan; Hong Kong; and Australia. See Comparability Determinations for Substituted Compliance Purposes, available at *https://www.cftc.gov/LawRegulation/DoddFrankAct/CDSCP/index.htm* (July 11, 2023).

Nonetheless, neither the Commission nor our registrants should be complacent. I reiterate this statement in the preamble: ''[T]he Commission also reminds [swap dealers] and FCMs that their RMPs may require periodic updates to reflect and keep pace with technological innovations that have developed or evolved since the Commission first promulgated the RMP Regulations.'' The benefit of a principles-based regulatory framework is that it can more quickly anticipate and adapt to changes in risk profiles or the operating environment. I believe our rules must be broad and flexible enough to be forward-looking and evergreen, because it is simply not possible to prescribe every last requirement for the unknown future. Accordingly, swap dealers and FCMs must be vigilant and address new and emerging risks in their RMPs through various risk stripes as appropriate—whether from changing market conditions, technological developments, geopolitical concerns, or any other event.

I welcome input from commenters to inform the Commission and the staff regarding the application of the RMP Rules to swap dealers and FCMs, especially those entities that are part of a banking organization, and to describe in a detailed manner the policies, procedures, processes, systems, controls, testing, and audits that are part of an RMP, and associated governance requirements. In this way, it will be more clearly apparent to the Commission and staff that the vast majority of swap dealers and FCMs are part of enterprise-wide risk management programs that the industry spends billions of dollars on each year, with thousands of personnel across the three lines of defense. In addition, the CFTC's stringent RMP governance provisions ensure management accountability and responsibility, and the RMP Rules prescribe various requirements for swap dealers to address market risk, credit risk, liquidity risk, foreign currency risk, legal risk, operational risk, and settlement risk,[4] and for FCMs to address market risk, credit risk, liquidity risk, foreign currency risk, legal risk, operational risk, settlement risk, segregation risk, technological risk, and capital risk.[5]

Of course, financial institutions can still have lapses in risk management and weaknesses in their control environment. This is evident in the high-profile news stories of the past few years. But the appropriate response is for regulators, including the CFTC and National Futures Association (NFA), to increase focus and resources on compliance examinations to ensure that swap dealers and FCMs are complying with the rules we *already* have—not piling on more rules that ultimately do not enhance sound risk management and governance, and further dilute limited resources, time, and attention.[6] In instances of especially egregious or prolonged deficiencies, material weakness, or misconduct by management, then enforcement actions may be appropriate, and the Commission should not shy away from this step.

[4] 17 CFR 23.600(c)(1).

[5] 17 CFR 1.11(e)(1)(i).

[6] *See* Opening Statement of Commissioner Caroline D. Pham before the CFTC Technology Advisory Committee, March 22, 2023, available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement032223.*

[FR Doc. 2023–15056 Filed 7–17–23; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Part 240

**[Release No. 34–97877; File No. S7–11–23]**

**RIN 3235–AN28**

## Daily Computation of Customer and Broker-Dealer Reserve Requirements Under the Broker-Dealer Customer Protection Rule

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission (''Commission'') proposes to amend the broker-dealer customer protection rule to require certain broker-dealers to perform their customer and broker-dealer reserve computations and make any required deposits into their reserve bank accounts daily rather than weekly. The Commission also is seeking comment on whether similar daily reserve computation requirements should apply to broker-dealers and security-based swap dealers with respect to their security-based swap customers.

**DATES:** Comments should be received on or before September 11, 2023.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/submitcomments.htm*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–11–23 on the subject line.

*Paper Comments*

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–11–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (*https://www.sec.gov/rules/proposed.shtml*). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's Public Reference Room. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

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 our 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.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Macchiaroli, Associate Director; Thomas K. McGowan, Associate Director; Randall W. Roy, Deputy Associate Director; Raymond Lombardo, Assistant Director; Sheila Dombal Swartz, Senior Special Counsel; Timothy C. Fox, Branch Chief; or Abraham Jacob, Special Counsel, at (202) 551–5500, Office of Broker-Dealer Finances, Division of Trading and Markets; Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

**SUPPLEMENTARY INFORMATION:** The Commission is proposing amendments to:

| Commission reference | CFR citation (17 CFR) |
|---|---|
| Rule 15c3–3 .............. | 17 CFR 240.15c3–3. |

### Table of Contents

## I. Background

### *A. Introduction*

Pursuant to section 15(c)(3)(A) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] the Commission is proposing to amend the broker-dealer customer protection rule.[2] As discussed in more detail below,[3] the rule requires broker-dealers that maintain custody of customer securities and cash (''carrying broker-dealers'') to have a special reserve account at a bank that must hold cash and/or qualified securities in an amount determined by a computation of the net cash owed to the broker-dealer's customers. Generally, carrying broker-dealers are required to perform the customer reserve computation and make any required deposits into the customer reserve bank account weekly. Rule 15c3–3 also permits carrying broker-dealers to perform the customer reserve computation more frequently than weekly (*e.g.,* daily), and, in certain limited circumstances, to perform a monthly computation. Rule 15c3–3 also addresses the manner in which a carrying broker-dealer holds proprietary securities and cash in accounts of other broker-dealers, known as PAB accounts. ''PAB account'' generally means a proprietary securities account of a broker-dealer.[4] For example, a broker-dealer that is not a carrying broker-dealer (*e.g.,* an introducing broker-dealer) may hold its proprietary cash and securities at a carrying broker-dealer. In this case, the securities account of the introducing broker-dealer held at the carrying broker-dealer would be a PAB account and the introducing broker-dealer would be a PAB account holder of the carrying broker-dealer. While broker-dealers are not treated as customers under Rule 15c3–3, the rule requires a carrying broker-dealer to have a separate special reserve account at a bank for PAB account holders; such special reserve bank account must hold cash and/or qualified securities in an amount determined by a computation of the net cash owed to PAB account holders. Generally, carrying broker-dealers are required to perform the PAB reserve computation and make any required deposits into the PAB reserve bank account weekly, similar to the requirements for the customer reserve bank account.

The proposed amendments would require carrying broker-dealers that had large amounts of cash owed to customer and PAB accounts holders (*i.e.,* large total credits), measured by both their customer and PAB reserve computations for the previous twelve month ends (*i.e.,* a rolling twelve month average), to perform those computations and make any required deposits into their respective customer and PAB reserve bank accounts daily (rather than weekly). Cash owed to customers and PAB account holders may include cash proceeds received from sales of securities, cash deposited by customers and PAB account holders for the purposes of purchasing securities, and monthly or quarterly dividends received on behalf of customers and PAB account holders. These carrying broker-dealers—because they have owed large amounts of cash to their customers and PAB account holders—can incur large deposit requirements from time to time. This can lead to situations where—for a period of days—the net amount of cash owed to customers and PAB account holders is substantially greater than the amounts held in their combined customer and PAB reserve bank accounts. The proposed daily computation would shorten the period during which this mismatch between the net amount owed and the amount on deposit exists. The objective of the proposal is to reduce the risk caused by this mismatch for carrying broker-dealers where the difference between the net amount owed and the amount on deposit potentially is substantial. Large mismatches can lead to correspondingly large shortfalls in the amounts available in the customer and PAB reserve bank accounts to make customers and PAB account holders whole if the carrying broker-dealer fails financially. As explained below, these potential shortfalls could lead to large-scale harm (*e.g.,* delayed satisfaction of customer or PAB account holder claims for securities and cash) or substantial losses (the inability to satisfy those claims in full) if a carrying broker-dealer with a large mismatch is liquidated in a formal proceeding under the Securities Investor Protection Act of 1970 (''SIPA'').[5]

### *B. Current Requirements of Rule 15c3–3 and Its Relation to SIPA*

#### 1. Rule 15c3–3—Customer Accounts

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. For example, a broker-dealer is ''virtually'' precluded from using customer funds to buy securities for its own account.[6] To meet this objective, Rule 15c3–3 requires a carrying broker-dealer to take two primary steps to safeguard these assets, as described in this section below. The steps are designed to protect customers by segregating their securities and cash from the carrying broker-dealer's proprietary business activities. If the carrying broker-dealer fails financially, the customer securities and cash should

[1] 15 U.S.C. 78*o*(c)(3)(A).

[2] 17 CFR 240.15c3–3.

[3] *See* sections I.B.1. and I.B.2. of this release.

[4] The term ''PAB account'' means a proprietary securities account of a broker-dealer (which includes a foreign broker-dealer, or a foreign bank acting as a broker-dealer) other than a delivery-versus-payment account or a receipt-versus-payment account. 17 CFR 240.15c3–3(a)(16). The term does not include an account that has been subordinated to the claims of creditors of the carrying broker-dealer. *Id.*

[5] *See* 15 U.S.C. 78aaa *et seq.*

[6] *See Net Capital Requirements for Brokers and Dealers,* Exchange Act Release No. 21651 (Jan. 11, 1985), 50 FR 2690, 2690 (Jan. 18, 1985). *See also Broker-Dealers; Maintenance of Certain Basic Reserves,* Exchange Act Release No. 9856 (Nov. 17, 1972), 37 FR 25224, 25224 (Nov. 29, 1972).

be readily available to be returned to the customers. 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'' and, consequently, available to be distributed to customers ahead of other creditors.[7]

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.[8] 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.[9] Permissible locations include a clearing corporation and a ''bank,'' as defined in section 3(a)(6) of the Exchange Act.[10]

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.[11] The account must be titled ''Special Reserve Bank Account for the Exclusive Benefit of Customers'' (''customer reserve bank account'').[12] The amount of net cash owed to customers is computed weekly as of the close of the last business day of the week pursuant to a formula set forth in Exchange Act Rule 15c3–3a (''Rule 15c3–3a'') (''customer reserve computation'').[13] Under the customer reserve computation, the carrying broker-dealer adds up customer credit items and then subtracts from that amount customer debit items.[14] 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).[15] 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.[16] 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.[17] The carrying

[7] 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 (15 U.S.C. 78fff–2(c)(2)), distribute the fund of ''customer property'' ratably to customers (15 U.S.C. 78fff–2(b)), and obtain cash advances from the Securities Investor Protection Corporation (''SIPC'') from the fund administered by SIPC (''SIPC Fund'') to satisfy remaining customer net equity claims, to the extent provided by SIPA (15 U.S.C. 78fff–2(b) and 3(a)). Customer property is defined 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.'' 15 U.S.C. 7*lll*(4). *See also* section I.B.3. of this release (discussing broker-dealer liquidations under SIPA in more detail).

[8] *See* 17 CFR 240.15c3–3(d). 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 Board of Governors of the Federal Reserve System (12 CFR 220.1 *et seq.*) (''Regulation T''), 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. 17 CFR 240.15c3–3(a)(3). 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 (12 CFR 220.4), 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). 17 CFR 240.15c3–3(a)(4). 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. 17 CFR 240.15c3–3(a)(5).

[9] *See* 17 CFR 240.15c3–3(c). 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.

[10] *Id.* In 2020, the Commission issued a statement describing its position that, for a period of five years, special purpose broker-dealers operating under the circumstances set forth in the statement will not be subject to a Commission enforcement action on the basis that the broker-dealer deems itself to have obtained and maintained physical possession or control of customer fully-paid and excess margin crypto asset securities for purposes of Rule 15c3–3. *See Commission Statement on Custody of Digital Asset Securities by Special Purpose Broker-Dealers,* Exchange Act Release No. 90788 (Dec. 23, 2020), 86 FR 11627 (Feb. 21, 2021). While the proposed amendments would apply to all carrying broker-dealers, including special purpose broker-dealers, the amendments would not alter the current possession and control requirements of Rule 15c3–3 for any broker-dealer. *See also* Division of Trading and Markets, Commission and Office of General Counsel, FINRA, *Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities* (Jul. 8, 2019), available at *https://www.sec.gov/news/public-statement/joint-staff-statement-broker-dealer-custody-digital-asset-securities.* The 2019 staff statement represents the views of the staff. It is not a rule, regulation, or statement of the Commission. Furthermore, the Commission has neither approved nor disapproved its content. This staff statement, like all staff statements, has no legal force or effect: it does not alter or amend applicable law; and it creates no new or additional obligations for any person.

[11] 17 CFR 240.15c3–3(e). The term ''qualified security'' is defined in Rule 15c3–3 to mean a security issued by the United States or a security in respect of which the principal and interest are guaranteed by the United States (collectively, ''U.S. Government securities'' for purposes of this release). *See* 17 CFR 240.15c3–3(a)(6).

[12] *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.

[13] *See* 17 CFR 240.15c3–3a. Some carrying broker-dealers choose to perform a daily computation. *See* 17 CFR 240.15c3–3(e)(3)(iv). Further, the rule permits carrying broker-dealers in certain limited circumstances to perform a monthly computation. These circumstances include: (1) the broker-dealer must have aggregate indebtedness not exceeding 800 percent of net capital; (2) the broker-dealer carries aggregate customer funds, as computed at the last required computation, not exceeding $1,000,000; and (3) the broker-dealer must deposit in its customer reserve bank account not less than 105% of the amount computed under the customer reserve formula. *See* 17 CFR 240.15c3–3(e)(3)(i).

[14] *See* 17 CFR 240.15c3–3a.

[15] *See* 17 CFR 240.15c3–3a, Items 1–9. Credits in the customer reserve computation include—among other credits—free credit balances and other credit balances in customers' securities accounts, monies borrowed collateralized by securities carried for the accounts of customers, and monies payable against customers' securities loaned. *See* 17 CFR 240.15c3–3a, Items 1–3, respectively. 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. Similarly, carrying broker-dealers may use customer margin securities to make stock loans to other broker-dealers in which the lending broker-dealer typically receives cash in return. The amount payable to the other broker-dealer on the stock loan is a credit in the customer reserve computation—which is accounted for in Item 3—because this is the amount the broker-dealer would need to pay the other broker-dealer to retrieve the securities. *See also Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants and Broker-Dealers; Final Rule,* Exchange Act Release No. 87005 (Sept. 19, 2019), 84 FR 68550, 68690 (Dec. 16, 2019) (containing FOCUS Report Part II—Computation for Determination of Customer Reserve Requirements).

[16] *See* 17 CFR 240.15c3–3a, Items 10–14. *See also Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities; Proposed Rule,* Exchange Act Release No. 95763 (Sept. 14, 2022), 87 FR 64610 (Oct. 25, 2022) (proposing a new Item 15 in Rule 15c3–3a to permit margin required and on deposit at a covered clearing agency for U.S. Treasury securities to be included as a debit item in the customer and PAB reserve computations, subject to certain conditions). The Commission encourages commenters to review the U.S. Treasury security clearing proposal to determine whether it might affect their comments on this proposing release.

[17] 17 CFR 240.15c3–3(e). Customer cash is a balance sheet item of the carrying broker-dealer (*i.e.,* the amount of cash received from a customer increases the amount of the carrying broker-dealer's assets and creates a corresponding liability to the customer). The customer reserve computation is designed to isolate these carrying broker-dealer assets so that an amount equal to the net liabilities to customers is held as a reserve in the form of cash or U.S. Government securities. The requirement to

broker-dealer must make a deposit into the customer reserve bank account by 10 a.m. of the second business day following the ''as of'' date of the new computation if the computation shows the amount required to be on deposit in the customer reserve bank account is greater than the amount currently on deposit in the account.[18] Conversely, if the computation shows the amount required to be on deposit in the customer reserve bank account is less than the amount currently on deposit in the account, the carrying broker-dealer can withdraw the difference.[19] A carrying broker-dealer also is required to make and maintain a record of each computation.[20]

The customer reserve computation permits the carrying broker-dealer to offset customer credit items only with customer debit items.[21] 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 customers have sold short.[22] 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).[23] 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. 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 financing of securities transactions of other customers (*i.e.,* margin loans and short sales). 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.[24] The proceeds of the debits sale or liquidation can be used to repay the customer cash used to finance customer obligations. This cash plus the cash and/or qualified securities held in the customer reserve bank account should equal or exceed the total amount of customer credit items as of the customer reserve computation date (*e.g.,* as of the close of business on Friday).[25] However, as discussed below, activity subsequent to the customer reserve computation date can result in the carrying broker-dealer having large amounts of additional credit items that do not get accounted for until the next customer reserve computation and do not get reserved for until the next deposit into the customer reserve bank account.[26] This can lead to a mismatch between the net amount of cash owed to customers and the amount currently on deposit in the customer reserve bank account.

2. Rule 15c3–3—Proprietary Accounts of Broker-Dealers

Carrying broker-dealers also may carry accounts that hold proprietary securities and cash of other broker-dealers, known as PAB accounts.[27] Broker-dealers are not within the definition of ''customer'' for purposes of Rule 15c3–3.[28] The definition of ''customer'' in SIPA, however, is broader than the definition in Rule 15c3–3 in that the SIPA definition includes broker-dealers.[29] As discussed in more detail below, broker-dealers—as customers under SIPA—have the right to a *pro rata* share of customer property in a SIPA liquidation.[30]

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maintain this reserve is designed to effectively prevent the carrying broker-dealer from using customer funds for proprietary business activities such as investing in securities. The goal is to put the carrying broker-dealer in a position to be able to readily meet its cash obligations to customers by requiring the carrying broker-dealer to make deposits of cash and/or U.S. Government securities into the customer reserve bank account in the amount of the net cash owed to customers.

[18] For carrying broker-dealers performing a weekly customer reserve computation as of the close of the last business day of the week, the deposit so computed must be made no later than one hour after the opening of banking business on the second following business day. *See* 17 CFR 240.15c3–3(e)(3)(i). For example, a carrying broker-dealer would perform the customer reserve computation on Monday as of the close of business on the previous Friday and generally be required to make the necessary deposit no later than 10 a.m. Tuesday.

[19] *See* 17 CFR 240.15c3–3(e).

[20] *See* 17 CFR 240.15c3–3(e)(3)(v). Each record must be preserved in accordance with Rule 17a–4. *Id.*

[21] *See* 17 CFR 240.15c3–3(e)(2); 17 CFR 240.15c3–3a.

[22] For example, if a carrying broker-dealer holds $100 for customer A, the carrying broker-dealer can use that $100 to finance a security purchase of customer B (*i.e.,* make a margin loan to customer B). The $100 the carrying broker-dealer owes customer A is a credit in the formula and the $100 customer B owes the carrying broker-dealer is a debit in the formula. Therefore, under the customer reserve computation there would be no requirement to maintain cash and/or U.S. Government securities in the customer reserve bank account. However, if the carrying broker-dealer did not use the $100 held in customer A's account for this purpose, there would be no offsetting debit and, consequently, the carrying broker-dealer would need to have on deposit in the customer reserve bank account cash and/or U.S. Government securities in an amount at least equal to $100.

[23] Broker-dealers are subject to margin requirements in Regulation T, in rules promulgated by the broker-dealer self-regulatory organizations (''SRO'') (*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 (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) (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).

[24] 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 the customer maintains a minimum level of equity in their account, *i.e.,* that the debit is over-collateralized. For example, if a customer purchases a listed equity security, they can borrow up to 50% of the purchase price from the broker-dealer using the purchased security as collateral for the loan. This is known as initial margin. After a customer buys securities on margin, SRO margin rules require the customer to maintain a minimum amount of equity in their securities margin account. This is known as maintenance margin. SRO margin rules require a customer to maintain at least 25% of the total market value of the margin securities in their account. For example, if a customer purchases $16,000 of listed equity securities, the customer can borrow $8,000 from the broker-dealer and pay $8,000 in cash. If the market value of the listed equity securities falls to $12,000, the equity in the securities margin account would total $4,000 ($12,000 − $8,000 = $4,000) and the broker-dealer's loan to the customer would be over-collateralized by $4,000. The customer would be in compliance with the 25% SRO maintenance margin requirement of $3,000 as well (25% of $12,000 = $3,000). *See* 12 CFR 220.12(a) and FINRA Rule 4210(c)(1).

[25] *See Net Capital Requirements for Broker-Dealers; Amended Rules,* Exchange Act Release No. 18417 (Jan. 13, 1982), 47 FR 3512, 3513 (Jan. 25, 1982). The alternative method is founded on the concept that if the debit items in the reserve formula can be liquidated at or near their contract value, these assets, along with any cash required to be on deposit under the customer protection rule, will be sufficient to satisfy all customers-related liabilities (which are represented as credit items in the reserve formula).

[26] *See* section I.C. of this release (explaining the implications of a weekly computation).

[27] 17 CFR 240.15c3–1(a)(16).

[28] 17 CFR 240.15c3–3(a)(1) (The term customer shall mean any person from whom or on whose behalf a broker or dealer has received or acquired or holds funds or securities for the account of that person. The term shall not include a broker or dealer, a municipal securities dealer, or a government securities broker or government securities dealer.). *Id.*

[29] *See* 15 U.S.C. 78*lll*(2).

[30] *See* section I.B.3. of this release (discussing broker-dealer liquidations under SIPA in more detail). While broker-dealers as ''customers'' under SIPA have a right to a *pro rata* share of customer

Continued

Because broker-dealers are entitled to a *pro rata* share of customer property, Rules 15c3–3 and 15c3–3a require carrying broker-dealers to: (1) perform a separate reserve computation for PAB accounts in addition to the customer reserve computation described above (''PAB reserve computation); [31] (2) establish and fund a separate bank account titled ''Special Reserve Bank Account for Brokers and Dealers'' (''PAB reserve bank account''); and (3) obtain and maintain physical possession or control of non-margin securities carried for a PAB account holder unless the carrying broker-dealer has provided written notice to the PAB account holder that it may use those securities in the ordinary course of its securities business, and has provided opportunity for the PAB account holder to object to such use.[32] These requirements provide similar protections to the securities and cash a carrying broker-dealer maintains for PAB account holders as are provided for the securities and cash the broker-dealer maintains for customers. The objective in applying these similar protections is to reduce the risk that, in the event a carrying broker-dealer is liquidated under SIPA, the claims of SIPA customers (*i.e.,* customers and PAB account holders) will exceed the amount of customer property available and, thereby, expose the SIPC Fund and potentially SIPA customers to losses.[33] In addition, if the customer property is insufficient to fully satisfy all SIPA customer claims and losses are incurred, the PAB account holders could be placed in financial distress. This could cause adverse impacts to the securities markets beyond those resulting from the failure of the carrying broker-dealer, given that the PAB account holders—as broker-dealers—provide services to investors and others who participate in those markets.[34]

Similar to the customer reserve computation, the amount of net cash owed to PAB account holders is computed weekly as of the close of the last business day of the week pursuant to the formula set forth in Rule 15c3–3a.[35] Specifically, carrying broker-dealers perform the PAB reserve computation using the formula in Rule 15c3–3a—which is used to perform the customer reserve computation—with modifications that tailor the computation to PAB (*i.e.,* broker-dealer) accounts as compared with customer accounts.[36] If credit items exceed debit items, the net amount owed to PAB account holders must be on deposit in the PAB reserve bank account in the form of cash and/or qualified securities. The carrying broker-dealer must make a deposit into the PAB reserve bank account if the computation shows an increase in the reserve requirement.[37] If the computation shows a decrease in the reserve requirement, the carrying broker-dealer may withdraw the difference. Finally, consistent with the requirements for the customer reserve computation, the PAB reserve computation permits the carrying broker-dealer to offset PAB credit items only with PAB debit items.[38]

3. Broker-Dealer Liquidations and SIPA

SIPA became law in 1970 with the purpose of affording certain protections against loss to customers resulting from broker-dealer failure and, in doing so, promote investor confidence in the nation's securities markets.[39] SIPA established SIPC and directed SIPC to establish the SIPC Fund.[40] The protections afforded by SIPA are designed to work as a ''back stop'' to the broker-dealer net capital rule,[41] which requires broker-dealers to maintain net liquid assets in excess of all liabilities to customers and other creditors, and Rule 15c3–3. SIPC oversees the liquidation of SIPC-member broker-dealers that fail financially and where customer assets the broker-dealer holds (*i.e.,* cash or securities) are missing from customers' securities accounts (*i.e.,* broker-dealers that cannot return these assets through a self-liquidation).[42] For example, cash and securities may be missing from customers' securities accounts in cases of unauthorized trading or embezzlement. The Commission has authority to oversee SIPC, including to conduct inspections of SIPC and to approve or disapprove changes to SIPC's bylaws and rules.[43]

In a SIPA liquidation of a broker-dealer, SIPC and a court-appointed trustee work to return customers' cash and securities as quickly as possible. Customers under SIPA (''SIPA customers'') generally are entitled to a number of protections. These protections include the right to share *pro rata* with other SIPA customers in the customer property held by the broker-dealer.[44] Broker-dealers with securities accounts at the failed broker-dealer—as SIPA customers—have the right to a *pro rata* share of the customer property in a SIPA liquidation.[45]

property in a SIPA liquidation, they are not entitled to receive an advance from the SIPC Fund. *See* 15 U.S.C. 78fff–3(a). *See infra* section I.B.3. of this release (discussing advances from the SIPC Fund as a customer protection for certain customers in a SIPA liquidation).

[31] *See supra* section I.B.1. of this release (discussing Rule 15c3–3 and customer accounts).

[32] 17 CFR 240.15c3–3(b)(5) and (e). *See also Financial Responsibility Rules for Broker-Dealers; Final Rule,* Exchange Act Release No. 70072 (July 30, 2013), 78 FR 51824, 51827–31 (Aug. 21, 2013) (adopting a PAB reserve computation and possession and control requirements for securities held in PAB accounts under Rule 15c3–3) (''Financial Responsibility Rules for Broker-Dealers'').

[33] *See* Financial Responsibility Rules for Broker-Dealers, 78 FR at 51827–28.

[34] *Id.*

[35] *See* Rule 15c3–3a. Some carrying broker-dealers choose to perform the PAB reserve computation daily. *See* 17 CFR 240.15c3–3(e)(3)(iv). Further, Rule 15c3–3 permits certain carrying broker-dealers to perform the PAB reserve computation monthly if they do not carry customer accounts or conduct a proprietary trading business. *See* 17 CFR 240.15c3–3(e)(3)(iii).

[36] *See* 17 CFR 240.15c3–3a, Notes Regarding the PAB Reserve Bank Account Computation. For example, Note 1 states that broker-dealers should use the customer reserve formula for the purposes of computing the PAB reserve formula, except that references to ''accounts,'' ''customer accounts,'' or ''customers'' will be treated as references to PAB accounts. Further, Note 2 provides that any credit (including a credit applied to reduce a debit) that is included in customer reserve formula may not be included as a credit in PAB reserve formula. *Id.*

[37] For carrying broker-dealers performing the PAB reserve computation weekly, as of the close of the last business day of the week, the deposit so computed must be made no later than one hour after the opening of banking business on the second following business day. *See* 17 CFR 240.15c3–3(e)(3)(i). Carrying broker-dealers also may satisfy a PAB reserve bank account deposit requirement with excess debits from the customer reserve computation from the same date. However, a deposit requirement from the customer reserve computation may not be satisfied with excess debits from the PAB reserve computation. *See* 17 CFR 240.15c3–3(e)(4).

[38] *See* 17 CFR 240.15c3–3(e)(2); 17 CFR 240.15c3–3a.

[39] *See* 2022 SIPC Annual Report at 4, *available at https://www.sipc.org/media/annual-reports/2022-annual-report.pdf.*

[40] *See* 15 U.S.C. 78ccc(a)(1) and 78ddd(a)(1).

[41] 17 CFR 240.15c3–1.

[42] With some limited exceptions set forth in SIPA, all registered broker-dealers are SIPC members. 15 U.S.C. 78ccc(a)(2). SIPC is a non-profit member organization created in 1970 under SIPA. 15 U.S.C. 78ccc(a).

[43] 15 U.S.C. 78ggg(c) and 78ccc(e).

[44] *See* 15 U.S.C. 78fff–2(c).

[45] *See* 15 U.S.C. 78fff–2(c) and 15 U.S.C. 78fff–3(a).

Consequently, when a carrying broker-dealer is liquidated in a SIPA proceeding, each customer (including a SIPA customer that is a broker-dealer) has a priority claim on the customer property compared to general unsecured creditors of the carrying broker-dealer.[46] The SIPA protections also include the ability for a SIPA customer—other than a SIPA customer that is a broker-dealer—to 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.[47]

The SIPC Fund largely is financed through assessments paid to SIPC by its broker-dealer members.[48] The SIPC Fund is used to pay SIPC's expenses, the administrative costs of a SIPA liquidation to the extent the broker-dealer's estate is insufficient to cover those costs, and—as noted above—to pay advances to SIPA customers whose claims cannot be fully satisfied by the estate of a failed carrying broker-dealer.[49] The SIPC Fund—which consists of cash and U.S. Government securities—totaled approximately $4.05 billion as of December 31, 2022.[50] The schedule for calculation of the annual assessment for SIPC members is governed under the SIPC bylaws and generally depends on the level of SIPC's unrestricted net assets.[51] The current assessment rate is 0.15 percent of net operating revenues.[52] A summary of the possible level of SIPC assessments is as follows:

TABLE 1—SIPC ASSESSMENT SCHEDULE

| Unrestricted net assets/SIPC Fund balance | Annual assessment rate |
|---|---|
| Unrestricted net assets $2.5–<$5 billion (and reasonably likely to remain less than $5 billion but not less than $2.5 billion). | 0.15% of net operating revenues. |
| SIPC Fund balance of $150 million—unrestricted net assets of <$2.5 billion. | 0.25% of net operating revenues. |
| SIPC Fund balance $100 million–<$150 million | Determined by SIPC, but not less than 0.25% of gross revenues. |
| SIPC Fund balance below $100 million | Determined by SIPC, but not less than 0.5% of gross revenues. |
| Unrestricted net assets ≥$5 billion (and reasonably likely to remain >$5 billion (after review of study [1] and consultation with Commission and SROs)). | SIPC may not more than once in any four-year period, increase or decrease the assessment rate by up to, but not more than, 25% of the assessment rate in effect at that time. |

[1] When unrestricted net assets total $5 billion, SIPC will commission a study every four years to examine the adequacy of SIPC's unrestricted net asset balance and the SIPC Fund and the appropriate assessment rate. *See* section 6(a)(1)(C) and (D) of SIPC's Bylaws.

In addition to the Commission's requirements under Rule 15c3–3, if either the Commission or any SRO, such as FINRA, is aware of facts which lead it to believe that any broker-dealer subject to its regulation is in or is approaching financial difficulty, it must immediately notify SIPC, and, if such notification is by an SRO, the Commission.[53] In a case when an SRO notifies SIPC about a broker-dealer, and that broker-dealer has taken steps to either reduce or liquidate its business, either voluntarily or at the direction of the SRO, the SRO may render such assistance or oversight to such broker-dealer as it considers appropriate to protect the interests of customers of such broker-dealer.[54] However, any actions the SRO takes do not prevent or act as a bar from SIPC from taking an action as well.[55] If SIPC finds that a broker-dealer has failed, or is in danger of not meeting its obligations to customers, SIPC can initiate steps to begin a customer protection proceeding. For example, SIPC may, upon notice to its broker-dealer member, file an application for a protective decree with any court that has jurisdiction (*i.e.,* a Federal District Court), whether or not the broker-dealer consents.[56] In addition, no member of SIPC that has customers may enter into bankruptcy, insolvency, or a receivership without approval from SIPC, except as provided in Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[57]

### *C. The Risk of a Mismatch in Funds Owed and Funds Reserved Under Rule 15c3–3*

Carrying broker-dealers receive customer- and PAB-related cash inflows in connection with various securities transactions, including cash proceeds received from sales of securities, cash deposited by customers and PAB account holders for the purposes of purchasing securities, and monthly or quarterly dividends received on behalf of customers and PAB account holders. Cash credited to customers and PAB account holders often is quickly re-invested by the customer or PAB

[46] As discussed above in section I.B.2. of this release, this is why Rules 15c3–3 and 15c3–3a require carrying broker-dealers to perform a PAB reserve computation for PAB account holders. SIPA liquidations generally involve customer claims and the claims of general unsecured creditors. Customer claims are satisfied out of the customer estate, while general unsecured claims are paid from the general estate (any remaining assets). To the extent a customer's claims are not fully satisfied through advances from the SIPC Fund and the customer's share of the customer estate, a customer will be eligible to receive a distribution as a general creditor to the extent that there are any general estate assets. *See* 15 U.S.C. 78fff–2(c)(1).

[47] 15 U.S.C. 78fff–3.

[48] 15 U.S.C. 78ddd(c) and (d). The SIPC Fund is also financed through interest on U.S. Government securities held in the SIPC Fund. *See* 2022 SIPC Annual Report at 4.

[49] In the event that the SIPC Fund is or may reasonably appear to be insufficient for the purposes of SIPA, the Commission is authorized to lend SIPC up to $2.5 billion, which the Commission, in turn, would borrow from the U.S. Treasury. 15 U.S.C. 78ddd(g) and (h). The Commission has not borrowed funds under the authority in SIPA since the legislation was enacted in 1970.

[50] Currently, the objective is to build the SIPC Fund to a level of $5 billion. *See* 2022 SIPC Annual Report at 3, 10. Between 1970 and 2022, SIPC has facilitated the return of cash and securities for accounts of customers of failed broker-dealers totaling approximately $142 billion. Of that amount, approximately $141.2 billion came from broker-dealer estates and $917 million came from trustee advances from the SIPC Fund. *Id.* at 8. Further, of the approximately 770,400 customer claims from completed, or substantially completed, cases that were satisfied between 1970 and 2022, only 355 claims were for cash and securities valued greater than the limits of protection afforded by SIPA. *Id.* at 9.

[51] *See* Article 6, Assessments of SIPC Bylaws. SIPC's unrestricted net assets are SIPC's total assets (including the SIPC Fund) less liabilities, which include estimated costs to complete ongoing SIPA liquidations. *See* 2022 SIPC Annual Report at 20. *See also* 15 U.S.C. 78ddd(c) and (d) and 2022 SIPC Annual Report at 21.

[52] *See Assessment Rate, available at https://www.sipc.org/for-members/assessment-rate.* The amount of each SIPC member's assessment for the member's fiscal year is the product of the assessment rate established by SIPC for that fiscal year and either the member's gross revenues or net operating revenues from the securities business. *See* Section 6(a)(1) of SIPC's Bylaws.

[53] *See* 15 U.S.C. 78eee(a)(1).

[54] *See* 15 U.S.C. 78eee(a)(2).

[55] *Id.*

[56] *See* 15 U.S.C. 78eee(a)(3)(A). *See also* 15 U.S.C. 78eee(b)(1) (detailing court proceedings).

[57] *See* 15 U.S.C. 78eee(a)(3)(B).

account holder in securities such as money market mutual funds or securities held by the customer or PAB account holder that are subject to dividend re-investment plans. This cash also may be swept out of the customer's or PAB account holder's securities account at the carrying broker-dealer to a bank or money market mutual fund as part of a program in which customers' and PAB account holders' free credit balances are automatically invested in the mutual fund or bank deposit product on the prior authorization of the customer or PAB account holder (''sweep program'').[58] When customers and PAB account holders use their free credit balances to invest in securities or bank deposit products, the amount of cash held by a carrying broker-dealer for them is reduced and, therefore, the amount that needs to be deposited into the customer or PAB reserve bank account also is reduced.

Carrying broker-dealers, however, may receive large cash inflows that are not deployed for or on behalf of the customers or PAB account holders prior to the next required customer and PAB reserve computations and deposits into the customer and PAB reserve bank accounts. In this situation, the value of the cash and/or qualified securities in the customer and PAB reserve bank accounts may not equal the net cash owed to customers and PAB account holders for a period of time. For example, assume a carrying broker-dealer performs its customer and PAB reserve computations weekly as required under Rule 15c3–3 (*i.e.,* it has not elected to perform a daily computation or meet the conditions in the rule to perform a monthly computation). Typically, the carrying broker-dealer would perform the customer and PAB reserve computations on Monday using credit and debit amounts as of the close of business on the previous Friday. If the Monday computation showed a deposit requirement, the carrying broker-dealer would need to make that deposit by 10 a.m. the following business day, which typically would be Tuesday. In this example, cash inflows received by the carrying broker-dealer on Monday through Friday would not be accounted for until the carrying broker-dealer performs the next customer and PAB reserve computations on the Monday of the following week and would not be reserved for until the carrying broker-dealer makes the required deposits into the customer and PAB reserve bank accounts no later than 10 a.m. on Tuesday of the following week. Consequently, for a number of days, the net amount of cash owed to customers and PAB account holders could be greater than the amounts deposited into the customer and PAB reserve bank accounts.[59]

This mismatch poses a risk to the carrying broker-dealer's customers and PAB account holders that the carrying broker-dealer could fail financially and be unable to return all the securities and cash owed to the customers and PAB account holders. In this situation, the carrying broker-dealer would be liquidated under SIPA, and SIPC would be required to advance money from the SIPC Fund—but not to PAB account holders—to the extent the fund of customer property was insufficient to make customers whole through the *pro rata* distribution. As discussed above, the amount that can be advanced to each customer is capped at $500,000 (of which $250,000 can be used to cover cash claims).[60] Therefore, if the mismatch was sufficiently large, customers' claims may not be satisfied in full. Further, because PAB account holders—as broker-dealers—are not entitled to advances from the SIPC Fund, their claims for securities and cash would be at greater risk of not being satisfied in full. This could expose the PAB account holder to financial stress and increased risk of liquidation.[61]

As of the end of 2022, 162 carrying broker-dealers reported total credits in their customer reserve computation of greater than $0.[62] These carrying broker-dealers reported an aggregate amount of total customer credits of $1.03 trillion. In addition, 82 carrying broker-dealers reported total credits in their PAB reserve computation of greater than $0. These carrying broker-dealers reported an aggregate amount of PAB account holder total credits of $166.3 billion.[63] Moreover, some of these carrying broker-dealers have been required to deposit large amounts of additional cash and/or qualified securities into their customer and/or PAB reserve bank accounts after performing their customer and/or PAB reserve computations. For example, during the 2022 calendar year, the largest required additional deposits into the customer reserve bank accounts of these carrying broker-dealers ranged from approximately $1.6 billion to over $6.0 billion following the customer reserve

[58] *See* 17 CFR 240.15c3–3(j)(2)(ii) (setting forth requirements under Rule 15c3–3 for this type of a program for customer accounts). Broker-dealers are not customers under Rule 15c3–3. Therefore, PAB account holders are not subject to the sweep program requirements under the rule with respect to their free credit balances. *See* 17 CFR 15c3–3(a)(1). Nonetheless, PAB account holders may elect to have their free credit balances included in a sweep program.

[59] To further illustrate this risk, assume on Monday of Week 1 a carrying broker-dealer performs a customer reserve computation that shows as of close-of-business on Friday of the previous week the broker-dealer had total credits of $30 billion and total debits of $25 billion and, therefore, had excess credits over debits of $5 billion. Assume further, the carrying broker-dealer had $4.8 billion of cash and qualified securities on deposit in its customer reserve bank account. Under Rule 15c3–3, the carrying broker dealer would need to deposit $200 million into its customer reserve bank account no later than 10 a.m. on Tuesday of Week 1. Assume further that the carrying broker-dealer receives $3 billion of cash inflows on Monday of Week 1 but does not facilitate any customer transactions during Week 1 that generate additional debits and the customers do not deploy the $3 billion to purchase securities or into a sweep program. In this scenario, the $3 billion of cash inflows on Monday of Week 1 would not get accounted for in the customer reserve formula until the carrying broker-dealer performs the customer reserve computation on Monday of Week 2. Assuming all else stays the same, the Week 2 customer reserve computation would result in a deposit requirement of $3 billion, which would need to be made no later than 10 a.m. on the Tuesday of Week 2. This means the net amount of cash owed to customers was $8 billion and the amount on deposit in the customer reserve bank account was $4.8 billion on Monday through 10 a.m. on Tuesday of Week 1 and $5 billion from 10 a.m. on Tuesday of Week 1 through 10 a.m. on Tuesday of Week 2. Consequently, the difference between the net amount of cash owed to customers and the amount on deposit in the customer reserve bank account was $3.2 billion for Monday of Week 1 through 10 a.m. on Tuesday of Week 1 and $3 billion from 10 a.m. on Tuesday of Week 1 through 10 a.m. on Tuesday of Week 2.

[60] *See* section I.B.3. of this release (discussing broker-dealer liquidations under SIPA in more detail).

[61] *See* section IV.C. of this release (discussing the benefits and costs of the proposed amendments).

[62] This number of carrying broker-dealers is based on information reported by broker-dealers as of Dec. 31, 2022, in Form X–17A–5, the Financial and Operational Combined Uniform Single Report (''FOCUS Report''). The FOCUS Reports showed that 162 carrying broker-dealers reported total credits of greater than $0 on Line 4430 of the report (total credits in the customer reserve formula). Total credits in the customer reserve computation is the sum of customer credits in the formula, including—among other credits—free credit balances and other credit balances in customers' securities accounts (Line 4340), monies borrowed collateralized by securities carried for the accounts of customers (Line 4350), and monies payable against customers' securities loaned (Line 4360). *See also* section IV.B.2. of this release (estimating that there are 187 broker-dealers that may currently fall within the scope of the Rule 15c3–3 based on carrying activities). This estimate includes broker-dealers that did not report credits greater than $0 and/or that reported being exempt from the provisions of Rule 15c3–3.

[63] FOCUS Report data as of Dec. 31, 2022, showed that 82 broker-dealers reported total credits of greater than $0 on Line 2170 of the report (total credits in the PAB reserve formula). Total credits in the PAB reserve computation is the sum of PAB account holder credits in the formula, including—among other credits—free credit balances and other credit balances in PAB securities accounts (Line 2110), monies borrowed collateralized by securities carried for the accounts of PAB (Line 2120), and monies payable against PAB securities loaned (Line 2130).

computation.[64] Furthermore, during the 2022 calendar year, the largest required additional deposits into their PAB reserve bank accounts ranged from approximately $350 million to over $4.0 billion.[65] The carrying broker-dealers that reported the largest amounts of total credits for their customers and PAB account holders (and that exceeded the proposed $250 Million Threshold discussed below) were more likely to experience larger mismatches and the dollar amounts underlying those mismatches were significantly larger (than carrying broker-dealers that do not exceed the proposed $250 Million Threshold).[66]

These large deposit requirements indicate that there may be times when the net amount of cash owed to customers and PAB account holders is substantially greater than the amounts on deposit in the customer and PAB reserve bank accounts. As explained above, this creates the potential risk that a carrying broker-dealer could fail financially and not be able to fully satisfy claims of customers and PAB account holders for securities and cash. Moreover, given the potential size of this mismatch between the cash owed and the cash reserved, the failure of a carrying broker-dealer that has large total credits could cause widespread harm and potentially substantial losses (as discussed above). It also potentially could deplete the SIPC Fund resulting in the need to increase assessments on SIPC's broker-dealer members to replenish it, with the resulting costs potentially being passed through to investors.[67]

To address these risks, the Commission is proposing amendments to Rule 15c3–3 to require carrying broker-dealers with large total credits—the carrying broker-dealers most likely to have large customer and PAB additional deposit requirements—to increase the frequency of their customer and PAB reserve computations from weekly to daily. The objective is to more dynamically match the net amount of cash owed to customers and PAB account holders with the amount on deposit in the carrying broker-dealer's customer and PAB reserve bank accounts by shortening the timeframe that a mismatch can exist.[68] This objective also should enhance the customer protection requirements of Rule 15c3–3.

In addition, performing daily (rather than weekly) customer and PAB reserve computations would allow large carrying broker-dealers to more effectively manage their cash flows and liquidity. For example, a carrying broker-dealer that performs weekly computations generally cannot withdraw excess cash or U.S. Government securities from either its customer or PAB reserve bank accounts until the following week even if the value of the account assets exceeds the net cash owed to customers or PAB account holders during the current week. While Rule 15c3–3 currently permits a carrying broker-dealer to elect to perform its customer and PAB reserve calculations more frequently than weekly,[69] a practical effect of requiring carrying broker-dealers to perform daily customer and PAB reserve computations would be to permit them to withdraw these excess funds and securities more quickly. A number of carrying broker-dealers currently elect to perform daily customer and PAB reserve computations, including eleven of the largest carrying broker-dealers.[70] Finally, an additional 52 carrying broker-dealers that would be required to begin performing daily customer and PAB computations under the proposed rule (*i.e.,* those carrying broker-dealers that are not already voluntarily performing daily computations) may incur increased compliance costs.[71] As further discussed in the Economic Analysis in section IV. of this release, these costs and benefits may ultimately be passed through to customers and PAB account holders of the affected carrying broker-dealers.[72]

## II. Proposed Amendments

### *A. Proposed Amendments to Rule 15c3–3*

In order to address the mismatch risk discussed above and enhance customer protection requirements, the Commission is proposing amendments to Rule 15c3–3 that would require carrying broker-dealers with large amounts of total credits to perform the customer and PAB reserve computations daily (rather than weekly).[73] More specifically, the amendments would add paragraph (e)(3)(i)(B) to Rule 15c3–3.[74]

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[64] This is based on the 25 largest additional deposit requirements reported in the monthly FOCUS Reports filed during the 2022 calendar year.

[65] This is based on the 25 largest additional deposit requirements reported in the monthly FOCUS Reports filed during the 2022 calendar year. The largest additional deposit requirements were made by carrying broker-dealers that also had the 20 largest credit balances based on 2022 FOCUS Report data. In addition to large deposit requirements, the customer and PAB reserve computations also permitted some carrying broker-dealers to make large withdrawals from both their customer and PAB reserve bank accounts during the 2022 calendar year. For example, during the 2022 calendar year, the 25 largest withdrawals from customer reserve bank accounts ranged from approximately $1.3 billion to $6.0 billion, and the 25 largest withdrawals from PAB reserve bank accounts ranged from $241.7 million to $3.5 billion.

[66] This is based on the carrying broker-dealers that reported the largest amounts of total credits on their FOCUS Reports as of Dec. 31, 2022, and comparing them to the carrying broker-dealers that reported the largest deposits for the 2022 calendar year. *See also* section II.A.1. of this release (discussing the proposed $250 Million Threshold) and Table 5 in section IV.B.2. of this release (detailing broker-dealer deposits and withdrawals as a share of reserve accounts for the year 2022).

[67] *See* section IV.C. of this release (discussing the benefits and costs of the proposed amendments).

[68] To illustrate how a daily computation would reduce this risk, assume on Monday a carrying broker-dealer performs a customer reserve computation that shows as of the close-of-business on Friday of the previous week the broker-dealer had total credits of $30 billion and total debits of $25 billion and, therefore, had excess credits over debits of $5 billion. Assume further, the carrying broker-dealer had $4.8 billion of cash and qualified securities on deposit in its customer reserve bank account. Under a daily computation, the carrying broker dealer would need to deposit $200 million into its customer reserve bank account no later than 10 a.m. on Tuesday of that week. Assume further that the carrying broker-dealer receives $3 billion of cash inflows on Monday but does not facilitate any customer transactions that generate any additional debits and the customers do not deploy the $3 billion to purchase securities or into a sweep program. Under a daily requirement, the carrying broker-dealer would perform a customer reserve computation on Tuesday as of the close of business on Monday that would account for the $3 billion in cash inflows received on Monday and be required to deposit $3 billion into the customer reserve bank account by 10 a.m. on Wednesday of the same week. Consequently, the mismatch would exist from the point in time on Monday when the $3 billion was received until 10 a.m. on Wednesday of the *same* week when $3 billion would need to be deposited into the customer reserve bank account (approximately two full days). Under a weekly requirement, this mismatch would exist from the point in time on Monday when the $3 billion was received until 10 a.m. on Tuesday of the *following* week when the next deposit into the customer reserve bank account would need to be made (approximately eight full days).

[69] *See* 17 CFR 240.15c3–3(e)(3)(iv).

[70] Based on FOCUS Report data for the 2022 calendar year, these carrying broker-dealers are among the largest broker-dealers measured by average total credits and total assets. These 11 carrying broker-dealers accounted for 64 percent of the total amount of average total credits among all carrying-broker dealers with positive customer or PAB credits reported in 2022. *See* section IV.B.2. of this release (discussing baseline of affected broker-dealers in the economic analysis).

[71] Based on FOCUS Report data for the 2022 calendar year.

[72] *See* section IV. of this release (discussing the benefits and costs of the proposed amendments).

[73] *See* section I.C. of this release (discussing the mismatch risk).

[74] *See* paragraph (e)(3)(i)(B) to Rule 15c3–3, as proposed to be amended. In addition, the Commission is proposing the following conforming amendments to paragraph (e)(3)(i) of Rule 15c3–3: (1) paragraph (e)(3)(i) would be re-lettered paragraph (e)(3)(i)(A); and (2) the text in paragraph (e)(3)(i) regarding monthly computations would be set forth in new paragraph (e)(3)(i)(C). Further, the phrase "[e]xcept as provided in paragraphs (e)(3)(i)(B)(*1*) and (C) of this section" would be added to the beginning of paragraph (e)(3)(i)(A) of Rule 15c3–3, as proposed to be amended, to clarify that the weekly computation requirement in paragraph (e)(3)(i)(A) applies unless the carrying

Continued

This paragraph would provide that a carrying broker-dealer with average total credits that are equal to or greater than $250 million must make the computation necessary to determine the amounts required to be deposited in the customer and PAB reserve bank accounts daily as of the close of the previous business day.[75] The paragraph would further provide that the deposit so computed must be made no later than one hour after the opening of banking business on the second following business day. For example, a carrying broker-dealer performing the computation on Tuesday as of the close of business on Monday, would be required to make the deposit on Wednesday, assuming all three days are business days. On Wednesday, the carrying broker-dealer would perform the computation as of the close of business Tuesday and be required to make the deposit on Thursday (assuming Thursday is a business day).

For purposes of paragraph (e)(3) of Rule 15c3–3, the Commission is proposing to define average total credits as the arithmetic mean of the sum of total credits in the customer reserve computation and PAB reserve computation reported in the twelve most recently filed month-end FOCUS Reports (''$250 Million Threshold'').[76] The proposed definition of average total credits is designed to serve as a straightforward way for the carrying broker-dealer to determine whether its total credits equal or exceed the $250 Million Threshold. In addition, using the arithmetic mean of total credit amounts reported in the twelve most recently filed month-end FOCUS Reports to calculate the average total credits is designed to account for the fact that a carrying broker-dealer's total credits may fluctuate. A rolling average based on twelve most recently filed month-end FOCUS Reports would provide for a more stable and representative metric as compared to basing the calculation on a single filing such as the most recently filed FOCUS Report.

The proposed $250 Million Threshold is designed to apply the daily computation requirement to carrying broker-dealers that have large amounts of total credits. Based on FOCUS Report data, these carrying broker-dealers are the ones more likely to experience larger mismatches between the net cash they owe customers and PAB account holders and the amounts they have on deposit in their customer and PAB reserve bank accounts, and the dollar amounts underlying those mismatches are significantly larger than carrying broker-dealers below the $250 Million Threshold.[77] The proposed $250 Million Threshold is designed to provide a balanced demarcation between carrying broker-dealers with large amounts of total credits relative to smaller carrying broker dealers (with lower average total credits), the former of which are more likely to incur larger mismatches in any given year, and are more likely to better absorb any potential increase in compliance costs.[78]

Based on regulatory filings for the period of January 2022 through December 2022, the $250 Million Threshold would apply the proposed daily computation requirement to approximately 63 carrying broker-dealers.[79] These broker-dealers include 11 carrying broker-dealers that already voluntarily perform the customer reserve computation daily.[80] Under the proposed $250 Million Threshold, approximately 100 carrying broker-dealers would continue to be subject to a weekly customer and/or PAB reserve computation requirement.[81] In summary, in proposing the $250 Million Threshold, the Commission seeks to reasonably balance the enhancements to customer protection under Rule 15c3–3 through reductions in the mismatch risk, with the potential increases in compliance costs and staffing that may be necessary to perform a daily computation.[82]

The Commission is proposing to require that a carrying broker-dealer comply with the daily computation requirement for the customer and PAB reserve bank accounts no later than six months after having average total credits that equal or are greater than $250 million.[83] The purpose is to provide time for a carrying broker-dealer to prepare to perform a daily computation after it exceeds the $250 Million Threshold. A carrying broker-dealer in this situation may need to add resources in order to perform the computations, including hiring or assigning additional staff to perform the daily computations.

Once a carrying broker-dealer begins to perform daily customer and PAB reserve computations (because it exceeded the $250 Million Threshold), the proposed amendments would require it to continue performing daily customer and PAB reserve computations for at least 60 days after it falls below the $250 Million Threshold. More specifically, under paragraph (e)(3)(i)(B)(*2*) of Rule 15c3–3, as proposed to be amended, a carrying broker-dealer performing daily computations, whose average total credits falls below the $250 Million Threshold, could elect to perform weekly computations under paragraph (e)(3)(i)(A) of Rule 15c3–3 by notifying its designated examining authority in writing.[84] In order to revert to a weekly computation, the carrying broker-dealer would need to wait 60 calendar days after notifying its designated examining authority, in writing, of its election to

broker-dealer is subject to the daily computation requirement of paragraph (e)(3)(i)(B)(*1*) or meets the conditions of paragraph (e)(3)(i)(C) to perform a monthly computation.

[75] The text of paragraph (e)(3)(i)(B) of Rule 15c3–3, as proposed to be amended, is modelled closely on the current text of paragraph (e)(3)(i) of Rule 15c3–3.

[76] *See* paragraph (e)(3)(i)(B)(*1*) of Rule 15c3–3, as proposed to be amended. This would mean the carrying broker-dealer would add up the sum of the total credits reported in the customer and PAB reserve computations in each of the twelve most recently filed month-end FOCUS Reports and divide that amount by 12 to calculate the arithmetic mean of the total credits.

[77] Based on FOCUS Report data for the 2022 calendar year. *See also* Table 5 in section IV.B.2. of this release (detailing broker-dealer deposits and withdrawals as a share of reserve accounts for the year 2022).

[78] *See* section IV.C. of this release (discussing the costs and benefits of the proposed $250 Million Threshold).

[79] This estimate is based on the arithmetic mean of the sum of total credits in the customer and PAB reserve computations reported in each required monthly FOCUS Report filed for the 12 months ended Dec. 31, 2022. All of these broker-dealers reported total credits in their customer reserve computation during the 2022 calendar year. Approximately fourteen carrying broker-dealers that exceeded the $250 Million Threshold reported no credits in their PAB reserve computations during the 2022 calendar year. The number of affected carrying broker-dealers may vary month to month because the proposed $250 Million Threshold is based on a 12-month rolling average. For example, the number of affected carrying broker-dealers varied monthly from 60 to 63 over the period from January 2022 through May 2023. There was little variation, however, in the identity of the affected carrying broker-dealers. The same 59 carrying broker-dealers met the proposed $250 Million Threshold in each month, and from one to four additional carrying broker-dealers met the threshold in any given month. In total, over this period, 63 different carrying broker dealers would have been affected. *See* Figure 1 (Number of Affected Broker-Dealers under 12-Month Rolling Average, Over the Period from January 2022–May 2023) in section IV.B.2. of this release.

[80] This is based on FOCUS Report data as of Dec. 31, 2022. Based on FOCUS Report data for 2022, ten out of these 11 carrying broker-dealers were among the 20 largest carrying broker-dealers in terms of the largest average total credits. All 11 of these carrying broker-dealers that currently perform their customer reserve computation daily are among the 30 largest carrying broker-dealers in terms of average total credits.

[81] This estimate is based on 162 carrying broker-dealers that reported total credits greater than $0 on their FOCUS Reports as of Dec. 31, 2022.

[82] *See* section IV. of this release (discussing the costs and benefits of the proposed $250 Million Threshold).

[83] *See* paragraph (e)(3)(i)(B)(*1*) of Rule 15c3–3, as proposed to be amended.

[84] *See* paragraph (e)(3)(i)(B)(*2*) of Rule 15c3–3, as proposed to be amended.

perform weekly computations before it could switch to performing weekly computations.[85] The purpose of this requirement is to provide the designated examining authority with prior notice of the switch and to provide the designated examining authority with the opportunity to contact the firm and ask how it intends to implement the change. This would assist the designated examining authority in monitoring the firm.

If a carrying broker-dealer that provided the 60-day notice under the proposal reverts to a weekly (rather than daily) customer and PAB reserve computation and subsequently exceeds the $250 Million Threshold once again, the proposed rule would require the carrying broker-dealer to comply with the daily computation requirement no later than six months after having average total credits equal to or greater than $250 million.[86] This would be the same process as when a carrying broker-dealer exceeded the $250 Million Threshold for the first time. The purpose of this requirement would be to provide the carrying broker-dealer time to prepare to perform a daily computation. Carrying broker-dealers that fall below the $250 Million Threshold and revert to weekly customer and PAB reserve computations may reduce the resources they dedicate to performing the computations. Therefore, these carrying broker-dealers would need some time to enhance their operational resources in order to increase the frequency of the computations again. However, this may be an infrequent occurrence given that few carrying broker-dealers likely would maintain average total credits that is close to the $250 Million Threshold. Further, a carrying broker-dealer could choose to continue to perform daily customer and PAB reserve computations even after it falls below the $250 Million Threshold, given the practical effect on liquidity as a result of the ability to make more frequent withdrawals from its customer and PAB reserve bank accounts. The largest carrying broker-dealers likely would be required to perform daily computations an ongoing basis because their average total credits would far exceed the proposed $250 Million Threshold.[87]

The Commission also is proposing to amend paragraph (e)(3)(iv) of Rule 15c3–3. Current paragraph (e)(3)(iv) of Rule 15c3–3 provides that computations in addition to the computations required in paragraph (e)(3) (*i.e.,* the weekly computation and permitted monthly computation) may be made as of the close of any business day, and the deposits so computed must be made no later than one hour after the opening of banking business on the second following business day.[88] The amendment to paragraph (e)(3)(iv) would provide that computations, other than those made under paragraph (e)(3)(i)(B)(*1*) of Rule 15c3–3, as proposed to be amended (*i.e.,* the daily computations), may be made as of the close of any business day.[89] This amendment would specify that the option to perform a customer or PAB reserve computation more frequently than weekly or monthly (as applicable) remains available to carrying broker-dealers that are required to make such computations on a weekly or monthly basis. Carrying broker-dealers currently performing daily customer and PAB reserve computations have used this option.

### *B. Request for Comment*

The Commission requests comments from all members of the public on all aspects of the proposed rule amendments. Commenters are requested to provide empirical data in support of any arguments or analyses. With respect to any comments, the Commission notes that they are of the greatest assistance to this rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments and by alternatives to the Commission's proposals where appropriate. In addition, the Commission is requesting comment on the following specific aspects of the proposals:

1. The objective of the proposed amendments is to address the risk that is created when the amount of net cash owed to customers and PAB account holders by a carrying broker-dealer is greater than the amount on deposit in the broker-dealer's customer and PAB reserve bank accounts and the amount of that difference is substantial. Are there ways—other than requiring daily customer and PAB reserve computations—to address this risk? If so, identify them and explain how they would more appropriately address this risk. For example, rather than a daily customer and PAB reserve computation requirement, should Rule 15c3–3 be modified to require a carrying broker-dealer to deposit cash and/or qualified securities in the customer and PAB reserve bank accounts in an amount that is a multiple of the required amount computed under the customer and PAB reserve computations (*i.e.,* overfund the customer and PAB reserve bank accounts weekly)? If so, explain why. If not, explain why not. If Rule 15c3–3 were to be modified in this way, should the multiple of the amount computed under the customer and PAB reserve computations be 105%, 110% or some other percentage? If so, explain why.

2. Should the definition of average total credits be modified to use a subset of credit items rather than total credits? If so, explain why. If not, explain why not. For example, rather than using the sum of total credits from the customer reserve computation (Line 4430 of the FOCUS Report) and the PAB reserve computation (Line 2170 of the FOCUS Report), should the definition use the sum of free credit balances and other credit balances from the customer reserve computation (Line 4340 of the FOCUS Report) and the PAB reserve computation (Line 2110 of the FOCUS Report)? If so, explain why. If not, explain why not. If the definition used free credit balances and other credit balances, the amounts reported by a carrying broker-dealer would be less than the amounts reported using total credits (as free credit balances and other credit balances are one of several components of total credits). Therefore, if the definition used free credit balances and other credit balances, should the $250 Million Threshold be adjusted downward to account for the lower amounts that would be reported by carrying broker-dealers? If so, explain why. If not, explain why not. For example, if the definition were to be modified in this way, should the threshold be lowered to $200 million, $150 million, or $100 million, or some other lower amount? If so, explain why. If not, explain why not.

3. Should the definition of average total credits be modified so that it is based on a different set of filed FOCUS Reports? If so, explain why. If not, explain why not. For example, should it be the arithmetic mean of the total credits in the customer and PAB reserve

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[85] To illustrate how this would work, assume a carrying broker-dealer has been required to perform daily customer and PAB reserve computations for five years. Assume further that with the filing of the FOCUS Report for the October month-end in the fifth year the carrying broker-dealer calculates its average total credits and the amount is below the $250 Million Threshold. At this point, the carrying broker-dealer could provide notice to its designated examining authority of its election to begin performing the customer and PAB reserve computations weekly. It would need to wait 60 days after providing that notice before it could begin performing those computations weekly.

[86] *See* paragraph (e)(3)(i)(B)(*1*) of Rule 15c3–3, as proposed to be amended.

[87] This is based on FOCUS Report data for the 12 months ended Dec. 31, 2022.

[88] *See* 17 CFR 240.15c3–3(e)(3)(iv).

[89] This proposed amendment would insert the phrase ''other than computations made under paragraph (e)(3)(i)(B)(*1*) of this section,'' following the words ''this paragraph (e)(3),'' in current paragraph (e)(3)(iv) of Rule 15c3–3.

computations reported in each required FOCUS Report filed during the most recently ended calendar year? If so, explain why. If not, explain why not. Should it be the arithmetic mean of the FOCUS Reports filed for the previous four calendar quarters? If so, explain why. If not, explain why not.

4. Should the $250 Million Threshold be modified to be set at a higher or lower threshold? [90] If so, explain why. If not, explain why not. For example, should the threshold be $50 million, $100 million, $150 million, $200 million, $300 million, $500 million, or $1 billion? If so, recommend a different threshold and explain why it would be appropriate.

5. Should Rule 15c3–3 be modified to require a carrying broker-dealer to perform daily customer and PAB reserve computations using a different metric for the threshold? For example, if Rule 15c3–3 were to be modified in this way, should the threshold be based on a metric such as: (1) total assets; (2) net capital under 17 CFR 240.15c3–1 (Exchange Act Rule 15c3–1); (3) the maximum value of total credits reported on the twelve most recently filed month-end FOCUS Reports; (4) whether the required reserve bank account deposit as a share of the reserve bank account balance prior to such deposit exceeds a certain percentage threshold (*e.g.,* 5% or 10%); or (5) the average total credits per number of customer and PAB accounts? If so, explain why. If not, explain why not.

6. Should Rule 15c3–3 be modified to require all carrying broker-dealers to perform daily customer and PAB reserve computations? If so, explain why. If not, explain why not.

7. Should the six-month period to begin performing the daily customer and PAB reserve computations after having average total credits that equal or exceed the $250 Million Threshold be modified? If so, explain why. If not, explain why not. For example, would six months be a sufficient time to implement the necessary changes to begin performing a daily computation? If so, explain why. If not, explain why not. Should the six-month period be lengthened or shortened? If so, explain why. If not, explain why not. For example, should the time period be 30 calendar days, 60 calendar days, three months, nine months or one year? If so, recommend a different time period and explain why it would be appropriate.

8. If a carrying broker-dealer falls below the $250 Million Threshold, reverts to a weekly computation after providing the 60-day prior notice, and subsequently exceeds the $250 Million Threshold again, should the six-month period to begin performing the daily customer and PAB reserve computations be modified? If so, explain why. If not, explain why not. For example, would a carrying broker-dealer need six months to implement the changes necessary to perform the customer and PAB reserve computations daily after it exceeds the $250 Million Threshold for a second or third time? If so, explain why. If not, explain why not. In this case, should the six-month period be shortened? If so, explain why. If not, explain why not. For example, should the time period for exceeding the $250 Million Threshold for a second or subsequent time be 30 calendar days, 60 calendar days, or three months? If so, recommend a different time period and explain why it would be appropriate.

9. Should the requirement to provide a 60-day prior written notice to the carrying broker-dealer's designated examining authority before switching to weekly customer and PAB reserve computations be modified? If so, explain why. If not, explain why not. For example, should the time period be 30 days, 90 days or 180 days? If so, recommend a different time period and explain why it would be appropriate.

10. Should Rule 15c3–3 be modified to specifically address the situation where a carrying broker-dealer performing weekly customer and PAB reserve computations exceeds the proposed $250 Million Threshold for a period of a month or two, but subsequently falls below the proposed $250 Million Threshold during the six-month period to begin performing the customer and PAB reserve computations daily? If so, explain why. If not, explain why not. For example, if Rule 15c3–3 were to be modified in this way, should the carrying broker-dealer be permitted to continue to perform its customer and PAB reserve computations weekly, if it falls below the proposed $250 Million Threshold during the six-month period? For example, if a carrying broker-dealer performing weekly computations exceeds the proposed $250 Million Threshold in January and February, but falls below the proposed $250 Million Threshold in March, April, May, and June, should the carrying broker-dealer be permitted to continue to perform weekly computations in July (as opposed to be required to perform daily computations beginning in July)? In such a case, should the carrying broker-dealer be required to give a written notice to its designated examining authority that it will continue to perform weekly computations? If so, explain why. If not, explain why not.

11. Should Rule 15c3–3 be modified to require carrying broker-dealers to perform the customer and PAB reserve computations daily indefinitely once they exceed the $250 Million Threshold for the first time (with no option to revert to weekly computations with a 60-day prior written notice)? If so, explain why. If not, explain why not.

12. Should Rule 15c3–3 be modified to require carrying broker-dealers to document in writing and preserve for three years under Exchange Act Rule 17a–4 the calculation of their average total credits? [91] If so, explain why. If not, explain why not.

13. If the proposal was adopted substantially as proposed, how long would carrying broker-dealers need to prepare to come into compliance with the new requirements? Please explain. For example, would they need three, six, nine, twelve or some other number of months? What data points would carrying broker-dealers use to assess the timing? Are there any specific operational or technological issues that should be factored into a compliance date?

14. Would staggering the compliance dates over more than one calendar year help facilitate an orderly implementation of the proposal, if adopted substantially as proposed? For example, would it be appropriate for the compliance date to vary depending on the size of the average total credits reported by carrying broker-dealers, with firms having larger amounts of average total credits required to come into compliance sooner than firms with smaller amounts of average total credits? More generally, if staggering is appropriate, what would be an appropriate schedule of compliance dates for carrying broker-dealers with different amounts of average total credits? Please recommend different compliance dates for carrying broker-dealers with different amounts of average total credits and explain why they would be appropriate. Should the fact that some carrying broker-dealers already would be performing daily customer and PAB reserve computations factor into the compliance date? If so, explain why. If not, explain why not.

15. If the proposal was adopted substantially as proposed, would the six-month period to begin performing daily customer and PAB reserve computations after having average total credits that equal or exceed the $250 Million Threshold provide adequate time for carrying broker-dealers to

[90] *See* Table 5 in section IV.B.2. of this release (detailing broker-dealer deposits and withdrawals as a share of reserve account balance for the year 2022).

[91] *See* 17 CFR 240.17a–4.

implement the changes necessary to comply with the rule without the need for an additional delayed compliance date? If so, explain why. If not, explain why not. For example, would the six-month period be adequate if the date to begin performing the daily customer and PAB reserve computations fell near the end of the calendar year when carrying broker-dealers may refrain from implementing new information technology projects? If so, explain why. If not, explain why not.

## III. Request for Comment—Reserve Account Requirements for Security–Based Swaps

### *A. Discussion*

In 2019, the Commission adopted customer segregation requirements for broker-dealers and security-based swap dealers (''SBSDs'') with respect to customer money, securities, and property related to security-based swaps.[92] These requirements were based in part on the requirements of Rules 15c3–3 and 15c3–3a discussed above.[93] Under the security-based swap segregation requirements, broker-dealers—including broker-dealers registered as SBSDs—are required to perform a separate weekly security-based swap customer reserve computation and have a separate security-based swap customer reserve account that must hold the net amount of cash owed to security-based swap customers.[94] Title 17 sections 240.18a–4 and 18a–4a (''Exchange Act Rules 18a–4 and 18a–4a'') impose analogous security-based swap customer reserve computation and deposit requirements on SBSDs that either are not registered as a broker-dealer or are registered as special class of broker-dealer known as an over-the counter derivatives dealer (''OTC derivatives dealer'').[95] As discussed below, the proposed amendments would not alter these existing segregation rules for security-based swap customers to require a daily (rather than weekly) computation and deposit.[96] However, the Commission seeks comment on these matters below.

The proposed amendments do not include such daily requirements because almost all carrying broker-dealers—including those also registered as SBSDs—that have credits related to the security-based swap activities of their security-based swap customers account for these credits in their customer reserve computation and in their customer reserve bank account.[97] Therefore, the proposed amendments to the customer reserve requirements of Rule 15c3–3 discussed above would apply to the security-based swap credits computed by these broker-dealers.[98] These carrying broker-dealers would not include any debit items related to security-based swap activities of their security-based swap customers in their customer reserve computation.[99] Consequently, amending Rule 15c3–3 to require a daily security-based swap customer reserve computation for broker-dealers, including those also registered as SBSDs, would have virtually no impact because the credits related to security-based swap activity for security-based swap customers generally are being included in the customer reserve computation. This would include the daily customer reserve computations of those carrying broker-dealers that exceed the proposed $250 Million Threshold.

In addition, the SBSDs registered with the Commission that are not dually registered as broker-dealers (other than as OTC derivatives dealers) operate pursuant to an exemption from the Commission's security-based swap segregation rule.[100] Under this exemption, they are not required to perform a security-based swap customer reserve computation or have a security-based swap customer reserve account. In addition, these SBSDs are not members of SIPC.

### *B. Request for Comment*

The Commission generally requests comments on whether the security-based swap customer reserve computation and deposit requirements should be daily (rather than weekly). In addition, the Commission requests comments on the following specific issues, with accompanying data and analysis:

16. Should Rule 15c3–3 be modified to require broker-dealers—including broker-dealers (other than OTC derivatives dealers) registered as SBSDs—to perform daily security-based swap customer reserve computations in addition to daily customer and PAB reserve computations? If so, explain why. If not, explain why not.

17. Should the Commission amend Exchange Act Rules 18a–4 and 18a–4a to require SBSDs that are not registered as broker-dealers (other than as OTC derivatives dealers) to perform daily security-based swap customer reserve computations? If so, explain why. If not, explain why not.

## IV. Economic Analysis

### *A. Introduction*

The Commission is mindful of the economic effects, including the benefits and costs, of the proposed amendments. Section 3(f) of the Exchange Act provides that when engaging in rulemaking that requires the Commission to consider or determine whether an action is necessary or appropriate in the public interest, to also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[101] Section 23(a)(2) of the Exchange Act also requires the Commission to consider the effect that the rules and rule amendments would have on competition, and it prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act.[102] 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. The Commission also discusses the potential

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[92] *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, 43930–43 (Aug. 22, 2019) (''SBS Segregation Adopting Release'').

[93] *Id. See also* sections I.B.1. and I.B.2. of this release (discussing the requirements of Rules 15c3–3 and 15c3–3a).

[94] *See* 17 CFR 240.15c3–3(p); 17 CFR 240.15c3–3b.

[95] *See* 17 CFR 240.18a–4; 17 CFR 240.18a–4a. OTC derivatives dealers are limited purpose broker-dealers that are authorized to trade in OTC derivatives (including a broader range of derivatives than security-based swaps) and to use models to calculate net capital. *See* 17 CFR 240.3b–12 (defining the term ''OTC derivatives dealer''); *OTC Derivatives Dealers,* Exchange Act Release No. 40594 (Oct. 23, 1998), 63 FR 59362 (Nov. 3, 1998). OTC derivatives dealers are not members of SIPC.

[96] The Commission proposed a daily computation requirement for security-based swap customers. *See* SBS Segregation Adopting Release, 84 FR at 43940. In response to comment, the Commission adopted a weekly security-based swap customer reserve requirement in light of the increased operational burdens for broker-dealers and SBSDs as compared to a weekly computation. *Id.*

[97] This is based on FOCUS Report data for calendar year 2022. The Commission notes that staff has stated its views in Question 1 of *Responses to Frequently Asked Questions Regarding Financial Responsibility Requirements as Applied to Security-Based Swap Activities of Broker-Dealers and Security-Based Swap Dealers* (Oct. 8, 2021), *available at https://www.sec.gov/tm/faqs-financial-responsibility-req-applied-sbs* (''SBS FAQ 1''). Based on FOCUS Report data for calendar year 2022, only one broker-dealer currently performs a separate security-based swap customer reserve computation.

[98] *See* section II.A.1. of this release (discussing the proposed amendments).

[99] *See* SBS FAQ 1 for staff views.

[100] *See* 17 CFR 240.18a–4(f).

[101] *See* 15 U.S.C. 78c(f).

[102] *See* 15 U.S.C. 78w(a)(2).

economic effects of certain alternatives to the approaches taken in this proposal.

As part of their business, carrying broker-dealers regularly receive cash related to customers' and PAB account holders' securities transactions, such as cash realized from sales of securities. While it is common that customers' and PAB account holders' cash is quickly re-invested or swept out to a bank account or money market fund by the customer or PAB account holder, it is also common for this cash to remain undeployed for or on behalf of customers and PAB account holders for several days or longer prior to the next required customer and PAB reserve computations and deposits into the customer and PAB reserve bank accounts.[103]

Currently, the required balances in customer and PAB reserve bank accounts (net cash owed to customers or PAB account holders) are required to be calculated weekly, and the resulting amount must be held in the customer and PAB reserve bank accounts until the date of next required deposit.[104] However, the value of the net cash owed to customers or PAB account holders may change daily due to customers' and PAB account holders' transactions and re-deployment of undeployed funds. On a weekly basis, this could result in a large intra-week mismatch between the customer or PAB reserve bank account balances and actual net cash owed to customers or PAB account holders. This intra-week mismatch introduces several potential risks that are currently not internalized by carrying broker-dealers.

First, the mismatch between the calculated and the actual amounts of net cash owed to customers and PAB account holders introduces a risk to other SIPC members. More specifically, if a liquidation of a carrying broker-dealer with a mismatch of cash in its customer and PAB reserve bank accounts is carried out under SIPA, the SIPC Fund balance would be used if there are not enough assets in the broker-dealer's estate to cover the difference between the net cash owed to customers and the amount in the reserve bank account,[105] which may trigger a subsequent increase in contributions from other SIPC members. This risk may be exacerbated for carrying broker-dealers experiencing large aggregate intra-week mismatches. As a result, the SIPC Fund would be at a higher risk of depletion. For example, as discussed in section IV.B.2. below, mismatches are common among broker-dealers of all sizes (as measured by average total credits). The largest carrying broker-dealers with average total credits of at least $500 billion had mismatches of between 10 and 18 percent during 2022.[106]

Second, this mismatch introduces a risk to customers and PAB account holders of carrying broker-dealers. To the extent that there is mismatch of funds in the customer or PAB reserve bank account, a failure of a carrying broker-dealer would prevent its customers or PAB account holders from promptly receiving the whole amount of cash owed to them. In this scenario, the funds owed to customers or PAB account holders may be tied up in liquidation proceedings and these customers or PAB account holders would have to wait to receive their funds back until the broker-dealer liquidation process is carried out under SIPA, which may take a significant amount of time. In addition, customers and PAB account holders may not receive their funds in full if the liquidation proceedings do not result in a full recovery of funds owed to customers and PAB account holders. This risk may be exacerbated for potential failures of carrying broker-dealers with large amounts of customer or PAB reserve bank account balances, such as when these carrying broker-dealers experience large aggregate intra-week mismatches between the reserve bank account balances and actual net cash owed to customers or PAB account holders. Under perfect information, investors would choose their carrying broker-dealer in part based on the risk of failure and would continue to monitor the carrying broker-dealer for risk of failure. However, monitoring costs and other frictions may prevent this.

The proposed daily customer and PAB reserve computations for carrying broker-dealers with substantial amounts of total credits is aimed to address these risks and is expected to benefit customers, PAB account holders, and other stakeholders of the affected carrying broker-dealers by more dynamically matching the net cash owed to customers or PAB account holders and the customer and PAB reserve bank account balances. More specifically, the daily customer and PAB reserve computations would safeguard customers and PAB account holders of the affected carrying broker-dealers by lessening the potential for large mismatches to build over time, and thereby increasing the likelihood that they are made whole even if a carrying broker-dealer fails. Daily computations would also decrease the risk that other stakeholders, such as contributors to the SIPC Fund, would need to provide additional resources (*e.g.,* in the form of increased assessments) to address a failure of a carrying broker-dealer.

The proposed amendments may result in increased compliance costs for the affected carrying broker-dealers. To the extent that each customer or PAB reserve computation takes a significant amount of time or involves manual processes, affected carrying broker-dealers would experience a one-time set up cost related to switching to a daily computation, as well as an increase in ongoing costs related to more frequent computations. These costs, like the aforementioned benefits, may ultimately be passed through to customers and PAB account holders of the affected carrying broker-dealers.

Many of the benefits and costs discussed below are impracticable to quantify. For example, the Commission lacks data that would help it predict how enhanced customer protection related to daily customer and PAB reserve computations would affect customer and PAB account holders' activities in the accounts maintained by the affected carrying broker-dealers and whether customers and PAB account holders of non-affected carrying broker-dealers would shift their capital to the affected carrying broker-dealers due to such increased protections; data that would help the Commission estimate how carrying broker-dealers near the proposed $250 Million Threshold may adjust their business activities as a result of the proposed changes; and data on the complexity of customers' and PAB account holders' activities for different carrying broker-dealers that

[103] *See* section I.C. of this release (discussing the risk of a mismatch of funds owed and funds reserved under Rule 15c3–3).

[104] *See* section I.B.1. and 2. of this release (discussing customer protection requirements of Rule 15c3–3 for customers and PAB account holders).

[105] *See* section I.B.3. of this release (discussing broker-dealer liquidations and SIPA, including the funding and balance of the SIPC Fund). For an example of a customer reserve bank account mismatch, one carrying broker-dealer had a deficit in its customer reserve bank account equal to $5 billion, yet the level of the SIPC Fund at the time was at $2 billion. *See* Merrill Lynch, Pierce, Fenner & Smith Incorporated and Merrill Lynch Professional Clearing Corp., Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, Exchange Act Rel. No. 78141 (June 23, 2016).

[106] Based on FOCUS Report data for 2022. The mismatch is calculated as the amount deposited (FOCUS Report Line 4520) relative to the reserve account balance (Line 4530). These data are discussed in detail in section IV.B.2 of this release, *see* Table 5 in that section and related discussion.

would help the Commission estimate the potential costs for various groups of the affected carrying broker-dealers. While the Commission has attempted to quantify economic effects where possible, much of the discussion of economic effects is qualitative in nature. The Commission seeks comment on all aspects of the economic analysis, especially any data or information that would enable a quantification of the proposal's economic effects.

*B. Baseline*

1. Regulatory Baseline

a. Rule 15c3–3

Carrying broker-dealers are broker-dealers that maintain custody of customer securities and cash. Rule 15c3–3, known as the broker-dealer customer protection rule, is designed to give specific protection to customer funds and securities. For example, a broker-dealer is ''virtually'' precluded from using customer funds to buy securities for its own account.[107]

The current rule specifies that a carrying broker-dealer must undertake two primary steps to safeguard these customer assets. First, carrying broker-dealers are required to maintain physical possession or control over customers' fully paid and excess margin securities.[108] Second, a carrying broker-dealer must maintain a reserve of funds and/or qualified securities in an account at a bank that is at least equal in value to the net cash owed to customers. The account must be a customer reserve bank account. The amount of net cash owed to customers is computed weekly as of the close of the last business day of the week pursuant to the customer reserve computation.[109] 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.[110] A carrying broker-dealer also is required to make and maintain a record of each computation.[111]

Carrying broker-dealers also may carry accounts that hold proprietary securities and cash of other broker-dealers, known as PAB accounts.[112] Broker-dealers are not within the definition of ''customer'' for purposes of Rule 15c3–3. The definition of ''customer'' in SIPA, however, is broader than the definition in Rule 15c3–3 in that the SIPA definition includes broker-dealers. As discussed in more detail in section I.B.3. of this release, broker-dealers—as customers under SIPA—have the right to share equally with other customers in the customer property in a SIPA liquidation in the event that there is a shortfall in the amount the broker-dealer owes its customers. Because broker-dealers are entitled to a *pro rata* share of customer property,[113] Rules 15c3–3 and 15c3–3a require carrying broker-dealers to: (1) perform a PAB reserve computation in addition to the customer reserve computation;[114] (2) establish and fund their PAB reserve bank account; and (3) obtain and maintain physical possession or control of non-margin securities carried for a PAB account holder.[115]

b. SIPA and the SIPC Fund

As described in section I.B.3. of this release, SIPA established SIPC and directed SIPC to establish the SIPC Fund.[116] At the end of 2022, SIPC reported 3,396 members.[117] The SIPC Fund totaled approximately $4.05 billion as of December 31, 2022, and currently the objective is to build it to a level of $5 billion. To date, SIPC has carried out 330 liquidations since its inception with approximately $142 billion in assets distributed to customers.[118] Of that, about $141.2 billion came from debtors' estates (*i.e.,* SIPC broker-dealer members' estates), while $917 million came from the SIPC Fund.[119]

c. Reserve Account Requirement for Security-Based Swaps

In 2019, the Commission adopted customer segregation requirements for broker-dealers and SBSDs with respect to customer money, securities, and property related to security-based swaps.[120] These requirements were based in part on the requirements of Rules 15c3–3 and 15c3–3a discussed above.[121] Under these requirements, broker-dealers (including broker-dealers that are also SBSDs) are required to perform a separate weekly security-based swap customer reserve computation and have a separate security-based swap customer reserve account that must hold the net amount of cash owed to security-based swap customers.[122]

2. Affected Broker-Dealers

Table 2 presents the universe of broker-dealers by presence of carrying activities.[123] As of December 2022, 156 broker-dealers identified in Line 40 of the FOCUS Report that they carry their own customer accounts. Among these, 65 reported having only customer credits, 66 reported having both customer and PAB credits, none reported having only PAB credits,[124] and 9 broker-dealers reported having no customer credits or debits. Further, 16 broker-dealers reported having exemptions from the requirements of Rule 15c3–3, including performing a customer reserve computation.[125] In

[107] *See* section I.B.1. of this release (describing the purposes of Rule 15c3–3).

[108] *See* section I.B.1. of this release (describing possession and control requirements for customers' securities).

[109] Some carrying broker-dealers choose to perform a daily computation. *See* 17 CFR 240.15c3–3(e)(3)(iv). Further, the rule permits carrying broker-dealers in certain limited circumstances to perform a monthly computation. *See* 17 CFR 240.15c3–3(e)(3)(i). *See* also section I.B.1. of this release (describing the customer reserve bank account and customer reserve computation).

[110] 17 CFR 240.15c3–3(e). *See also* section I.B.1. of this release (describing the customer reserve bank account and customer reserve computation).

[111] *See* 17 CFR 240.15c3–3(e)(3)(v). Each record must be preserved in accordance with Rule 17a–4. *Id.*

[112] *See* section I.B.2. of this release (describing Rule 15c3–3 and PAB accounts).

[113] *See* section I.B.3. of this release (describing broker-dealer liquidations and SIPA).

[114] *See* section I.B.1. of this release (describing Rule 15c3–3 and customer accounts).

[115] *See* section I.B.2. of this release (describing Rule 15c3–3 and PAB accounts).

[116] *See* 15 U.S.C. 78ccc(a)(1) and 78ddd(a)(1).

[117] *See* 2022 SIPC Annual Report, Table 2, at 10.

[118] As of the end of 2022. *See* section I.B.3. of this release, describing broker-dealer liquidations and SIPA. The volume of proceedings was highest in the 1970s (15 per year), while between 1980 and 2003 the number averaged about seven per year. Since 2003 the average has been one per year (with the highest number, five, occurring in 2008, while there were 10 years with none). *See* 2022 SIPC Annual Report, Figure 1, at 8.

[119] *See* 2022 SIPC Annual Report at 8–9, for the statistics in this paragraph. SIPC refers to distributions to customers as ''advances,'' though the 2022 SIPC Annual Report does not detail the timing of those advances in the 330 proceedings.

[120] *See* SBS Segregation Adopting Release. *See also* section III. of this release (discussing reserve account requirements for security-based swaps).

[121] *Id. See also* sections I.B.1. and I.B.2. of this release (discussing the requirements of Rules 15c3–3 and 15c3–3a).

[122] *See* 17 CFR 240.15c3–3(p); 17 CFR 240.15c3–3b. *See also* section III. of this release (discussing reserve account requirements for security-based swaps, and SBS FAQ 1 for staff views). SBSDs that are not broker-dealers (other than OTC derivatives dealers) are subject to the segregation requirements of Exchange Act Rules 18a–4 and 18a–4a.

[123] Based on monthly FOCUS Report data for the reporting year 2022. The Commission assumes that broker-dealers that did not file FOCUS Reports for the last month of 2022 are no longer in business.

[124] PAB account holders are not considered customers under 17 CFR 240.15c3–3(a)(1). *See* section I.B.2. of this release (describing Rule 15c3–3 and proprietary accounts of broker-dealers).

[125] There are three exemptions to Rule 15c3–3, each related to the procedure a broker-dealer follows when they receive customer funds and securities. The first exemption is for broker-dealers that partake in limited mutual fund and insurance-related business. The exemption allows such firms to briefly handle customer funds, but not maintain indefinite custody of those funds or securities. The second exemption applies to broker-dealers that clear their transactions on what is known as a ''receive versus payment/delivery versus payment (RVP/DVP) basis.'' In an RVP/DVP settlement, a broker-dealer executes simultaneous exchanges of an equal value of funds for securities. As such, the

Continued

addition, 31 broker-dealers that did not identify themselves as those that carry their own customer accounts in Line 40 of the FOCUS Report reported customer and/or PAB credits in their customer or PAB reserve computations. Among these, four broker-dealers had both customer and PAB credits, 26 broker-dealers had customer credits only, and one broker-dealer had PAB account credits only.

When the Commission computes average total credits using data for January 2022 through December 2022, the Commission estimates that there are 187 broker-dealers (''carrying broker-dealers'') that currently fall within the scope of the Rule 15c3–3 (though of this group, 25 carrying broker-dealers reported zero customer or PAB credits in 2022). In aggregate, these carrying broker-dealers hold approximately 87 percent of all broker-dealer assets,[126] and report approximately $1.2 trillion in total credits and approximately $0.92 trillion in average monthly total debits, as of December 2022.[127]

TABLE 1—BROKER-DEALERS BY CARRYING ACTIVITY, 2022 [a]

| Broker-dealer type | Number | Total assets, $B | Total credits, $B | | Total debits, $B | |
|---|---|---|---|---|---|---|
| | | | Monthly average | Year-end | Monthly average | Year-end |
| *Carrying its own customer accounts:* | 156 | 4,487.7 | 1,306.9 | 1,177.0 | 1,024.3 | 913.6 |
| —with positive customer and PAB credits | 66 | 3,982.3 | 1,261.2 | 1,138.5 | 982.8 | 879.4 |
| —with positive customer credits only | 65 | 446.8 | 45.7 | 38.5 | 41.5 | 34.3 |
| —with zero reported credits | 9 | 54.5 | 0 | 0 | 0 | 0 |
| —with reporting exemptions | 16 | 4.1 | | | | |
| *Not carrying its own customer accounts:* | 31 | 58.0 | 22.6 | 20.5 | 4.2 | 3.8 |
| —with positive customer and PAB credits | 4 | 8.0 | 0.3 | 0.1 | 0.3 | 0.1 |
| —with positive customer credits only | 26 | 49.7 | 22.3 | 20.4 | 3.8 | 3.7 |
| —with positive PAB credits only | 1 | 0.4 | 0.01 | 0.01 | 0.02 | 0.01 |
| *Without any carrying activities* | 3,411 | 694.0 | | | | |
| Total | 3,598 | 5,239.7 | 1,329.5 | 1,197.5 | 1,028.5 | 917.4 |

[a] Data are for calendar year 2022. The Commission uses monthly FOCUS Reports to calculate average monthly total credits and total debits. For each broker-dealer, Total Credits are calculated as the sum of the average monthly amount of customer credits reported on Line 4430 and the average monthly amount of PAB credits reported on Line 2170. Similarly, for each broker-dealer, Total Debits are calculated as the sum of the average monthly amount of customer debits reported on Line 4472 and the average monthly amount of PAB debits reported on Line 2230.

Table 3 displays the broker-dealers that reported positive customer or PAB credits in 2022 into groups based on the size of their average monthly total customer and PAB credits (averaged over January 2022 to December 2022).[128]

TABLE 2—CARRYING BROKER-DEALERS BY SIZE OF AVERAGE TOTAL CREDITS, 2022

| | Number | Total assets ($B) | Total customer credits, $MM | | | Total PAB credits, $MM | | | Total credits, $MM | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | Number | Mean | Median | Number | Mean | Median | Mean | Median |
| >$0–100MM | 81 | 127.1 | 81 | 14.8 | 2.1 | 18 | 0.4 | 0 | 15.3 | 2.4 |
| $100–250MM | 18 | 101 | 18 | 133.3 | 120.3 | 12 | 4.3 | 0 | 137.6 | 128.6 |
| $250–500MM | 8 | 148.1 | 8 | 374.7 | 394.9 | 3 | 8.6 | 0 | 383.3 | 401.1 |
| $500MM–1B | 9 | 206.6 | 9 | 593.8 | 566.5 | 7 | 98.0 | 29.6 | 691.8 | 667.6 |
| $1–5B | 18 | 352.5 | 18 | 2056.7 | 1868.1 | 16 | 127.5 | 2.9 | 2184.2 | 1871.4 |
| $5–10B | 7 | 189.7 | 7 | 5779.7 | 5352.5 | 7 | 820.0 | 62.3 | 6599.6 | 5892.1 |
| ≥$10B | 21 | 3362.1 | 21 | 51312.0 | 23941.5 | 19 | 7307.7 | 84.5 | 58619.8 | 29261.2 |
| Total [a] | 162 | 4,487.1 | 162 | 7,203.5 | 84.7 | 82 | 1,003.5 | 0.0 | 8,207.0 | 95.1 |

[a] Table excludes carrying broker-dealers with zero reported credits in 2022.

The proposed daily computation would apply only to carrying broker-dealers whose average total credits are above the proposed $250 Million Threshold. Therefore, the Commission estimates that, based on data for January 2022 through December 2022, the scope of affected entities was 63 carrying broker-dealers, which held 86.4 percent of aggregate total credits of all carrying broker-dealers.

The number of affected carrying broker-dealers may vary month to month since a 12-month rolling average is used for the proposed $250 Million Threshold. To provide information on how the number of entities may thus vary over time, Figure 1 displays the number of affected broker-dealers for a sequence of 12-month rolling averages

broker-dealer does not end up holding any residual customer funds or securities. The third exemption is also available to broker-dealers that temporarily handle customer funds. This broker-dealer, called an ''introducing broker,'' establishes accounts in the name of its customers at another broker-dealer, a ''clearing broker.'' The clearing broker then maintains custody of those customers' cash and securities in those accounts on a fully disclosed basis. *See* 17 CFR 240.15c3–3(k).

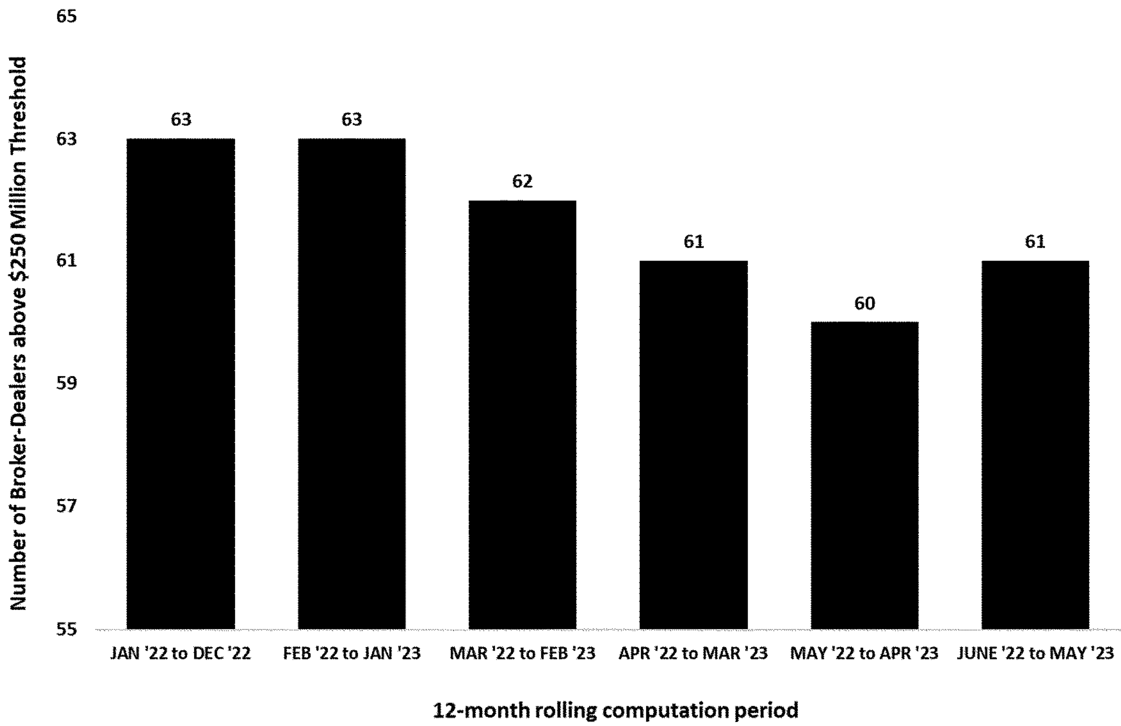
[126] Total assets are reported on Line 940 of the FOCUS Report.

[127] The Commission uses monthly FOCUS Reports to calculate total credits and total debits. For each broker-dealer, Total Credits are calculated as the sum of customer credits reported on Line 4430 and the PAB credits reported on Line 2170. Similarly, for each broker-dealer, Total Debits are calculated as the sum of the customer debits reported on Line 4472 and the PAB debits reported on Line 2230.

[128] The grouping is based on the average monthly amount of customer credits reported on Line 4430 and the average monthly amount of PAB credits reported on Line 2170.

beginning with January 2022 and extending through May 2023.[129]

**Figure 1. Number of Affected Broker-Dealers under 12-Month Rolling Average, Over the Period from January 2022 – May 2023**




As shown in Figure 1, the number of affected carrying broker-dealers varied monthly from 60 to 63 over the period from January 2022 through May 2023. There was little variation, however, in the identity of the affected carrying broker-dealers. The same fifty-nine carrying broker-dealers met the threshold in each month, and from one to four additional broker-dealers met the threshold in any given month. In total, over this period, 63 different carrying broker dealers would have been affected.[130]

With respect to the frequency of computation, based on the January 2022 to December 2022 period (12-month period), Table 4 displays the number of broker-dealers performing their computations daily, weekly, and monthly in each size category for average total credits.[131]

TABLE 3—RESERVE FORMULA COMPUTATION FREQUENCY, 2022

| *Average total credits* | Number | Customer reserve formula | | | | PAB reserve formula | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | Number | Daily | Weekly | Monthy | Number | Daily | Weekly | Monthly |
| >$0–100MM | 81 | 81 | 1 | 67 | 12 | 18 | 0 | 17 | 1 |
| $100–250MM | 18 | 18 | 0 | 18 | 0 | 12 | 0 | 12 | 0 |
| $250–500MM | 8 | 8 | 0 | 8 | 0 | 3 | 0 | 3 | 0 |
| $500MM–1B | 9 | 9 | 0 | 9 | 0 | 7 | 0 | 7 | 0 |
| $1–5B | 18 | 18 | 1 | 17 | 0 | 16 | 1 | 15 | 0 |
| $5–10B | 7 | 7 | 0 | 7 | 0 | 7 | 0 | 7 | 0 |
| ≥10B | 21 | 21 | 10 | 11 | 0 | 19 | 9 | 10 | 0 |
| Total | 162 | 162 | 12 | 137 | 12 | 82 | 10 | 71 | 1 |

[129] Figure created from monthly FOCUS Reports, from January 2022 through May 2023. The first 12-month computation period is January 2022 to December 2022, the second period is February 2022 through January 2023, and so on. The total number of broker-dealers that reported positive total credits in each of the six rolling periods shown in Figure 1 equaled 162, 162, 161, 161, 162 and 162, respectively.

[130] Only in one case did a carrying broker-dealer within the top-60 fall below the $250 Million Threshold from one period to the next (leading to the decline from 63 to 62 carrying broker-dealers).

[131] Data from monthly FOCUS Reports filed for the 2022 calendar year. A small number of broker-dealers did not identify any customer or PAB reserve computation frequency (for example, for broker-dealers reporting positive credits in customer accounts, one failed to report reporting frequency in their FOCUS Report). Therefore, the total number of carrying broker-dealers exceeds the sum of the number of broker-dealers who identified a daily, weekly, or monthly computation frequency. Of the carrying broker-dealers that reported a filing frequency in 2022 calendar year, the reported frequency (daily, weekly, or monthly) remained the same in each reported month.

As shown in Table 4, out of 162 broker-dealers that reported the frequency of their customer reserve formula computations, there were 12 carrying broker-dealers that performed the customer reserve computation daily, among which 10 also performed the PAB reserve computation daily and two which do not report carrying PAB accounts. Among carrying broker-dealers performing the customer reserve computation daily, 11 had total credits above the proposed $250 Million Threshold. These 11 carrying broker-dealers accounted for 64 percent of the total amount of average total credits among all carrying-broker dealers with positive customer or PAB credits reported in 2022.[132] All the carrying broker-dealers performing the PAB reserve computation daily had total credits above the proposed $250 Million Threshold.[133]

Based on the January 2022 to December 2022 period, there were 52 carrying broker-dealers with average total credits equal to $250 million or above performing the customer reserve computation weekly and there were no carrying broker-dealers with average total credits equal to $250 million or above performing the customer reserve computation monthly. Among the 52 carrying broker-dealers performing weekly customer reserve computation, there were 42 carrying broker-dealers that performed the PAB reserve computation weekly and there were no carrying broker-dealers with average total credits equal to $250 million or above that performed the PAB reserve computation monthly. Based on the data for 2022, the Commission estimates that 52 carrying broker-dealers would be affected by the proposal.

Table 5 below shows the distribution of deposits required to be put into the customer and PAB reserve bank accounts or permitted withdrawals after the reserve computation performed at the end of the reporting period relative to the initial reserve bank account balance.[134] These metrics provide a picture of the ''mismatch'' that occurs with respect to customer and PAB accounts. The column ''Average Mismatch'' is calculated as the average of deposits (averaged over 2022) for each broker-dealer relative to the average balance in the reserve account (customer or PAB account).

With respect to customer reserve accounts, shown in Panel A, the largest average mismatches occurred for broker-dealers over the $250 Million Threshold, with the largest occurring for carrying broker-dealers within the $5 to $10 billion range. For the case of the maximum mismatch during the year, there appears to be less of a correlation with carrying broker-dealer size.[135] For PAB reserve accounts, shown in Panel B, the largest average mismatch and the maximum mismatch occurred for the groups of carrying broker-dealers over $250 million in average total credits (it is also the case that the total amount of PAB accounts are concentrated among those carrying broker-dealers).

Panel C and D of Table 5 display the average mismatch and maximum mismatch metrics comparing the large carrying broker-dealers (over $1 billion in average total credits) that currently compute their reserve accounts daily versus those that do so weekly.[136] With respect to customer reserve accounts (Panel C), carrying broker-dealers that compute daily have larger average reserve balances and deposits, and lower average and maximum mismatches than those that compute weekly.[137]

For PAB reserve accounts (Panel D), the average or maximum mismatch do not appear as correlated with daily versus weekly filing.[138]

TABLE 4—BROKER-DEALER DEPOSITS AND WITHDRAWALS AS A SHARE OF RESERVE ACCOUNT BALANCE, 2022

| Broker-dealer group | Number | Average reserve balance MM | Average deposit MM | Average withdrawal MM | Average mismatch % | Maximum mismatch % |
|---|---|---|---|---|---|---|
| **Panel A: Customer Reserve Accounts** | | | | | | |
| >$0–100MM | 81 | $9.5 | $0.7 | −$4.1 | 6.1 | 25.2 |
| $100–250MM | 18 | 52.7 | 1.9 | −16.2 | 5.7 | 27.1 |
| $250–500MM | 8 | 180.8 | 9.9 | −16.0 | 6.1 | 20.9 |
| $500MM–1B | 9 | 124.2 | 7.7 | −32.2 | 18.2 | 35.9 |
| $1–5B | 18 | 732 | 35.8 | −61.4 | 5.4 | 22.5 |
| $5–10B | 7 | 1,147.2 | 234 | −122.4 | 31.9 | 57.4 |
| ≥10B | 21 | 14,150.6 | 542.3 | −841.6 | 7.9 | 25.3 |
| **Panel B: PAB Reserve Accounts** | | | | | | |
| >$0–100 MM | 18 | 1.2 | 0.03 | −0.3 | 2.9 | 18.7 |
| $100–250 MM | 12 | 5.3 | 0.3 | −2.9 | 2.3 | 10.4 |
| $250–500 MM | 3 | 19.9 | 1.3 | −5.3 | 5.2 | 24.7 |
| $500MM–1 B | 7 | 106.5 | 4.5 | −27.3 | 11.4 | 41.1 |
| $1–5 B | 16 | 27.9 | 5.5 | −20.4 | 7.7 | 44 |
| $5–10 B | 7 | 184.5 | 56.2 | −108.6 | 10.4 | 39 |
| ≥10 B | 19 | 749.1 | 127.4 | −279.9 | 7.6 | 29.4 |

[132] Calculated from monthly FOCUS Reports for 2022.

[133] The broker-dealers identified as filing daily in the January 2022 to December 2022 sample were the same broker-dealers identified in the April 2022 to May 2023 sample (for both customer and PAB accounts).

[134] Calculated from monthly FOCUS Reports for 2022. The Commission isolated deposits (equal to or greater than zero) from any month (Line 4520), relative to the reserve account balance, (Line 4530). For PAB reserve bank accounts, deposits and amount in reserve account are FOCUS Lines 2290 and 2300, respectively. Note, the Commission also recalculated by defining the deposit category as only values greater than zero, but the average mismatch did not change very much for each category, nor did the pattern seen in the table.

[135] For the maximum mismatch, the Commission isolated the largest monthly deposit amount in 2022 (Line 4520), relative to the reserve account balance for that month (Line 4530). The same was done for PAB reserve accounts (FOCUS Lines 2290 and 2300, respectively).

[136] As noted above, the number and identity of the daily filers are consistent from December 2022 through May 2023. *See supra* note 133.

[137] Panel C omits the one carrying broker-dealer below the $250 Million Threshold that computed their customer reserve account daily in 2022.

[138] The patterns and inference drawn from Table 5 are similar if constructed with the rolling sample period from June 2022 to May 2023. For example, for the daily filers shown in Panel C, the average mismatch is 4.9 percent, while for weekly filers, the average mismatch is 14.6 percent.

TABLE 4—BROKER-DEALER DEPOSITS AND WITHDRAWALS AS A SHARE OF RESERVE ACCOUNT BALANCE, 2022—Continued

| Broker-dealer group | Number | Average reserve balance MM | Average deposit MM | Average withdrawal MM | Average mismatch % | Maximum mismatch % |
|---|---|---|---|---|---|---|
| **Panel C: Customer Reserve Accounts** | | | | | | |
| All (weekly and daily): | | | | | | |
| ≥1B | 46 | 6,921.1 | 297.2 | −441.1 | 10.7 | 29.2 |
| Daily: | | | | | | |
| ≥1B | 11 | 13,324.2 | 482.3 | −1,227.8 | 5.2 | 22.1 |
| Weekly: | | | | | | |
| ≥1B | 35 | 4,908.7 | 239 | −178.9 | 12.4 | 31.5 |
| **Panel D: PAB Reserve Accounts** | | | | | | |
| All (weekly and daily): | | | | | | |
| ≥1B | 42 | 380.3 | 69.1 | −159.1 | 8.1 | 36.6 |
| Daily: | | | | | | |
| ≥1B | 10 | 1,153.7 | 216.8 | −356.5 | 8.9 | 33.4 |
| Weekly: | | | | | | |
| ≥1B | 32 | 138.5 | 22.9 | −74.5 | 7.9 | 37.4 |

*C. Benefits and Costs of the Proposed Amendments*

Customers and PAB account holders of the affected carrying broker-dealers are expected to benefit from the proposed daily customer and PAB reserve computations. As reflected in the discussion in section I.C of this release noting the large amounts of deposits carrying broker-dealers may receive, and as evidenced from the information in Table 5, a weekly customer and PAB reserve computation can result in a carrying broker-dealer owing a net amount of cash to customers or PAB account holders for a number of days that is greater than the current amounts deposited into the customer and PAB reserve bank accounts. Hence, if a carrying broker-dealer fails before the next reserve account computation and the reserve bank account balances do not represent the actual net amount of cash owed to customers or PAB account holders, these customers and PAB account holders may be at risk of not recovering their funds from the carrying broker-dealer or having it tied up in a liquidation proceeding. Performing daily customer and PAB reserve computations would likely decrease this risk.

Under the scenario where a carrying broker-dealer does not have sufficient funds to repay what it owes to customers or PAB account holders, SIPC likely would need to initiate a liquidation of the carrying broker-dealer under SIPA.[139] Although the SIPC Fund can be used to advance funds to customers that are owed money, PAB account holders are not entitled to such advances; therefore, they may not receive the funds owed to them by a failed carrying broker-dealer as promptly as customers of such broker-dealer may. In addition, there is a limit on advances to customers in the amount of $500,000 per customer (of which $250,000 can be used to cover cash claims). If some customers are owed more than such limit, these customers would have to wait along with PAB account holders until a trustee is appointed who would consequently attempt to recover assets of the failed carrying broker-dealer via asset sales or other recovery methods. This recovery process may, in some cases, be lengthy.[140] In an extreme case, the recovery amounts the trustee is able to receive may still be insufficient to make all customers and PAB account holders whole, which means that these customers and PAB account holders have to absorb the loss.

Based on these various circumstances surrounding a failure of a carrying broker-dealer, from the customer's or PAB account holder's perspective, there are varying degrees of risk related to a potential failure of a carrying broker-dealer, depending on whether it has enough funds to make all customer and PAB account holders whole at the time of its failure. Therefore, maintaining levels of customer and PAB reserve bank account balances that more closely represent the actual amounts of net cash owed to customers and PAB account holders would benefit these customers and PAB account holders by decreasing the risk of not completely recovering their funds from the carrying broker-dealer or having these funds tied up in a liquidation proceeding.[141]

In addition, performing daily customer and PAB reserve computations would benefit customers and PAB account holders of the affected carrying broker-dealers by acting as a prophylactic that reduces the risk of broker-dealers using customers' or PAB account holders' funds for other purposes that are not permissible under Rule 15c3–3, if the part of the net cash owed to customers or PAB account holders is comingled with other funds in a broker-dealer's operating account.[142] When a carrying broker-

[139] *See* section I.B.3 of this release (discussing broker-dealer liquidations and SIPA).

[140] For example, it has been the case that customers of a liquidated carrying broker-dealer have had to wait up to six months or more to access their assets during the liquidation period. *See* Michael P. Jamroz, *The Customer Protection Rule,* 57 Bus. Law. 1069 (May 2002), *available at https://www.jstor.org/stable/40688076.*

[141] The Commission notes that, with daily computing, there will still be a mismatch between the actual net cash owed to customers and the reserve account balance because of the deposit timing delay, which is the morning of the second business day after the day of calculation. Should a carrying broker-dealer computing daily fail, and the amount of the mismatch is lower than in the case of a weekly computation, the customer may receive their funds more promptly from the carrying broker-dealers' available assets than in the case where mismatches are larger (which may imply a longer liquidation process), underscoring the potential benefit from daily computing. It is also a possibility, however, that daily computing may lead to a situation with large mismatches. If a carrying broker-dealer receives large customer deposits on consecutive days, given the two-day settlement period, any mismatch may persist over that period, and should the carrying broker-dealer fail, the benefits to customers of daily computation may be reduced.

[142] The Commission notes that, with respect to each customer reserve computation required pursuant to Rule 15c3–3, a broker-dealer must not accept or use any of the amounts under items

Continued

dealer experiences a large inflow of customer cash, reducing the time between that inflow and when the carrying broker-dealer performs its next customer and PAB reserve computations and funds its reserve accounts could reduce the risk that those funds may be inadvertently used for other purposes that may carry a risk to the customers and PAB account holders. Under the proposal, the affected carrying broker-dealers would not be able to do this, which would reduce the risk of reserve fund mismatches.

Other broker-dealers that are SIPC members may also benefit from the proposed daily computation of the customer and PAB reserve formulas. Specifically, if a failing carrying broker-dealer with a mismatch between the reserve bank account balances and actual cash owed to customers and PAB account holders is put into SIPC liquidation, SIPC may be required to use the SIPC Fund to advance money to customers from the SIPC Fund, reducing its balance and potentially depleting the SIPC Fund.[143] Consequently, a reduction in the SIPC Fund balance and/or SIPC's unrestricted net assets may trigger increased contributions from member broker-dealers, as displayed in Table 1 in section I.B.3. of this release, with more substantive balance reductions requiring larger increases in assessments of member broker-dealers, which may be passed onto investors. Therefore, the proposed daily computation would benefit SIPC member broker-dealers by reducing the risk of SIPC Fund depletion and a consequent increase in SIPC assessments.

The proposed daily computation would apply only to carrying broker-dealers whose average total credits exceed the $250 Million Threshold. Given the information from the 12-month average based on the 2022 monthly FOCUS Reports as an example, the Commission estimates that 52 broker-dealers would be required to switch to a daily computation of the customer reserve formula and 42 broker-dealers would be required to switch to a daily computation of the PAB reserve formula.[144] As shown in Table 5, carrying broker-dealers with average total credits above the proposed $250 Million Threshold are more likely to experience larger mismatches and the dollar amounts underlying those mismatches are significantly larger.[145] And as shown in Panel C of Table 5, those carrying broker-dealers that compute daily tend to have smaller mismatches than those that compute weekly. Hence, the proposal may reduce the likelihood of mismatches, benefitting customers and PAB account holders of the affected carrying broker-dealers.

Further, in cases where carrying broker-dealers with greater amounts of total credits are more interdependent with other carrying broker-dealers than carrying broker-dealers with smaller amounts of total credits, having more large broker-dealers computing daily may benefit financial markets overall without imposing the costs of daily computation onto carrying broker-dealers that do not have significant amounts of total credits. To the extent that carrying broker-dealers above the threshold are more likely to have more PAB account holders (which include other broker-dealers) or PAB account holders with greater amounts of cash in their PAB accounts, the broker-dealers above the threshold may pose greater risk to other broker-dealers. As shown in Table 3, among the 63 carrying broker-dealers above the proposed $250 Million Threshold, based on data for January 2022 through December 2022, approximately 82.5 percent carry PAB accounts while only approximately 26.6 percent of the unaffected broker-dealers carry PAB accounts.

That is, should a carrying broker-dealer fail and not have sufficient funds in its PAB reserve bank account to make whole its PAB account holders, a broker-dealer that is a PAB account holder of the failed carrying broker-dealer may consequently be exposed to financial stress, which could further propagate to its PAB account holders, and so on. This risk is exacerbated for PAB account holders because they are not entitled to advances from the SIPC Fund. In that way, a failure of one large carrying broker-dealer with a mismatched PAB reserve bank account may result in other carrying broker-dealers experiencing financial stress and increased risk of liquidation. In so far as a daily computation for carrying broker-dealers with total credits above the $250 Million Threshold reduces the chance that a large carrying broker-dealer has mismatched funds in its PAB reserve bank account, the potential for stress propagation associated with a failure of a carrying broker-dealer could be reduced.

Affected broker-dealers may experience an increase in costs as a result of the proposed daily computation. The Commission expect these costs to be primarily related to the operational changes, staff increases, and upgrades required for daily computing and the costs related to the recordkeeping requirements. The Commission estimates that it takes a carrying broker-dealer between one to five hours per computation to prepare the records of the computations, or an average of 2.5 hours.[146] Given the 52 carrying broker-dealers that would be required to switch to a daily computation of the reserve formulas under the proposal, that implies an increase in the aggregate annual recordkeeping burden of approximately $13 million.[147] To the extent that carrying broker-dealers with total credits above the $250 Million Threshold may experience economies of scale and may have more sophisticated operational systems, with experienced and well-trained staff,[148] the increase in compliance costs may not be substantial. In addition, the 11 carrying broker-dealers that already perform such computations daily (as shown in Table 4, based on data for the period for January 2022 through December 2022) may not experience an increase in compliance costs.

However, to the extent that the affected carrying broker-dealers that are just above the threshold do not experience the same economies of scale as carrying broker-dealers that are well above the threshold, they may be disproportionately affected by the proposed requirement and the related costs. If these costs are significant, some carrying broker-dealers may decide to alter their business to fall below the threshold and avoid the costs related to performing the customer and PAB reserve computations daily. If so, the potential benefits of the proposal may be mitigated.

comprising total credits under the customer reserve formula except for the specified purposes indicated under items comprising total debits under the formula. *See* paragraph (e)(2) of Rule 15c3–3. 17 CFR 240.15c3–3(e)(2).

[143] The Commission notes that, while broker-dealers (which includes PAB account holders) are customers for the purposes of SIPA, they are not entitled to the advances from the SIPC Fund of up to $500,000 (limited to $250,000 for cash claims) allowed under SIPA to make up for potential shortfalls after the *pro rata* distribution of customer property. *See* 15 U.S.C. 78fff–3(a).

[144] *See* Table 3.

[145] *See* discussion in section IV.B.2. of this release for more details on Table 5.

[146] *See infra* section V. of this release (discussing PRA).

[147] *Id.* The Commission assumed an hourly rate of $295 per hour for a ''financial reporting manager.'' That computes to a potential added cost of $13,726,350 ($295 × 46,530 hours) to the affected carrying broker-dealers.

[148] *See* related discussion in Stavros Gadinis, *The SEC and the Financial Industry: Evidence from Enforcement Against Broker-Dealers,* 67 Bus. Law. 679 (May 2012), *available at https://www.jstor.org/stable/2324001.*

Carrying broker-dealers just below or above the threshold may also experience uncertainty related to being scoped into compliance with the daily computation requirement and may experience costs related to this uncertainty. As displayed in Figure 1, some carrying broker-dealers are likely to drop below the $250 Million Threshold, and then once again exceed the threshold in later months. The costs related to these fluctuations are uncertain, but are likely to add, for such carrying broker-dealers, to the cost estimates cited above (for example, if additional staff is needed by these carrying broker-dealers to monitor their customer reserve accounts more closely than firms well above the $250 Million Threshold).

Finally, while switching back and forth between daily and weekly computations may tailor the compliance costs to the size of customer activity, these fluctuations may also be confusing for customers and PAB account holders of carrying broker-dealers who decide to switch. However, this potential cost or concern may be trivial as many customers may be unaware of, or unconcerned by, the switch.

*D. Effects on Efficiency, Competition, and Capital Formation*

The proposed amendments may affect competition among carrying broker-dealers. First, to the extent that compliance costs would be passed onto customers and PAB account holders, affected carrying broker-dealers that experience greater economies of scale may become more competitive than other affected carrying broker-dealers. Second, to the extent that customers of carrying broker-dealers value daily reserve computations more than the weekly computations, the affected carrying broker-dealers may become more competitive relative to the unaffected carrying broker-dealers. However, the Commission does not anticipate such an effect to be large. Given the fact eleven carrying broker-dealers already compute daily, if such a competitive advantage existed, and carrying broker-dealers performing weekly computations were losing customers, then more carrying broker-dealers would have likely already converted to daily computing.

The proposed amendments may increase liquidity in the securities markets, as they would promote confidence in the broker-dealer industry and result in an increase of customer and PAB account activities. As a consequence, market efficiency and capital formation in the underlying markets may increase. Under the baseline there is a greater chance of a larger mismatch with weekly reserve computations than with daily reserve computations, suggesting a greater risk in doing business with a carrying broker-dealer that performs its customer and PAB reserve computations weekly. Also, to the extent that the mismatch reflects an overfunding, there may also be a greater cost to the carrying broker-dealer (and by extension its customers), since it ties up capital that the broker-dealer could have put to more productive use.

Therefore, should customers and PAB account holders have a concern over mismatch in reserve bank accounts and potential failures affect market participants' willingness to expose themselves to broker-dealers, there may be less capital committed to this market as otherwise. However, similar to the point above, if customers of carrying broker-dealers were aware and concerned of mismatches, the Commission might have already observed more carrying broker-dealers computing daily, in order to retain customers, than is currently the case under the baseline. Therefore, the Commission does not anticipate any effect on capital formation in this market to be significant.

In addition, in so far as capital loss could arise in times of market stress due to an increased likelihood of carrying broker-dealer failures, market participants may become concerned with the possibility of not getting their cash promptly or not getting paid in full, in an event of a carrying broker-dealer failure and reduce their exposure to broker-dealers. To the extent that the proposed daily computation requirement alleviates this concern, the risk of flight of capital from securities markets may decrease during stressed market conditions and capital inflow during normal market conditions may increase.

Finally, the proposed daily computation may benefit the affected carrying broker-dealers by increasing their operational efficiency. For example, in a scenario where customer reserve or PAB reserve accounts are over-funded, a carrying broker-dealer that performs a weekly computation cannot withdraw excess cash from the customer reserve bank account until the following reserve computation date, even if the value of the account exceeds the actual net cash owed to customers, exposing this carrying broker-dealer to operational inefficiency. A daily computation would permit the affected carrying broker-dealers to withdraw these excess funds in a timely manner and would allow them to manage their funds and operations more effectively. In this context, daily computation implies that a carrying broker-dealer's capital commitments are more efficiently employed.

Since the proposed requirements do not impact the scope of information available to investors, the Commission does not anticipate effects on informational efficiency to be significant.

*E. Reasonable Alternatives*

1. Over-Funding of the Customer and PAB Reserve Bank Accounts

As an alternative to daily computation requirements, the Commission could require an over-funding approach which would apply to the customer and PAB reserve bank accounts. For example, carrying broker-dealers would perform the required reserve computations and deposits weekly and deposit a multiple of this amount (*e.g.,* 105% or 110%) into the customer or PAB reserve bank account. Under this alternative approach, carrying broker-dealers would avoid an increase in compliance costs associated with a daily computation requirement (hence, this alternative would apply to carrying broker-dealers choosing weekly funding). Insofar as the compliance costs associated with the proposed daily computation would be passed onto customers and PAB account holders of the affected carrying broker-dealers, this alternative approach may be more beneficial for these customers and PAB account holders because it would not imply an operational change and compliance costs related to the customer and PAB reserve computation while offering extra protection for customers and PAB account holders.

However, under this alternative the carrying broker-dealer would need to fund the excess with its own cash, which could result in funding costs, decreased liquidity, and opportunity costs from not being able to deploy this cash in the firm's business. As a result, requiring carrying broker-dealers to place extra cash in a customer or PAB reserve bank account may result in an operational efficiency decrease and potential reduction of carrying broker-dealers' profits, which may be passed onto customers, PAB account holders, and other stakeholders. In addition, this approach may not account for the actual net cash owed to customers and PAB account holders, if reserve bank account mismatches exceed the buffer that this alternative would require.

2. A Threshold Based on a Different Metric

As an alternative, the Commission could set a threshold for compliance with a daily computation requirement based on a different metric. For example, the Commission could set a threshold based on total assets of $1 billion or net capital of $50 million. A threshold based on such metrics may be more representative of the economies of scale that carrying broker-dealers experience and may better indicate a carrying broker-dealer's ability to comply with enhanced requirements without substantial increases in compliance costs that could ultimately be passed onto their customers.

Based on the monthly 2022 FOCUS Reports, the Commission estimates that under the alternative threshold of $1 billion in total assets 80 broker-dealers would be required to perform the customer and PAB reserve computations daily. Of the 63 carrying broker-dealers that are at or above the $250 Million Threshold for average total credits, three have total assets below $1 billion, while 20 broker-dealers below the $250 Million Threshold have total assets over $1 billion.

With respect to a $50 million net capital threshold, 104 broker-dealers would be required to perform the customer and PAB reserve computations daily. Of broker-dealers that are below $250 Million Threshold for average total credits, 24 have net capital exceeding $50 million, while of the group above $250 Million Threshold for average total credits, three have net capital below $50 million.

If the alternative states that the broker-dealer has over $1 billion in total assets, *or* has over $50 million net capital threshold, 105 broker-dealers would be required to perform the customer and PAB reserve computations daily.

A drawback to this alternative is that some large broker-dealers with minimal amounts of carrying activity would bear the added cost of switching to a daily computation. For example, the group of 20 carrying broker-dealers below the $250 Million Threshold with $1 billion in assets or more, had a combined total of average total credits of approximately $1.5 billion as of the end of 2022. That amounted to only about 0.11 percent of average total credits for all broker-dealers for that year.[149]

3. Daily Computation Requirement for All Carrying Broker-Dealers

As an alternative, the Commission could require the daily computation requirement to apply to all carrying broker-dealers (a ''zero'' threshold). Under this alternative, a greater number of carrying broker-dealers would perform their customer and PAB reserve computations daily, which would benefit more customers and PAB account holders compared to the proposal. Specifically, under the zero threshold, 99 more carrying broker-dealers would experience the benefits and costs discussed in section IV.C. of this release (compared to the 63 affected based on the January 2022 to December 2022 period).

Further, to the degree that carrying broker-dealers with smaller amounts of total credits are interdependent with other broker-dealer to the same degree as carrying broker-dealers with larger amounts of total credits, the zero-threshold approach may benefit all PAB account holders equally and potentially reducing the systemic risk to a greater degree relative to the proposal. The amount of credits held in the PAB reserve bank accounts of the 52 broker-dealers (with PAB accounts) above the $250 Million Threshold makes up approximately 99 percent of the total amount held in PAB reserve bank accounts (of the 82 broker-dealers that reported carrying PAB accounts in 2022).[150]

In particular, in so far as a daily computation for all carrying broker-dealers reduces the chance that any carrying broker-dealer has funds in its PAB reserve bank account that are less than the net amount of cash owed to PAB account holders, the potential for stress propagation associated with a failure of a carrying broker-dealer could be reduced.

However, this alternative would impose compliance costs on a greater number of carrying broker-dealers, which could be passed onto customers and PAB account holders. In addition, customer protection benefits may be outweighed by the reduction in operational efficiency of carrying broker-dealers with little customer and PAB account activity that may arise from disproportional dedication of resources towards a de minimus business activity. Relatedly, this alternative may also impose significant economic impact on small businesses.[151]

4. A Higher or Lower Threshold for Daily Computation

As an alternative, the Commission could have proposed a threshold higher or lower than $250 million in average total credits. Under these alternatives, fewer or more carrying broker-dealers would be required to perform their customer and PAB reserve computations daily. For example, if the threshold was set at $100 million, a total of 81 broker-dealers would be scoped into the new requirements compared to the 63 under the proposal. Similarly, if the threshold was set at $1 billion, only 46 broker-dealers would be scoped into the new requirements.[152]

For the case of the $100 million threshold, with more carrying broker-dealers computing daily, there would possibly be fewer broker-dealers having a mismatch between the net cash owed to the carrying broker-dealer's customers and the amounts deposited in their customer or PAB reserve bank accounts. The potential cost of this alternative implies that more broker-dealers would incur the burden of performing their customer and PAB reserve computations daily. If the threshold were set at $1 billion, fewer carrying broker-dealers would face the costs of a daily computation than under the proposal. However, there would be fewer carrying broker-dealers computing daily, suggesting the potential for more carrying broker-dealers having a mismatch than under the proposal.

5. Calculation Based on the Maximum Value Over the Past Year

The proposed $250 Million Threshold would be the arithmetic mean of the total credits in the customer and PAB reserve computations reported on the twelve most recently filed month-end FOCUS Reports.[153] As an alternative, the Commission could have proposed a threshold based on the maximum value for total credits during the most recently ended calendar year. This alternative may more appropriately account for the implied capacity of the carrying broker-dealer's reserve bank accounts. For example, if total credits related to customers or PAB account holders' activity fluctuate throughout a year or based on economic cycles and such fluctuations are predictable, the maximum value of total credits may be more representative of the customer transactions' volume. As another example, if a carrying broker-dealer experiences trending growth of its

[149] The numbers for this alternative do not change much if the rolling average is computed using the June 2022 to May 2023 period. *See* Table 7 below in section IV.E.6 of this release for those numbers.

[150] *See* Table 7 below in section IV.E.6 of this release for numbers based on the June 2022 to May 2023 period.

[151] *See* 5 U.S.C. 601 through 612.

[152] *See* Table 7 below in section IV.E.6 of this release for numbers based on the June 2022 to May 2023 period.

[153] This would mean, for example, if a carrying broker-dealer was required to file 12 FOCUS Reports for a calendar year, the carrying broker-dealer would add up the Total Credits reported in both the customer and PAB reserve formulas in each of the 12 FOCUS Reports filed, and divide the total by 12 to compute the arithmetic mean.

customer base, the maximum value of total credits would also be more representative of the current size of the customer base.

Table 6 below regroups carrying broker-dealers based on the maximum number reported for total credits within a given year. Under this alternative, 74 carrying broker-dealers would be scoped into the compliance with performing the customer and PAB reserve computations daily, compared to the 63 that would be so under the proposal.

TABLE 5—THRESHOLD BASED ON MAXIMUM TOTAL CREDITS DURING 2022

| | Number | Total assets ($B) | Total customer credits, $MM | | | Total PAB credits, $MM | | | Total credits, $MM | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | Number | Mean | Median | Number | Mean | Median | Mean | Median |
| >$0–100MM | 70 | 78.1 | 70 | 15.5 | 3.4 | 16 | 1.2 | | 16.6 | 4 |
| $100–250MM | 18 | 42.8 | 18 | 161.0 | 165.9 | 10 | 12.3 | | 166.6 | 165.9 |
| $250–500MM | 13 | 142 | 13 | 354.5 | 371.6 | 4 | 1.9 | | 354.9 | 373.3 |
| $500MM–1B | 8 | 87.6 | 8 | 705.7 | 736.8 | 5 | 35.2 | 6.7 | 723.6 | 765.2 |
| $1–5B | 25 | 584.8 | 25 | 2,338.1 | 2,057.1 | 21 | 212.5 | 6.9 | 2,513.7 | 2,058.2 |
| $5–10B | 6 | 149.8 | 6 | 7,070.8 | 6,367.5 | 6 | 898.8 | 57.3 | 7,955.5 | 7,736.7 |
| ≥10B | 22 | 3,402 | 22 | 55,584.5 | 26,096.5 | 20 | 8,197.1 | 696.4 | 62,990.5 | 32,340 |
| Total [a] | 162 | 4,487.1 | 162 | 8,295.1 | 171 | 82 | 1,183 | 0 | 9,326.7 | 180 |

[a] Table excludes carrying broker-dealers with zero reported credits in 2022.

A benefit of this alternative is those carrying broker-dealers with the largest amounts of total credits would be scoped into daily computing, where the largest credits reported (as opposed to the average) could be more indicative of a potential mismatch between the net cash owed to customers and the reserve account balances. However, this alternative may also create uncertainty if any cyclical behavior of total credits that has occurred over some historical period, changes unexpectedly, leading to potential for a carrying broker-dealer oscillating between weekly and daily computations and deposits from year to year.

Table 7 summarizes the number of affected broker-dealers under the alternatives proposed thus far versus the proposal, both for the rolling sample period defined from January 2022 to December 2022 and for the period defined from June 2022 to May 2023.

TABLE 7—SUMMARY OF AFFECTED BROKER-DEALERS UNDER PROPOSAL VERSUS ALTERNATIVES

| Alternatives vs. proposal | Number of affected broker-dealers (based on period January 2022 to December 2022) | Number of affected broker-dealers (based on period June 2022 to May 2023) |
|---|---|---|
| Proposal | 63 | 61 |
| Alternatives: | | |
| Alt 1 Over-Funding | 162 | 162 |
| Alt 2 $1B in Total Assets | 80 | 79 |
| Alt 2 $50MM in Net Capital | 104 | 103 |
| Alt 3 Daily for all | 162 | 162 |
| Alt 4 Average T.C. >$1B | 46 | 44 |
| Alt 4 Average T.C. >$100MM | 81 | 76 |
| Alt 5 Maximum Total Credits | 74 | 69 |

6. Daily Computation if an Average Required Deposit Exceeds a Threshold

As an alternative to performing the customer and PAB reserve computations daily for carrying broker-dealers over a threshold (defined by average total credits), the Commission could have proposed an approach that would require a daily computation in the case where the required reserve bank account deposit as a share of the reserve bank account balance prior to such deposit exceeds a certain percentage threshold (*e.g.,* 5% or 10%).[154]

This alternative approach would account for broker-dealer-specific trends related to customer transactions. If the customer base differs substantially between carrying broker-dealers, with customers of some broker-dealers trading more often or doing account activities that increase the carrying broker-dealer's total credits by more compared to the customer base of other broker-dealers, this alternative approach would focus only on those carrying broker-dealers that typically experience larger reserve mismatches. However, given the information displayed in Table 5, there does not appear to be a perfect correlation with broker-dealer size (measured by average total credits), and the deposit ''mismatch.''[155] Smaller-broker dealers have an average mismatch more than 5 percent (based on the January 2022 to December 2022 period), implying the possibility of an undue burden with respect to compliance costs. That latter could ultimately be passed onto the carrying broker-dealers' customers and PAB account holders.

[154] *See* discussion related to Table 5 in section IV.B.2. of this release.

[155] Computed by dividing the numbers in column four by the numbers in column three of panel A of Table 5.

7. Daily Computation Requirement Based on Average Total Credits per Number of Customer and PAB Accounts

As an alternative to performing the customer and PAB reserve computations daily for carrying broker-dealers over a threshold (defined by average total credits), the Commission could require daily computations based on *average total credits per number of customer accounts.* While a failure of carrying broker-dealers with smaller amounts of total credits may not pose a significant risk of depletion to the SIPC Fund, a threshold based on the average total credits may have limitations from an individual customer or PAB account holder prospective. This is because such a threshold does not account for the number of customers and PAB account holders a carrying broker-dealer might have and is disconnected from the per-customer protection approach that is used by SIPC.[156]

For example, consider two broker-dealers, both with $150 million in total credits which is below the $250 million. The first broker-dealer has three customers, each contributing $50 million in credits towards the broker-dealer's aggregate value of total credits, and the second broker-dealer has 100 customers each contributing $1.5 million in credits towards the broker-dealer's aggregate value of total credits. Recall that the maximum advance from the SIPC Fund is $500,000 per customer. Consider a situation where both broker-dealers fail and their reserve bank accounts are underfunded by more than one percent of what is owed to customers (*i.e.,* the shortage is above $1.5 million). In this situation, the customers of the second broker-dealer would be made whole promptly with an advance from the SIPC Fund, but the customers of the first broker-dealer would not be made whole (because the per-customer loss is above maximum per-customer SIPC advance of $500,000) until SIPC recovers funds from the broker-dealer, which may take some time.

The above example notwithstanding, data from the FOCUS Reports for 2022 suggests the potential for this concern is likely negligible. Table 8 displays the amounts of average total credits per total accounts for each size grouping of broker-dealers. For the 162 firms that reported positive total credits in December 2022, the average amount of average total credits per account (with the number of customer accounts and PAB accounts combined) was notably larger for the firms above the $250 Million Threshold than for broker-dealers below the threshold. Firms above the $250 Million Threshold had about $19 million per customer account, while firms below the $250 Million Threshold had about $1 million on average per customer account.[157]

TABLE 8—THRESHOLD BASED ON AVERAGE TOTAL CREDITS PER ACCOUNTS DURING 2022

| | Number | Number of accounts (Cust + PAB) | Total credits $MM | Total credits per account $MM |
|---|---|---|---|---|
| | | Mean | Mean | Mean |
| >$0–100MM | 81 | 204,081 | 15.3 | 0.7 |
| $100–250MM | 18 | 311,261 | 137.6 | 1.9 |
| $250–500MM | 8 | 122,261 | 383.3 | 0.1 |
| $500MM–1B | 9 | 114,678 | 691.8 | 60.3 |
| $1–5B | 18 | 1,542,836 | 2,184.2 | 34.3 |
| $5–10B | 7 | 6,226,305 | 6,599.6 | 1.9 |
| ≥10B | 21 | 7,700,435 | 58,619.8 | 3.0 |
| Total | 162 | 1,587,598 | 8,207 | 9.8 |

8. Daily Computation Based on Average Total Credits From the Most Recent Calendar Year

As an alternative to performing the customer and PAB reserve computations daily based on a 12-month rolling average of total credits, the Commission could instead require computation based on the arithmetic mean of the sum of total credits over the 12 months in the most recent calendar year. For example, whether a carrying-broker dealer exceeded the $250 Million Threshold at any point in 2023, would be based on the average total credits from January 2022 through December 2022.

The potential benefit of basing the average total credit amount on the most recent calendar year is that carrying broker-dealers would know with certainty if they fell above or below the proposed $250 Million Threshold and would be subject to daily or weekly computing for the entirety of the next calendar year. This potential benefit contrasts with the possible uncertainty that the rolling average computation would introduce for carrying broker-dealers that are close to the proposed $250 Million Threshold. That uncertainly may create an added cost for those carrying broker-dealers as they would need to constantly monitor their standing with respect to the $250 Million Threshold. This monitoring may involve additional staff, or existing staff devoting additional time to that task, and suggests the cost of the proposal may be marginally higher for some carrying broker-dealers than the cost estimates cited earlier in this release.[158] Or, wishing to avoid this monitoring cost, the carrying broker-dealer may have to decide to switch to daily (or weekly) once and for all, which may also imply additional costs.

However, a potential cost of this alternative is that, over the course of a year, a carrying broker-dealer computing weekly (for example) may exceed the $250 Million Threshold. This may result in a situation where a carrying broker-dealer with average total credits above the $250 Million Threshold would not

[156] Per 15 U.S.C. 78fff–2(c), customers of a failed broker-dealer have the right to share *pro rata* with other SIPA customers in the customer property held by that broker-dealer. *See* section I.B.3. of this release for more details.

[157] Calculated from monthly FOCUS Reports for 2022. The Commission divided average total credits in 2022 for each broker-dealer by the number of total customer and PAB accounts for each broker-dealer (Lines 8080 and 8081, respectively), then computed the average of the per customer amount for each size category, and above and below the $250 Million Threshold. Lines 8080 and 8081 are reported in the December FOCUS Report each year, hence those numbers are not yet available for the rolling averages beyond 2022.

[158] *See infra* section V. of this release (discussing PRA).

be engaging in daily computation—as they would with a timelier and up-to-date rolling average—and the risks of weekly computing discussed in this release would remain present for that carrying broker-dealer.

*F. Request for Comment*

The Commission requests comment on all aspects of the economic analysis of the proposed amendments. To the degree possible, the Commission requests 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, the Commission ask commenters to consider the following questions:

18. What additional qualitative or quantitative information should be considered as part of the baseline for the economic analysis of these amendments?

19. Are the benefits and costs of proposed amendments accurately characterized? If not, why not? Should any of the costs or benefits be modified? What, if any, other costs or benefits should be taken into account? If possible, please offer ways of estimating these benefits and costs. What additional considerations can be used to estimate the benefits and costs of the proposed amendments?

20. Are the effects on competition, efficiency, and capital formation arising from the proposed amendments accurately characterized? If not, why not?

21. Is the statement related to carrying broker-dealers with greater economies of scale gaining a competitive advantage, in the case that any increased costs of compliance are passed onto customers to a lesser degree, accurately characterized? If not, why not?

22. Are the statements related to an increase in liquidity in securities markets, arising from a promotion of confidence in the broker-dealer industry, and/or more efficient management of funds due to lower likelihood of mismatch, accurately characterized? If not, why not?

23. Are the statements related to operational efficiency increasing because of carrying broker-dealers' potential ability to withdraw excess funds in a timelier manner and thus, manage their funds and operations more effectively, accurately characterized? If not, why not?

24. 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?

25. 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?

26. Is the statement related to larger carrying broker-dealers' economies of scale 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?

## V. Paperwork Reduction Act

The proposed amendments to paragraph (e) of Rule 15c3–3 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (''PRA'').[159] The Commission is submitting the proposed collection of information to the Office of Management and Budget (''OMB'') for review and approval in accordance with the PRA and its implementing regulations.[160] For the proposed amendments, the title of the existing information collection is ''Customer Protection—Reserves and Custody of Securities'' (OMB Control No. 3235–0078), and that collection would be revised by the changes in this proposal, if adopted. 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.[161]

The burden estimates contained in this section do not include any other possible costs or economic effects beyond the burdens required to be calculated for PRA purposes.

*A. Summary of Collections of Information Under the Proposed Rule Amendments*

Rule 15c3–3 requires each carrying broker-dealer to maintain a reserve of cash and/or qualified securities in a customer reserve bank account that is at least equal in value to the net cash owed to customers.[162] Carrying broker-dealers also maintain a reserve of cash and/or qualified securities in a PAB reserve bank account in an amount that is at least equal in value to the net cash owed to PAB account holders.[163] In order to determine the amount required to be deposited in the customer reserve bank account and the PAB reserve bank account, Rule 15c3–3 requires carrying broker-dealers to perform weekly customer and PAB reserve computations as of the close of the last business day of each week.[164] The rule also requires carrying broker-dealers to make a record of each such computation.[165]

Under the proposed amendments, carrying broker-dealers with average total credits equal to or greater than $250 million would be required to perform the customer and PAB reserve computations daily instead of weekly, and would also be required to make a record of each such daily computation.[166] The proposed amendments also provide that a carrying broker-dealer performing daily customer and PAB reserve computations may elect to perform weekly computations if its average total credits fall below $250 million and it notifies its designated examining authority, in writing, of this election at least 60 calendar days prior to starting weekly computations.[167]

*B. Proposed Use of the Information*

Rule 15c3–3 is an integral part of the Commission's financial responsibility program for broker-dealers. The requirement to document in writing the customer and PAB reserve computations facilitates the process by which the Commission and the broker-dealer's designated examining authority examines the broker-dealer's compliance with Rule 15c3–3. The purpose of the proposed 60-day prior written notice requirement is to provide the designated examining authority with prior notice that the carrying broker-dealer is switching from daily to weekly customer and PAB reserve computations and provide the designated examining authority the opportunity to contact the firm and ask how it intends to implement the change. This would assist the designated examining authority in monitoring the firm.

[159] *See* 44 U.S.C. 3501 *et seq.*

[160] *See* 44 U.S.C. 3507; 5 CFR 1320.11.

[161] *See* 5 CFR 1320.11(l).

[162] 17 CFR 240.15c3–3(e). *See also* section I.B.1. of this release (discussing the customer reserve requirements of Rule 15c3–3 in more detail).

[163] 17 CFR 240.15c3–3(e). *See also* section I.B.2. of this release (discussing the PAB account holder reserve requirements of Rule 15c3–3 in more detail).

[164] 17 CFR 240.15c3–3(e). Rule 15c3–3 also permits certain broker-dealers to perform their reserve computations monthly. 17 CFR 240.15c3–3(e)(3)(i) and (iii). Some carrying broker-dealers also elect to perform daily customer and PAB reserve computations. 17 CFR 240.15c3–3(e)(3)(iv).

[165] 17 CFR 240.15c3–3(e)(3)(v).

[166] *See* paragraph (e)(3)(i)(B)(*1*) of Rule 15c3–3, as proposed to be amended.

[167] *See* paragraph (e)(3)(i)(B)(*2*) of Rule 15c3–3, as proposed to be amended.

*C. Respondents*

1. Recordkeeping Requirements

Respondents under the proposed amendments would be carrying broker-dealers with average total credits equal to or exceeding $250 million. The Commission estimates there are currently approximately 63 carrying broker-dealers that would *have average total credits* equal to or exceeding $250 million based on a review of FOCUS Report data for the 12 months ended December 31, 2022. Of these carrying broker-dealers, the Commission estimates that 11 already perform the customer reserve computation daily. Of the 63 carrying broker-dealers that would have average total credits equal to or exceeding $250 million, the Commission estimates that 49 have total credits relating to PAB account holders of greater than $0, with 10 of these carrying broker-dealers already performing the PAB reserve computation daily. Consequently, for the purposes of the PRA, the Commission estimates that there are 52 respondents for the customer reserve computation, and 39 respondents for the PAB reserve computation. These respondents are currently included in the collection of information associated with Rule 15c3–3 related to weekly computations for the customer and PAB reserve computations. However, as a result of the proposed amendments, these respondents would need to perform daily customer and PAB reserve computations (rather than weekly computations).

2. Notification Requirement

Based on a review of FOCUS Report data for the 2022 calendar year, the Commission preliminarily estimates that one carrying broker-dealer per year would provide notice to their designated examining authority that the carrying broker-dealer's average total credits has fallen below the $250 Million Threshold, and that such carrying broker-dealer would switch from a daily computation to a weekly computation.

*D. Total Annual Burden Estimate*

1. Recordkeeping Requirements

Carrying broker-dealers that would be subject to the requirement to perform daily customer and PAB reserve computations under this proposal are required to perform such computations weekly. Therefore, the Commission preliminarily estimates that the proposed amendments would not impose any new one-time burdens on carrying broker-dealers to set up the process of creating the required record of the computations. Instead, the Commission preliminarily believes the proposed amendments would impose increased ongoing burdens on the respondent carrying broker-dealers because they would be required to increase the frequency of the customer and PAB reserve computations and, therefore, produce additional records of the computations.

Specifically, the Commission believes that there would be an increase in the burdens associated with the collections of information titled ''Rule 15c3–3(e)(3)—daily computations'' for both the customer and PAB reserve computations, and a corresponding decrease in the burdens associated with the collections of information titled ''Rule 15c3–3(e)(3)—weekly computations'' for the customer and PAB reserve computations as certain carrying broker-dealers will be required to shift from weekly to daily computations in connection with the proposed amendments. Based on experience with customer and PAB reserve computations, the Commission preliminary estimates that it takes between one and five hours to make a record of each such computation, and that the average time spent across all of the firms is 2.5 hours.[168]

As a result, the Commission estimates that the proposed amendments would impose aggregate annual ongoing burdens on respondent carrying broker-dealers required to perform daily customer and PAB reserve computations of 32,500 hours and 24,375 hours, respectively, or a total of 56,875 hours.[169] When added to the currently approved burden hours of 7,500 hours and 1,875 hours for the customer and PAB reserve computations, respectively, the proposed revised burden hour estimates would be 40,000 hours for the daily customer reserve computation, and 26,250 hours for the daily PAB reserve computation.

In addition to this increase, the Commission preliminarily estimates that there will be a corresponding decrease in the collections of information titled ''Rule 15c3–3(e)(3)—weekly computations'' for both the customer and PAB reserve computations. Specifically, the Commission preliminarily estimates that the proposed amendments would result in a revised burden hour estimate of 14,430 hours with respect to weekly customer reserve computations,[170] (a decrease of 6,760 hours) [171] and 2,210 hours with respect to the weekly PAB reserve computations [172] (a decrease of 5,070 hours).[173]

2. Notification Requirement

Based on its experience with other notification requirements, the Commission preliminarily estimates that it would take a carrying broker-dealer 30 minutes to prepare and send the notification regarding its election to perform weekly customer and PAB reserve computations to its designated examining authority. This burden would represent a new collection of information. The Commission preliminarily estimates that relatively few carrying broker-dealers would send the notice either because their average total credits would be substantially greater than $250 million or because they would continue to perform daily computations even if their average total credits fell below the $250 Million Threshold, given the liquidity benefits of performing a daily computation. Consequently, the Commission preliminarily estimates that one carrying broker-dealer per year would send the notice for a burden of 0.5 hours per year.[174]

[168] This is consistent with the current collection of information for the customer and PAB reserve computations.

[169] This figure was calculated as follows: 52 respondent carrying broker-dealers that would be required to perform daily customer reserve computations × 2.5 hours/day × 250 business days = 32,500 hours, plus 39 respondent carrying broker-dealers that would be required to perform daily PAB reserve computations × 2.5 hours/day × 250 business days = 24,375 hours. Therefore, the total estimated burden is 32,500 hours + 24,375 hours = 56,875 hours.

[170] This figure was calculated as follows: 163 respondents currently approved under the information collection related to weekly customer reserve computations titled ''Rule 15c3–3(e)(3)—weekly computations'' minus the 52 respondent carrying broker-dealers that would be required under the proposed amendments to perform daily customer reserve computations = 111 respondents × 2.5 hours × 52 responses annually = 14,430 hours.

[171] This figure was calculated as follows: 21,190 burden hours currently approved with respect to the collection of information related to weekly customer reserve computations minus the revised proposed estimate of 14,430 hours resulting from fewer respondents performing weekly computations = 6,760 hours.

[172] This figure was calculated as follows: 56 respondents currently approved under the information collection related to weekly PAB reserve computations titled ''Rule 15c3–3(e)(3)—weekly computations'' minus the 39 respondent carrying broker-dealers that would be required under the proposed amendments to perform daily PAB reserve computations = 17 respondents × 2.5 hours × 52 responses annually = 2,210 hours.

[173] This figure was calculated as follows: 7,280 burden hours currently approved with respect to the collection of information related to weekly PAB reserve computations minus the revised proposed estimate of 2,210 hours resulting from fewer respondents performing weekly computations = 5,070 hours.

[174] One response per year × 0.5 hours per response = 0.5 hours.

3. Summary of the Proposed Burden Revisions[175]

As a result of the proposed amendments, the burdens associated with daily computations for customer reserve accounts would increase by 32,500 hours and the burdens associated with daily computations for PAB reserve accounts would increase by 24,375 hours. This increase would be accompanied by a decrease in burdens associated with weekly computations for customer and PAB reserve accounts of 6,760 hours and 5,070 hours, respectively, as carrying broker-dealers with average total credits of $250 million or more shift from performing the customer and PAB reserve computations on a weekly to daily basis.

Additionally, a new collection of information related to the notification requirement for carrying broker-dealers reverting to a weekly computation of the customer and PAB reserve formulas will result in an addition 0.5 burden hours per year.

The net increase in estimated annual burdens associated with the proposed amendments to Rule 15c3–3 would be 45,045.5 hours. The table below summarizes these changes.

| Name of information collection | Currently approved estimated annual industry burden (hours) | Proposed estimated increase/decrease in annual industry burden (hours) | Proposed revised annual industry burden (hours) |
|---|---|---|---|
| Rule 15c3–3(e)(3)—daily computations for customer reserve account[1] | 7,500 | 32,500 | 40,000 |
| Rule 15c3–3(e)—daily computations for PAB reserve account[2] | 1,875 | 24,375 | 26,250 |
| Rule 15c3–3(e)(3)—weekly computations for customer reserve account[3] | 21,190 | (6,760) | 14,430 |
| Rule 15c3–3(3)(3)—weekly computations for PAB reserve account[4] | 7,280 | (5,070) | 2,210 |
| Rule 15c3–3(e)(B)(*1*) notification | N/A | 0.5 | 0.5 |
| Total proposed change | | 45,045.5 | |

1. In the most recently approved supporting statement for Rule 15c3–3, the title of this collection of information is "Rule 15c3–3(e)(3)—daily computations." The Commission is revising the title of this collection of information in order to clarify that it is distinct from the collection of information related to daily computations for PAB reserve accounts, which currently shares the same title.
2. In the most recently approved supporting statement for Rule 15c3–3, the title of this collection of information is "Rule 15c3–3(e)(3)—daily computations." The Commission is revising the title of this collection of information in order to clarify that it is distinct from the collection of information related to daily computations for customer reserve accounts, which currently shares the same title.
3. In the most recently approved supporting statement for Rule 15c3–3, the title of this collection of information is "Rule 15c3–3(e)(3)—weekly computations." The Commission is revising the title of this collection of information in order to clarify that it is distinct from the collection of information related to weekly computations for PAB reserve accounts, which currently shares the same title.
4. In the most recently approved supporting statement for Rule 15c3–3, the title of this collection of information is "Rule 15c3–3(e)(3)—weekly computations." The Commission is revising the title of this collection of information in order to clarify that it is distinct from the collection of information related to weekly computations for customer reserve accounts, which currently shares the same title.

*E. Collections of Information Are Mandatory*

The collections of information under the proposed amendments to Rule 15c3–3 would be mandatory as to the carrying broker-dealers that would be subject to them.

*F. Confidentiality of Response to Collections of Information*

The Commission expects to receive confidential information in connection with the collections of information. A carrying broker-dealer requested by the Commission to produce records related to the proposed amendments under Rule 15c3–3 could request confidential treatment of the information.[176] If a confidential treatment request was made, the Commission anticipates that it would keep the information confidential subject to applicable law.[177]

*G. Retention Period for Recordkeeping Requirements*

The customer and PAB reserve computations must be preserved in accordance with the requirements of Rule 17a–4.[178] Written notifications from carrying broker-dealers electing to compute the customer and PAB reserve formulas weekly after being subject to the daily requirement would be submitted to the carrying broker-dealer's designated examining authority. These notices would constitute communications relating to a carrying broker-dealer's "business as such" and, therefore, will need to be retained for three years.[179]

*H. Request for Comment*

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

27. Evaluate whether the proposed collections of information are necessary for the proper performance of the Commission's functions, including whether the information shall have practical utility;

28. Evaluate the accuracy of the Commission's estimates of the burdens of the proposed collections of information;

29. Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;

30. Evaluate whether there are ways to minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and

31. Evaluate whether the proposed rules and rule amendments would have any effects on any other collection of information not previously identified in this section.

Persons submitting comments on the collection of information requirements

[175] OMB Control No. 3235–0078 for Rule 15c3–3 includes thirty separate information collections. This summary show only those information collections that would be revised as a result of the proposed amendments.

[176] *See* 17 CFR 200.83. Information regarding requests for confidential treatment of information submitted to the Commission is available on the Commission's website at *https://www.sec.gov/foia/howfo2.htm#privacy.*

[177] *See, e.g.,* 15 U.S.C. 78x (governing the public availability of information obtained by the Commission); 5 U.S.C. 552 *et seq.*

[178] *See* 17 CFR 240.15c3–3(e)(3)(v); 17 CFR 240.17a–4.

[179] *See* 17 CFR 240.17a–4(b)(4).

should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File Number S7–11–23. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, with reference to File Number S7–11–23 and be submitted to the Securities and Exchange Commission, Office of FOIA/PA Services, 100 F Street NE, Washington, DC 20549–2736. As OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

## VI. Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act of 1996,[180] a rule is ''major'' if it has resulted, 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. The Commission requests comment on whether the proposed rules and rule amendments would be a ''major'' rule for purposes of the Small Business Regulatory Enforcement Fairness Act. In addition, the Commission solicits comment and empirical data on: the potential effect on the U.S. economy on annual basis; any potential increase in costs or prices for consumer or individual industries; and any potential effect on competition, investment, or innovation.

## VII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'') requires the Commission, in promulgating rules, to consider the impact of those rules on small entities.[181] Section 603(a) of the Administrative Procedure Act,[182] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules to determine the impact of such rulemaking on ''small entities.'' [183] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule which, if adopted, would not have a significant economic impact on a substantial number of small entities.[184]

For purposes of Commission rulemaking in connection with the RFA, a small entity includes a broker-dealer that: (1) had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to paragraph (d) of 17 CFR 240.17a–5 (Exchange Act Rule 17a–5(d)),[185] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization.[186]

The proposed rule amendments to Rule 15c3–3 would require certain carrying broker-dealers to perform the customer and PAB reserve computations on a daily rather than weekly basis. Only carrying broker-dealers would be impacted by the proposed rule amendment.

Based on FOCUS Report data, the Commission estimates that as of December 31, 2022, there were approximately 790 broker-dealers that were ''small'' for the purposes of Rule 0–10. The Commission estimates that none of these small broker-dealers is a carrying broker-dealer. As a result, the proposed rule amendments likely would not apply to small broker-dealers. Therefore, the Commission believes that the proposed amendments would not have a significant impact on a substantial number of small broker-dealers.

For the foregoing reasons, the Commission certifies that the proposed amendments to Rule 15c3–3, if adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the RFA. The Commission requests comment regarding this certification. The Commission invites commenters to address whether the proposed amendments to Rule 15c3–3 would have a significant economic impact on a substantial number of small entities, and, if so, what would be the nature of any impact on small entities. The Commission requests that commenters provide empirical data to support the extent of such impact.

## Statutory Authority

The Commission is proposing amendments to Rule 15c3–3 under the Commission's rulemaking authority pursuant to the Exchange Act, 15 U.S.C. 78a *et seq.,* and particularly, sections 15 and 23(a) (15 U.S.C. 78*o* and 78w(a)), thereof.

## List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

## Text of Amendments

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

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5,78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78j–4, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

Section 240.15c3–3 is also issued under 15 U.S.C. 78c–5, 78*o*(c)(2), 78(c)(3), 78q(a), 78w(a); sec. 6(c), 84 Stat. 1652; 15 U.S.C. 78fff.

* * * * *

■ 2. Section 240.15c3–3 is amended by revising paragraphs (e)(3)(i) and (iv) to read as follows:

### § 240.15c3–3 Customer protection—reserves and custody of securities.

* * * * *

(e) * * *

(3) * * *

(i)(A) Except as provided in paragraphs (e)(3)(i)(B)(*1*) and (C) of this section, computations necessary to determine the amount required to be deposited in the Customer Reserve Bank Account and PAB Reserve Bank Account as specified in paragraph (e)(1)

[180] Public Law 104–121, Title II, 110 Stat. 857 (1996).

[181] *See* 5 U.S.C. 601 *et seq.*

[182] 5 U.S.C. 603(a).

[183] Section 601(b) of the RFA permits agencies to formulate their own definitions of ''small entities.'' *See* 5 U.S.C. 601(b). The Commission has adopted definitions for the term ''small entity'' for the purposes of rulemaking in accordance with the RFA. These definitions, as relevant to this proposed rulemaking, are set forth in 17 CFR 240.0–10 (''Rule 0–10'').

[184] *See* 5 U.S.C. 605(b).

[185] 17 CFR 240.17a–5(d).

[186] *See* 17 CFR 240.0–10(c).

of this section must be made weekly, as of the close of the last business day of the week, and the deposit so computed must be made no later than one hour after the opening of banking business on the second following business day.

(B)(*1*) A broker or dealer with average total credits that are equal to or greater than $250 million must make the computations necessary to determine the amount required to be deposited in the Customer Reserve Bank Account and PAB Reserve Bank Account, as specified in paragraph (e)(1) of this section, daily as of the close of the previous business day, and the deposit so computed must be made no later than one hour after the opening of banking business on the second following business day. A broker or dealer must comply with this paragraph (e)(3)(i)(B)(*1*) no later than six months after having average total credits equal to or greater than $250 million and until such time as it has average total credits of less than $250 million and 60 days after having provided the 60-day notice required by paragraph (e)(3)(i)(B)(*2*) of this section. For purposes of this paragraph (e)(3), *average total credits* means the arithmetic mean of the sum of Total Credits in the Customer Reserve Bank Account computation and the PAB Reserve Bank Account computation reported in the 12 most recently filed month-end Forms X–17A–5.

(*2*) A broker or dealer computing the Customer Reserve Bank Account computation and the PAB Reserve Bank Account computation daily under paragraph (e)(3)(i)(B)(*1*) of this section whose average total credits falls below $250 million may elect to compute the Customer Reserve Bank Account and the PAB Reserve Bank Account computation weekly under paragraph (e)(3)(i)(A) of this section. Such broker or dealer must notify its designated examining authority, in writing, of this election at least 60 calendar days before computing the Customer Reserve Bank Account and the PAB Reserve Bank Account computation weekly under paragraph (e)(3)(i)(A) of this section.

(C) A broker or dealer which has aggregate indebtedness not exceeding 800 percent of net capital (as defined in § 240.15c3–1) and which carries aggregate customer funds (as defined in paragraph (a)(10) of this section), as computed at the last required computation pursuant to this section, not exceeding $1,000,000, may in the alternative make the Customer Reserve Bank Account computation monthly, as of the close of the last business day of the month, and, in such event, must deposit not less than 105 percent of the amount so computed no later than one hour after the opening of banking business on the second following business day.

* * * * *

(iv) Computations in addition to the computations required in this paragraph (e)(3), other than computations made under paragraph (e)(3)(i)(B)(*1*) of this section, may be made as of the close of any business day, and the deposits so computed must be made no later than one hour after the opening of banking business on the second following business day.

* * * * *

By the Commission.

Dated: July 12, 2023.

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2023–15200 Filed 7–17–23; 8:45 am]

**BILLING CODE 8011–01–P**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Parts 5 and 202

**[Docket No. FR–6291–P–01]**

**RIN 2502–AJ60**

### Revision of Investing Lenders and Investing Mortgagees Requirements and Expansion of Government-Sponsored Enterprises Definition

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

**ACTION:** Proposed rule.

**SUMMARY:** HUD proposes to revise the requirements for investing lenders and investing mortgagees to gain or maintain status as a Federal Housing Administration (FHA) approved lender or mortgagee. This proposed revision would make FHA's approval requirements consistent with investing mortgagees' and investing lenders' risk, reduce barriers to FHA approval for new investing mortgagees and investing lenders, and increase access to capital for all FHA-approved mortgagees and lenders. HUD also proposes to make clarifying edits to ensure that certification language is applicable to investing lenders and investing mortgagees. In addition, HUD proposes to define the Government-Sponsored Enterprises (GSEs) separately from other governmental-type entities to ensure that FHA requirements specific to loan origination do not improperly apply to the GSEs. Finally, HUD proposes to eliminate obsolete language related to lender and mortgagee net worth requirements.

**DATES:** *Comment Due Date:* September 18, 2023.

**ADDRESSES:** There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

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

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

**Note:** To receive consideration as a public comment, comments must be submitted through one of the two methods specified above.

*Public Inspection of Public Comments.* HUD will make all properly submitted comments and communications available for public inspection and copying during regular business hours at the above address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Volky Garcia, Division Director, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone 202–402–8229 (this is not a toll-free number), email *Volky.a.garcia@hud.gov.* HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

Current HUD regulations at 24 CFR part 202, subpart A, establish minimum standards and requirements for approval by the Secretary of lenders and mortgagees to participate in FHA's Title I and Title II programs. Subpart B identifies the classes of lender and mortgagee eligible to participate in FHA's Title I and Title II programs and outlines additional class-specific requirements for participation in FHA's Title I and Title II programs.

In 2010, HUD amended 24 CFR part 202, subpart A, to include investing lenders and investing mortgagees as a class of lender and mortgagee subject to HUD's net worth requirements currently found at § 202.5(n). At the time the investing lender and investing mortgagee net worth requirement change was made in 2010, HUD also incorporated new financial reporting, audit, and quality control plan requirements for investing lenders and investing mortgagees into various HUD handbooks; however, no corresponding updates were made to 24 CFR part 202, subpart B, to reflect these investing lender and investing mortgagee requirements. Additionally, in 2010, FHA increased the minimum net worth requirements applicable to certain classes of lenders and mortgagees in 24 CFR part 202. These new net worth requirements were phased in over a period of three years, beginning on May 20, 2010, and becoming fully phased in by May 20, 2013. The net worth requirements during that three-year transition period are now obsolete, but the phased-in net worth requirements language remains in HUD's regulations.

Current HUD regulations in § 202.10 also identify the class of lenders and mortgagees that qualify as governmental institutions, Government-Sponsored Enterprises, public housing agencies, and State housing agencies. Currently, the various GSEs [1] are included in the same definition as Federal, State, or municipal governmental agencies and Federal Reserve Banks at § 202.10(a). For several years, certain GSEs have contended that they do not have the infrastructure that other lenders and mortgagees listed in § 202.10 have in place to ensure compliance with FHA requirements related to loan and mortgage origination because they cannot originate loans or mortgages. FHA has reviewed the mission and structure of the GSEs and determined that they should not be subject to FHA requirements specific to loan and mortgage origination because the GSEs do not originate loans or mortgages.

[1] The GSEs are the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation (commonly known as Freddie Mac), and the Federal National Mortgage Association (commonly known as Fannie Mae).

## II. This Proposed Rule

Through this proposed rule, HUD proposes to make multiple changes to 24 CFR part 202. HUD's proposed changes are described more fully in each of the below sections.

### *A. Requirements for Investing Lenders and Investing Mortgagees*

HUD proposes to state that investing lenders and investing mortgagees must comply with applicable audit and financial statement requirements by adding language to § 202.9 that incorporates audit report, financial statement, and other financial information requirements, similar to the requirements for supervised and nonsupervised lenders and mortgagees found in §§ 202.6(b)(4) and 202.7(b)(3), respectively. These proposed audit and financial statement requirements would also include adding investing lenders and investing mortgagees as types of lenders and mortgagees that must comply with HUD's uniform financial reporting standards, as described in § 5.801(a)(5).

HUD is also proposing to make explicit that investing lenders and investing mortgagees must comply with FHA's annual certification requirements at § 202.5(m). Currently, FHA's annual certification regulation contains language primarily directed at lenders and mortgagees that originate insured mortgages or Title I loans. HUD proposes to update the annual certification requirement language in § 202.5(m) to reference any lender or mortgagee, including investing lenders and investing mortgagees, that originates, purchases, holds, sells, or services insured mortgages or Title I loans.

HUD is also proposing to clarify at § 202.5(h) that investing lenders and investing mortgagees without servicing authority do not have to implement a written quality control plan.

### *B. Government-Sponsored Enterprises*

HUD proposes to separately define the GSEs from other Federal, State, or municipal governmental agencies and Federal Reserve Banks as described in § 202.10(a). This proposed change is appropriate because, unlike the other governmental-type institutions listed in § 202.10(a), the GSEs do not originate loans or mortgages. By separately defining the GSEs, it would be clear that the GSEs do not perform loan or mortgage origination activities and therefore are not subject to FHA requirements specific to loan or mortgage origination.

Specifically, HUD proposes to individually define the term GSE by creating a separate paragraph (b) in § 202.10. The GSEs would be identified as the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation (commonly known as Freddie Mac), and the Federal National Mortgage Association (commonly known as Fannie Mae). The proposed GSE definition would make clear that GSE lenders or mortgagees may purchase, service, or sell, but not originate, loans and mortgages. The proposed GSE definition would also make explicit that the GSE lenders or mortgagees must meet the general approval requirements in § 202.5, but that GSE lenders or mortgagees are not required to meet the net worth requirement provided in § 202.5.

### *C. Obsolete Language*

The phased-in net worth requirements for 2010 and 2011 currently found at § 202.5(n)(2) expired in 2013. HUD proposes to delete paragraph (n)(2) because the language is now obsolete.

### *D. Technical Amendments and Administrative Edits*

As part of HUD's review of 24 CFR part 202 and in proposing the changes described above, HUD identified several technical or non-substantive edits to 24 CFR part 202 that would improve the clarity and readability of the part. HUD proposes the following edits to 24 CFR part 202 to improve its clarity and readability:

1. In § 202.5(n)(1), HUD is proposing to update the paragraph to change the word ''section'' to ''this section (n).'' This change would make it more clear to which text the paragraph is referring. Additionally, HUD proposes to update paragraph (n)(1) to change the word ''entities'' to ''institutions.'' This change would make the text of the paragraph more consistent because the term ''institutions'' is used in an earlier sentence in the paragraph.

2. In § 202.5(n)(3)(i)–(ii),[2] HUD is proposing minor grammatical changes intended to improve the readability of the paragraphs and does not make any changes to the substantive meaning of the text. Additionally, HUD proposes to update paragraph (n)(3)(ii) to remove the phrases ''minimum'' and ''is required'' from the paragraph. These changes are proposed because the quoted terms are duplicative in meaning of other phrases in the paragraph.

3. In § 202.9(b)(3), HUD is proposing to add the phrase ''investing lender or investing mortgagee'' to the text to make explicit that the paragraph applies to both investing lenders and investing mortgagees.

4. In § 202.10(c),[3] HUD is proposing to update the citations of §§ 200.40 and 200.69 listed in the paragraph to 2 CFR 200.1. This change is appropriate because the identified section numbers from 2 CFR part 200 have been updated. This change will direct the reader to the appropriate citation.

## III. Findings and Certifications

*Regulatory Review—Executive Orders 12866 and 13563*

Pursuant to Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The order also directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 further directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. As discussed above, this proposed rule, if finalized, would be limited to defining GSEs under a separate definition within 24 CFR 202.10; clarifying the audit, financial statement, and certification requirements of investing lenders and investing mortgagees; and eliminating obsolete language within 24 CFR part 202 regarding lenders and mortgagees net worth requirements. OMB has reviewed this proposed rule and determined that it is not significant under Executive Orders 12866 and 13563.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The changes proposed in this rule are limited to defining GSEs under a separate definition within § 202.10; clarifying the audit, financial statement, and certification requirements of investing lenders and investing mortgagees; and eliminating obsolete language within 24 CFR part 202 regarding lenders and mortgagees net worth requirements. HUD anticipates that this proposed rule, if finalized, will have no economic impact.

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

*Environmental Impact*

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

*Executive Order 13132, Federalism*

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (ii) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

*Unfunded Mandates Reform Act*

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

**List of Subjects**

*24 CFR Part 5*

Administrative practice and procedure; Aged; Claims; Crime; Government contracts; Grant programs-housing and community development; Individuals with disabilities; Intergovernmental relations; Loan programs-housing and community development; Low and moderate income housing; Mortgage Insurance; Penalties; Pets; Public housing; Rent subsidies; Reporting and recordkeeping requirements; Social security; Unemployment compensation; Wages.

*24 CFR Part 202*

Administrative practice and procedure; Home improvement; Manufactured homes; Mortgage insurance; Reporting and recordkeeping requirements.

For the reasons stated above, HUD proposes to amend 24 CFR parts 5 and 202 as follows:

## PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for part 5 continues to read as follows:

[2] Consistent with the proposed change described in section C. Obsolete Language of this proposed rule, these paragraphs would be redesignated as (n)(2)(i) and (n)(2)(ii), respectively.

[3] Consistent with the proposed change described in section B. Government-Sponsored Enterprises of this proposed rule, this paragraph would be redesignated as (d).

**Authority:** 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437f, 1437n, 3535(d); Sec. 327, Pub. L. 109–115, 119 Stat. 2396; Sec. 607, Pub. L. 109–162, 119 Stat. 3051 (42 U.S.C. 14043e *et seq.*); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O 13831, 83 FR 20715, 3 CFR, 2018 Comp., p. 806; 42 U.S.C. 2000bb *et seq.*

■ 2. Revise § 5.801(a)(5) to read as follows:

#### § 5.801 Uniform financial reporting standards.

(a) * * *

(5) HUD-approved Title I and Title II supervised, nonsupervised, and investing lenders and investing mortgagees.

* * * * *

## PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

■ 3. The authority citation for part 202 continues to read as follows:

**Authority:** 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

■ 4. In § 202.5:

■ a. Revise paragraph (h);

■ b. Revise the second sentence of the introductory text of paragraph (m);

■ c. Revise paragraphs (n)(1) and (2); and

■ d. Remove paragraph (n)(3).

The revisions read as follows:

#### § 202.5 General approval standards

* * * * *

(h) *Quality control plan.* Lenders or mortgagees, unless approved under § 202.9 without servicing authority, shall implement a written quality control plan, acceptable to the Secretary, that assures compliance with the regulations and other issuances of the Secretary regarding loan or mortgage origination and servicing.

* * * * *

(m) * * * Upon application for approval and with each annual recertification, each lender and mortgagee must submit a certification that it has not been refused a license and has not been sanctioned by any state or states in which it will originate, purchase, hold, sell, or service insured mortgages or Title I loans. * * *

* * * * *

(n) * * *

(1) *Applicability.* The requirements of paragraph (n) apply to approved supervised and nonsupervised lenders and mortgagees under § 202.6 and § 202.7, and approved investing lenders and investing mortgagees under § 202.9. For ease of reference, these institutions are referred to as ''approved lenders or mortgagees'' for purposes of paragraph (n). These requirements also apply to applicants for FHA approval under §§ 202.6, 202.7, and 202.9. For ease of reference, these institutions are referred to as ''applicants'' for purposes of paragraph (n).

(2) *Requirements.*

(i) *Single family net worth requirements.* Irrespective of size, each applicant and each approved lender or mortgagee for participation solely under the FHA single family programs shall have a net worth of not less than $1 million, plus an additional net worth of one percent of the total volume, in excess of $25 million, of FHA single family insured mortgages originated, underwritten, purchased, or serviced during the prior fiscal year, up to a maximum required net worth of $2.5 million. No less than 20 percent of the applicant's or approved lender's or mortgagee's required net worth must be liquid assets consisting of cash or its equivalent acceptable to the Secretary.

(ii) *Multifamily net worth requirements.* Irrespective of size, each applicant for approval and each approved lender or mortgagee for participation solely under the FHA multifamily programs shall have a net worth of not less than $1 million. For those multifamily approved lenders or mortgagees that also engage in mortgage servicing, an additional net worth of one percent of the total volume, in excess of $25 million, of FHA multifamily mortgages originated, purchased, or serviced during the prior fiscal year, up to a maximum required net worth of $2.5 million. For multifamily approved lenders or mortgagees that do not perform mortgage servicing, an additional net worth of one half of one percent of the total volume, in excess of $25 million, of FHA multifamily mortgages originated during the prior fiscal year, up to a maximum required net worth of $2.5 million. No less than 20 percent of the applicant's or approved lender's or mortgagee's required net worth must be liquid assets consisting of cash or its equivalent acceptable to the Secretary.

(iii) *Dual participation net worth requirements.* Irrespective of size, each applicant for approval and each approved lender or mortgagee that is a participant in both FHA single family and multifamily programs must meet the net worth requirements as set forth in paragraph (n)(2)(i) of this section.

■ 6. In § 202.9:

■ a. Revise the section heading;

■ b. In paragraph (a), the introductory text to paragraph (b), paragraph (b)(1), and paragraph (b)(2) remove the words ''investing lender or mortgagee'' and add, in their place, the words ''investing lender or investing mortgagee''; and

■ c. Revise paragraph (b)(3) and add paragraph (b)(4).

The revisions and additions read as follows:

#### § 202.9 Investing lenders and investing mortgagees.

* * * * *

(b) * * *

(3) *Fidelity bond.* An investing lender or investing mortgagee shall maintain fidelity bond coverage and errors and omissions insurance acceptable to the Secretary and in an amount required by the Secretary, or alternative insurance coverage approved by the Secretary, that assures the faithful performance of the responsibilities of the mortgagee.

(4) *Audit Report.* A lender or mortgagee must comply with the financial reporting requirements in 24 CFR part 5, subpart H. Audit reports shall be based on audits performed by a certified public accountant, or by an independent public accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. Audit reports shall include:

(i) A financial statement in a form acceptable to the Secretary, including a balance sheet and a statement of operations and retained earnings, a statement of cash flows, an analysis of the lender's or mortgagee's net worth adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds; and

(ii) Such other financial information as the Secretary may require to determine the accuracy and validity of the audit report.

* * * * *

■ 7. In § 202.10:

■ a. Revise paragraph (a);

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

■ c. Add new paragraphs (b) and (d).

The revisions and additions read as follows:

#### § 202.10 Governmental institutions, Government-Sponsored Enterprises, public housing agencies and State housing agencies.

(a) *Federal, State, and municipal governmental agencies and Federal Reserve Banks.* A Federal, State, or municipal government agency or a Federal Reserve Bank may be an approved lender or mortgagee. A mortgagee approved under this paragraph may submit applications for Title II mortgage insurance. A lender or mortgagee approved under this paragraph may originate, purchase, service, or sell Title I loans and insured mortgages, respectively. A mortgagee or lender approved under this paragraph is not required to meet a net worth requirement. A lender or mortgagee shall maintain fidelity bond coverage and errors and omissions insurance acceptable to the Secretary and in an amount required by the Secretary, or alternative insurance coverage approved by the Secretary, that assures the faithful performance of the responsibilities of the mortgagee. There are no additional requirements beyond the general approval requirements in § 202.5 or as provided under paragraph (c) of this section.

(b) *Government-Sponsored Enterprises.* The Government-Sponsored Enterprises are the Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, and Federal National Mortgage Association. A Government-Sponsored Enterprise may be an approved lender or mortgagee. A lender or mortgagee approved under this paragraph may purchase, service, or sell Title I loans and insured mortgages, respectively. A mortgagee or lender approved under this paragraph is not required to meet a net worth requirement. There are no additional requirements beyond the general approval requirements in § 202.5.

* * * * *

(d) *Audit requirements.* The insuring of loans and mortgages under the Act constitutes ''Federal financial assistance'' (as defined in 2 CFR 200.1) for purposes of audit requirements set out in 2 CFR part 200, subpart F. Non-Federal entities (as defined in 2 CFR 200.1) that receive insurance as lenders and mortgagees shall conduct audits in accordance with 2 CFR part 200, subpart F.

**Julia R. Gordon,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 2023–15033 Filed 7–17–23; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

### 42 CFR Part 136

**RIN 0917–AA10**

### Catastrophic Health Emergency Fund

**AGENCY:** Indian Health Service, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Indian Health Service (IHS or Service) administers the Catastrophic Health Emergency Fund (CHEF) pursuant to section 202 of the Indian Health Care Improvement Act (IHCIA). The purpose of the CHEF is to meet the extraordinary medical costs associated with the treatment of victims of disasters or catastrophic illnesses who are within the responsibility of the Service. This notice proposes regulations governing the administration of the CHEF.

**DATES:** Send comments on or before September 18, 2023.

**ADDRESSES:** You may submit comments by the following method:

*Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter the Regulation Identifier Number (RIN) (presented above in the document headings). For best results, do not copy and paste the number; instead, type the RIN into the Search box using hyphens. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

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

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this rule contact: Carl Mitchell, Director, Division of Regulatory and Policy Coordination (DRPC), Office of Management Services (OMS), Indian Health Service, 301–443–6384, *carl.mitchell@ihs.gov;* or CAPT John Rael, Director, Office of Resource Access and Partnerships (ORAP), Indian Health Service, 301–443–0969, *john.rael@ihs.gov.*

**SUPPLEMENTARY INFORMATION:** The CHEF was established by section 202 of the IHCIA, Public Law 94–437 (25 U.S.C. 1621a). The Patient Protection and Affordable Care Act, Public Law 111–148 as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (collectively, the Affordable Care Act or ''the ACA''), reauthorized the IHCIA and amended the CHEF, directing the Secretary to promulgate regulations governing the administration of the CHEF.

## I. Background

The purpose of the CHEF is to meet the extraordinary medical costs associated with the treatment of victims of disasters or catastrophic illnesses who are within the responsibility of the Service. The IHS administers the CHEF to reimburse certain IHS and Tribal purchased/referred care (PRC) costs that exceed the cost threshold. Although the CHEF was first established in 1988, a similar fund was authorized by Public Law 99–591, a Joint Resolution continuing appropriations for fiscal year (FY) 1987. The IHS developed operating guidelines for the management of the CHEF in August of 1987, which were approved by the Office of Management and Budget (OMB). Those guidelines were developed with input from Tribal Organizations and the IHS personnel who work with the daily processing and management of Contract Health Services (CHS), now known as the Purchased/Referred Care (PRC) Program. Congress passed the Indian Health Care Improvement Reauthorization and Extension Act of 2009, S. 1790, 111th Cong. (2010) (IHCIREA), as section 10221(a) of the Patient Protection and Affordable Care Act, Public Law 111–148. Through IHCIREA, Congress permanently reauthorized and amended the IHCIA, Public Law 94–437. Section 202 of the IHCIA (25 U.S.C. 1621a) establishes the CHEF and directs the IHS to promulgate regulations for its administration. The operating guidelines and twenty-eight (28) years of experience (FYs 1987–2015) contributed to the design of the proposed rule published January 26, 2016, (81 FR 4239). Following additional consultation and additional years of experience, the IHS is issuing this new notice of proposed rulemaking (NPRM). This NPRM supersedes and replaces the proposed rule published January 26, 2016, (81 FR 4239); as such, the 2016 NPRM is hereby rescinded.

## II. Provisions of This Proposed Regulation

This regulation proposes to (1) establish definitions governing the CHEF, including definitions of disasters and catastrophic illnesses; (2) establish that a Service Unit shall not be eligible for reimbursement for the cost of treatment from the CHEF until its cost of treating any victim of such catastrophic illness or disaster has reached a certain threshold cost; (3) establish a procedure for reimbursement of the portion of the costs for authorized services that exceed such threshold costs; (4) establish a procedure for payment from the CHEF for cases in which the exigencies of the medical circumstances warrant treatment prior to the authorization of such treatment; and, (5) establish a procedure that will ensure no payment will be made from the CHEF to a Service Unit to the extent the provider of services is eligible to receive payment for the treatment from any other Federal, state, local, or private source of reimbursement for which the patient is eligible.

No part of the CHEF, or its administration, shall be subject to contract or grant under any law, including the Indian Self-Determination and Education Assistance Act (ISDEAA), Public Law 93–638 (25 U.S.C. 5301 *et seq.*) and may not be allocated, apportioned, or delegated to a Service Unit, Area Office, or any other IHS organizational unit. Accordingly, the IHS Division of Contract Care within ORAP, IHS, shall remain responsible for administration of the CHEF.

The proposed regulation also incorporates provisions on severability. Congress has specifically directed the promulgation of these rules for the administration of the CHEF, which is administered by the Secretary, Department of Health and Human Services (HHS) (''the Secretary'') acting through the Headquarters of the Indian Health Service (IHS) (''the Service''). The sole purpose of the CHEF is meeting extraordinary medical costs associated with treatment of victims of disasters or catastrophic illnesses who are within the responsibility of the Service. In the event that any portion of the proposed regulation is declared invalid, the Secretary, acting through the IHS, will continue to be responsible for the administration of the CHEF. The IHS anticipates that the remainder of the regulation could function sensibly and continue to govern the administration of the CHEF. For these reasons, if any portion of the proposed regulation is declared invalid, the IHS intends that the remaining provisions be severable.

*A. Definitions*

The IHS proposes establishing the following definitions for governing the CHEF, including definitions of disasters and catastrophic illnesses:

1. Alternate Resources—health care resources other than those of the IHS. Such resources include health care providers and institutions and health care programs for the payment of health services including but not limited to programs under titles XVIII or XIX of the Social Security Act (*i.e.,* Medicare, Medicaid), state or local health care programs, and private insurance.

2. Catastrophic Health Emergency Fund (CHEF)—the fund established by Congress to reimburse extraordinary medical expenses incurred for catastrophic illnesses and disasters paid by a PRC program of the IHS, whether such program is carried out by the IHS or an Indian Tribe or Tribal Organization under the ISDEAA.

3. Catastrophic Illness—a medical condition that is costly by virtue of the intensity and/or duration of its treatment. Examples of conditions that frequently require multiple hospital stays and extensive treatment are cancer, burns, premature births, cardiac disease, end-stage renal disease, strokes, trauma-related cases such as automobile accidents and gunshot wounds, and certain mental disorders. The CHEF is intended to insulate the IHS and Tribal PRC operations from financial disruption caused by the intensity of expenses incurred as a result of high cost illnesses and/or disasters.

4. Disasters—situations that pose a significant level of threat to life or health or cause loss of life or health stemming from events such as tornadoes, earthquakes, floods, catastrophic accidents, epidemics, fires, and explosions. The CHEF is intended to insulate the IHS and Tribal PRC operations from financial disruption caused by the intensity of expenses incurred as a result of high cost illnesses and/or disasters.

5. Episode of Care—the period of consecutive days for a discrete health condition during which reasonable and necessary medical services related to the condition occur.

6. Purchased/Referred Care (PRC)—any health service that is—

(a) delivered based on a referral by, or at the expense of, an Indian health program; and

(b) provided by a public or private medical provider or hospital that is not a provider or hospital of the IHS health program.

7. Service Unit—an administrative entity of the Service or a Tribal health program through which services are provided, directly or by contract, to eligible Indians within a defined geographic area.

8. Threshold Cost—the annual designated amount above which incurred medical costs will be considered for the CHEF reimbursement after a review of the authorized expenses and diagnosis.

*B. Threshold Cost*

The IHCIA section 202 provides that a Service Unit shall not be eligible for reimbursement from the CHEF until its cost of treating any victim of a catastrophic illness or event has reached a certain threshold cost. The Secretary is directed to establish the initial CHEF threshold at—

(1) the FY 2000 level of $19,000; and

(2) for any subsequent year, the threshold will not be less than the threshold cost of the previous year increased by the percentage increase in the medical care expenditure category of the Consumer Price Index (CPI) for all urban consumers (United States city average) for the 12-month period ending with December of the previous year.

The IHS intends to set the initial threshold governed by this rule at $19,000 for FY 2023. In reaching this determination, the IHS adopted the recommendation of the IHS Director's Workgroup on Improving PRC (Workgroup). The Workgroup, composed of Tribal leaders and Tribal and Federal representatives, voted 18–2 to recommend $19,000 as the initial threshold. For this recommendation, the Workgroup considered several factors, including (1) Tribal concerns regarding the lower threshold and the potential to exhaust the CHEF earlier in the fiscal year leaving PRC programs without the ability to recover costs for treating victims of catastrophic illnesses or disasters; and, (2) Tribal concerns about setting the threshold at the FY 2000 level and then applying the CPI–U Medical for each year since FY 2000, which would have resulted in a $30,000 plus threshold requirement by FY 2013. At this higher level, PRC programs with limited budgets would be unable to access the CHEF to seek recovery for extraordinary medical costs. Accordingly, the IHS intends to set the initial threshold at $19,000 for FY 2023, with increases in subsequent years based on the annual CPI–U Medical factor. The IHS will publish the revised threshold costs yearly in the **Federal Register**.

*C. Compliance With PRC Regulations*

The IHS proposes to follow PRC regulations 42 Code of Federal Regulations (CFR) part 136 for payment from the CHEF. For example, payment or reimbursement from the CHEF may be made for the costs of treating persons eligible for PRC in accordance with 42 CFR 136.23 and authorized for PRC in accordance with 42 CFR 136.24. In cases where the exigencies of the medical circumstances warrant treatment prior to the authorization of such treatment by the Service Unit, authorization must be obtained in accordance with 42 CFR 136.24(c). For example, claims for reimbursement of services provided that do not meet the 72 hour emergency notification requirements found at 42 CFR 136.24(c) will be denied. The applicable Area PRC program shall review the CHEF requests for CHEF reimbursement to ensure consistency with PRC regulations. The IHS seeks comment on whether payments by PRC programs to patients, or other individuals/entities that are not PRC providers, should be included as eligible for CHEF reimbursement under these regulations and if so, under what circumstances.

*D. Alternate Resources*

In accordance with section 202(d)(5) of the IHCIA [25 U.S.C. 1621a (d)(5)], alternate resources must be exhausted before reimbursement is made from the CHEF. No reimbursement shall be made from the CHEF to any Service Unit to the extent that the provider of treatment is eligible to receive payment for the treatment from any other Federal, state, local, or private source of reimbursement for which the patient is eligible. Medical expenses incurred for catastrophic illnesses and events will not be considered eligible for reimbursement if they are payable by alternate resources, as determined by the IHS. The IHS is the payor of last resort and, if the provider of services is eligible to receive payment from other resources, the medical expenses are only payable by PRC and reimbursable by the CHEF to the extent the IHS would not consider the other resources to be ''alternate resources'' under the applicable regulations and the IHS policy. Expenses paid by alternate resources are not eligible for payment by PRC or reimbursement by the CHEF. However, if the patient is found to have been eligible for alternate resources at the time of service, the Service Unit shall promptly return all funds reimbursed from the CHEF to the Headquarters CHEF account.

*E. Reimbursement Procedure*

A patient must be eligible for PRC services and the Service Unit must adhere to regulations (42 CFR 136.23(a) through (f)) governing the PRC program to be reimbursed for catastrophic cases from the CHEF. Once the catastrophic case meets the threshold requirement and the Service Unit has authorized PRC resources exceeding the threshold requirement, the Service Unit may qualify for reimbursement from the CHEF. Reimbursable costs are those costs that exceed the threshold requirement after payment has been made by all alternate resources such as Federal, state, local, private insurance, and other resources. Reimbursement of PRC expenditures incurred by the Service Unit and approved by the PRC program at Headquarters will be processed through the respective IHS Area Office. Reimbursement from the CHEF shall be subject to availability of funds.

*F. Recovery of the CHEF Reimbursement Funds*

In the event a PRC program has been reimbursed from the CHEF for an episode of care and that same episode of care becomes eligible for and is paid by any Federal, state, local, or private source (including third party insurance), the PRC program shall return all the CHEF funds received for that episode of care to the CHEF at the IHS Headquarters. These recovered CHEF funds will be used to reimburse other approved CHEF requests.

## III. Collection of Information Requirements

Prior to implementing the rule, the IHS may be required to develop new information collection forms that would require approval from the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995, 44 United States Code 3507(d).

## IV. Response to Comments

Because of the large number of public comments normally received on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments received by the date and time specified in the **DATES** section of the preamble of this proposed rule, and, when we proceed with a final rule, we will respond to the comments in the preamble to that rule.

## V. Regulatory Impact Analysis

We have examined the impacts of this rule as required by Executive Order (E.O.) 12866 on Regulatory Planning and Review (September 30, 1993); section 603 of the Regulatory Flexibility Act (RFA), Public Law 96–354 [5 U.S.C. 601–612], as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996, Public Law 104–121; the Unfunded Mandates Reform Act (UMRA) of 1995, Public Law 104–4; E.O. 13132 on Federalism (August 4, 1999); and E.O. 13175 Consultation and Coordination with Indian Tribal Governments.

*A. Executive Order 12866*

Executive Order 12866, as amended by Executive Order 14094, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866, as amended, defines a ''significant regulatory action'' as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $200 million or more in any one year (adjusted every three years by the Administrator of OIRA for changes in gross domestic product), or adversely affect in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities (2) create a serious inconsistency or otherwise interfering 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 legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in Executive Order 12866. While the Office of Information and Regulatory Affairs has determined that this is a significant regulatory action as defined by Executive Order 12866, they have also determined that it does not confer significant costs and does not warrant a regulatory impact analysis.

*B. Regulatory Flexibility Act (RFA)*

RFA requires analysis of regulatory options that minimize any significant economic impact of a rule on small entities, unless it is certified that the proposed rule is not expected to have a significant economic impact on small entities. This rule is not expected to have a significant economic impact on small entities, because the rule only governs reimbursements of certain expenditures made by Service Units under Purchased/Referred Care (PRC) authorities. Many PRC programs are operated by the Federal Government, through the Indian Health Service (IHS). The remaining PRC programs are operated by Tribes and tribal organizations under Indian Self-Determination and Education Assistance Act (ISDEAA) agreements with the IHS. Presently, there are 62 federally operated PRC programs and 188 tribally operated PRC programs. Some of the entities operating PRC programs may be small entities, but the rule does not directly impact a substantial number of small entities and the rule is not expected to reduce their revenues or raise their costs.

*C. Unfunded Mandates Reform Act (UMRA)*

Section 202 of UMRA (Pub. L. 104–4) requires an assessment of anticipated costs and benefits before proposing any rule that may result in expenditure by state, local, and Tribal Governments, in aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is $165 million, using the most current (2021) Implicit Price Deflator for the Gross Domestic Product. We have determined that this rule is consistent with the principles set forth in the executive orders and in these statutes and find that this rule will not have an effect on the economy that exceeds the UMRA threshold in any one year. The IHS FY 2022 annual appropriation for the CHEF was $53 million. This final rule is not anticipated to have an effect on state, local, or Tribal Governments in the aggregate, or by the private sector of $165 million or more. This rule does not impose any new costs on small entities, and it will not result in a significant economic impact on a substantial number of small entities. Thus, no further analysis is required.

*D. Federalism*

E.O. 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local Governments, preempts state law, or otherwise has federalism implications. We have reviewed this proposed rule under the threshold criteria of E.O. 13132 and have determined that this proposed rule would not have substantial direct effect on the states, on the relationship between the Federal Government and the states, or on the distribution of power and governmental responsibilities among the various levels of the Government(s). As this rule has no Federal implications, a federalism summary impact statement is not required.

*E. E.O. 13175 Consultation and Coordination With Indian Tribal Governments*

This rule has Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would have a substantial direct and positive effect on one or more Indian Tribes.

The first proposed CHEF rule, published in January 2016 (81 FR 4239), was developed with input from Tribes and the IHS personnel who work with the daily processing and management of PRC resources. Specifically, the IHS Director's Workgroup on Improving PRC met and discussed the CHEF guidelines on October 12–13, 2010, and June 1–2, 2011, in Denver, Colorado, and on January 11–12, 2012, in Albuquerque, New Mexico. In addition, the IHS issued ''Dear Tribal Leader'' letters related to the development of these regulations on February 9, 2011, and May 6, 2013.

The IHS has sought additional Tribal input throughout the development of this new proposed rule. Specifically, Tribal consultation sessions were held in the fall of 2016. At meetings of the Workgroup in 2015 and 2018, the Workgroup recommended establishing a $19,000 CHEF threshold. Moreover, in November 2020, the Workgroup recommended that the IHS promulgate new regulations based on Workgroup input. Based on the recommendation of the Workgroup, the threshold amount of $19,000 is proposed to be established for the current fiscal year. This proposed rule serves as additional Tribal consultation with affected Tribes by giving interested Tribes the opportunity to comment on the regulation before it is finalized. The IHS intends to consult as fully as possible with Tribes prior to the publication of a final rule.

**List of Subjects in 42 CFR Part 136**

Alaska Natives, Purchased/Referred Care (formerly Contract Health Services), Health, Health facilities, Indians.

For the reasons set out in the preamble, the IHS proposes to amend 42 CFR chapter I as set forth below:

## PART 136—INDIAN HEALTH

■ 1. The authority citation for part 136 is revised to read as follows:

**Authority:** 42 U.S.C. 2001 and 2003; 25 U.S.C. 13; and 25 U.S.C. 1621a.

■ 2. Add new subpart L consisting of §§ 136.501–136.510 to read as follows:

## Subpart L—Indian Catastrophic Health Emergency Fund

Sec.


**§ 136.501 Definitions.**

*Alternate Resources* means health care resources other than those of the Indian Health Service. Such resources include health care providers and institutions and health care programs for the payment of health services including but not limited to programs under titles XVIII or XIX of the Social Security Act (*i.e.,* Medicare, Medicaid), state or local health care programs, and private insurance.

*Catastrophic Health Emergency Fund* (CHEF) means the fund established by Congress to reimburse extraordinary medical expenses incurred for catastrophic illnesses and disasters paid by a PRC program of the IHS, whether such program is carried out by the IHS or an Indian Tribe or Tribal Organization under the ISDEAA.

*Catastrophic Illness* refers to a medical condition that is costly by virtue of the intensity and/or duration of its treatment. Examples of conditions that frequently require multiple hospital stays and extensive treatment are cancer, burns, premature births, cardiac disease, end-stage renal disease, strokes, trauma-related cases such as automobile accidents, and gunshot wounds, and some mental disorders. The CHEF is intended to insulate the IHS and Tribal PRC operations from financial disruption caused by the intensity of expenses incurred as a result of high cost illnesses and/or disasters.

*Disaster* means a situation that poses a significant level of threat to life or health or causes loss of life or health stemming from events such as tornadoes, earthquakes, floods, catastrophic accidents, epidemics, fires, and explosions. The CHEF is intended to insulate the IHS and Tribal PRC operations from financial disruption caused by the intensity of expenses incurred as a result of high cost illnesses and/or disasters.

*Episode of Care* means the period of consecutive days for a discrete health condition during which reasonable and necessary medical services related to the condition occur.

*Purchased/Referred Care* means any health service that is—

(1) delivered based on a referral by, or at the expense of, an Indian health program; and

(2) provided by a public or private medical provider or hospital which is not a provider or hospital of the Indian health program.

*Service Unit* means an administrative entity of the Service or a Tribal Health Program through which services are provided, directly or by contract, to eligible Indians within a defined geographic area.

*Threshold Cost* means the annual designated amount above which incurred medical costs will be considered for the CHEF reimbursement after a review of the authorized expenses and diagnosis.

**§ 136.502 Purpose of the regulations.**

The Indian Catastrophic Health Emergency Fund (hereafter referred to as ''CHEF'') is authorized by section 202 of the Indian Health Care Improvement Act (IHCIA) [25 U.S.C. 1621a]. The CHEF is administered by the Secretary, Department of Health and Human Services (HHS) (''the Secretary'') acting through the Headquarters of the Indian Health Service (IHS) (''the Service''), solely for the purpose of meeting extraordinary medical costs associated with treatment of victims of disasters or catastrophic illnesses who are within the responsibility of the Service.

These regulations:

(a) establish definitions of terms governing the CHEF, including definitions of disasters and catastrophic illnesses for which the cost of treatment provided under contract would qualify for payment from the CHEF;

(b) establish a threshold level for reimbursement for the cost of treatment;

(c) establish procedures for reimbursement of the portion of the costs incurred by Service Units that exceeds such threshold costs, including procedures for when the exigencies of the medical circumstances warrant treatment prior to the authorization of such treatment by the Service; and

(d) establish procedures for reimbursements pending the outcome or payment by alternate resources.

**§ 136.503 Threshold cost.**

A Service Unit shall not be eligible for reimbursement from the CHEF until its cost of treating any victim of a catastrophic illness or disaster for an episode of care has reached a certain threshold cost.

(a) The threshold cost shall be established at the level of $19,000.

(b) The threshold cost in subsequent years shall be calculated from the threshold cost of the previous year, increased by the percentage increase in the medical care expenditure category of the Consumer Price Index for all urban consumers (United States city average) for the 12-month period ending with December of the previous year. The revised threshold costs shall be published yearly in the **Federal Register**.

**§ 136.504 Reimbursement procedure.**

Service Units whose scope of work and funding include the purchase of medical services from private or public vendors under PRC are eligible to participate. The CHEF payments shall be based only on valid PRC expenditures, including expenditures for exigent medical circumstances without prior PRC authorization. Reimbursement from the CHEF will not be made if applicable PRC requirements are not followed.

(a) *Claim Submission:* Requests for reimbursement from the CHEF must be submitted to the appropriate IHS Area Office. Area PRC programs will review requests for reimbursement to ensure compliance with PRC requirements, including but not limited to: patient eligibility, medical necessity, notification requirements for emergent and non-emergent care, medical priorities, allowable expenditures, and eligibility for alternate resources. Following this review, Area PRC programs may provide Service Units an opportunity to submit missing information or to resubmit documents that are indecipherable. Area PRC programs will then forward all requests to the Division of Contract Care, along with any recommendations or observations from the Area PRC program regarding compliance with PRC or other CHEF requirements. The Division of Contract Care will adjudicate the claim based upon an independent review of the claim documentation, but it may consider any recommendations or observations from the Area PRC program.

(b) *Content of Claims:* All claims submitted for reimbursement may be submitted electronically utilizing the secure IHS system(s) established for this purpose or may be submitted in paper form but must include:

(1) A fully completed Catastrophic Health Emergency Fund Reimbursement Request Form.

(2) A statement of the provider's charges on a form that complies with the format required for the submission of claims under title XVIII of the Social Security Act. For example, charges may be printed on forms such as the Centers for Medicare & Medicaid Services (CMS) 1500, UB–04 (formerly CMS–1450), American Dental Association (ADA) dental claim form, or National Council for Prescription Drug Program (NCPDP) universal claim forms. The forms submitted for review must include specific appropriate diagnostic and procedure codes.

(3) An explanation of benefits or statement of payment identifying how much was paid to the provider by the Service Unit for the Catastrophic Illness or Disaster. Payments to the patient or any other entity are ineligible for the CHEF reimbursement.

(4) The Division of Contract Care may request additional medical documentation describing the medical treatment or service provided, including but not limited to discharge summaries and/or medical progress notes. Cases may be submitted for 50% reimbursement of eligible expenses pending discharge summaries. Medical documentation must be received to close the CHEF case.

(c) *Limitation of Funds and Reimbursement Procedure:* Because of the limitations of funds, full reimbursement cannot be guaranteed on all requests and will be based on the availability of funds at the time the IHS processes the claim. To the extent funds are available, the CHEF funds may not be used to cover the cost of services or treatment for which the funds were not approved. Unused funds, including but not limited to, funds unused due to overestimates, alternate resources, and cancellations must be returned to the CHEF.

**§ 136.505 Reimbursable services.**

The costs of catastrophic illnesses and disasters for distinct episodes of care are eligible for reimbursement from the CHEF in accordance with the medical priorities of the Service. Only services that are related to a distinct episode of care will be eligible for reimbursement.

(a) Some of the services that may qualify for reimbursement from the fund are:

(1) Emergency treatment.

(2) Emergent and acute inpatient hospitalization.

(3) Ambulance services; air and ground (including patient escort travel costs).

(4) Attending and consultant physician.

(5) Functionally required reconstructive surgery.

(6) Prostheses and other related items.

(7) Reasonable rehabilitative therapy exclusive of custodial care not to exceed 30 days after discharge.

(8) Skilled nursing care when the patient is discharged from the acute process to a skilled nursing facility.

(b) [Reserved]

**§ 136.506 Alternate resources.**

(a) Expenses paid by alternate resources are not eligible for payment by PRC or reimbursement by the CHEF. No payment shall be made from the CHEF to any Service Unit to the extent that the provider of services is eligible to receive payment for the treatment from any other Federal, state, local, or private source of reimbursement for which the patient is eligible. A patient shall be considered eligible for such resources and no payment shall be made from the CHEF if:

(1) The patient is eligible for alternate resources, or

(2) The patient would be eligible for alternate resources if he or she were to apply for them, or

(3) The patient would be eligible for alternate resources under Federal, state, or local law or regulation but for the patient's eligibility for PRC, or other health services, from the Indian Health Service or Indian Health Service funded programs.

(b) The determination of whether a resource constitutes an alternate resource for the purpose of the CHEF reimbursement shall be made by the Headquarters of the Indian Health Service, irrespective of whether the resource was determined to be an alternate resource at the time of PRC payment.

### § 136.507 Program integrity.

All the CHEF records and documents will be subject to review by the respective Area and by Headquarters. Internal audits and administrative reviews may be conducted as necessary to ensure compliance with PRC regulations and the CHEF policies.

### § 136.508 Recovery of reimbursement funds.

In the event a Service Unit has been reimbursed from the CHEF for an episode of care and that same episode of care becomes eligible for and is paid by any Federal, state, local, or private source (including third party insurance) the Service Unit shall return all the CHEF funds received for that episode of care to the CHEF at the IHS Headquarters. These recovered CHEF funds will be used to reimburse other valid CHEF requests.

### § 136.509 Reconsideration and appeals.

(a) Any Service Unit to whom payment from the CHEF is denied will be notified of the denial in writing together with a statement of the reason for the denial within 130 business days from receipt.

(b) If a decision on the CHEF case is not made by the CHEF Program Manager within 180 calendar days from receipt, the Service Unit that submitted the claim may choose to appeal it as a deemed denial.

(c) In order to seek review of a denial decision or deemed denial, the Service Unit must follow the procedures set forth in paragraphs (c)(1) and (c)(2) of this section.

(1) Within 40 business days from the receipt of the denial provided in paragraph (a) of this section, the Service Unit may submit a request in writing for reconsideration of the original denial to the Division of Contract Care. The request for reconsideration must include, as applicable, corrections to the original claim submission necessary to overcome the denial; or a statement and supporting documentation establishing that the original denial was in error. If no additional information is submitted the original denial will stand. The Service Unit may also request a telephone conference with the Division of Contract Care, to further explain the materials submitted, which shall be scheduled within 40 business days from receipt of the request for review. A decision by the Division of Contract Care shall be made within 130 business days of the request for review. The Division of Contract Care Director, or designee, shall review the application *de novo* with no deference to the original decision maker or to the applicant.

(2) If the original decision is affirmed on reconsideration, the Service Unit will be notified in writing and advised that an appeal may be taken to the Director, Indian Health Service, within 40 business days of receipt of the denial. The appeal shall be in writing and shall set forth the grounds supporting the appeal. The Service Unit may also request a telephone conference through the Division of Contract Care, which shall be scheduled with the Director or a representative designated by the Director, to further explain the grounds supporting the appeal. A decision by the Director shall be made within 180 calendar days of the request for reconsideration. The decision of the Director, Indian Health Service or designee, shall constitute the final administrative action.

### § 136.510 Severability.

If any provision of this subpart is held to be invalid or unenforceable by its terms, as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed to continue to give the maximum effect to the provision permitted by law, including as applied to those not similarly situated or to dissimilar circumstances. However, if such holding is that the provision of this subpart is invalid and unenforceable in all circumstances, the provision shall be severable from the remainder of this subpart and shall not affect the remainder thereof.

Dated: July 10, 2023.

**Xavier Becerra,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2023–14849 Filed 7–17–23; 8:45 am]

BILLING CODE 4165–16–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Medicare & Medicaid Services

## 42 CFR Chapter IV

**[CMS–5540–NC]**

**RIN 0938–AV19**

## Request for Information; Episode-Based Payment Model

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

**ACTION:** Request for information.

**SUMMARY:** This request for information seeks input from the public regarding the design of a future episode-based payment model. Responses to this request for information may be used to inform potential future rulemaking or other policy development.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, by August 17, 2023.

**ADDRESSES:** In commenting, refer to file code CMS–5540–NC.

Comments, including mass comment submissions, must be submitted in *one* of the following three ways (please choose only *one* of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *https://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–5540–NC, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–5540–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:**

Sacha Wolf, (410) 786–9769 (*Sacha.Wolf@cms.hhs.gov*), for issues related to incentive structure, model overlap, and BPCI Advanced.

Lauren Vanderwerker (*Lauren.Vanderwerker@cms.hhs.gov*) for issues related to payment and Comprehensive Care for Joint Replacement (CJR).

Nicholas Adcock (*Nicholas.Adcock@cms.hhs.gov*) for issues related to health equity.

Dena McDonough (*Dena.McDonough@cms.hhs.gov*) for issues related to quality measures, clinical episodes, or any other issues.

**SUPPLEMENTARY INFORMATION:**

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *https://www.regultions.gov.* Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

## I. Background

In 2021, the Innovation Center announced a strategic refresh with a vision of having a health care system that achieves equitable outcomes through high quality, affordable, person-centered care.[1] To guide this updated vision, the Innovation Center intends to design, implement, and evaluate future episode-based payment models with a focus on five strategic objectives, including advancing health equity and driving accountable care.[2] With a bold goal of having 100 percent of Medicare fee-for-service (FFS) beneficiaries and the vast majority of Medicaid beneficiaries in an accountable care relationship by 2030, we acknowledge that additional opportunities for accountable care relationships with specialists are needed.[3]

One approach to support accountable care and to create an avenue for specialists to participate in value-based care initiatives is through episode-based payment models. The Innovation Center has launched several episode-based payment models (also known as bundled-payment models), four of which are either ongoing or being implemented in 2023.[4] These models help to address the inefficiencies in traditional Medicare FFS, where providers are paid for each item or service, which may drive volume over value and fragment care. By bundling items and services into an episode of care, providers are better incentivized to coordinate patient care and to avoid duplicative or unnecessary services.

Early episode-based payment demonstrations were narrow in scope and assessed particular design aspects, such as the use of gainsharing mechanisms or bundled payments for inpatient stays.[5] Current models build upon early tests by examining condition-specific or acute inpatient/outpatient episodes with accountability usually extending 90-days beyond the triggering event. Generally, these episode-based payment models have demonstrated reductions in gross Medicare spending, driven in large part by reductions in post-acute care (PAC) spending or utilization, with minimal to no change on quality of care.[6]

The Innovation Center is utilizing lessons learned from our experience with the Bundled Payments for Care Improvement (BPCI), Bundled Payments for Care Improvement Advanced (BPCI Advanced), and the Comprehensive Care for Joint Replacement (CJR) models to design and implement a new episode-based payment model focused on accountability for quality and cost, health equity, and specialty integration. To further inform development of the potential new model, we are soliciting input from those with additional insight and frontline experience with bundled payments. This request for information (RFI) is not seeking feedback on models which address particular conditions over a longer period of time, such as the Enhancing Oncology Model and the Kidney Care Choices Model. Specifically, we are requesting input on a broader set of questions related to care delivery and incentive structure alignment and six foundational components:

- Clinical Episodes
- Participants
- Health Equity
- Quality Measures, Interoperability, and Multi-Payer Alignment
- Payment Methodology and Structure
- Model Overlap

In addition to maintaining or improving quality of care and reducing Medicare spending (two requirements articulated in the Innovation Center statute[7]), CMS intends to test an episode-based payment model with goals to:

- Improve care transitions for the beneficiary; and
- Increase engagement of specialists within value-based, accountable care.

We recognize that for these goals to be realized, there must be a change in how episode-based payment models coexist with population-based Medicare Accountable Care Organizations (ACOs). In theory, ACOs and episode-based payment models should be complementary, as ACOs are well situated to prevent unnecessary care, while episode-based payment model participants focus on controlling the cost of acute, high-cost episodes. However, these value-based care approaches have not consistently been complementary and, in some cases, have complicated health care operations.

The Innovation Center strategic refresh provides an opportunity to better align episodes of care and population-based models to improve the beneficiary experience and reduce health care inefficiencies.[8] Furthermore,

[1] CMS White Paper on CMS Innovation Center's Strategy: Driving Health System Transformation—A Strategy for the CMS Innovation Center's Second Decade (*https://innovation.cms.gov/strategic-direction-whitepaper*).

[2] The five strategic objectives are Drive Accountable Care, Advance Health Equity, Support Innovation, Address Affordability, and Partner to Achieve System Transformation.

[3] Providers in accountable care relationships work together and with their patients to manage patients' overall health, all while considering their patients' personal health goals and values.

[4] CMS Innovation Center models still ongoing or being implemented in 2023 are the Bundled Payments for Care Improvement Advanced Model, Comprehensive Care for Joint Replacement Model, Enhancing Oncology Model, and the End-Stage Renal Disease Treatment Choices Model.

[5] The Medicare Hospital Gainsharing Demonstration (*https://innovation.cms.gov/innovation-models/medicare-hospital-gainsharing*) and Physician Hospital Collaboration Demonstration (*https://innovation.cms.gov/innovation-models/physician-hospital-collaboration*) focused on gainsharing while the Medicare Acute Care Episode Demonstration (*https://innovation.cms.gov/innovation-models/ace*) tested a global payment for certain inpatient stays.

[6] Synthesis of Evaluation Results Across 21 Medicare Models (*https://innovation.cms.gov/data-and-reports/2022/wp-eval-synthesis-21models*).

[7] Statutory requirements for CMS Innovation Center models are covered in section 1115A of the Social Security Act.

[8] Ryan, A.M., Krinsky, S., Adler-Milstein, J., Damberg, C.L., Maurer, K.A., & Hollingsworth, J.M. (2017). Association Between Hospitals' Engagement in Value-Based Reforms and Readmission Reduction in the Hospital Readmission Reduction Program. *JAMA internal medicine,* 177(6), 862–868. *https://doi.org/10.1001/jamainternmed.2017.0518.*

coordination capitalizes on the strengths of each provider, allowing them to manage and influence the outcomes that they control. Unfortunately, the current ACO and episode-based payment environment has created the perception that certain providers and suppliers are striving for the same cost savings, and uncertainty with respect to who manages a beneficiary's care. This issue is further exacerbated by complex model overlap policies that have changed as models and initiatives have evolved over time. These unintended consequences may discourage providers from participating in alternative payment models (APMs), leading to fewer beneficiaries under accountable care relationships. In order for the Innovation Center to achieve its strategic policy goals, episode-based payment incentives must be aligned across models to encourage intentional overlap, promote coordination, and facilitate seamless transition back to primary care.

## II. Solicitation of Public Comments

The Centers for Medicare & Medicaid Services (CMS) Center for Medicare and Medicaid Innovation (Innovation Center) seeks feedback regarding a potential new episode-based payment model that would be designed with a goal to improve beneficiary care and lower Medicare expenditures by reducing fragmentation and increasing care coordination across health care settings. The Innovation Center is releasing this request for information (RFI) to gather feedback on testing a new model design, built on previous experience with episode-based payment models, and to further the goals of improved outcomes and reduced Medicare spending. Whenever possible, respondents are requested to draw their responses from objective, empirical, and actionable evidence and to cite this evidence within their responses.

We anticipate this model would require participation by certain entities, such as Medicare providers or suppliers or both located in certain geographic regions, to ensure that a broad and representative group of beneficiaries and participants are included. Further, requiring participation would also help to overcome voluntary model challenges such as clinical episode selection bias and participant attrition. Therefore, any such model would be implemented via notice and comment rulemaking, with ample opportunity for public input. We expect this episode-based payment model to be implemented no earlier than 2026, ensuring participants have sufficient time to prepare for the model.

### *A. Care Delivery and Incentive Structure Alignment*

Interested parties and experts have requested that CMS align specialty care incentives with population-based model initiatives to improve coordination across the continuum of care.[9] In November 2022, the Innovation Center released its comprehensive specialty strategy to test models and innovations supporting access to high-quality, integrated specialty care across the patient journey—both longitudinally and for procedural or acute services.[10] One element of the strategy is to maintain momentum established by episode-based payment models.

To date, the Innovation Center's episode-based payment models have focused largely on acute inpatient and hospital outpatient episodes, through CJR, BPCI, and BPCI Advanced. These model tests have successfully driven essential care delivery changes to transform how patients transition between hospitals and post-acute care providers.[11] Through this next model, CMS will build on those care improvements to better align episodic and longitudinal, population-based incentives, thereby strengthening communication, collaboration, and coordination across providers at all points of a patient's journey through the health care system. This will be achieved through design features such as considering a shorter, 30-day episode to support coordination, while limiting overlap.

To maintain momentum among providers and health systems, CMS extended the original CJR model for an additional 3 performance years (October 1, 2021–December 31, 2024), with modifications to certain elements such as the episode definition and the payment methodology. Subsequently, CMS extended BPCI Advanced for 2 years (January 1, 2024–December 31, 2025), with technical changes to the pricing methodology to balance participation incentives with statutory requirements. The extension requires new convener participants to be Medicare-enrolled providers or suppliers or ACOs, which will support increasing ACO management of specialty conditions and primary care integration. In addition, the future data transparency initiatives of the specialty strategy will provide ACOs tools to better manage specialty care for patients within their population.[12]

The Innovation Center acknowledges that the role of clinical episodes will grow and evolve as more patients are cared for by providers in accountable care arrangements. To help us ensure all accountable entities provide patients with the highest value care, we seek input on the following questions:

- How can CMS structure episodes of care to increase specialty and primary care integration and improve patient experience and clinical outcomes?
- How can CMS support providers who may be required to participate in this episode-based payment model?
- How can CMS ensure patient choice and rights will not be compromised as they transition between health care settings and providers?
- How can CMS promote person-centered care in episodes, which includes mental health, behavioral health, and non-medical determinants of health?
- How can CMS support multi-payer alignment for providers and suppliers in episode-based and population-based models?
- For population-based entities currently engaging specialists in episodic care management, what are the key factors driving improvements in cost, quality, and outcomes?
- How does the nature of the relationship (that is, employment, affiliation, etc.) between a population-based entity and a specialist influence integration?
- What should CMS consider in the design of this model to effectively incorporate health information technology (health IT) standards and functionality, including interoperability, to support the aims of the model?
- How can CMS include home and community-based interventions during episode care transitions that provide connections to primary care or behavioral health and support patient independence in home and community settings?[13]

[9] Care coordination is a key concept for episode-based and population-based initiatives. Please see the CMS Innovation Center's Care Coordination page (*https://innovation.cms.gov/key-concept/care-coordination*) for further details.

[10] The CMS Innovation Center's Strategy to Support Person-centered, Value-based Specialty Care (*https://www.cms.gov/blog/cms-innovation-centers-strategy-support-person-centered-value-based-specialty-care*).

[11] Comprehensive Care for Joint Replacement Model: Fourth Evaluation Report (*https://innovation.cms.gov/data-and-reports/2021/cjr-py4-annual-report*); BPCI Advanced: Fourth Annual Report (*https://innovation.cms.gov/data-and-reports/2023/bpci-adv-ar4*).

[12] CMS has signaled its intent to provide data on specialist performance, such as shadow bundles, to facilitate integration with ACOs. Shadow bundles would use existing ACO-attributed lives and claims data to assign services and associated payments to clinical episodes and enable a more nuanced view of performance on procedural or condition specific care.

[13] For example, Community Aging In Place, Advancing Better Living for Elders (CAPABLE) was

*B. Clinical Episodes*

The CJR and BPCI Advanced models test condition-specific medical or surgical episodes, or both, which are initiated by either an inpatient hospitalization or a hospital outpatient procedure and include items and services provided over the following 90-day period.[14]

Many factors, including Medicare savings potential, are considered when deciding which clinical episode categories a model will test. Currently, there is no single clinical episode or service line group that meets every priority, but each is considered against the following criteria.

• *Clinical homogeneity:* Episodes with high clinical homogeneity may simplify target price methodology and make it easier to identify included items and services.

• *Spending variability:* Episodes with greater spending variability suggest opportunities for reducing costs and improving health care efficiency.

• *Episode volume:* Episodes with sufficient volume reduce pricing volatility and may spread financial risk.

• *Quality impacts:* Episodes with established quality measures or positive health equity outcomes may improve beneficiary quality of care.

• *Episode overlap alignment:* Episodes that support ACO collaboration.

CJR tests a single surgical episode category, while BPCI Advanced includes 34 medical and surgical episode categories. Beginning in 2021, the BPCI Advanced model combined the individual clinical episodes into eight service line groups to expand participant accountability and promote efficiencies across similar episodes. While participants acknowledged the potential benefits of this change for increasing episode volume, they highlighted the difficulties of redesigning care processes across certain medical and critical care service lines. They found identifying and implementing care redesign interventions to be more straightforward for surgical episodes. CMS' BPCI Advanced evaluation reflected this; reductions in episode payments were more substantial for surgical episodes compared to medical episodes [15] and suggest early management may reduce Medicare spending.

CMS maximizes the items and services included in a clinical episode to align with a total cost-of-care approach and ensure providers have accountability for all related aspects of care. This total cost-of-care approach represents an opportunity for improved care coordination and collaboration across disciplines and settings. For example, participants are generally accountable for the anchor event, along with PAC, hospital readmissions, physician, laboratory, and durable medical equipment costs.[16] Although exclusion lists omit items and services that are clearly unrelated to the anchor event, clinical subjectivity does exist, and participants have expressed concern that they have limited influence over some included items and services.

The 90-day episode length has demonstrated success in reducing PAC spending, but the extended duration of overlap between episode-based payment models and ACO initiatives may contribute to inefficiencies. Reducing episode duration to 30 days could both sustain the spending reductions and mitigate some of the current challenges. Specifically, a 30-day episode would position the specialist as the principal provider near the anchor event with a hand off back to the primary care provider for longitudinal care management.

We anticipate this next episode-based payment model would test a set of clinical episodes that is broader than CJR, but narrower than BPCI Advanced, with shorter episode lengths. We request feedback on the following clinical episode questions:

• Which of the clinical episode categories, tested in either BPCI Advanced or CJR, should be considered for, or excluded from, this next episode-based payment model? [17]

• Should CMS test new clinical episode categories?

• How many clinical episode categories or service line groupings should be tested?

• Should CMS consider alternatives to a 30-day episode length? If so, include evidence to support this marker as the most appropriate transition point from the hospital to the primary care provider.

• Which clinical episodes are most appropriate for collaboration between episode-based model participants and ACOs?

• Are there particular types of items or services that should be excluded from clinical episodes?

• Are there other considerations for selection criteria that are of interest to other payers?

• Aside from episode selection,reducing the duration of an episode of care, and the types of services in an episode, what other ways can CMS prevent unnecessary overlap with ACO functions?

• For which clinical episodes are ACOs better positioned than episode-based payment model participants to efficiently manage care?

• Should different participants be accountable for different clinical episodes? For example, if both hospitals and physician group practices (PGPs) are participants in the episode-based payment model, should hospitals be accountable for a certain clinical episode category (for example, congestive heart failure) or a certain clinical episode type (for example, medical episodes vs. surgical episodes) as compared to PGPs?

*C. Participants*

A key component of any APM is defining model participants. For episode-based payment models, the participant generally assumes accountability for cost and quality performance. Often, the type and setting of clinical episodes will dictate who is eligible to participate. The ability to bear financial risk, availability of resources, prior value-based care experience, and downstream entities may inform participant eligibility. Participant eligibility differed between BPCI Advanced and CJR, and other entities have also expressed interest in being participants in future episode-based payment models.

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a CMS Health Care Innovation Award project (*https://downloads.cms.gov/files/cmmi/hcia-chspt-thirdannualrpt.pdf*) that supported home-based care management by a registered nurse and occupational therapy to improve functional status. Services included home safety assessments, education, problem solving, care coordination, and handyman services to address housing-related safety risks.

[14] Medical episodes are those requiring medical management of an acute exacerbation of a condition whereas surgical episodes are those requiring a procedural intervention.

[15] In the BPCI Advanced: Fourth Annual Report (*https://innovation.cms.gov/data-and-reports/2023/bpci-adv-ar4*), the reduction in per-episode payments was larger for surgical clinical episodes than medical clinical episodes (−$796 or −3.1 percent for medical clinical episodes vs. −$1,800 or −5.8 percent for surgical clinical episodes).

[16] Items and services typically included in a clinical episode include inpatient/outpatient hospital services, post-acute care services, laboratory services, durable medical equipment, Medicare Part B drugs, physician services, and mental health services. Items and services typically excluded from a clinical episode include certain readmissions (for example, transplant or cancer), blood clotting factors, new technology addon payments, and transitional pass-through payments.

[17] The CJR model only tests the lower extremity for joint replacement episode, which includes MS–DRGs 469, 470, 521, 522 and CPT codes 27447 and 27130. The BPCI Advanced model tests 34 clinical episode categories which can be found here: *https://innovation.cms.gov/media/document/bpci-adv-clin-ep-lists-my6-mar2023*.

1. BPCI Advanced Participants

The BPCI Advanced model has convener and non-convener participants. A convener bears and apportions financial risk and facilitates coordination among one or more ''downstream episode initiators.'' In contrast, a non-convener participant bears financial risk only for itself and does not have any downstream episode initiators. Non-convener participants and downstream episode initiators must be either an acute care hospital or PGP.

Convener participants have generally been the dominant participant type in BPCI Advanced. Conveners provide support such as analytics, care navigators, and administrative assistance to their downstream episode initiators, who otherwise may not have joined the model. However, this arrangement was challenging for some hospitals and PGPs participating as downstream episode initiators as they were removed from decision-making, including when to exit the model. Further, convener participants are required to have financial guarantees that can impose significant upfront financial investment for participation.

2. CJR Participants

The participant structure of the CJR model is more straightforward than BPCI Advanced. Acute care hospitals in select metropolitan statistical areas are the only participants to trigger an episode and be held accountable for cost and quality performance. When CJR was implemented in 2016, we believed that the best policy approach was to assign financial accountability to large entities, such as hospitals, that care for a higher volume of Medicare beneficiaries. However, we recognized the importance of smaller entities, such as PGPs, and allowed gainsharing arrangements and other flexibilities to support collaboration with participating CJR hospitals.

3. Other Entities

Aside from hospitals and PGPs, other providers have signaled interest in managing or initiating clinical episodes. Expanding provider or participant eligibility may increase model scope, but it also adds operational complexity and reduces the likelihood of a seamless care experience for the beneficiary. For this reason, CMS attributes episodes to a single entity, regardless of the number of providers involved. Precedence rules generally dictate to which entity an episode of care is attributed, but these rules are often difficult for participants to follow. Data feeds inform entities of episode attribution when multiple providers have interacted with the beneficiary, but participants still express challenges with identifying their potential episodes due to lack of real-time data.

We request feedback on the following participant questions:

• Given that some entities may be better positioned to assume financial risk, what considerations should CMS take into account about different types of potential participants, such as hospitals and PGPs?

++ Should CMS consider flexibilities for PGPs to participate, such as a delayed start or a glide path to full financial risk?

++ How should CMS identify a PGP given the ability to form new practices and obtain new Tax Identification Numbers, and given the movement of suppliers within a PGP?

++ How can CMS ensure PGPs will remain engaged and accountable for their contributions to managing the episode of care?

• What concerns are there with conveners not being formal participants in this model since CMS cannot require entities that do not particiate in the Medicare program? [18]

• Should CMS continue using precedence rules to attribute clinical episodes to a single accountable entity or consider weighted attribution for multiple accountable entities?

++ How could weighted attribution work?

++ How should incentives be structured to promote shared accountability and ensure program integrity?

*D. Health Equity*

Health equity is a pillar of the Biden Administration, as mentioned in Executive Order (E.O.) 13985, the HHS 2022–2026 Strategic Plan, and the CMS 2022 Strategic Plan, and it is one of the five objectives in the Innovation Center's 2021 Strategy Refresh.[19] BPCI Advanced and CJR were designed prior to this more intentional focus on equity, but both models allow safety-net hospital participation and incorporate risk adjustment for dually eligible beneficiaries. We recognize there is room for improvement and intend to advance health equity through the design, implementation, and evaluation of this next episode-based payment model.

The CJR 5th Annual Report and several independent studies display a widening, statistically significant gap between lower extremity joint replacement (LEJR) rates between the control group and CJR episodes and beneficiaries who are Black/African American and those who are white.[20 21 22 23] While CJR potentially had an unfavorable impact on LEJR utilization rate, these studies acknowledge the presence of pre-existing disparities before the implementation of the CJR model. Future evaluations will capture the recent changes to the CJR risk adjustment methodology to include beneficiaries who are dually-eligible and the inclusion of safety-net hospitals. The impacts of these changes will inform the development and use of future risk adjustment strategies in episode-based models.

Improving access to high-quality, patient-centered care is a goal for the Innovation Center, and ensuring underserved beneficiaries are adequately represented in value-based care models may help reduce inequities when designed with the proper incentives. The BPCI Advanced Model's 4th Annual Report provides evidence that medical episodes may have greater reach to underserved populations than surgical episodes, because underserved populations are more likely to be admitted to a hospital due to a medical condition than due to a surgery.[24] Therefore, medical episodes may provide a greater opportunity to reach underserved beneficiaries in episode-based payment models, and by extension decrease discrepancies in care.

The Innovation Center is also committed to prioritizing the unique

[18] Participants could still choose to partner with a convening organization to receive similar services, such as data analytics or care navigators.

[19] CMS Innovation Center Strategic Direction (*https://innovation.cms.gov/strategic-direction*) and CMS Strategic Plan (*https://www.cms.gov/cms-strategic-plan*).

[20] CJR Fifth Annual Report (*https://innovation.cms.gov/data-and-reports/2023/cjr-py5-annual-report*).

[21] Thirukumaran, C.P., Yeunkyung, K., Cai, X., C., Ricciardi, B.F., Yue, L., Fiscella, K.A., Mesfin, A., & Glance, L.G. (2021). Association of the Comprehensive Care for Joint Replacement Model with Disparities in the Use of Total Hip and Total Knee Replacement. *JAMA Network Open,* 4 (5), e2111858.

[22] Ko, H., Martin, B.I., Nelson, R.E., & Pelt, C.E. (2022). Patient Selection in the Comprehensive Care for Joint Replacement Model. *Health Services Research, 57,* 72–90.

[23] Kim, H., Meath, T.H.A., Quiñones, A.R., McConnell, K.J., & Ibrahim, S.A. (2021). Association of Medicare Mandatory Bundled Payment Program with the Receipt of Elective Hip and Knee Replacement in White, Black, and Hispanic Beneficiaries. *JAMA Network Open, 4* (3), e211772.

[24] BPCI Advanced's 4th Annual Report (*https://innovation.cms.gov/data-and-reports/2023/bpci-adv-ar4*) covers health equity findings from 2020–2021.

needs of providers who care for a large proportion of underserved populations. This includes flexibilities providers may need to be successful in future models. Further, to help address the increased social needs of underserved populations, future episode-based payment models will need to consider the use of area level indicators, such as the social deprivation index (SDI), the social vulnerability index (SVI), and the area deprivation index (ADI).[25] These indicators would not only help address the increased social needs of beneficiaries, but would also help determine if additional risk adjustment variables would increase future models' reach to underserved groups.

To illuminate the potential health equity impacts of a new episode-based payment model and to help ensure the goals laid out in the CMS Strategic Plan and the Innovation Center Strategy Refresh are met, we request feedback on the following questions:

• What risk adjustments should be made to financial benchmarks to account for higher costs of traditionally underserved populations and safety net hospitals? *(Quality measurement is addressed more thoroughly in the next section of this RFI.)*

• Should episode-based payment models employ special adjustments or flexibilities for disproportionate share hospitals, providers serving a greater proportion of dually eligible beneficiaries, and/or providers in regions identified with a high ADI, SVI, or SDI?

• What other factors could be considered for providers who serve underserved beneficiaries or beneficiaries who experience social risk factors? Can measure stratification among patient subgroups and composite health equity measures improve how CMS identifies and quantifies potential disparities in care and outcomes?

• Based on the BPCI Advanced 4th Annual Report findings and the increased reach of medical episodes for underserved populations, should the next episode-based payment model have a larger focus on medical or surgical episodes?

• What metrics should be used or monitored to adjust payment to assure health disparities are not worsened as an unintended consequence?

• Aside from claims data, what data sources would be valuable for evaluation and tracking of health equity?

++ What data or metrics or both should we share with participants to ensure they are addressing gaps in clinical outcomes and access to appropriate procedural care and with what frequency?

++ What data or metrics or both should we share publicly to help inform beneficiaries of provider performance?

• What provider-level initiatives or interventions, such as shared decision-making, could be considered to ensure equitable access to procedures and treatments for beneficiaries?

*E. Quality Measures and Multi-Payer Alignment*

In accordance with section 1115A of the Social Security Act (the Act), the Innovation Center tests models that are expected to improve or maintain quality of care while reducing or maintaining program expenditures.[26] Current and prior models have used a combination of claims data, participant-reported or registry-based quality measures, and patient-reported outcome (PRO) measures to incentivize improvement and assess model and participant performance. To reduce provider burden, the Innovation Center is focused on including multi-payer alignment approaches, where feasible.

The CJR model assesses participant hospitals on a composite quality score, which is based on the Hospital-Level Risk-Standardized Complication Rate Following Elective Primary Total Hip Arthroplasty and/or Total Knee Arthroplasty measure (CBE #1550[27]), the Hospital Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Survey measure (CBE #0166), and voluntary total knee and total hip arthroplasty PRO submission.

The BPCI Advanced model relies on care coordination across settings to improve quality and reduce costs for certain clinical episodes. Participants can choose to report a maximum of 5 measures under either the Administrative Quality Measure Set or Alternate Quality Measure Set. The Administrative Quality Measure set uses claims-based measures, including 3 required measures—Hospital-Wide All-Cause Unplanned Readmission Measure (CBE #1789), Advance Care Plan (CBE #0326), and CMS Patient Safety Indicators PSI 90 (CBE #0531)—and 3 additional measures which are appropriate for certain episodes. The Alternate Quality Measure Set requires reporting on the Hospital-Wide All-Cause Unplanned Readmission Measure (CBE #1789) and Advance Care Plan (CBE #0326) measures, and includes 23 more clinically-aligned measures appropriate for specific episodes. These measures are derived from registries and inpatient quality reporting, as well as claims.

The Innovation Center recently conducted a review of 21 Medicare models implemented between 2012 and 2020.[28] The evaluation, which examined relative performance on costs and quality, found two-thirds of the models demonstrated significant gross savings, but most showed no significant improvement in patient experience or mortality. Notably, the CJR model and surgical episodes managed by PGPs in the BPCI Advanced model significantly decreased readmissions, although neither model showed improvement in patient experience or reductions in emergency department use. The heterogeneity of quality measures used across models made relative assessment difficult and limited comparison to a handful of metrics for a subset of models. For example, self-reported experience of care was only measured in 12 of the 21 models.

CMS is committed to improving alignment across models and programs to simplify relative comparison of quality performance, to effectively track quality, outcomes, patient experience, and interoperable exchange of care data to generate evidence for determining whether, and to what extent, individual models improve care quality. This is in line with the broader CMS National Quality Strategy, including an effort to move toward digital quality measurement,[29] and recently announced plans to employ a ''Universal Foundation'' of quality measures to create greater consistency

[25] Refer to Table 2.1 in the Landscape of Area-Level Deprivation Measures and Other Approaches to Account for Social Risk and Social Determinants of Health in Health Care Payments document (*https://aspe.hhs.gov/sites/default/files/documents/ce8cdc5da7d1b92314eab263a06efd03/Area-Level-SDOH-Indices-Report.pdf*) for descriptions of ADI, SDI, and SVI.

[26] Section 1115A of the Social Security Act (*https://www.ssa.gov/OP_Home/ssact/title11/1115A.htm*).

[27] In previous years, we referred to the consensus-based entity (CBE) by corporate name. We have updated this language to refer to the consensus-based entity more generally. See footnote 166 of the FY 2024 inpatient prospective payment systems (IPPS)/long-term care hospitals (LTCH) prospective payment system (PPS) proposed rule (88 FR 27025) (*https://www.federalregister.gov/documents/2023/05/01/2023-07389/medicare-program-proposed-hospital-inpatient-prospective-payment-systems-for-acute-care-hospitals*).

[28] The Synthesis of Evaluation Results Across 21 Medicare Models (*https://innovation.cms.gov/data-and-reports/2022/wp-eval-synthesis-21models*) highlighted that decreases in spending were most significant among acute and specialty care models, largely driven by lower utilization—5 models reduced emergency department (ED) visits and 8 reduced inpatient readmissions.

[29] dQM Strategic Roadmap (*https://ecqi.healthit.gov/dqm*).

in primary care quality reporting.[30] As an extension of that aim, and with a particular focus on specialty care, the Innovation Center is considering how to increase the use of model-specific measures and adopt a more person-centered quality strategy, including greater use of PRO measures.

To that end, we are seeking feedback on how to best align quality measurement between new and established models and across payers, how other payers have approached quality measurement in episode-based models, and potential areas of alignment for a future episode-based payment model.

• Which quality measures, currently used in established models or quality reporting programs, would be most valuable for use across care settings?

• What quality measures are other payers using to drive improvements in clinical episodes?

• What PRO measures should CMS consider including in this next episode-based payment model?

++ Are payers testing or finding success with any PRO measures in existing episode-based models?

• In what specific measurement areas can CMS improve upon the current Inpatient Quality Reporting and Value-Based Purchasing measure sets[31] to better capture performance on acute medical and surgical episodes and the interoperable exchange of patient data between coordinating providers?

• The CAHPS® for the Merit-based Incentive Payment System (MIPS) includes questions to assess the degree to which shared decision-making has been implemented in the outpatient setting. How can CMS most effectively measure these activities in the hospital setting?

• What supports can this new model provide for decreasing burden of data collection?

++ How can registries, electronic health records, and other quality reporting systems reduce reporting burden for participants?

++ What approaches are providers currently utilizing that would create opportunities for payer alignment?

++ Are there opportunities to reduce provider burden across episodes through multi-payer alignment of quality measures and social risk adjustment?

*F. Payment Methodology and Structure*

Payment methodology is a key element of an episode-based payment model. While there are notable differences between the CJR and BPCI Advanced payment methodologies, the models are built on a similar underlying payment structure wherein participants receive preliminary target prices prior to the performance period, are paid through the traditional Medicare FFS payment systems during a performance period, and are subject to a retrospective payment reconciliation calculation after the performance period. This reconciliation calculation compares the participant's FFS spending to an adjusted target price, with the participant either earning a reconciliation payment or owing a repayment to Medicare. This retrospective reconciliation process avoids the need for changes to Medicare FFS claims-processing systems and for participants to pay downstream providers who deliver services during the episode, as is done with prospective model payments. However, both models have been subject to challenges with regard to various aspects of the payment methodology, including reconciliation timing, target price methodology, and risk adjustment.

1. Reconciliation Timing

CMS has tried to balance participants' desire to receive reconciliation results as close as possible to the performance period, while also allowing for sufficient claims runout to finalize the results and minimize the administrative burden of multiple reconciliations. Still, participants have indicated difficulty investing in and maintaining care redesign activities, as the incentive payments that support these activities are paid well after they have occurred. Reconciliation timing for BPCI Advanced, CJR, and the CJR extension are summarized in Table 1.

TABLE 1—COMPARISON OF RECONCILIATION TIMING

| | BPCI Advanced model years (MYs) 1–8 | CJR performance years (PYs) 1–5 | CJR extension PYs 6–8 |
|---|---|---|---|
| Performance Period | 6 months | 1 year[32] | 1 year.[33] |
| Number of Reconciliations per Performance Period | 3 | 2 | 1. |
| Approximate Claims Runout (from last episode) | 3 months, 9 months, 15 months. | 2 months, 14 months | 6 months. |

2. Target Prices

Reconciliations are based on comparison of performance period spending and the target price for a given participant and episode. The method of calculating target prices has changed over time for both CJR and BPCI Advanced, as CMS has sought to balance the need for predictable and achievable target prices with the need to respond to market changes and allow a reasonable likelihood of overall Medicare savings. Key features of the target price methodology for BPCI Advanced, CJR, and the CJR extension are summarized in Table 2.

TABLE 2—COMPARISON OF TARGET PRICING

| | BPCI Advanced (MYs 1–3) | BPCI Advanced (MYs 4–8) | CJR (PY 1–5) | CJR extension (PY 6–8) |
|---|---|---|---|---|
| Baseline Claims Period | 4 years | 4 years | 3 years | 1 year. |
| Frequency of Baseline Update | Annual | Annual | Every 2 years | Annual.[34] |

[30] Jacobs, D.B., Schreiber, M., Seshamani, M., Tsai, D., Fowler, E., & Fleisher, L.A. (2023). Aligning Quality Measures across CMS—The Universal Foundation. *New England Journal of Medicine,* 388 (9), 776–779. DOI: 10.1056/NEJMp2215539.

[31] The Acute Care Hospital Quality Improvement Program Measures FY 2025 reference guide (*https://qualitynet.cms.gov/inpatient/iqr/measures*) provides a comparison of measures for five CMS acute care hospital quality improvement programs.

[32] With the exception of years impacted by COVID.

[33] With the exception of years impacted by COVID.

TABLE 2—COMPARISON OF TARGET PRICING—Continued

| | BPCI Advanced (MYs 1–3) | BPCI Advanced (MYs 4–8) | CJR (PY 1–5) | CJR extension (PY 6–8) |
|---|---|---|---|---|
| Baseline Claims Blend | Participant Historical Claims, Patient Case Mix, Peer Group Characteristics, Peer Group Trends. | Participant Historical Claims, Patient Case Mix, Peer Group Characteristics, Peer Group Trends. | PY 1–2: ⅔ Participant, ⅓ Regional. PY 3: ⅓ Participant, ⅔ Regional. PY 4–5: Regional Only. | Regional Only. |
| Adjustments at Reconciliation | Patient Case Mix Adjustment, Quality Adjustment. | Patient Case Mix Adjustment, Peer Group Trend Factor Adjustment, Quality Adjustment. | Quality Adjustment | Regional Market Trend Factor, Normalization Factor, Quality Adjustment. |

The CJR and BPCI Advanced models initially used a prospective trend methodology to project future episode spending to construct target prices. However, early reconciliation results from both models, combined with nationwide spending data, suggested that the prospective trend had not accurately captured national changes in spending patterns during the model performance period, resulting in reconciliation payments that were higher than needed to incentivize care coordination. To more accurately reflect performance period episode costs and to help minimize the risk that the models increased spending, CMS incorporated a retrospective trend into the target price methodology for both models, allowing for a target price adjustment at reconciliation.[35] However, a number of BPCI Advanced participants found the retrospective trend untenable, given the unpredictability and resulting challenge of gauging their performance in the model. The retrospective trend for most episodes was lower than the prospective trend had been in previous years, resulting in a downward adjustment to target prices at reconciliation and leading many participants to withdraw from the model.

3. Risk Adjustment

CMS recognizes that patients will require various levels of care, with differences in appropriate episode spending based on a number of factors. To acknowledge this variability and minimize the likelihood of participants preferentially selecting healthier patients for treatment in the model (also known as ''cherry picking''), CMS has included risk adjustment in both the CJR and BPCI Advanced payment methodologies. Factors used in risk adjustment are summarized in Table 3.

TABLE 3—COMPARISON OF PATIENT-LEVEL RISK ADJUSTMENT FACTORS

| BPCI Advanced (MY 1–8)[36] | CJR (PY 1–5) | CJR extension (PY 6–8) |
|---|---|---|
| MS–DRG/APCs,[37] age, dual eligibility status, disability as reason for Medicare eligibility, Hierarchical Condition Categories (HCCs), HCC count, recent health service resource use. | MS–DRG, hip fracture[38] | MS–DRG/HCPCS,[39] age group, dual eligibility status, CJR HCC count. |

Risk adjustment in Innovation Center episode-based models is largely based on CMS claims and enrollment data. However, beneficiary characteristics from other sources, such as electronic health records or non-medical determinants of health, are not accounted for by the use of claims and enrollment data. CMS is considering ways to incorporate non-claims-based variables, if collected uniformly and documented consistently, to improve risk adjustment and address health equity. Interested parties have also recommended the inclusion of trigger event diagnosis codes to better capture beneficiary acuity. However, we are concerned that risk adjusting based on variables that occur contemporaneous to the episode could incentivize increased coding intensity.

4. Alternative Payment Approach

In light of the CJR and BPCI Advanced payment methodology challenges, we are considering changes to our payment approach, such as incorporating elements of value-based purchasing. Under a value-based purchasing framework, participants are assessed on certain measures and their future Medicare FFS payments are adjusted up or down based on their performance. For instance, the Hospital Value Based Purchasing (VBP) program withholds 2% of the base operating MS–DRG payments of participating hospitals, and then redistributes those funds to hospitals in a future year via a payment adjustment based on their Total Performance Score across four domains (Clinical Outcomes, Person and Community Engagement, Safety, and Efficiency and Cost Reduction). Similarly, in the traditional Merit-based Incentive Payment System (MIPS), clinicians submit data on four domains (Quality, Promoting Interoperability, Improvement Activities, and Cost), and the MIPS final score determines a payment adjustment to future Medicare Part B claims. To avoid duplicating the existing value-based purchasing initiatives, we are considering blending the traditional payment approach by setting a target price but paying the reconciliation payment (or recouping the repayment amount) in future years as a multiplier or add-on to future

[34] With the exception of PY 7, which repeated the use of 2019 data as baseline in order to avoid the impact of COVID in 2020 data.

[35] Under section 1115A(b)(3)(B) of the Social Security Act, the CMS Innovation Center has a statutory obligation to modify or terminate models unless the model is expected to improve quality without increasing spending, reduce spending without reducing quality, or improve quality and reduce spending after testing has begun.

[36] While the patient characteristics used in risk adjustment has remained fairly consistent across Model Years, please see the BPCI Advanced Model Year 6 Target Prices Specifications (*https://innovation.cms.gov/media/document/bpci-adv-targetprice-specs-my6-mar2023*) for the most updated and complete list.

[37] Medicare Severity Diagnosis Related Group/Ambulatory Payment Classifications.

[38] The FY 2021 IPPS/LTCH final rule (85 FR 58432) created two new MS–DRGs that separated hospital discharges for LEJR with hip fracture (521, 522) from those without hip fracture (469, 470). CJR added these MS–DRGs to the model, which removed the need for an additional risk adjustment for hip fracture.

[39] Medicare Severity Diagnosis Related Group/Healthcare Common Procedure Coding System.

claims, rather than as a lump sum at the time of the reconciliation calculation. We anticipate that incorporating value-based purchasing design components could help to resolve concerns with pricing predictability and remove the operational burdens of the reconciliation process. We recognize this alternative approach, along with other payment methodology features, would require input from interested parties. Therefore, we request feedback on the following payment methodology questions.

- How should CMS balance the need for predictable, achievable target prices with the need to create a reasonable possibility of achieving net Medicare savings?
- How should CMS balance participants' desire to receive reconciliation results as close as possible to the performance period, while also allowing for sufficient claims runout to finalize the results and minimize the administrative burden of multiple reconciliations?
- How should risk adjustment be factored into payment for episode-based payment models?

++ How can risk adjustment be designed to guard against preferential selection of healthier patients (that is, cherry picking)?

++ What risk factors, including clinical or social, should be considered?

++ Which non-claims-based variables could be used to improve risk adjustment and address health equity, and how can CMS ensure that they are collected uniformly and documented consistently?

++ How can CMS account for apparent changes in risk that are actually due to changes in coding patterns rather than changes in health status?

- If CMS were to move toward a value-based purchasing approach for acute care episodes, what performance measures (including quality and utilization or cost measures) should participants be accountable for?

++ What level of payment adjustment to future claims would be sufficient to balance the need to: (1) incentivize coordination with physician group practices and post-acute care providers; (2) achieve savings or budget neutrality for Medicare; and (3) create a reasonable, but not onerous, level of downside risk for participants?

++ To what extent could quality measures already collected in existing value-based programs (for example, MIPS, MIPS Value Pathways (MVPs), post-acute care VBPs) be incorporated into an acute care episode-based payment model?

- How could CMS incorporate other non-claims-based variables, such as from electronic health records or non-medical determinants of health, to improve risk adjustment, care coordination, quality measurement, and/or address health equity?

*G. Model Overlap*

The Innovation Center Strategic Refresh highlights the need to streamline the Innovation Center's model portfolio, reduce complexity, and capture broad provider participation.[40] These lessons learned resonate when considering the challenges between the interactions of episode-based payment models and ACO initiatives. While CMS continues to learn from tested policies, none have consistently encouraged overlap or promoted meaningful collaboration between primary care and specialty care providers. Overlap policies were intended to avoid duplicative incentive payments or give precedence to a single accountable entity. In some cases, these policies resulted in confusing methodologies or misaligned incentives which were difficult for providers to navigate. Providers have also cited confusion with identifying to which model(s) a beneficiary may be aligned or attributed.

1. Duplicate Payments

In earlier episode-based payment models, such as CJR (when applicable) and BPCI, CMS addressed overlap by implementing a complex calculation and recouping a portion of the pricing discount for providers participating in certain ACO initiatives. The recoupment was intended to prevent duplicate incentive payments for the same beneficiary's care. Yet some participants perceived the recoupment as a financial penalty, discouraging providers from participating in both initiatives. To avoid complexity, the CJR and BPCI Advanced models exclude overlap for beneficiaries aligned or assigned to certain ACOs, and these beneficiaries will not initiate a clinical episode.[41]

While this exclusionary approach creates a clean demarcation of who is accountable for a beneficiary's care, it also limits the number of providers in accountable care relationships and becomes less tenable as we work towards the goal of increased accountability. Additionally, participants may be informed of beneficiary ACO alignment or assignment after the potential episode has been initiated and after the participant has expended resources for items or services not covered by Medicare on unattributed beneficiaries. This concern highlights the opportunity to incentivize coordinated care, expand care redesign efforts to more patients, and strengthen APM participation. Lastly, even passive avoidance of duplicate payments has its drawbacks such as lack of incentive to coordinate care. For example, the CJR and BPCI Advanced models allow overlap with the Medicare Shared Savings Program without a financial recoupment.[42] [43] However, this does not encourage behavior change to ensure a smooth transition back to population-based providers.

2. Overlap

Both episode-based payment models and ACOs have demonstrated successes in reducing post-acute care spending through reductions in skilled nursing facility length of stay or reduced institutional post-acute care use.[44] [45] However, when the same beneficiary is included in both an ACO initiative and episode-based payment model, it may create confusion and inefficiencies. Providers in both models invest in care management and rely on the savings generated to support these functions. If those spending reductions are credited to only one of these entities, this may create a barrier for collaboration. Further, if an episode of care is priced too high, this can negatively impact the ACO's financial performance and add to inefficiencies between episode-based payment models and ACOs.

Regardless of the issues identified, evidence suggests shared beneficiaries in episode-based payment models and

[40] CMS White Paper on CMS Innovation Center's Strategy: Driving Health System Transformation—A Strategy for the CMS Innovation Center's Second Decade (*https://innovation.cms.gov/strategic-direction-whitepaper*).

[41] Currently, the BPCI Advanced model does not allow overlap with the ACO Realizing Equity, Access, and Community Health (ACO REACH) model, the Vermont All-Payer ACO Model, and the Comprehensive Kidney Care Contracting (CKCC) Options of the Kidney Care Choices (KCC) Model. The CJR model does not allow overlap with the ENHANCED Track of the Medicare Shared Savings Program.

[42] The Medicare Shared Savings Program benchmark updates include retrospective county-level trends that implicitly reflect BPCI Advanced and CJR spending changes; such methodology helps mitigate potential overlap of federal outlays.

[43] The CJR model only allows overlap with the BASIC track of the Medicare Shared Savings Program.

[44] Comprehensive Care for Joint Replacement Model: Fourth Evaluation Report; BPCI Advanced: Fourth Annual Report (*https://innovation.cms.gov/data-and-reports/2021/cjr-py4-annual-report*).

[45] McWilliams, J.M., Gilstrap, L.G., Stevenson, D.G., Chernew, M.E., Huskamp, H.A., & Grabowski, D.C. (2017). Changes in Postacute Care in the Medicare Shared Savings Program. *JAMA internal medicine,* 177(4), 518–526. doi:10.1001/jamainternmed.2016.9115.

ACOs can lead to lower post-acute care spending and reduced readmissions.[46] In light of findings like this, we believe overlap with episode-based payment models and ACOs should be supported through complementary policies. We want to avoid precedence or exclusionary rules for entities who may be required to participate in this next episode-based payment model. This means all of the participating entity's beneficiaries for a given clinical episode or service line group may be eligible to initiate an episode regardless of beneficiary ACO assignment/alignment. This may help the participant create standard care pathways for all beneficiaries and make it easier for ACOs to know which beneficiaries may be initiating a clinical episode. We also want to encourage overlap between this next model and ACO initiatives to support coordination and ensure providers are not carved out of a beneficiary's continuum of care. This means we must account for duplicate payments when there are shared beneficiaries. We are considering simple ways a target price can be factored into an ACO's benchmark, or how the target price can be adjusted to account for shared beneficiaries so that providers in both models have financial incentives to drive efficiency and coordinate care. We aim to resolve the previous model overlap challenges and request feedback for the following model overlap questions:

• How can CMS allow beneficiary overlap with ACO initiatives yet ensure Medicare is not double-paying incentives for the same beneficiary?

++ Should the approach to prevent double-paying incentives differ depending on whether the participating entity is part of an ACO or particular type of ACO (for example, low revenue ACOs vs. high revenue ACOs, or one-sided vs. two-sided risk ACOs)?

++ What are the implications of allowing beneficiary overlap for model evaluation?

• How should CMS create a reciprocal overlap policy that incentivizes efficiency by the participant while the ACO is incentivized to use the participant for episodic care?

++ What risks or rewards should we include to drive collaboration?

++ What resources or data should CMS provide participants to ensure there is collaboration with ACO providers for shared beneficiaries?

++ What resources or data should CMS provide ACOs to ensure collaboration with participants for shared beneficiaries? How does this differ when the participant is not part of the ACO?

• How can CMS leverage this episode-based payment model to incentivize participants to join an ACO if not already a part of one?

++ Conversely, how can this episode-based payment model incentivize ACOs to partner with participants?

• How does CMS ensure episode spending aligns with ACO benchmarks, especially if ACO benchmark methodology changes?

• What levers, such as benefit enhancements or waivers, could be used to support participants to close the care loop back to primary care/ACOs?

• How can CMS design this model to spur ACOs to engage specialty care providers for episodes of care that may not be included in this model?

## III. Collection of Information Requirements

Please note, this is a request for information (RFI) only. In accordance with the implementing regulations of the Paperwork Reduction Act of 1995 (PRA), specifically 5 CFR 1320.3(h)(4), this general solicitation is exempt from the PRA. Facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration, are not generally considered information collections and therefore not subject to the PRA.

We note that this is a RFI only. This RFI is issued solely for information and planning purposes; it does not constitute a Request for Proposal (RFP), applications, proposal abstracts, or quotations. This RFI does not commit the U.S. Government to contract for any supplies or services or make a grant award. Further, we are not seeking proposals through this RFI and will not accept unsolicited proposals. Responders are advised that the U.S. Government will not pay for any information or administrative costs incurred in response to this RFI; all costs associated with responding to this RFI will be solely at the interested party's expense. We note that not responding to this RFI does not preclude participation in any future procurement, if conducted. It is the responsibility of the potential responders to monitor this RFI announcement for additional information pertaining to this request. In addition, we note that CMS will not respond to questions about the policy issues raised in this RFI.

We will actively consider all input as we develop future regulatory proposals or future subregulatory policy guidance. We may or may not choose to contact individual responders. Such communications would be for the sole purpose of clarifying statements in the responders' written responses. Contractor support personnel may be used to review responses to this RFI. Responses to this document are not offers and cannot be accepted by the Government to form a binding contract or issue a grant. Information obtained as a result of this RFI may be used by the Government for program planning on a non-attribution basis. Respondents should not include any information that might be considered proprietary or confidential. This RFI should not be construed as a commitment or authorization to incur cost for which reimbursement would be required or sought. All submissions become U.S. Government property and will not be returned. In addition, we may publicly post the public comments received, or a summary of those public comments.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on July 11, 2023.

Dated: July 13, 2023.

**Xavier Becerra,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2023–15169 Filed 7–14–23; 11:15 am]

**BILLING CODE 4120–01–P**

[46] Navathe, A.S., Liao, J.M., Wang, E., Isidro, U., Zhu, J., Cousins, D.S., & Werner, R.M. (2021). Association of Patient Outcomes With Bundled Payments Among Hospitalized Patients Attributed to Accountable Care Organizations. *JAMA health forum,* 2(8), e212131. *https://doi.org/10.1001/jamahealthforum.2021.2131.*

# Notices

Federal Register
Vol. 88, No. 136
Tuesday, July 18, 2023

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

## DEPARTMENT OF AGRICULTURE

**[Docket Number: USDA–2022–0013]**

## Privacy Act of 1974; System of Records

**AGENCY:** Departmental Administration (DA), Office of Customer Experience (OCE), Department of Agriculture (USDA).

**ACTION:** Notice of a new system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended, and the Office of Management and Budget and Budget (OMB) Circular No. A–108 *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act*, the U.S. Department of Agriculture (USDA) proposes a new system of records for the information collected, created, and stored in the centralized omni-channel AskUSDA Contact Center. The purpose of this system is to provide industry standard customer service to respond to inquiries from the general public regarding programs and services provided by USDA. The system keeps track of the people asking questions for continuity of support and maintains a record of their interaction. The system provides multiple public channels like phone, email, and live chat. Also, the system maintains a common knowledge base across the organization that improves response consistency. This system also improves the efficiency of the Federal staff providing answers to public inquiry.

**DATES:** In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is effective upon publication, subject to a 30-day notice and comment period in which to comment on the routine uses described in the routine uses section of this system of records notice. Please submit your comments by August 17, 2023.

**ADDRESSES:** You may submit comments by either of the following methods:

*Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to: *https://www.regulations.gov*. Follow the online instructions at that site for submitting comments. Postal Mail/ Commercial Delivery: Please send one copy of your comments to Docket No. USDA–2022–0013, Customer Contact, 1400 Independence Ave, SW, Mailstop 3000, Washington, DC 20250 or at Simchah Suveyke-Bogin, email: *simchah.suveykebogin@usda.gov.*

*Instructions:* All items submitted by mail or electronic mail must include the Agency name and docket number USDA- 2022–0013. Comments received in response to this docket will be made available for public inspection and posted with change, including any personal information to: *https://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** For general questions, please contact: Simchah Suveyke-Bogin, email: *simchah.suveykebogin@usda.gov* or call 202–913–3020. For Privacy Act questions concerning this system of records notice, please contact Michele Washington, USDA, Department Administration Information Technology Office, Office of the Chief Information Officer, United States Department of Agriculture, 202–577–8021. For general USDA Privacy Act questions, please contact the USDA Chief Privacy Officer, Information Security Center, Office of Chief Information Officer, USDA, Jamie L. Whitten Building, 1400 Independence Ave. SW, Washington, DC 20250, or email: *USDAprivacy@ ocio.usda.gov.*

**SUPPLEMENTARY INFORMATION:** USDA is proposing to establish a new System of Records Notice entitled USDA/OCX, AskUSDA Contact Center. The AskUSDA Contact Center serves as the centralized entry point for the public to access information and assistance from USDA through an omni-channel of calls, emails, and chats. The records maintained are the inquirer's contact information, public inquiries, case information, knowledge articles used, and accompanying notes.

#### SYSTEM NAME AND NUMBER:

*USDA/OCX,* AskUSDA Contact Center

#### SECURITY CLASSIFICATION:

Sensitive But Unclassified

#### SYSTEM LOCATION:

The USD/OCX is maintained and physically located at USDA/OCIO, 1400 Independence Ave SW, Washington, DC 20250–3000. Salesforce Government Cloud—OCIO FR.

#### SYSTEM MANAGER(S):

Chief Customer Experience Officer, Office of Customer Experience (OCX), USDA 1400 Independence Ave SW, Washington, DC 20250–3300, (202) 913–3020. Third-party service provider, Salesforce Government Cloud, 415 Mission Street, San Francisco, CA 94105.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system of records is authorized under OMB Circular A–11, Section 280, S.1088, Federal Agency Customer Experience Act of 2017, Public Law 115–336, Presidents' Management Agenda (PMA) 2021, and Executive Order 1307, Executive Order 14058- Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government.

#### PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to provide industry standard customer service to respond to inquiries from the general public regarding programs and services provided by USDA. The system tracks the individual asking questions for continuity of support and maintains a record of their interaction. The system provides the general public multiple channels like phone, email, and chat. The system also maintains a common knowledge base across the organization that improves response consistency. This system also improves the efficiency of the federal staff providing answers to public inquiry.

#### CATEGORIES OF INDIVIDUALS CONVERED BY THE SYSTEM:

The categories of individuals covered by the system include the general public and USDA employees. The majority of customers are private individuals and businesses from across the nation that are looking for information regarding USDA programs and services. The programs and services are provided by the different agencies within USDA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records created in the system are on individual(s) who have contacted USDA, to include their first and last names, phone numbers, emails, and physical addresses. Knowledge Articles from various mission areas explaining USDA programs and other public sources, and General Inquiry Case Information (Subject, Description—Inquiry Details/Case History, Case Number, Contact, Account, Nature of Inquiry) are in the system.

RECORD SOURCE CATEGORIES:

The sources of information in this system are members of the public, USDA employees, contractors, USDA applicants, and other individuals or entities who contact the USDA Contact Center.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, records maintained in the system may be disclosed outside USDA, as follows:

A. To the U.S. Department of Justice (DOJ) when: (a) USDA or any component thereof; or (b) any employee of USDA in his or her official capacity, or any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and USDA determines that the records are relevant and necessary to the litigation and the use of such records by the Department of Justice is for a purpose that is compatible with the purpose for which USDA collected the records;

B. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program, statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate Federal, State, local, foreign, Tribal, or other public authority responsible for enforcing, investigating, or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prospective responsibility of the receiving entity;

C. To Congressional office staff in response to an inquiry made at the written request of the individual to whom the record pertains;

D. To appropriate agencies, entities, and persons when: (a) USDA suspects or has confirmed that there has been a breach of the system of records; (b) USDA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, USDA (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USDA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

E. To contractors and their agents, grantees, experts, consultants, and other performing or working on a contract, service, grant, cooperative agreement, or other assignment for the USDA, when necessary to accomplish an agency function related to this system of records;

F. To comply with Federal Funding Accountability and Transparency Act (FFATA) and similar statutory requirements for public disclosure in situations where records reflect loans, grants, or other payments to members of the public;

G. To the National Archives and Records Administration (NARA) or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906;

H. To a court or adjudicative body in a proceeding when: (a) USDA or any component thereof; or (b) any employee of USDA in his or her official capacity; or (c) any employee of USDA in his or her individual capacity where USDA has agreed to represent the employee; or the United States Government is a party to litigation or has an interest in such litigation, and USDA determines that the records are both relevant and necessary to the litigation and that use of such records is therefore deemed by USDA to be for a purpose that is compatible with the purpose for which USDA collected the records;

I. To appropriate agencies, entities, and persons when (1) DA/OCE suspects or has confirmed that there has been a breach of the system of records,(2) DA/OCE has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DA/OCE (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 DA/OCE's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

J. To another Federal agency or Federal entity to another Federal agency or Federal entity, when DA/OCE 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:

The NIST 800–53 controls are employed to reduce the risks of unauthorized and unintended information transfer. OCX records are electronic only records and stored at the FedRamp certified Salesforce Cloud.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Contact information are retrieved by a search of the name or phone number. A key word search retrieves knowledge articles. Only employees with secure and verified access can retrieve Contact Center data information. Employees retrieving this data must have secure access to Salesforce, must pass a single sign- on verification, and have specific permissions granted by a database administrator to retrieve records. The employee would access the platform using a personal identity verification (PIV) card or enter verifiable credentials, use a dashboard or customized report retrieval.

POLICIES AND PRACTICIES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with NARA's General Records Schedule 820–1 but may be retained for a longer period as required by litigation, investigation, and/or audit. Contact details are proposed to maintain for seven years before archived. Personal information stored (*i.e.,* name, email, and phone number) are encrypted.

ADMINISTRATIVE, TECHICAL, AND PHYSICAL SAFEGUARDS:

All electronic records are secured with proper requirements for access in place. Access is only granted to employees approved and cleared to receive permissions to Salesforce and have PIV access and clearance. Users who are contractors are provided training during onboarding to use the system and federal employees receive updated training for Salesforce and its dashboards periodically as needed. Access Control (AC), Identification and Authentication (IA) and Systems and Communication Protection (SC) security controls are in place to prevent unauthorized access. Individual systems desk procedures document the process for establishing, activating, and modifying IDs. System Owners define Groups and account types. System Point of Contact (POC) assigns group membership and determines need-to-know validation. The Program Manager verifies user identification. Role Based Access Control are also used. All internal USDA access is managed through the USDA Enterprise Entitlement Management System for requesting internal access.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to gain access to a record in this system of records should contact the system manager at the address listed above. Provide the system manager with the necessary particulars such as full name, date of birth, work address, and country of citizenship. Requesters must also reasonably specify the record contents sought. The request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity. All requests for access to records must be in writing and should be submitted to the system manager at the address listed above. A determination on whether a record may be accessed will be made when a request is received.

**CONTESTING RECORD PROCEDURES:**

Individuals seeking to contest or amend information maintained in the system should direct their request to the above listed System Manager and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A request for contesting records should contain: Name, address including zip code, name of the system of records, year of records in question, and any other pertinent information to help identify the data requested.

**NOTIFICATION PROCEDURES:**

Individuals may be notified if a record in this system of records pertains to them when the individuals request information utilizing the same procedures as those identified in the ''RECORD ACCESS PROCEDURES'' paragraph, above.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

None

**Simchah SuveykeBogin,**

*Chief Customer Experience Officer, Office of Customer Experience, Departmental Administration, United States Department of Agriculture.*

[FR Doc. 2023–15161 Filed 7–17–23; 8:45 am]

**BILLING CODE 3411–07–P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Minnesota Advisory Committee; Cancellation

**AGENCY:** Commission on Civil Rights.

**ACTION:** Notice; cancellation of virtual business meeting.

**SUMMARY:** The Commission on Civil Rights published a notice in the **Federal Register** concerning a virtual business meeting of the Minnesota Advisory Committee. The meeting scheduled for Thursday, July 27, 2023, at 12:30 p.m. (CT) is cancelled. The notice is in the **Federal Register** of Wednesday, June 21, 2023, in FR Doc. 2023–13124 in the third column of page 40199 and first column of page 40200.

**FOR FURTHER INFORMATION CONTACT:** Liliana Schiller, Support Services Specialist, at *lschiller@usccr.gov* or (202) 770–1856.

Dated: July 13, 2023.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2023–15191 Filed 7–17–23; 8:45 am]

**BILLING CODE P**

## COMMISSION ON CIVIL RIGHTS

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

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Notice of public meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Commonwealth of the Northern Mariana Islands Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 1:00 p.m. ChST on Wednesday, July 19, 2023 (11:00 p.m. ET on Tuesday, July 18, 2023). The purpose of the meeting is to discuss the Committee's project proposal on healthcare within the judicial system of the CNMI.

**DATES:** Wednesday, July 19, 2023, from 1:00 p.m.–2:30 p.m. Chamorro Standard Time (Tuesday, July 18, 2023, from 11:00 p.m.–12:30 a.m. Eastern Time).

**ADDRESSES:** The meeting will be held via Zoom.

*Registration Link (Audio/Visual): https://www.zoomgov.com/j/1607771359.*

*Join by Phone (Audio Only):* (833) 435–1820 USA Toll-Free; Meeting ID: 160 777 1359.

**FOR FURTHER INFORMATION CONTACT:** Kayla Fajota, Designated Federal Officer, at *kfajota@usccr.gov* or (434) 515–2395.

**SUPPLEMENTARY INFORMATION:** This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at *lschiller@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Kayla Fajota at *kfajota@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the

Commission on Civil Rights, Commonwealth of the Northern Mariana Islands Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *lschiller@usccr.gov.*

## Agenda

I. Welcome & Roll Call
II. Discussion: Project Proposal & Briefing Planning
III. Public Comment
IV. Next Steps
V. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the committee's charter end date.

Dated: July 13, 2023.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2023–15194 Filed 7–17–23; 8:45 am]

**BILLING CODE 6335–01–P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Hawai'i Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of a virtual briefing.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Hawai'i Advisory Committee to the Commission will convene by ZoomGov on Thursday, August 10, 2023, from 10:00 a.m. to 2:30 p.m. HST, to collect testimony related to the Committee's topic ''Examining Hawai'i's Child Welfare System and its Impact on Native Hawaiian Children and Families.''

**DATES:** The briefing will take place on Thursday, August 10, 2023, from 10:00 a.m.–2:30 p.m. HST.

**ADDRESSES:**

*Zoom Registration Link (Audio/Visual): https://www.zoomgov.com/meeting/register/vJIsceisrTkiEtbIYpowM-QJD0xUWO0f3gQ.*

*Audio:* (833) 435–1820; Meeting ID: 161 614 3288#.

**FOR FURTHER INFORMATION CONTACT:** Kayla Fajota, Designated Federal Officer (DFO) at *kfajota@usccr.gov* or by phone at (434) 515–2395.

**SUPPLEMENTARY INFORMATION:** Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captions will be provided for individuals who are deaf, deafblind, or hard of hearing. To request additional accommodations, please email *kfajota@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Kayla Fajota at *kfajota@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzl0AAA.*

Please click on ''Committee Meetings'' tab. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above phone number or email address.

## Agenda:

I. Welcome, Opening Remarks, and Roll Call
II. Panelists Presentations
III. Committee Question and Answer
IV. Public Comment
V. Adjournment

Dated: July 13, 2023.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2023–15195 Filed 7–17–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Census Bureau

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Manufacturers' Shipments, Inventories, and Orders (M3) Survey

**AGENCY:** U.S. Census Bureau, Commerce.

**ACTION:** Notice of information collection, request for comment.

**SUMMARY:** The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed extension of the Manufacturers' Shipments, Inventories, and Orders (M3) Survey prior to the submission of the information collection request (ICR) to OMB for approval.

**DATES:** To ensure consideration, comments regarding this proposed information collection must be received on or before September 18, 2023.

**ADDRESSES:** Interested persons are invited to submit written comments by email to *Thomas.J.Smith@census.gov.* Please reference Manufacturers' Shipments, Inventories, and Orders (M3) Survey in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2023–0004 to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or specific questions related to collection activities should be directed to Carol Aristone, U.S. Census Bureau, Economic

Indicators Division, (301) 763–7062, *carol.ann.aristone@census.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

The U.S. Census Bureau plans to request an extension of the current Office of Management and Budget (OMB) clearance of the Manufacturers' Shipments, Inventories and Orders (M3) survey. The M3 survey requests data monthly from domestic manufacturers on form M–3 (SD). Data requested are shipments, new orders, unfilled orders, total inventory, materials and supplies, work-in-process, and finished goods.

The M3 survey is designed to measure current industrial activity and to provide an indication of future production commitments. The value of shipments measures the value of goods delivered during the month by domestic manufacturers. Estimates of new orders serve as an indicator of future production commitments and represent the current sales value of new orders received during the month, net of cancellations. Substantial accumulation or depletion of unfilled orders measures excess or deficient demand for manufactured products. The level of inventories, especially in relation to shipments, is frequently used to monitor the business cycle, by calculating the inventories to sales ratio. In general, a low ratio indicates strong shipments. A high ratio indicates weaker shipments or accumulation of inventories in stock.

In October 2021, we accelerated total manufacturing and the nondurable manufacturing aggregate estimates to the same time as the Advance Report on Durable Goods Manufacturers' Shipments, Inventories and Orders by creating an advance high-level report of total manufacturing. This exception to the normal procedure was initially approved by Office of Management and Budget (OMB) in September 2021 and has been subsequently extended annually through means of a separately submitted memo. This exception has permitted the public release of preliminary monthly data on shipments and inventories of total manufacturing under the provisions of the OMB's Statistical Policy Directive No. 3 on the Compilation, Release and Evaluation of Principal Federal Economic Indicators. The Census Bureau will request that provisions for the early release of total manufacturing shipments and inventories be included in the clearance, thereby eliminating the need for a separate annual re-approval from OMB for the early release. Currently, the Advance report on Durable goods is available approximately 18 working days after each month, with the Full report available approximately 23 working days after each month. Accelerating the nondurable release provides data users with early access to total manufacturing estimates ahead of the Full Report, giving them an early snapshot of the direction of this critical indicator. Additionally, in September 2024 we plan to include additional nondurable goods industry level data, to provide more detail estimates at the advance time.

## II. Method of Collection

Respondents may submit the form via mail, fax, or the internet. We send emails and make telephone calls to respondents to remind them to report on time.

*OMB Control Number:* 0607–0008.

*Form Number(s):* M–3 (SD).

*Type of Review:* Regular submission, Request for an Extension of a Currently Approved Collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 5,000 respondents filing a total of 60,000 reports a year.

*Estimated Time per Response:* 20 minutes.

*Estimated Total Annual Burden Hours:* 20,000.

*Estimated Total Annual Cost to Public:* $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 U.S.C. 131, 182, and 193.

## IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2023–15186 Filed 7–17–23; 8:45 am]

**BILLING CODE 3510–07–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–475–819]**

### Certain Pasta from Italy: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2021

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

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to certain producers and exporters of certain pasta (pasta) from Italy during the period of review (POR) January 1, 2021, through December 31, 2021. Additionally, Commerce is rescinding the review with respect to two companies. Interested parties are invited to comment on these preliminary results.

**DATES:** Applicable July 18, 2023.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Czajkowski, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1395.

**SUPPLEMENTARY INFORMATION:**

## Background

On July 24, 1998, Commerce published in the **Federal Register** the countervailing duty order on pasta from Italy.[1] On September 6, 2022, Commerce published in the **Federal Register** the

[1] *See Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy,* 61 FR 38544 (July 24, 1996) (*Order*).

notice of initiation of an administrative review of the *Order*.[2] We initiated an administrative review of four producers/ exporters of pasta from Italy for the POR. On March 22, 2023, Commerce extended the deadline for the preliminary results of this administrative review to no later than July 11, 2023.[3]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4] A list of topics discussed in the Preliminary Decision Memorandum is included as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

**Scope of the Order**

The merchandise covered by this Order is pasta from Italy. For a complete description of the scope of the Order, see the Preliminary Decision Memorandum.[5]

**Partial Rescission of Administrative Review**

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. Commerce received timely-filed withdrawal requests with respect to: (1) Pastificio Mediterranea S.R.L.;[6] and (2) Pastificio Favellato Srl.[7] Because the withdrawal requests were timely filed, and no other parties requested a review of these companies, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this review of the *Order* with respect to these two companies.

**Methodology**

Commerce is conducting this review in accordance with section 751(a)(l)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[8] For a full description of the methodology, see the Preliminary Decision Memorandum.

**Preliminary Results of Review**

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist for the period January 1, 2021, through December 31, 2021:

| Company | Subsidy rate (percent *ad valorem*) |
|---|---|
| Pastificio Gentile S.R.L. | 1.79 |
| Sgambaro SpA. | 1.79 |

**Preliminary Rate for Non-Selected Companies Under Review**

There is one company for which a review was requested and not rescinded, and which was not selected as a mandatory respondent or found to be cross-owned with a mandatory respondent. The statute and Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides the basis for calculating the all-others rate in an investigation.

Section 705(c)(5)(A)(i) of the Act instructs Commerce, as a general rule, to calculate an all-others rate equal to the weighted average of the countervailable subsidy rates established for exporters and/or producers individually examined, excluding any rates that are zero, *de minimis*, or based entirely on facts available. In this review, the preliminary rate calculated for Pastificio Gentile S.r.l. (Gentile), the sole mandatory respondent, was not zero, *de minimis*, or based entirely on facts available. Therefore, for the company for which a review was requested that was not selected as a mandatory company respondent, and for which Commerce did not receive a timely request for withdrawal of review, we are applying to the non-selected company the net subsidy rate calculated for Gentile.

**Cash Deposit Requirements**

Pursuant to section 751(a)(1) of the Act, Commerce intends, upon publication of the final results, to instruct U.S. Customs and Border Protection (CBP) to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respondents listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. If the rate calculated in the final results is zero or *de minimis*, no cash deposit will be required on shipments of the subject merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Assessment Rates**

In accordance with 19 CFR 351.221(b)(4)(i), we preliminarily assigned subsidy rates in the amounts shown above for the producers/ exporters shown above. Consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), upon issuance of the final results, Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. We intend 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).

For the companies for which this review is rescinded with these preliminary results, we will instruct CBP to assess countervailing duties on

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 54463, 54473 (September 6, 2022).

[3] *See* Memorandum, '' Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review,'' dated March 22, 2023.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Countervailing Duty Administrative Review: Certain Pasta from Italy,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *Id.*

[6] *See* Pastificio Mediterranea S.R.L.'s letter, ''Withdrawal of Request for Administrative Review on Behalf of Pastificio Mediterranea S.R.L,'' dated October 31, 2022.

[7] *See* Pastificio Favetello Srl's letter, ''Withdraw Request for Administrative Review,'' dated November 2, 2022.

[8] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2021, through December 31, 2021, in accordance with 19 CFR 351.212(c)(l)(i).

## Verification

As provided in section 782(i)(3) of the Act, Commerce intends to verify the information relied upon for the final results of review.

## Disclosure

Commerce intends to disclose its calculations and analysis performed in reaching the preliminary results within five days of publication of these preliminary results, in accordance with 19 CFR 351.224(b).[9]

## Public Comment

Case briefs or other written documents may be submitted to the Assistant Secretary for Enforcement and Compliance.[10] A timeline for the submission of case and rebuttal briefs and written comments will be provided to interested parties at a later date.

Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case or rebuttal briefs in this administrative review are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[11] All briefs must be filed electronically using ACCESS. Note that Commerce has temporarily modified certain of its requirements for service documents containing business proprietary information, until further notice.[12]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. An electronically-filed request must be received successfully, and in its entirety by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice. Hearing requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, parties will be notified of the date and time for the hearing to be determined.

## Final Results

Unless extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

## Notification to Interested Parties

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: July 11, 2023.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

### List of Topics Discussed in the Preliminary Decision Memorandum

I.Summary
II.Background
III.Scope of the Order
V. Non-Selected Companies Under Review
V.Partial Rescission of Administrative Review
VI. Use of Facts Otherwise Available and Adverse Inferences
VII.Subsidies Valuation
VIII. Analysis of Programs
IX. Recommendation

[FR Doc. 2023–15123 Filed 7–17–23; 8:45 am]

BILLING CODE 3510–DS–P

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[9] *See* 19 CFR 351.224(b).

[10] *See* 19 CFR 351.309(c)–(d).

[11] *See* 19 CFR 351.309(c)(2) and 351.309(d)(2).

[12] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

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# DEPARTMENT OF COMMERCE

## International Trade Administration

## Amended Trade Mission Application Deadline and Updated Schedule to the Executive-Led Cybersecurity Business Development Mission to Taiwan, South Korea, and Japan

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** The United States Department of Commerce, International Trade Administration (ITA), is organizing an Executive-Led Cybersecurity Business Development Mission to Taiwan, South Korea, and Japan on September 18–26, 2023. This notice is to update the prior **Federal Register** notice to reflect that the application deadline is now extended to July 21, 2023 and the proposed timetable has been updated to include additional events.

**FOR FURTHER INFORMATION CONTACT:**

Jeffrey Odum, Events Management Task Force, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone (202) 482–6397 or email *Jeffrey.Odum@trade.gov.*

Pompeya Lambrecht, Senior International Trade Specialist, U.S. Commercial Service, Arlington, VA, (703) 235–0102, *pompeya.lambrecht@trade.gov.*

Gemal Brangman, Director, Trade Events Management Task Force, Washington, DC, (202) 482–3773, *gemal.Brangman@trade.gov.*

**SUPPLEMENTARY INFORMATION:** Amendment to Revise the Trade Mission Deadline for Submitting Applications and Updated Schedule.

## Background

### Executive-Led Cybersecurity Business Development Mission to Taiwan, South Korea, and Japan

The International Trade Administration has determined that to allow for optimal execution of recruitment the application deadline has been extended from June 23, 2023, to July 21, 2023. Applications may be accepted after that date if space remains and scheduling constraints permit. Interested U.S. companies and trade associations/organizations that have not already submitted an application are encouraged to do so. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis in accordance with the 88 FR 39224 (June 15, 2023). The applicants selected will be notified as soon as possible. The proposed schedule is updated as follows:

## Proposed Timetable

* **Note:** The final schedule and potential site visits will depend on the availability of host government, authorities and business officials; specific goals of mission participants; and ground transportation.

| | |
|---|---|
| Sunday, September 17, 2023. | Trade Mission Participants Arrive in Taipei. |
| Monday, September 18, 2023. | Welcome and Taiwan Briefing.<br>Cybersecurity Maturity Model Certification (CMMC) Seminar.<br>One-on-One business matchmaking appointments.<br>Networking Reception at residence of the Deputy Director of the American Institute in Taiwan (To Be Confirmed). |
| Tuesday, September 19, 2023. | Attend U.S. Business Day forum to meet with Taiwan public and private sector contacts.<br>One-on-One business matchmaking appointments.<br>Networking Lunch (No-Host).<br>One-on-One business matchmaking appointments. |
| Wednesday, September 20, 2023. | Trade Mission Participants Travel/Arrive to Seoul. |
| Thursday, September 21, 2023. | Welcome and South Korea Briefing.<br>Cybersecurity related engagements and site visits. |
| Friday, September 22, 2023. | U.S.-Korea Cybersecurity Forum.<br>Networking Lunch (No-Host).<br>One-on-One business matchmaking appointments.<br>Networking Reception. |
| Saturday, September 23, 2023. | Trade Mission Participants Stay in Seoul or Travel to Tokyo. |
| Sunday, September 24, 2023. | Trade Mission Participants Arrive in Tokyo.<br>Welcome cocktail hour with mission delegates and U.S. Embassy officials. |
| Monday, September 25, 2023. | Welcome and Japan Briefing.<br>One-on-One business matchmaking appointments.<br>Networking Reception at U.S. Embassy. |
| Tuesday, September 26, 2023. | Cybersecurity-related engagements and site visits in Tokyo Metropolitan Area. |

**Gemal Brangman,**

*Director, Trade Events Management Task Force.*

[FR Doc. 2023–14724 Filed 7–17–23; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2023–OS–0028]**

### Submission for OMB Review; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

**ACTION:** 30-Day information collection notice.

**SUMMARY:** The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by August 17, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ‘‘Currently under 30-day Review—Open for Public Comments’’ or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Status of the Forces Survey of Reserve Component Members; OMB Control Number 0704–0616.

*Type of Request:* Revision.

*Number of Respondents:* 16,500.

*Responses per Respondent:* 1.

*Annual Responses:* 16,500.

*Average Burden Per Response:* 15 minutes.

*Annual Burden Hours:* 4,125.

*Needs and Uses:* The Status of Forces Reserve Survey (SOFS–R) is a DoD-wide survey of Reserve and National Guard used in evaluating existing policies and programs, establishing baseline measures before implementing new policies and programs, and monitoring the progress of policies/programs that make a difference in the lives of Reserve component members and their families. The survey assesses topics such as financial well-being, reintegration programs following activation/deployment, outreach to civilian employers, employer support, food security, and suicide awareness. Data are aggregated by appropriate demographics, including Service, paygrade, gender, race/ethnicity, activation status, and other indicators. In order to be able to meet reporting requirements for DoD leadership, the Military Services, and Congress, the survey needs to be completed annually. As required by the NDAA, the results of this survey are used by each of the Service Secretaries to evaluate and update training. In addition, The Undersecretary of Defense for Personnel and Readiness uses the SOFS–R to suggest changes to services supporting Reserve component members' ability to return to their families and their civilian jobs following activation/deployment as well as addressing retention, food security, and family life issues.

*Affected Public:* Individuals or households.

*Frequency:* Annually.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: July 12, 2023.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2023–15136 Filed 7–17–23; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2023–OS–0030]**

### Submission for OMB Review; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

**ACTION:** 30-Day information collection notice.

**SUMMARY:** The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the *Paperwork Reduction Act of 1995.*

**DATES:** Consideration will be given to all comments received by August 17, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Status of the Forces Survey of Active Duty Members; OMB Control Number 0704–0624.

*Type of Request:* Revision.

*Number of Respondents:* 16,500.

*Responses per Respondent:* 1.

*Annual Responses:* 16,500.

*Average Burden per Response:* 15 minutes.

*Annual Burden Hours:* 4,125.

*Needs and Uses:* The Status of Forces Active Duty Survey (SOFS–A) is an annual DoD-wide large-scale survey of active duty members that is used in evaluating existing policies and programs, establishing baseline measures before implementing new policies and programs, and monitoring the progress of existing policies/programs. The survey assesses topics such as financial well-being, retention intention, stress, tempo, readiness, food security and suicide awareness. Data are aggregated by appropriate demographics, including Service, paygrade, gender, race/ethnicity, and other indicators. In order to be able to meet reporting requirements for DoD leadership, the Military Services, and Congress, the survey needs to be completed in 2023. The legal requirements for the SOFS–A can be found in the FY2016 NDAA, Title VI, Subtitle F, Subpart 661. This legal requirement mandates that the SOFS–A solicit information on financial literacy and preparedness. Results will be used by the Service Secretaries to evaluate and update financial literacy training and will be submitted in a report to the Committees on Armed Services of the Senate and the House of Representatives.

*Affected Public:* Individuals or households.

*Frequency:* Annually.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: July 12, 2023.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2023–15160 Filed 7–17–23; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2023–OS–0062]**

### Submission for OMB Review; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

**ACTION:** 30-Day information collection notice.

**SUMMARY:** The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by August 17, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Optimization of Harassment Response for Service Members; DoD-wide Data Collection and Analysis for Department of Defense Qualitative Data Collection in Support of the Independent Review Commission on Sexual Assault Recommendations; OMB Control Number 0704–0644.

*Type of Request:* New Generic IC.

*Number of Respondents:* 256.

*Responses per Respondent:* 1.

*Annual Responses:* 256.

*Average Burden per Response:* 1 hour.

*Annual Burden Hours:* 256.

*Needs and Uses:* Data collection is necessary to provide recommendations in order to better address the needs of service members who have experienced harassment. We will be conducting focus groups with service members to determine their understanding of new policies changes and what services they would like available if they were to experience harassment. Data from the 2018 *Workplace and Gender Relations Survey of Active Duty Members* (*WGRA*) estimate that a total of 116,300 Service members experienced sexual harassment (SH) in the year prior to taking the survey. However, the Military Equal Opportunity (MEO) workforce receives fewer than 2,000 SH complaints annually. Prevalence rates for other forms of harassment—including hazing, bullying, and incidents based on race and sexual orientation—are not assessed as frequently. However, Service members experiencing all forms of harassment could benefit from support services. Any approach to address harassment within DoD will require a significant commitment of resources. Existing academic literature, data analytics, and research studies cannot serve as a complete guide for determining the ramifications of addressing these important changes. The Independent Review Commission on Sexual Assault in the Military (IRC) found the Military Departments' response to SH complaints from Service members is inconsistent and fails to render proper assistance. Specifically, DoD's approach to SH is fractured across several components and should be addressed in direct coordination with sexual assault prevention and response (SAPR) policies to reflect the established continuum of harm, namely that from sexual harassment to sexual assault. The IRC's cross-cutting recommendation 1 prescribed a stop gap measure to support SH victims with appropriate SAPR services while the Department undertakes a review of all policies and structures tasked with addressing elements of the military's SH response. More broadly, DoD Instruction 1020.03 requires harassment prevention and response policies to address a wide range of misconduct, but does not specify what kinds of response services, care, and support are appropriate for Service members reporting harassment. This project will examine how DoD can best provide harassment response services to Service members.

*Affected Public:* Individuals or households.

*Frequency:* Once.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: July 12, 2023.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2023–15198 Filed 7–17–23; 8:45 am]

BILLING CODE 5001–06–P

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Uniform Formulary Beneficiary Advisory Panel; Notice of Federal Advisory Committee Meeting

**AGENCY:** Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

**ACTION:** Notice of Federal advisory committee meeting.

**SUMMARY:** The DoD is publishing this notice to announce that the following Federal advisory committee meeting of the Uniform Formulary Beneficiary Advisory Panel (UF BAP) will take place.

**DATES:** Open to the public Wednesday, September 27, 2023, 10:00 a.m.–1:00 p.m. (Eastern Standard Time).

**ADDRESSES:** The meeting will be held telephonically or via conference call. The phone number for the remote access on September 27, 2023 is: CONUS: 1–800–369–2046; OCONUS: 1–203–827–7030; PARTICIPANT CODE: 8546285.

These numbers and the dial-in instructions will also be posted on the UF BAP website at: *https://www.health.mil/Military-Health-Topics/Access-Cost-Quality-and-Safety/Pharmacy-Operations/BAP.*

**FOR FURTHER INFORMATION CONTACT:** Designated Federal Official (DFO) Colonel Paul B. Carby, USA, 703–681–2890 (voice), *dha.ncr.j-6.mbx.baprequests@health.mil* (email). Mailing address is 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101. Website: *https://www.health.mil/Military-Health-Topics/Access-Cost-Quality-and-Safety/Pharmacy-Operations/BAP.* The most up-to-date changes to the meeting agenda can be found on the website.

**SUPPLEMENTARY INFORMATION:** This meeting is being held under the provisions of 5 United States Code (U.S.C.) chapter 10 (commonly known as the Federal Advisory Committee Act or FACA), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

*Purpose of the Meeting:* The UF BAP will review and comment on recommendations made to the Director, Defense Health Agency, by the Pharmacy and Therapeutics Committee, regarding the Uniform Formulary.

### Agenda

1. 10:00 a.m.–10:10 a.m. Sign In for UF BAP Members
2. 10:10 a.m.–10:40 a.m. Welcome and Opening Remarks
   a. Welcome, Opening Remarks, and Introduction of UF BAP Members by DFO, UF BAP
   b. Public Written Comments by DFO, UF BAP
   c. Opening Remarks by UF BAP Co-Chair
   d. Introductory Remarks by Chief, Formulary Management Branch
3. 10:40 a.m.–11:45 a.m. Scheduled Therapeutic Class Reviews
4. 11:45 a.m.–12:30 p.m. Newly Approved Drugs Review
5. 12:30 p.m.–12:45 p.m. Pertinent Utilization Management Issues

* Note that UF BAP discussion and vote will follow each section

6. 12:45 p.m.–1:00 p.m. Closing remarks
   a. Closing Remarks by UF BAP Co-Chair
   b. Closing Remarks by DFO, UF BAP

*Meeting Accessibility:* Pursuant to section 10(a)(1) of the FACA and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of phone lines, this meeting is open to the public. Telephone lines are limited and available to the first 220 people dialing in. There will be 220 lines total: 200 domestic and 20 international, including leader lines.

*Written Statements:* Pursuant to 41 CFR 102–3.10, and section 10(a)(3) of FACA, interested persons or organizations may submit written statements to the UF BAP about its mission and/or the agenda to be addressed in this public meeting. Written statements should be submitted to the UF BAP's DFO. The DFO's contact information can be found in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Written comments or statements must be received by the UF BAP's DFO at least five (5) calendar days prior to the meeting so they may be made available to the UF BAP for its consideration prior to the meeting. The DFO will review all submitted written statements and provide copies to UF BAP.

Dated: July 11, 2023.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2023–15118 Filed 7–17–23; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2023–SCC–0084]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Federal Family Educational Loan Program (FFEL)—Administrative Requirements for States, Not-For-Profit Lenders, and Eligible Lenders Trustees

**AGENCY:** Federal Student Aid, Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

**DATES:** Interested persons are invited to submit comments on or before August 17, 2023.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

**SUPPLEMENTARY INFORMATION:** The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Federal Family Educational Loan Program (FFEL)—Administrative Requirements for States, Not-For-Profit Lenders, and Eligible Lenders Trustees.

*OMB Control Number:* 1845–0085.

*Type of Review:* An extension without change of a currently approved ICR.

*Respondents/Affected Public:* Public sector; State, local, and Tribal governments.

*Total Estimated Number of Annual Responses:* 35.

*Total Estimated Number of Annual Burden Hours:* 35.

*Abstract:* This request is for the extension of a current paperwork collection in the Office of Management and Budget (OMB) Control Number 1845–0085 for the reporting requirement contained in the regulations for States, not-for-profit lenders and eligible lender trustees under 34 CFR 682.302 for the Federal Family Education Loan (FFEL) Program. The regulations in § 682.302 require a State, non-profit entity, or eligible lender trustee to provide to the Secretary a certification on the State or non-profit entity's letterhead signed by the State or non-profit's Chief Executive Officer which states the basis upon which the entity qualifies as a State or non-profit entity. The submission must include documentation establishing the entity's State or non-profit status. In addition, the submission must include the name and lender identification number for which the eligible not-for-profit designation is being certified.

Dated: July 12, 2023.

**Kun Mullan,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2023–15095 Filed 7–17–23; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2023–SCC–0134]**

### Agency Information Collection Activities; Comment Request; EDGAR Recordkeeping and Reporting Requirements

**AGENCY:** Office of the Secretary (OS), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

**DATES:** Interested persons are invited to submit comments on or before September 18, 2023.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0134. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 4C210, Washington, DC 20202–8240.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Cleveland Knight, 202–987–0064.

**SUPPLEMENTARY INFORMATION:** The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the

Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* EDGAR Recordkeeping and Reporting Requirements.

*OMB Control Number:* 1894–0009.

*Type of Review:* An extension without change of a currently approved ICR.

*Respondents/Affected Public:* Private Sector.

*Total Estimated Number of Annual Responses:* 7,800.

*Total Estimated Number of Annual Burden Hours:* 29,975.

*Abstract:* The Education Department General Administrative Regulations (EDGAR) contain several requirements that grantees maintain certain types of records related to their grants and to report or submit certain information to the Department. The current Recordkeeping and Reporting Requirements for discretionary grants has approval through December 31, 2023. We are requesting an extension of this approval.

**Stephanie Valentine,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2023–15172 Filed 7–17–23; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Regional Advisory Committees

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Request for additional nominations to serve on the Regional Advisory Committee: Pacific.

**SUMMARY:** The Secretary of Education (Secretary) invites interested parties to submit nominations for individuals for appointment to serve on the Regional Advisory Committee (RAC): Pacific.

**DATES:** Nominations for additional appointment of individuals to serve on the Pacific RAC must be submitted by July 24, 2023, 2023.

**ADDRESSES:** You may submit nominations, including attachments, to the Secretary by the following method:

• Electronically via electronic mail to *OESE.RAC@ed.gov* (please indicate ''Regional Advisory Committee Nomination: Pacific'' in the email subject line).

**Privacy Act Statement**

*Purpose:* The purpose of collecting nomination information is for the Secretary to consult with and seek nomination recommendations from the chief executive officers of States, chief State school officers, and education stakeholders within the Regional Advisory Committee's region on individuals for appointment for membership on a RAC. The nomination information will be used to evaluate, select, and appoint individuals for membership on the Pacific RAC and to conduct necessary ethics vetting and ethics training for nominees who are appointed to the RAC. Finally, the nomination information will be used to communicate with nominees and, if appointed, with appointees to conduct the business of the RACs.

*Authorities:* The collection of the nomination information is authorized by the Educational Technical Assistance Act of 2002 (ETAA) (Pub. L. 107–279; 20 U.S.C. 9605); 5 U.S.C. 301; Pub. L. 95–521, Ethics in Government Act of 1978; Pub. L. 101–194, Ethics Reform Act of 1989, as amended; and Executive Orders 12674, 12565, and 11222, as amended. The Regional Advisory Committees are also governed by the provisions of 5 U.S.C. chapter 10 (Federal Advisory Committees).

*Routine Use Disclosures:* Although the Department does not otherwise anticipate nonconsensually disclosing the information you provide outside of the Department, the Department may nonconsensually disclose such information pursuant to the published routine uses described in the following System of Records Notices: ''Secretary's Communications Control System'' (18–01–01), ''Employee Conduct—Government Ethics'' (18–09–03), and ''Executive Branch Confidential Financial Disclosure Reports'' (OGE/GOVT–2), the most recent versions of which are located on the Department's ''Privacy Act System of Record Notice Issuances (SORN)'' web page at *www2.ed.gov/notices/ed-pia.html.*

Consequences of Failure to Provide Information: Submitting nominations with the requested information in response to this notice is voluntary. You are not required to provide the personally identifiable information requested; however, if you do not, the Department may not be able to consider the nominee for membership on a RAC.

**FOR FURTHER INFORMATION CONTACT:** Michelle Daley, Group Leader, Comprehensive Centers Group, Office of Program and Grantee Support Services, U.S. Department of Education. Telephone: 202–987–1057. Email: *OESE.RAC@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

**SUPPLEMENTARY INFORMATION:** On April 11, 2023, the Secretary published a Request for nominations to serve on the Regional Advisory Committees (88 FR 21659). The deadline for submitting nominations was May 11, 2023. After reviewing the received nominations, the Secretary is requesting additional nominations of individuals from specific categories from the Pacific region for appointment to the Pacific Regional Advisory Committee for the purpose of regional representation and balance of Committee composition. The Pacific region includes American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Hawaii, Palau, and Republic of the Marshall Islands.

The Secretary is establishing the RACs, one for each region served by the Regional Educational Laboratories, in order to collect information on the education needs of each region and how those needs may be addressed through technical assistance activities provided by comprehensive centers described in section 203 of the Educational Technical Assistance Act (ETAA). Comprehensive centers provide training, professional development, and technical assistance to State educational agencies (SEAs), local educational agencies (LEAs), regional educational agencies, and schools in the region where the center is located for assistance with school improvement activities and to disseminate and provide information, reports, and publications that can be used for improving academic achievement, closing achievement gaps, and encouraging and sustaining school improvement (as described in section 1111(d) of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6311(d))), to schools, educators, parents, and policymakers within the region in which the center is located.

In choosing individuals for membership on the RACs, the Secretary is also seeking recommendations from the chief executive officers of States, chief State school officers, and education stakeholders within each region served by the Regional Educational Laboratories.

The RACs will seek input regarding the need for the technical assistance activities described in section 203 of the ETAA and how those needs would be most effectively addressed. In order to achieve this purpose, the RACs will seek input from chief executive officers of States; chief State school officers; and, through processes which may include open hearings to solicit the views and needs of schools (including public charter schools), educators, parents, teachers, administrators, members of the regional educational laboratory governing board, LEAs, librarians, businesses, SEAs, and other customers (such as adult education programs) within the region regarding the need for the activities described in 20 U.S.C. 9564 and 9602 and how those needs would be most effectively addressed.

Not later than 6 months after each RAC is first convened, it will submit a report to the Secretary based on the assessment of education needs within each region to be served. Each report will contain an analysis of the needs of the region and technical advice to the Secretary on how to most effectively address those needs. Under section 207 of the ETAA, the Secretary shall establish priorities for the comprehensive centers to address, taking into account these regional assessments and other relevant regional surveys of education needs to the extent the Secretary deems appropriate.

Section 206(b) of the ETAA requires that the membership of each RAC contain a balanced representation of States in the region and include not more than one representative of each SEA geographically located in the region. The membership of each RAC may include the following: representatives of LEAs, both rural and urban; representatives of institutions of higher education, including those that represent university-based research on education and subjects other than education; parents; practicing educators, including classroom teachers, principals, administrators, school board members, and other local school officials; representatives of business; and researchers. Each RAC will be comprised of not more than 25 members.

**Nomination Process**

Any interested person or organization may nominate one or more qualified individual for membership to serve on the Pacific RAC. Please be sure to use the information noted in the **ADDRESSES** section of this notice and indicate ''Regional Advisory Committee Nomination: Pacific'' in the subject line. If you would like to nominate an individual or yourself for appointment to serve on the Pacific RAC, please submit the following information:

(a) A cover letter addressed to Honorable Miguel Cardona, Secretary of Education. Please provide in the cover letter, the reason(s) the nominated individual is interested in being selected as a nominee for appointment by the Secretary to serve on the Pacific RAC.

Attachments:

(b) A copy of the nominee's resume/curriculum vitae;

(c) Contact information for the nominee (name, title, mailing address, phone number, and email address); and

(d) The group(s) the nominee may qualify to represent from the following categories (list all that apply):

(1) LEA, including:

(i) Rural LEA.

(ii) Urban LEA.

(2) Practicing educator.

(i) Classroom teacher.

(ii) School principal.

(iii) Other school administrator.

(iv) School board member.

(v) Other local school official.

(3) Parent.

In addition, the cover letter must state that the nominee (if you are nominating someone other than yourself) has agreed to be nominated and is willing to serve, if appointed, on the Pacific RAC.

Nominees will be appointed based on technical qualifications, professional experience, demonstrated knowledge of issues, demonstrated experience, integrity, impartiality, and good judgment.

The Secretary seeks additional nominations for the following RAC region: Pacific (American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Hawaii, Palau, and Republic of the Marshall Islands).

**Appointment**

The Secretary will appoint members for the life of the Committee, which will span not more than 6 months. The Committee will meet at least two times during this period. In the event an individual is appointed by the Secretary to fill a vacancy occurring prior to the expiration of the full term, the RAC member will be appointed to complete the remaining term of service. All appointed RAC members will serve without compensation.

Each RAC may be comprised of both representatives of organizations or recognizable groups of persons and Special Government Employees (SGEs). Representative members will not provide their own personal or independent advice based on their own individual expertise and experience, but rather, gather and synthesize information and the views of stakeholders they represent. SGE members will be chosen for their individual expertise, qualifications, and experiences; they will provide technical advice and recommendations based on their independent judgment and will not be speaking for, or representing the views of, any nongovernmental organization or recognizable group of persons.

*Accessible Format:* Upon request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

*Electronic Access to This Document:* The official version of this document is published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site, you can view this document, as well as other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Miguel A. Cardona,**

*Secretary of Education.*

[FR Doc. 2023–15120 Filed 7–17–23; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Official Name of Committee: Nuclear Energy Advisory Committee

**AGENCY:** Office of Nuclear Energy, Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces an open meeting of the Nuclear Energy Advisory Committee. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, August 9, 2023; 9:00 a.m.–4:00 p.m.

**ADDRESSES:** U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Robert Rova, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585; (202) 586–4290; *Robert.Rova@nuclear.energy.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* The Nuclear Energy Advisory Committee provides advice and recommendations to the Assistant Secretary for Nuclear Energy on national policy and scientific aspects of nuclear issues of concern to DOE.

*Purpose of Meeting:* The Nuclear Energy Advisory Committee will hold a meeting on August 9, 2023, to discuss committee priorities and proposed recommendations for the Assistant Secretary for Nuclear Energy.

*Tentative Agenda:* The meeting is expected to include presentations that provide the committee updates on activities for the Office of Nuclear Energy. The agenda may change to accommodate committee business. For updates, one is directed the NEAC website: *https://www.energy.gov/ne/services/nuclear-energy-advisory-committee.*

*Public Participation:* Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Robert Rova at the address or telephone listed above. Requests for an oral statement must be received at least five days prior to the meeting. Reasonable provision will be made to include requested oral statements in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by contacting Robert Rova at the address or phone number listed above. Minutes will also be available at the following website: *https://www.energy.gov/ne/nuclear-energy-advisory-committee.*

Signed in Washington, DC, on July 12, 2023.

**LaTanya Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2023–15113 Filed 7–17–23; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### National Nuclear Security Administration

### Molybdenum-99 Stakeholders Meeting

**AGENCY:** National Nuclear Security Administration (NNSA), Department of Energy (DOE).

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces an NNSA Molybdenum-99 (Mo-99) Stakeholders Meeting. This meeting will be held in a hybrid format.

**DATES:** Tuesday, August 29, 2023, 9:00 a.m.-5:00 p.m.

**ADDRESSES:** The meeting will be held in a hybrid format. Attendees can attend virtually via webcast using Zoom. Instructions for Zoom, as well as any updates to meeting times or agenda, can be found on the Mo-99 Stakeholders Meeting website at *https://mo99.ne.anl.gov/2023stakeholders/.* Attendees can also join in-person at the Crystal City Marriott at Reagan National Airport, located at 1999 Richmond Hwy, Arlington, VA 22202. In-person attendance requires registration and is subject to conference room space limits, as described in the ‘‘Public Participation’’ section.

**FOR FURTHER INFORMATION CONTACT:** Max Postman, Office of Conversion, *OfficeofConversion@nnsa.doe.gov* or (202) 586–9114.

**SUPPLEMENTARY INFORMATION:**

#### Purpose of the Meeting

The American Medical Isotopes Production Act of 2012 (AMIPA) (Subtitle F, Title XXXI of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–139)), enacted on January 2, 2013, directs the Secretary of Energy to carry out a technology-neutral program to support the domestic production of the medical isotope molybdenum-99 (Mo-99) without the use of highly enriched uranium. As part of this program, AMIPA requires DOE to develop a program plan and annually update the program plan through public workshops. NNSA implements this requirement through the Mo-99 Stakeholders Meeting.

#### Tentative Agenda

- U.S. Government Mo-99 Program and Regulatory Updates
- Mo-99 Producer Updates
- U.S. Mo-99 Supply Status—Industry Perspectives
- Open Discussion and Q&A

#### Public Participation

The meeting is open to the public. Seating for in-person attendees may be limited; attendees can request registration for virtual or in-person attendance via *https://mo99.ne.anl.gov/2023stakeholders/* no later than 4:00 p.m. ET on Monday, August 21, 2023. If the number of in-person registrants exceeds the available space, NNSA will inform the affected registrants of the need to attend virtually rather than in-person. NNSA welcomes the attendance of the public at the Mo-99 Stakeholders Meeting and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please include that information in your online registration submission.

#### Signing Authority

This document of the Department of Energy was signed on July 12, 2023, by Joan Dix, Deputy Director, Office of Conversion, Office of Defense Nuclear Nonproliferation, National Nuclear Security Administration, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 12, 2023.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S. Department of Energy.*

[FR Doc. 2023–15148 Filed 7–17–23; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER23–2368–000]**

### Derby Fuel Cell, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Derby Fuel Cell, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 1, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: July 12, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–15180 Filed 7–17–23; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER23–2363–000]**

### HXOap Solar One, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of HXOap Solar One, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 1, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: July 12, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–15183 Filed 7–17–23; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas and Oil Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP23–887–000.
*Applicants:* Columbia Gulf Transmission, LLC.
*Description:* Compliance filing: Petition for Approval of Stipulation and Agreement of Settlment to be effective N/A.
*Filed Date:* 7/7/23.
*Accession Number:* 20230707–5134.
*Comment Date:* 5 p.m. ET 7/19/23.

*Docket Numbers:* RP23–888–000.
*Applicants:* Texas Eastern Transmission, LP.
*Description:* § 4(d) Rate Filing: Negotiated Rates—UGI to Colonial 8984390 eff 7–8–23 to be effective 7/8/2023.
*Filed Date:* 7/10/23.
*Accession Number:* 20230710–5031.
*Comment Date:* 5 p.m. ET 7/24/23.

*Docket Numbers:* RP23–889–000.
*Applicants:* Algonquin Gas Transmission, LLC.
*Description:* § 4(d) Rate Filing: AGT Name Change Cleanup July 2023 to be effective 8/10/2023.
*Filed Date:* 7/10/23.
*Accession Number:* 20230710–5033.
*Comment Date:* 5 p.m. ET 7/24/23.

*Docket Numbers:* RP23–890–000.
*Applicants:* Maritimes & Northeast Pipeline, L.L.C.
*Description:* § 4(d) Rate Filing: MNUS Name Change Clean Up Filing July 2023 to be effective 8/10/2023.
*Filed Date:* 7/10/23.
*Accession Number:* 20230710–5034.
*Comment Date:* 5 p.m. ET 7/24/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

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.

*Dated:* July 10, 2023.

For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: July 10, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–15116 Filed 7–17–23; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas and Oil Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP23–892–000.
*Applicants:* Ruby Pipeline, L.L.C.
*Description:* § 4(d) Rate Filing: RP 2023–07–11 Rate Schedule and GT&C Revisions to be effective 8/11/2023.
*Filed Date:* 7/11/23.
*Accession Number:* 20230711–5100.
*Comment Date:* 5 p.m. ET 7/24/23.

*Docket Numbers:* RP23–893–000.
*Applicants:* Wyoming Interstate Company, L.L.C.
*Description:* Compliance filing: Diamond Mountain Implementation Filing in Docket No. CP23–14 to be effective 9/1/2023.
*Filed Date:* 7/11/23.
*Accession Number:* 20230711–5131.
*Comment Date:* 5 p.m. ET 7/24/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: July 12, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–15182 Filed 7–17–23; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2579–065]**

### Michigan Indiana Power Company; Notice of Availability of Final Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for non-project use dredging for the Twin Branch Hydroelectric Project No. 2579, located on the St. Joseph River in St. Joseph County, Indiana, and has prepared a Final Environmental Assessment (FEA) for the project. The project does not occupy Federal lands.

The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that permitting the proposed dredging, with appropriate environmental protective measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

A copy of the FEA may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (2579) excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208- 3676 (toll free), or (202) 502–8659 (TTY). 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, contact FERC Online Support.

For further information, contact Jason Krebill at (202) 502–8268 or *Jason.Krebill@ferc.gov,* or Michael Calloway at (202) 502–8041 or *Michael.Calloway@ferc.gov.*

Dated: July 12, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–15179 Filed 7–17–23; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER21–2449–004.
*Applicants:* Assembly Solar II, LLC.
*Description:* Compliance filing: Revised Rate Schedules to be effective 10/1/2021.
*Filed Date:* 7/10/23.
*Accession Number:* 20230710–5064.
*Comment Date:* 5 p.m. ET 7/31/23.

*Docket Numbers:* ER23–2218–001.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Tariff Amendment: Correction to Amendment to ISA & ICSA, SA Nos. 6606 & 6607; Queue No. AD1–022 to be effective 8/23/2023.
*Filed Date:* 7/10/23.
*Accession Number:* 20230710–5057.
*Comment Date:* 5 p.m. ET 7/31/23.

*Docket Numbers:* ER23–2362–000.
*Applicants:* MidAmerican Energy Company.
*Description:* Notice of Termination of Interconnection Agreement of MidAmerican Energy Company.
*Filed Date:* 7/7/23.
*Accession Number:* 20230707–5254.
*Comment Date:* 5 p.m. ET 7/28/23.

*Docket Numbers:* ER23–2363–000.
*Applicants:* HXOap Solar One, LLC.
*Description:* Baseline eTariff Filing: HXOap Solar One, LLC—MBR Application to be effective 8/28/2023.
*Filed Date:* 7/10/23.
*Accession Number:* 20230710–5035.
*Comment Date:* 5 p.m. ET 7/31/23.

Take notice that the Commission received the following qualifying facility filings:

*Docket Numbers:* QF23–1099–000.
*Applicants:* Generate NB Fuel Cells, LLC.
*Description:* Form 556 of Generate NB Fuel Cells, LLC.
*Filed Date:* 7/10/23.
*Accession Number:* 20230710–5092.
*Comment Date:* 5 p.m. ET 7/31/23.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

*Docket Numbers:* QM23–6–000.
*Applicants:* Golden Spread Electric Cooperative, Inc.
*Description:* Application of Golden Spread Electric Cooperative, Inc. to Terminate Its Mandatory Purchase Obligation under the Public Utility Regulatory Policies Act of 1978.
*Filed Date:* 7/7/23.
*Accession Number:* 20230707–5253.
*Comment Date:* 5 p.m. ET 8/4/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Dated:* July 10, 2023.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.*

Dated: July 10, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–15115 Filed 7–17–23; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER23–883–001; ER10–1852–080; ER10–1951–056; ER10–1971–036; ER10–2641–046; ER11–4462–079; ER16–1277–016; ER16–1293–016; ER16–1354–015; ER16–1913–013; ER19–774–011; ER19–2266–009; ER19–2269–009; ER21–254–008; ER21–255–008; ER21–1506–007; ER21–1519–006; ER21–1532–006; ER21–1682–006.
*Applicants:* Elora Solar, LLC, Quitman II Solar, LLC, Cool Springs Solar, LLC, Shaw Creek Solar, LLC, Taylor Creek Solar, LLC, Harmony Florida Solar, LLC, Dougherty County Solar, LLC, Quitman Solar, LLC, Stanton Clean Energy, LLC, River Bend Solar, LLC, Live Oak Solar, LLC, White Oak Solar, LLC, White Pine Solar, LLC, NEPM II, LLC, Oleander Power Project, Limited Partnership, NextEra Energy Power Marketing, LLC, NextEra Energy Services Massachusetts, LLC, Florida Power & Light Company, Bell Ridge Solar, LLC.
*Description:* Triennial Market Power Analysis for Southeast Region of Bell Ridge Solar, LLC, et al.
*Filed Date:* 6/30/23.
*Accession Number:* 20230630–5499.
*Comment Date:* 5 p.m. ET 8/29/23.

*Docket Numbers:* ER23–2075–001.
*Applicants:* FirstEnergy Service Company, PJM Interconnection, L.L.C.
*Description:* Tariff Amendment: FirstEnergy Service Company submits

tariff filing per 35.17(b): FirstEnergy submits Amendment of OIA, Service Agreement No. 2853 to be effective 8/5/2023.

*Filed Date:* 7/11/23.

*Accession Number:* 20230711–5138.

*Comment Date:* 5 p.m. ET 8/1/23.

*Docket Numbers:* ER23–2369–000.

*Applicants:* Wildflower Solar 3 LLC.

*Description:* Baseline eTariff Filing: Certificate of Concurrence to be effective 9/6/2023.

*Filed Date:* 7/11/23.

*Accession Number:* 20230711–5124.

*Comment Date:* 5 p.m. ET 8/1/23.

*Docket Numbers:* ER23–2370–000.

*Applicants:* Oklahoma Gas and Electric Company, Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: Oklahoma Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii: Submission of Revisions to the FRT of OGE to Incorp Changes Accepted in ER23–597 to be effective 2/11/2023.

*Filed Date:* 7/11/23.

*Accession Number:* 20230711–5130.

*Comment Date:* 5 p.m. ET 8/1/23.

*Docket Numbers:* ER23–2371–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Original IISA, SA No. 6987 and ICSA, SA No. 6988; Queue No. AF1–129 to be effective 6/15/2023.

*Filed Date:* 7/12/23.

*Accession Number:* 20230712–5005.

*Comment Date:* 5 p.m. ET 8/2/23.

*Docket Numbers:* ER23–2372–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2023–07–12_SA 3497 Duke Energy-Fairbanks Solar Energy 1st Rev GIA (J829) to be effective 6/30/2023.

*Filed Date:* 7/12/23.

*Accession Number:* 20230712–5026.

*Comment Date:* 5 p.m. ET 8/2/23.

*Docket Numbers:* ER23–2373–000.

*Applicants:* Public Service Company of Oklahoma.

*Description:* § 205(d) Rate Filing: PSO–AEPOTC–WFEC Amended and Restated Doxey Delivery Point Agreement to be effective 6/20/2023.

*Filed Date:* 7/12/23.

*Accession Number:* 20230712–5031.

*Comment Date:* 5 p.m. ET 8/2/23.

*Docket Numbers:* ER23–2374–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Original ISA/CSA, Service Agreement Nos. 6990 and 6991; Queue No. AE2–166 to be effective 9/11/2023.

*Filed Date:* 7/12/23.

*Accession Number:* 20230712–5045.

*Comment Date:* 5 p.m. ET 8/2/23.

*Docket Numbers:* ER23–2376–000.

*Applicants:* Horus West Virginia I, LLC.

*Description:* Baseline eTariff Filing: Horus West Virginia I, LLC MBR Application Filing to be effective 9/11/2023.

*Filed Date:* 7/12/23.

*Accession Number:* 20230712–5103.

*Comment Date:* 5 p.m. ET 8/2/23.

*Docket Numbers:* ER23–2377–000.

*Applicants:* Southwestern Electric Power Company.

*Description:* Informational Filing regarding Construction Work in Progress Expenditures of Southwestern Electric Power Company.

*Filed Date:* 7/12/23.

*Accession Number:* 20230712–5154.

*Comment Date:* 5 p.m. ET 8/2/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

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Dated: July 12, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–15181 Filed 7–17–23; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL 11153–01–OLEM]**

## Access to Confidential Business Information by Industrial Economic, Inc.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of access to data and request for comments.

**SUMMARY:** EPA will authorize its contractor, Industrial Economics, Inc. (IEc) to access Confidential Business Information (CBI) which has been submitted to EPA under the authority of all sections of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended. EPA has issued regulations that outline business confidentiality provisions for the Agency and require all EPA Offices that receive information designated by the submitter as CBI to abide by these provisions.

**DATES:** Access to confidential data submitted to EPA will occur no sooner than July 28, 2023.

**FOR FURTHER INFORMATION CONTACT:** LaShan Haynes, Document Control Officer, Office of Resource Conservation and Recovery, (5305T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, 202–566–0186.

**SUPPLEMENTARY INFORMATION:**

### 1. Access to Confidential Business Information

Under EPA Contract 68HERC23D0020, IEc will assist EPA's Office of Civil Enforcement and the Crosscutting Policy Staff in conducting financial and economic analyses in civil enforcement actions. Under the contract, IEc, will review tax returns, financial statements, and other financial information that may be claimed as RCRA CBI. This information will be used to advise case teams on the appropriate civil penalty in enforcement actions. This includes, but is not limited to, when a party claims an inability to pay a civil penalty or where there is a complex economic benefit of noncompliance calculation. The contract period is from April 3, 2023, to April 24, 2028. In accordance with the provisions of 40 CFR part 2, subpart B, ORCR has established policies and procedures for handling information collected from industry, under the authority of RCRA, including RCRA CBI Security Manual.

IEc shall protect from unauthorized disclosure all information designated as confidential and shall abide by all RCRA CBI requirements, including procedures outlined in the RCRA CBI Security Manual.

The U.S. Environmental Protection Agency has issued regulations (40 CFR part 2, subpart B) that outline business confidentiality provisions for the Agency and require all EPA Offices that receive information designated by the submitter as CBI to abide by these provisions. Industrial Economics will be authorized to have access to RCRA CBI under the EPA ''Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual.''

EPA is issuing this notice to inform all submitters of information under all sections of RCRA that EPA will provide IEc access to the CBI records located in the RCRA Confidential Business Information Center. Access to RCRA CBI under this contract will take place at IEc and EPA Headquarters only. Contractor personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to confidential information. If you have questions regarding this action consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

Dated: July 10, 2023.

**Carolyn Hoskinson,**

*Director, Office of Resource Conservation & Recovery.*

[FR Doc. 2023–15167 Filed 7–17–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6464.1–01–R10]**

## Proposed Modification of National Pollutant Discharge Elimination System General Permit for Concentrated Animal Feeding Operations Located in Idaho (IDG010000)

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed modification of NPDES general permit and request for public comment.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 10 proposes to modify the National Pollutant Discharge Elimination System (NPDES) general permit for concentrated animal feeding operations (CAFOs) in Idaho excluding Tribal lands (Permit). EPA proposes to modify the Permit to establish monitoring conditions for the subsurface discharges of pollutants from production areas and dry weather surface and subsurface discharges from land application areas at these CAFOs to waters of the United States. A Petition for Review was filed on September 22, 2020, in the Ninth Circuit Court of Appeals challenging the Permit; the Court granted the petition. The modified permit includes new and revised conditions to address the Ninth Circuit Court of Appeal's Order and Opinion filed on December 16, 2021 (*Food & Water Watch et al.* v. *U.S. Environmental Protection Agency* (No. 20–71554)).

**DATES:** Comments must be received by September 1, 2023.

**ADDRESSES:** Comments and requests regarding the Modified Permit must be submitted to *epar10wd-npdes@epa.gov* with the subject line: Public Comments on IDG010000.

**FOR FURTHER INFORMATION CONTACT:** Permit documents may be found on the EPA Region 10 website at: *https://www.epa.gov/npdes-permits/npdes-general-permit-concentrated-animal-feeding-operations-cafos-idaho.*

Copies of the Modified Permit and fact sheet are also available upon request. Requests may be made to Audrey Washington at (206) 553–0523. Requests may also be electronically mailed to: *washington.audrey@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

The modification is a major modification pursuant to 40 CFR 122.62(a)(15). EPA Region 10 reissued the NPDES General Permit for CAFOs in Idaho (IDG010000) on May 13, 2020; the Permit became effective on June 15, 2020 (85 FR 28624). Subsequently, a Petition for Review was filed on September 22, 2020, in the Ninth Circuit Court of Appeals, challenging the Permit on the basis that it did not contain representative effluent monitoring to ensure compliance with all applicable effluent limitations in violation of the Clean Water Act and implementing regulations (*Food & Water Watch et al* v. *U.S. Environmental Protection Agency* (No. 20–71554). The Court granted the petition holding that the Permit failed to include monitoring to ensure compliance with the discharge prohibitions in the Permit. The Modified Permit includes new and revised conditions to address the Ninth Circuit Court of Appeal's Order and Opinion filed on December 16, 2021 (*Food & Water Watch et al.* v. *U.S. Environmental Protection Agency* (No. 20–71554)).

### II. Other Legal Requirements

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review. Compliance with Endangered Species Act, Essential Fish Habitat, Paperwork Reduction Act, and other requirements are discussed in the original 2019 Fact Sheet to the permit.

**Michael J. Szerlog,**

*Acting Director, Water Division, Region 10.*

[FR Doc. 2023–15163 Filed 7–17–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OGC–2023–0367; FRL–11167–01–OGC]**

## Proposed Settlement Agreement, Clean Water Act and Administrative Procedure Act Claims

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed settlement agreement; request for public comment.

**SUMMARY:** In accordance with the Environmental Protection Agency (EPA) Administrator's March 18, 2022, memorandum regarding ''Consent Decrees and Settlement Agreements to resolve Environmental Claims Against the Agency,'' notice is hereby given of a proposed settlement agreement that would resolve *Gunpowder Riverkeeper* v. *Regan, et al.,* No. 1:20–cv–02063 (D.D.C.). On July 29, 2020, Gunpowder Riverkeeper (Plaintiff) filed a complaint in the United States District Court for the District of Columbia alleging that EPA's approval of Maryland's submission of Total Maximum Daily Loads of Polychlorinated Biphenyls (PCB TMDLs) for the Gunpowder and Bird Rivers was arbitrary and capricious in violation of the Administrative Procedure Act (APA). EPA seeks public input on a proposed settlement agreement prior to its final decision-making with regard to potential settlement of the litigation.

**DATES:** Written comments on the proposed settlement agreement must be received by August 17, 2023.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2023–0367 online at *https://www.regulations.gov* (EPA's preferred method). Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID number for this action. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments, see the ''Additional Information About Commenting on the Proposed Settlement Agreement'' heading under the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Alec Mullee, Water Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone: (202) 564–9616; email address: *mullee.alec@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Additional Information About the Proposed Settlement Agreement

A TMDL is the maximum amount of a pollutant that could enter a waterbody without causing a violation of water quality standards. The Clean Water Act (CWA) requires states to submit TMDLs for impaired waters to EPA for approval or disapproval. The Maryland Department of the Environment (MDE) listed the Gunpowder River and the Bird River as impaired for PCBs in fish tissue in 2006 and 2008, respectively. In 2015, MDE established PCB TMDLs concerning those impairments. In 2016, EPA approved the PCB TMDLs.

In July 2020, Plaintiff filed a lawsuit challenging EPA's approval. In October 2021, EPA and Plaintiff jointly requested the court to hold the case in abeyance so that they could engage in settlement negotiations. In the proposed settlement, EPA would agree to begin fish tissue sampling in specified areas by December 1, 2023; to make the results of the sampling available on its website and submit them to MDE; and to hold a public meeting on PCB TMDL implementation by March 30, 2026 if neither MDE nor Baltimore County does so by September 30, 2025.

For a period of thirty (30) days following the date of publication of this notice, EPA will accept written comments relating to the proposed settlement agreement from persons who are not parties to the litigation. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments received disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the CWA or APA.

## II. Additional Information About Commenting on the Proposed Settlement Agreement.

*A. How can I get a copy of the proposed settlement agreement?*

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2023–0367) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

The electronic version of the public docket for this action contains a copy of the proposed settlement agreement and is available through *https://www.regulations.gov.* You may use *https://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.''

*B. How and to whom do I submit comments?*

Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2023–0367 via *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *https://www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA does not plan to consider these late comments.

**Steven Neugeboren,**

*Associate General Counsel.*

[FR Doc. 2023–15110 Filed 7–17–23; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–10152–04–R10]**

## Proposed Reissuance of National Pollutant Discharge Elimination System (NPDES) General Permit for Federal Aquaculture Facilities and Aquaculture Facilities Located in Indian Country in Washington (WAG130000)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed reissuance of NPDES General Permit and request for public comment.

**SUMMARY:** On September 7, 2022, EPA Region 10 proposed to reissue a general

permit for Federal Aquaculture Facilities and Aquaculture Facilities Located in Indian Country in Washington. In response to requests from the regulated community, EPA extended the end of the public comment period from November 7 to December 22, 2022. With this document, EPA is initiating a second public comment period focused exclusively on four changes made to the General Permit.

**DATES:** Comments must be received by September 1, 2023.

**ADDRESSES:** Comments and requests regarding the draft general permit must be submitted to *epar10wd-npdes@epa.gov* with the subject line: Public Comments on WAG130000.

**FOR FURTHER INFORMATION CONTACT:** Permit documents may be found on the EPA Region 10 website at: *https://www.epa.gov/npdes-permits/npdes-general-permit-federal-aquaculture-facilities-and-aquaculture-facilities-located.*

Copies of the draft general permit and fact sheet are also available upon request. Requests may be made to Audrey Washington at (206) 553–0523. Requests may also be electronically mailed to: *washington.audrey@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The comment period for the notice of proposed reissuance of NPDES General Permit published September 7, 2022 (87 FR 54688), was extended to December 22, 2022 (November 2, 2022, 87 FR 66178). EPA is initiating a second public comment period focused exclusively on four changes made to the General Permit:

1. Inclusion of Soluble Reactive Phosphorus (SRP) effluent limits for the White River Hatchery (existing) and the proposed Coal Creek Springs Fish Facility (planned) based on the Lower White River pH Total Maximum Daily Load (TMDL), approved by EPA on January 13, 2023.

2. Changes to temperature monitoring requirements for facilities discharging to temperature impaired rivers.

3. The frequency and timing of PCB monitoring for facilities on the Spokane Reservation based on the Spokane Tribe of Indians 401 certification.

4. Adjustment of the Temperature Compliance Schedule Length and Milestones for Skookum Creek Hatchery.

**Michael J. Szerlog,**

*Acting Director, Water Division, Region 10.*

[FR Doc. 2023–15193 Filed 7–17–23; 8:45 am]

BILLING CODE 6560–50–P

## EXPORT-IMPORT BANK

**[Public Notice: EIB–2023–0006]**

### Receipt of Request To Increase the Amount of the Long-Term General Guarantee on the Interest of Secured Notes Issued by the Private Export Funding Corporation (PEFCO)

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Notice.

**SUMMARY:** This Notice is to inform the public that Export-Import Bank of the United States (''EXIM'') is expected to consider one or more requests to increase the amount of the long-term general guarantee on the interest of Secured Notes issued by the Private Export Funding Corporation (PEFCO). Comments received within the comment period specified below will be presented to the EXIM Board of Directors prior to any final action during the fiscal year ending on September 30, 2023.

**DATES:** Comments must be received on or before August 14, 2023 to be assured of consideration before any final decision on one or more additional guarantees during the course of fiscal year 2023.

**ADDRESSES:** Comments may be submitted through *Regulations.gov* at *WWW.REGULATIONS.GOV.* To submit a comment, enter EIB–2023–0006 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any), and EIB–2023–0006 on any attached document.

**SUPPLEMENTARY INFORMATION:**

**Reference: AP003048AA**

*Brief Description of Nature and Purpose of the Facility:* EXIM may consider one or more general guarantees on the interest of Secured Notes issued by the Private Export Funding Corporation (PEFCO), in accordance with both the Guarantee and Credit Agreement, as Amended, and the Guarantee Agreement between EXIM and PEFCO. The purpose of the guarantees of interest on the Secured Notes is to facilitate private funding from the U.S. capital markets for EXIM-guaranteed export finance transactions.

*Total Amount of Guarantees:* The exact number is not determinable due to market-determined pricing and uncertainty as to the amount and timing of Secured Notes to be issued; however, it could potentially be in excess of $100 million for Secured Notes issued during the course of fiscal year 2023.

*Reasons for the Facility and Methods of Operation:* The general guarantee serves to guarantee interest on PEFCO's issuance of Secured Notes. The principal amount of the Secured Notes is secured by a collateral pool of U.S. government-risk debt and securities, including EXIM-guaranteed loans. The proceeds from the Secured Notes are used to fund additional EXIM-guaranteed loans and provide a liquid secondary market for EXIM-guaranteed loans.

*Party Requesting Guarantee:* Private Export Funding Corporation (PEFCO)

*Information on Decision:* Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *https://www.exim.gov/news/meeting-minutes.*

**Joyce B. Stone,**

*Assistant Corporate Secretary.*

[FR Doc. 2023–15096 Filed 7–17–23; 8:45 am]

BILLING CODE 6690–01–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

**[OMB No. 3064–0210]**

### Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collection described below (OMB Control No. 3064–0210).

**DATES:** Comments must be submitted on or before September 18, 2023.

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following methods:

• *Agency website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*

• *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.

• *Mail:* Jennifer Jones (202–898–6768), Regulatory Counsel, MB–3078, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Jones, Regulatory Counsel, 202–898–6768, *jennjones@fdic.gov,* MB–3078, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:** Proposal to renew the following currently approved collection of information:

1. *Title:* Reporting Requirements Associated with Resolution Planning.

*OMB Number:* 3064–0210.

*Forms:* None.

*Affected Public:* Covered Companies as defined in 12 CFR part 381.

*Burden Estimate:*

TABLE 1—SUMMARY OF ESTIMATED ANNUAL BURDEN

[(OMB No. 3064–0210]

| Information collection (obligation to respond) | Type of burden (frequency of response) | Number of respondents | Number of responses per respondent | Time per response (HH:MM) | Annual burden (hours) |
|---|---|---|---|---|---|
| 12 CFR 381.4(a)—Biennial Filers—Domestic | Reporting (Biennial) | 4 | 1 | 40,115:00 | 160,460 |
| 12 CFR 381.4(b)—Triennial Full—Complex Foreign. | Reporting (Triennial) | 1 | 1 | 9,916:00 | 9,916 |
| 12 CFR 381.4(b)—Triennial Full—Foreign and Domestic. | Reporting (Triennial) | 7 | 1 | 5,667:00 | 39,669 |
| 12 CFR 381.4(c)—Triennial Reduced | Reporting (Triennial) | 27 | 1 | 20:00 | 540 |
| 12 CFR 381.4(d)(6)(ii)—Waivers by Covered Companies. | Reporting (On occasion) | 1 | 1 | 1:00 | 1 |
| *Total Annual Burden (Hours):* | | | | | *210,586* |

*General Description of Collection:* This collection comprises the reporting requirements associated with 12 CFR part 381.[1] Section 381 implements the resolution planning requirements of section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act),[2] which require certain financial companies (covered companies) to report periodically to the FDIC and the Board of Governors of the Federal Reserve System (Board) (together, the agencies) their plans for rapid and orderly resolution under the U.S. Bankruptcy Code[3] in the event of material financial distress or failure. The goal of the Dodd-Frank Act resolution planning process is to help ensure that a covered company's failure would not have serious adverse effects on financial stability in the United States. The resolution planning process requires covered companies to demonstrate that they have adequately assessed the challenges that their structures and business activities pose to a rapid and orderly resolution in the event of material financial distress or failure and that they have taken action to address those challenges, including through the development of capabilities appropriate to the covered company's size and complexity.

[1] 12 CFR part 381.

[2] 12 U.S.C. 5365(d).

[3] 11 U.S.C. 101-1532.

There is no change in the method or substance of the collection. The 7,254-hour increase in burden hours is a result of an increase in the number of entities subject to the information collection.

## Request for Comment

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, 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. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on July 12, 2023.

**James P. Sheesley,**

*Assistant Executive Secretary.*

[FR Doc. 2023–15142 Filed 7–17–23; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL MARITIME COMMISSION

**[Docket No. FMC–2023–0014]**

## Agency Information Collection Activities: 60-Day Public Comment Request

**AGENCY:** Federal Maritime Commission.

**ACTION:** Sixty-Day notice; 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, the Federal Maritime Commission (Commission) invites comments on the information collection related to Licensing, Financial Responsibility Requirements and General Duties for Ocean Transportation Intermediaries and Related Forms. This notice announces a renewal of an existing collection and includes a minor update to the collection based on an increase in the number of entities required to respond.

**DATES:** Written comments must be submitted on or before September 18, 2023.

**ADDRESSES:** The Commission will collect comments on this notice through the Federal eRulemaking Portal at *www.regulations.gov.* The docket of this notice can be found at *https://www.regulations.gov/* under Docket No. FMC–2023–0014 The FMC will summarize any comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

**FOR FURTHER INFORMATION CONTACT:** William Cody, Secretary; Phone: (202) 523–5725; Email: *secretary@fmc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

The Commission, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing information collections listed in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice 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: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

### Information Collections Open for Comment

*Title:* 46 CFR 515—Licensing, Financial Responsibility Requirements and General Duties for Ocean Transportation Intermediaries and Related Forms.

*OMB Approval Number:* 3072–0018 (Expires Dec 31, 2023).

*Abstract:* The Shipping Act of 1984 (the Act), 46 U.S.C. 40101–41309, as amended, provides that no person in the United States may advertise, hold oneself out, or act as an ocean transportation intermediary (OTI) unless that person holds a license issued by the Commission. The Commission shall issue an OTI license to any person that the Commission determines to be qualified by experience and character to act as an OTI. Further, no person may act as an OTI unless that person furnishes a bond, proof of insurance, or other surety in a form and amount determined by the Commission to insure financial responsibility. The Commission has implemented the Act's OTI requirements in regulations contained in 46 CFR part 515, including financial responsibility Forms FMC–48, FMC–67, FMC–68, and FMC–69, Optional Rider Forms FMC–48A and FMC–69A, its related license application Form FMC–18, and the related foreign-based unlicensed NVOCC registration/renewal Form FMC–65. This update includes an increase in number of responses received. The burden estimated per response remains the same.

*Current Actions:* There are no changes to this information collection.

*Type of Review:* Extension.

*Needs and Uses:* The Commission uses information obtained under this part and through Form FMC–18 to determine the qualifications of OTIs and their compliance with the Act and regulations, and to enable the Commission to discharge its duties under the Act by ensuring that OTIs maintain acceptable evidence of financial responsibility. If the collection of information were not conducted, there would be no basis upon which the Commission could determine if applicants are qualified for licensing. The Commission would also not be able to effectively assess the compliance of foreign-based, unlicensed NVOCCs without the required registration information.

*Frequency:* This information will be collected on an ad hoc basis.

*Type of Respondents:* The types of respondents are persons desiring to obtain or maintain a license or registration to advertise, hold themselves out as, or act as an OTI. Under the Act, OTIs may be either an ocean freight forwarder, an NVOCC, or both.

*Number of Annual Respondents:* The 2020 notice stated that the number of respondents was 6,475. Due to an increase in the number of OTIs, the Commission estimates the new number of respondents as 10,130. The distribution of responses is as follows: 750 FMC–18 filings, 1,770 OTI License renewals, 5,160 FMC–48 filings, 50 FMC–69 filings,12 FMC–48A filings, 1,560 FMC–65 registration filings, and 830 FMC–65 renewals. The Commission does not anticipate receiving any filings of FMC–67, FMC–68, or FMC–69A based on experience in recent years and the estimate for these forms is zero, but wishes to renew these forms.

*Estimated Time per Response:* The average time per response to complete application Form FMC–18 is 2 hours and to complete the triennial renewal is 10 minutes. The time to complete a financial responsibility form (FMC–48, FMC–48A, FMC–67, FMC–68, FMC–69, or FMC–69A) averages 20 minutes. The time to complete Form FMC–65 to submit or renew a registration as a foreign-based, unlicensed NVOCC averages 15 minutes.

*Total Annual Burden:* 1,500 person-hours (Form FMC–18) + 1,720 person-hours (Form FMC–48) + 4 person-hours (Form FMC–48A) + 17 person-hours (Form FMC–69) + 598 person-hours (Form FMC 65 New/Renewal) + 295 person-hours (License Renewal) = 4,134 total person-hours. Total burden equals 4,134 hours.

**JoAnne O'Bryant,**

*Program Analyst.*

[FR Doc. 2023–15173 Filed 7–17–23; 8:45 am]

BILLING CODE 6730–02–P

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

## Notice of Board Meeting

**DATES:** July 25, 2023 at 10:00 a.m.

**ADDRESSES:** Telephonic. Dial-in (listen only) information: Number: 1–202–599–1426, Code: 596 608 956#; or via web: *https://teams.microsoft.com/l/meetup-join/19%3ameeting_MjdmNDA0ZmMtNDVlZC00YjNiLThhMDgtOWNiZjYwMWZiNzJi%40thread.v2/0?context=%7b%22Tid%22%3a%223f6323b7-e3fd-4f35-b43d-1a7afae5910d%22%2c%22Oid%22%3a%221a441fb8-5318-4ad0-995b-f28a737f4128%22%7d.*

**FOR FURTHER INFORMATION CONTACT:** Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

**SUPPLEMENTARY INFORMATION:**

### Board Meeting Agenda

*Open Session*

1. Approval of the June 27, 2023 Board Meeting Minutes
2. Monthly Reports
   (a) Participant Activity Report
   (b) Legislative Report
3. Quarterly Reports
   (c) Investment Review
   (d) Budget Review
   (e) Audit Status
4. Internal Audit Update

*Closed Session*

5. Information covered under 5 U.S.C. 552b (c)(9)(B) and (c)(10).

*Authority:* 5 U.S.C. 552b (e)(1).

Dated: July 12, 2023.

**Dharmesh Vashee,**

*General Counsel, Federal Retirement Thrift Investment Board.*

[FR Doc. 2023–15114 Filed 7–17–23; 8:45 am]

BILLING CODE P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**[Docket No. CDC–2023–0063]**

## Advisory Committee on Immunization Practices

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice and request for comment.

**SUMMARY:** In accordance with regulatory provisions, the Centers for Disease Control and Prevention (CDC) announces the following meeting of the Advisory Committee on Immunization Practices (ACIP). This meeting is open to the public. Time will be available for public comment.

**DATES:** The meeting will be held on August 3, 2023, 11 a.m. to 3:30 p.m., EDT (date and times subject to change; see the ACIP website for updates: *https://www.cdc.gov/vaccines/acip/index.htm*).

Written comments will be received July 19, 2023–August 2, 2023.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2023–0063, by either of the methods listed below. CDC does not accept comments by email.

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Ms. Stephanie Thomas, ACIP Meeting, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H24–8, Atlanta, Georgia 30329–4027. Attn: Docket No. CDC–2023–0063.

*Instructions:* All submissions received must include the Agency name and docket number. All relevant comments received in conformance with the *https://www.regulations.gov* suitability policy will be posted without change to *https://www.regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

The meeting will be webcast live via the World Wide Web. The webcast link can be found on the ACIP website at *https://www.cdc.gov/vaccines/acip/index.html.*

**FOR FURTHER INFORMATION CONTACT:**
Stephanie Thomas, Committee Management Specialist, Advisory Committee on Immunization Practices, National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H24–8, Atlanta, Georgia 30329–4027. Telephone: (404) 639–8836; *Email: ACIP@cdc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose:* The Advisory Committee on Immunization Practices (ACIP) is charged with advising the Director, Centers for Disease Control and Prevention (CDC), on the use of immunizing agents. In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines For Children program, along with schedules regarding dosing interval, dosage, and contraindications to administration of vaccines. Further, under applicable provisions of the Affordable Care Act and section 2713 of the Public Health Service Act, immunization recommendations of ACIP that have been approved by the Director, CDC, and appear on CDC immunization schedules generally must be covered by applicable health plans.

*Matters to be Considered:* The agenda will include discussion of nirsevimab for prevention of respiratory syncytial virus (RSV). A recommendation vote and a Vaccines for Children vote are scheduled. Agenda items are subject to change as priorities dictate. For more information on the meeting agenda, visit *https://www.cdc.gov/vaccines/acip/meetings/index.html.*

*Meeting Information:* The meeting will be webcast live via the World Wide Web. For more information on ACIP, please visit the ACIP website: *https://www.cdc.gov/vaccines/acip/index.html.*

### Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near-duplicate examples of a mass-mail campaign. CDC will carefully consider all comments submitted into the docket.

*Written Public Comment:* The docket will be opened to receive written comments on July 19, 2023. Written comments must be received August 2, 2023.

*Oral Public Comment:* This meeting will include time for members of the public to make an oral comment. Priority will be given to individuals who submit a request to make an oral public comment before the meeting according to the procedures below.

*Procedure for Oral Public Comment:* All persons interested in making an oral public comment at the August 3, 2023, ACIP meeting must submit a request at *https://www.cdc.gov/vaccines/acip/meetings/index.html* no later than 11:59 p.m., EDT, August 1, 2023, according to the instructions provided.

If the number of persons requesting to speak is greater than can be reasonably accommodated during the scheduled time, CDC will conduct a lottery to determine the speakers for the scheduled public comment session. CDC staff will notify individuals regarding their request to speak by email on August 2, 2023. To accommodate the significant interest in participation in the oral public comment session of ACIP meetings, each speaker will be limited to three minutes, and each speaker may only speak once per meeting.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Kalwant Smagh,**

*Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2023–15190 Filed 7–17–23; 8:45 am]

**BILLING CODE 4163–18–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**[Docket No. CDC–2023–0062]**

## Draft Infection Control in Healthcare Personnel: Epidemiology and Control of Selected Infections Transmitted Among Healthcare Personnel and Patients: Measles, Mumps, Rubella, and Varicella-Zoster Virus Sections

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), in the Department of Health and Human Services (HHS), announces the opening of a docket to obtain comment on the *Draft Infection Control in Healthcare Personnel: Epidemiology and Control of Selected Infections Transmitted Among Healthcare Personnel and Patients: Measles, Mumps, Rubella, and Varicella-Zoster Virus Sections* (''*Draft Guideline: Measles, Mumps, Rubella, and Varicella-Zoster Virus Sections*''). The *Draft Guideline: Measles, Mumps, Rubella, and Varicella-Zoster Virus Sections* updates the *Guideline for infection control in health care personnel, 1998* (''*1998 Guideline*''), *Part E: Epidemiology and Control of Selected Infections Transmitted Among Health Care Personnel and Patients,* and its corresponding recommendations in Part II of the *1998 Guideline:* ''8. Measles;'' ''10. Mumps;'' ''15. Rubella;'' and ''21. Varicella.'' The updated recommendations in the *Draft Guideline: Measles, Mumps, Rubella, and Varicella-Zoster Virus Sections* are intended for use by the leaders and staff of healthcare facilities and systems' Occupational Health Services (OHS), as further provided herein. These updated recommendations will help facilitate the provision of occupational infection prevention and control services to healthcare personnel (HCP) who have been exposed or infected and may be contagious to others in the workplace.

**DATES:** Written comments must be received on or before September 18, 2023.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2023–0062 by either of the methods listed below. Do not submit comments by email. CDC does not accept comments by email.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Healthcare Infection Control Practices Advisory Committee (HICPAC) Secretariat, Division of Healthcare Quality Promotion, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H16–3, Atlanta, Georgia 30329, Attn: Docket Number CDC–2023–0062.

*Instructions:* All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *http://regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Laura Wells, Division of Healthcare Quality Promotion, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H16–2, Atlanta, Georgia 30329; Telephone: (404) 639–4000.

**SUPPLEMENTARY INFORMATION:**

### Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data related to the *Draft Guideline: Measles, Mumps, Rubella, and Varicella-Zoster Virus Sections.*

Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. Do not submit comments by email. CDC does not accept comments by email.

### Background

The *Draft Guideline: Measles, Mumps, Rubella, and Varicella-Zoster Virus Sections,* located in the ''Supporting & Related Material'' tab of the docket, updates the *Guideline for infection control in health care personnel, 1998, Part E: Epidemiology and Control of Selected Infections Transmitted Among Health Care Personnel and Patients,* and its corresponding recommendations in Part II of the *1998 Guideline:* ''8. Measles;'' ''10. Mumps;'' ''15. Rubella;'' and ''21. Varicella.'' The *1998 Guideline* provided information and recommendations for Occupational Health Services (OHS) of healthcare facilities and systems on the prevention of transmission of infectious diseases among healthcare personnel (HCP) and patients and can be found at *https://stacks.cdc.gov/view/cdc/11563.*

As described in the Executive Summary of this guideline (*https://www.cdc.gov/infectioncontrol/guidelines/healthcare-personnel/exec-summary.html*), in this document, ''OHS'' is used synonymously with ''Employee Health,'' ''Employee Health Services,'' ''Employee Health and Safety,'' ''Occupational Health,'' and other such programs. OHS refers to the group, department, or program that addresses many aspects of health and safety in the workplace for HCP, including the provision of clinical services for work-related injuries, exposures, and illnesses. In healthcare settings, OHS addresses workplace hazards including communicable diseases; slips, trips, and falls; patient handling injuries; chemical exposures; HCP burnout; and workplace violence.

This *Draft Guideline: Measles, Mumps, Rubella, and Varicella-Zoster Virus Sections* update is part of a larger guideline update: *Infection Control in Healthcare Personnel.* Part I, *Infrastructure and Routine Practices for Occupational Infection Prevention and Control Services (2019),* and the Diphtheria, Group A *Streptococcus,* Meningococcal Disease, Pertussis, and Rabies sections of Part II, *Epidemiology and Control of Selected Infections Transmitted Among Healthcare Personnel and Patients (2022)* are complete and have been published on the CDC Infection Control Guideline website: *https://www.cdc.gov/infectioncontrol/guidelines/healthcare-personnel/index.html.* The *Draft Guideline: Measles, Mumps, Rubella, and Varicella-Zoster Virus Sections,* once finalized, is intended for use by the leaders and staff of OHS to guide the management of exposed or infected HCP who may be contagious to others in the workplace. The draft recommendations in *Draft Guideline: Measles, Mumps, Rubella, and Varicella-Zoster Virus Sections* update the 1998 recommendations with current guidance on the management of HCP exposed to or potentially infected with measles, mumps, rubella, or varicella-zoster virus, focusing on postexposure management, including postexposure prophylaxis, for exposed HCP and work restrictions for exposed or infected HCP.

Since 2015, the Healthcare Infection Control Practices Advisory Committee (HICPAC) has worked with national partners, academicians, public health professionals, healthcare providers, and other partners to develop *Infection Control in Healthcare Personnel* (*https://www.cdc.gov/infectioncontrol/guidelines/healthcare-personnel/index.html*) as a segmental update of the *1998 Guideline.* HICPAC is a Federal advisory committee appointed to provide advice and guidance to HHS and CDC regarding the practice of infection control and strategies for surveillance, prevention, and control of healthcare-associated infections, antimicrobial resistance, and related events in United States healthcare settings. HICPAC includes representatives from public health, infectious diseases, regulatory and other Federal agencies, professional societies, and others impacted. *Draft Guideline: Measles, Mumps, Rubella, and Varicella-Zoster Virus Sections,* once finalized, will be the next sections to be posted to the *Infection Control in Healthcare Personnel* website.

The updated draft recommendations in *Draft Guideline: Measles, Mumps, Rubella, and Varicella-Zoster Virus Sections* are informed by reviews of the *1998 Guideline;* CDC resources (*e.g.,* CDC infection control website), guidance, and guidelines, as noted more specifically in the draft document; and new scientific evidence, when available. CDC is seeking comments on the *Draft Guideline: Measles, Mumps, Rubella, and Varicella-Zoster Virus Sections.* Please provide references to new evidence and justification to support any suggested revisions or additions. This *Draft Guideline: Measles, Mumps, Rubella, and Varicella-Zoster Virus Sections* is not a Federal rule or regulation.

Dated: July 13, 2023.

**Tiffany Brown,**

*Executive Secretary, Centers for Disease Control and Prevention.*

[FR Doc. 2023–15175 Filed 7–17–23; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS 3444–PN]**

### Medicare Program; Application by The Joint Commission (TJC) for Continued CMS Approval of Its Home Infusion Therapy (HIT) Accreditation Program

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice with comment.

**SUMMARY:** This notice acknowledges the receipt of an application from The Joint Commission (TJC) for continued recognition as a national accrediting organization providing home infusion therapy (HIT) services that wish to participate in the Medicare or Medicaid programs. The statute requires that within 60 days of receipt of an organization's complete application, the Centers for Medicare & Medicaid Services (CMS) publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, by August 16, 2023.

**ADDRESSES:** In commenting, refer to file code CMS–3444–PN.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3444–PN, P.O. Box 8016, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3444–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Shannon Freeland, (410) 786–4348.

**SUPPLEMENTARY INFORMATION:**

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments. We will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. We continue to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

## I. Background

Home infusion therapy (HIT) is a treatment option for Medicare beneficiaries with a wide range of acute and chronic conditions. Section 5012 of the 21st Century Cures Act (Pub. L. 114–255, enacted December 13, 2016) added section 1861(iii) to the Social Security Act (the Act), establishing a new Medicare benefit for HIT services. Section 1861(iii)(1) of the Act defines ''home infusion therapy'' as professional services, including nursing services; training and education not otherwise covered under the Durable Medical Equipment (DME) benefit; remote monitoring; and other monitoring services. Home infusion therapy must be furnished by a qualified HIT supplier and furnished in the individual's home. The individual must:

- Be under the care of an applicable provider (that is, physician, nurse practitioner, or physician assistant); and
- Have a plan of care established and periodically reviewed by a physician in coordination with the furnishing of home infusion drugs under Part B, that prescribes the type, amount, and duration of infusion therapy services that are to be furnished.

Section 1861(iii)(3)(D)(i)(III) of the Act requires that a qualified HIT supplier be accredited by an accrediting organization (AO) designated by the Secretary in accordance with section 1834(u)(5) of the Act. Section 1834(u)(5)(A) of the Act identifies factors for designating AOs and in reviewing and modifying the list of designated AOs. These statutory factors are as follows:

• The ability of the organization to conduct timely reviews of accreditation applications.

• The ability of the organization to take into account the capacities of suppliers located in a rural area (as defined in section 1886(d)(2)(D) of the Act).

• Whether the organization has established reasonable fees to be charged to suppliers applying for accreditation.

• Such other factors as the Secretary determines appropriate.

Section 1834(u)(5)(B) of the Act requires the Secretary to designate AOs to accredit HIT suppliers furnishing HIT not later than January 1, 2021. Section 1861(iii)(3)(D)(i)(III) of the Act requires a ''qualified home infusion therapy supplier'' to be accredited by a CMS-approved AO, pursuant to section 1834(u)(5) of the Act.

On March 1, 2019, we published a solicitation notice entitled, ''Medicare Program; Solicitation of Independent Accrediting Organizations To Participate in the Home Infusion Therapy Supplier Accreditation Program'' (84 FR 7057). This notice informed national AOs that accredit HIT suppliers of an opportunity to submit applications to participate in the HIT supplier accreditation program. We stated that complete applications would be considered for the January 1, 2021 designation deadline if received by February 1, 2020. Regulations for the approval and oversight of AOs for HIT organizations are located at 42 CFR part 488, subpart L. The requirements for HIT suppliers are located at 42 CFR part 486, subpart I.

## II. Approval of Deeming Organization

Section 1834(u)(5) of the Act and § 488.1010 require that our findings concerning review and approval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data.

Our rules at 42 CFR 488.1020(a) requires that we publish, after receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. Pursuant to our rules at 42 CFR 488.1010(d), we have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of The Joint Commission's (TJC's) request for CMS continued recognition of its HIT accreditation program. This notice also solicits public comment on whether TJC's requirements meet or exceed the Medicare conditions of participation for HIT services.

## III. Evaluation of Deeming Authority Request

In the July 16, 2019 **Federal Register**, we published TJC's initial application for recognition as an accreditation organization for HIT (84 FR 33944). On December 16, 2019, we published notification of their approval as such an organization, effective December 15, 2019 through December 15, 2023 (84 FR 68459). Last month, TJC submitted all the necessary materials to enable us to make a determination concerning its request for continued recognition of its HIT accreditation program. This application was determined to be complete on May 19, 2023. Under section 1834(u)(5) of the Act and § 488.1010 (Application and re-application procedures for national home infusion therapy accrediting organizations), our review and evaluation of TJC will be conducted in accordance with, but not necessarily limited to, the following factors:

• The equivalency of TJC's standards for HIT as compared with CMS' HIT conditions for certification.

• TJC's survey process to determine the following:

• The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

• The comparability of TJC's to CMS standards and processes, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

• TJC's processes and procedures for monitoring a HIT found out of compliance with TJC's program requirements.

• TJC's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

• TJC's capacity to provide CMS with electronic data and reports necessary for effective assessment and interpretation of the organization's survey process.

• The adequacy of TJC's staff and other resources, and its financial viability.

• TJC's capacity to adequately fund required surveys.

• TJC's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

• TJC's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as CMS may require (including corrective action plans).

• TJC's agreement or policies for voluntary and involuntary termination of suppliers.

• TJC's agreement or policies for voluntary and involuntary termination of the HIT AO program.

## IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## V. Response to Comments

Because of the large number of public comments, we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Evell J. Barco Holland, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

**Evell J. Barco Holland,**

*Federal Register Liaison, Centers for Medicare & Medicaid Services.*

[FR Doc. 2023–15140 Filed 7–17–23; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–576 and CMS–576A]**

### Agency Information Collection Activities: Proposed Collection; Extension of Comment Period

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Agency information collection activities: Proposed collection; comment request; extension of comment period.

**SUMMARY:** This notice extends the comment period for a 60-day notice request for proposed information collection request associated with the notice [Document Identifier: CMS–576 and CMS–576A] entitled ''Organ Procurement Organization (OPO) Request for Designation as an OPO, Health Insurance Benefits Agreement, and Supporting Regulations'' that was published in the June 13, 2023 **Federal Register**. The comment period for the information collection request, which would have ended on August 14, 2023, is extended to August 28, 2023.

**DATES:** The comment period for the information collection request published in the June 13, 2023, **Federal Register** (88 FR 38513) is extended to August 24, 2023.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number __, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

**FOR FURTHER INFORMATION CONTACT:** William N. Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:** In the FR Doc. 2023–12535 of June 13, 2023 (88 FR 38513), we published a Paperwork Reduction Act notice requesting a 60-day public comment period for the document entitled ''Organ Procurement Organization (OPO) Request for Designation as an OPO, Health Insurance Benefits Agreement, and Supporting Regulations.'' There were technical delays associated with making the information collection request publicly available; therefore, in this notice we are extending the comment period from the date originally listed in the June 13, 2023, notice.

Dated: July 13, 2023.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2023–15188 Filed 7–17–23; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Microbiology, Infectious Diseases and AIDS Initial Review Group Acquired Immunodeficiency Syndrome Research Study Section Acquired Immunodeficiency Syndrome Research Study Section (AIDS).

*Date:* August 9–10, 2023.

*Time:* 10:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G21B, Rockville, MD 20892 (Zoom meeting).

*Contact Person:* Robert C. Unfer, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G21B, Bethesda, MD 20852, (240) 669–5035, *robert.unfer@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 12, 2023.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–15094 Filed 7–17–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[234A2100DD/AAKC001030/A0A501010.999900]**

### Indian Gaming; Approval by Operation of Law of Amendment to Class III Tribal-State Gaming Compact (Prairie Band Potawatomi Nation and State of Kansas)

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the approval by operation of law of an amendment to the Tribal-State Gaming Compact for Regulation of Class III Gaming between the Prairie Band Potawatomi Nation and State of Kansas (Compact) governing class III gaming for the Prairie Band Potawatomi Nation (Nation) in the State of Kansas (State).

**DATES:** The amendment takes effect on July 18, 2023.

**FOR FURTHER INFORMATION CONTACT:** Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

**SUPPLEMENTARY INFORMATION:** The Indian Gaming Regulatory Act of 1988, 25 U.S.C. 2701 *et seq.,* (IGRA) provides the Secretary of the Interior (Secretary) with 45 days to review and approve or disapprove a Tribal-State compact governing the conduct of class III gaming activity on the Tribe's Indian lands. 25 U.S.C. 2710(d)(8). If the Secretary does not approve or disapprove a Tribal-State compact within the 45 days, IGRA provides that the Tribal-State compact is considered to have been approved by the Secretary but only to the extent the compact is consistent with IGRA. 25 U.S.C. 2710(d)(8)(c). The IGRA also requires the Secretary of the Interior to publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. 25 U.S.C. 2710(d)(8)(D). The Department's regulations at 25 CFR 293.4, require all compacts and amendments to be reviewed and approved by the Secretary prior to taking effect. The Secretary took no action on the Compact amendment between the Prairie Band Potawatomi Nation and the State of Kansas. Therefore, the Compact amendment is considered to have been approved, but only to the extent it is consistent with IGRA. *See* 25 U.S.C. 2710(d)(8)(C).

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2023–15139 Filed 7–17–23; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[234A2100DD/AAKC001030/ A0A501010.999900; OMB Control Number 1076–0191]**

## Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Standards, Assessments, and Accountability System Waiver

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Education (BIE) are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before August 17, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection request (ICR) should be sent within 30 days of publication of this notice to the Office of Information and Regulatory Affairs (OIRA) through *https://www.reginfo.gov/public/do/PRA/icrPublicCommentRequest?ref_nbr=202305-1076-002* or by visiting *https://www.reginfo.gov/public/do/PRAMain* and selecting ''Currently under Review—Open for Public Comments'' and then scrolling down to the ''Department of the Interior.''

**FOR FURTHER INFORMATION CONTACT:** Steven Mullen, Information Collection Clearance Officer, by email at *comments@bia.gov* or telephone at (202) 924–2650. 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. You may also view the ICR at *https://www.reginfo.gov/public/Forward?SearchTarget=PRA&textfield=1076-0191.*

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity 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.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on July 22, 2022 (87 FR 43889). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment 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 personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### OMB Control Number 1076–0191

*Abstract:* This information collection is necessary to implement the requirements of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA). The ESEA requires all schools, including BIE-funded and operated schools, to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging academic standards and aligned assessments. In order to accomplish these goals, the Secretary will develop or implement standards, assessments, and an accountability-system requirements for BIE-funded schools. Tribal governing bodies and school boards are able to waive the Secretary's requirements, in part in or whole. However, such entities are required to submit a proposal for alternative requirements for approval by the Secretary and the Secretary of Education prior to implementation of such alternative requirements.

*Title of Collection:* Standards, Assessments, and Accountability System Waiver.

*OMB Control Number:* 1076–0191.

*Form Number:* None.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Indian Tribes and BIE-funded school boards.

*Total Estimated Number of Annual Respondents:* 2.

*Total Estimated Number of Annual Responses:* 2.

*Estimated Completion Time per Response:* 500 hours.

*Total Estimated Number of Annual Burden Hours:* 1,000 hours.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion.

*Total Estimated Annual Nonhour Burden Cost:* $0.

### Authority

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 authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Steven Mullen,**

*Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.*

[FR Doc. 2023–15121 Filed 7–17–23; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0036185; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: University of Northern Colorado, Greeley, CO

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Northern Colorado (UNC), has completed an inventory of human remains and has determined that there is no cultural affiliation between the human remains and any Indian Tribe. The human remains most likely were removed either from New Mexico or Weld County, CO.

**DATES:** Disposition of the human remains in this notice may occur on or after August 17, 2023.

**ADDRESSES:** Dr. Andrew T. Creekmore, III, University of Northern Colorado, 501 20th Street, Greeley, CO 80638, telephone (970) 351–2761, email *andrew.creekmore@unco.edu.*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the UNC. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the UNC.

#### Description

Human remains representing, at minimum, 29 individuals most likely were removed and donated by Edgar Lee Hewett from New Mexico sometime in the early 20th century, or removed and donated by R.W. Bullock from New Mexico sometime in the early 20th century or were removed and donated by George Fay, or unknown individuals, from Weld County, CO, between 1890–1980. The human remains belong to one female adult, one male adult, 24 adults of indeterminate sex, two juveniles, and one adolescent. No associated funerary objects are present.

#### Aboriginal Land

The human remains in this notice were likely removed from known geographic locations. These locations are the aboriginal lands of one or more Indian Tribes. The following information was used to identify the aboriginal land: a final judgment of the Indian Claims Commission.

The UNC consulted with all Indian Tribes who are aboriginal to the area from which these human remains were likely removed. None of these Indian Tribes agreed to accept control of the human remains. The UNC agreed to transfer control of the human remains to the Indian Tribes identified in the Determinations section.

#### Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the UNC has determined that:

- The human remains described in this notice represent the physical remains of 29 individuals of Native American ancestry.
- No relationship of shared group identity can be reasonably traced between the human remains and any Indian Tribe.
- The human remains described in this notice were removed from the aboriginal land of the Cheyenne and Arapaho Tribes, Oklahoma; Jicarilla Apache Nation, New Mexico; Navajo Nation, Arizona, New Mexico, & Utah; Northern Arapaho Tribe of the Wind River Reservation, Wyoming; and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.
- The disposition of the human remains described in this notice may be to the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, and the Ute Mountain Ute Tribe.

#### Requests for Disposition

Written requests for disposition of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains described in this notice to a requestor may occur on or after August 17, 2023. If competing requests for disposition are received, UNC must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. UNC is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and 10.11.

Dated: July 6, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–15102 Filed 7–17–23; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0036183; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Bridgewater College's Reuel B. Pritchett Museum Collection, Bridgewater, VA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Bridgewater College's Reuel B. Pritchett Museum Collection has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from the Lewis Creek Burial Mound, Augusta County, VA.

**DATES:** Repatriation of the human remains and associated funerary objects in this notice may occur on or after August 17, 2023.

**ADDRESSES:** Andrew L. Pearson, Bridgewater College, 402 East College Street, Bridgewater, VA 22812, telephone (540) 828–5410, email *apearson@bridgewater.edu.*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Bridgewater College's Reuel B. Pritchett Museum Collection. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Bridgewater College's Reuel B. Pritchett Museum Collection.

**Description**

Human remains representing, at minimum, one individual were removed from the Lewis Creek Burial Mound, Augusta County, VA, by the Virginia Archaeological Society in the autumn of 1964 around the time the State Highway Department announced plans to work on access roads and ramps in the area. During the dig, Ruth Kent and Dr. Robert K. Burns, who according to the Museum's records, was an embryologist and a member of the American Academy of Sciences, discovered the infant remains. The human remains, a skeleton, was given to the Museum by the Southern Shenandoah Chapter of the Archaeological Society of Virginia in 1964 and given the catalog number 64.1.001.

On an unknown date(s), 52 cultural items were removed from the Lewis Creek Indian Mound in Augusta County, VA. The items were purchased from George Rusmiselle by Dr. Robert K. Burns circa 1936–1950, and were donated to the Museum in 1978 by Robert K. Burns. The 52 associated funerary objects are: eight red glass beads with blue and white stripes on a string (78.7.003a); 32 projectile points, some of which are carved from white quartz (78.7.003b); eight bone or shell beads (78.7.003c); one string of shell or bone wampum beads (78.7.003c); one string of shell beads (78.7.003d); one partial steatite pipe (78.7.003e); and one partial clay pipe (78.7.003f).

On an unknown date, one cultural item was removed from the Lewis Creek Indian Mound in Augusta County, VA. The item was donated to the Museum in 1954 by Reuel B. Pritchett. The one associated funerary object is an unidentified Native American stone implement that may be marked, ''Lewis.'' The item was given the catalog number: 54.1.956.

**Cultural Affiliation**

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archaeological information, geographical information, historical information, consultation with one or more Indian Tribes, and expert opinion.

**Determinations**

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Bridgewater College's Reuel B. Pritchett Museum Collection has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The 53 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Monacan Indian Nation.

**Requests for Repatriation**

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES.** Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after August 17, 2023. If competing requests for repatriation are received, the Bridgewater College's Reuel B. Pritchett Museum Collection must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Bridgewater College's Reuel B. Pritchett Museum Collection is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: July 6, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–15100 Filed 7–17–23; 8:45 am]

**BILLING CODE 4312–52–P**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0036192; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and determined they are related to the lineal descendant in this notice. The human remains were collected at the Sherman Institute in Riverside County, CA.

**DATES:** Repatriation of the human remains in this notice may occur on or after August 17, 2023.

**ADDRESSES:** Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@ fas.harvard.edu.*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

**Description**

Human remains representing, at minimum, one individual were collected at the Sherman Institute in Riverside County, CA. The human remains are hair clippings collected from an individual identified as ''Digger,'' who was recorded as being 19 years old. Samuel H. Gilliam took the hair clippings at the Sherman Institute between 1930 and 1933. Gilliam sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

**Lineal Descent**

The human remains and associated funerary objects in this notice are connected to an identifiable individual whose descendants can be traced directly and without interruption by means of a traditional kinship system or by the common law system of descendance.

**Determinations**

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate lineal descendants, Indian Tribes, and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is one direct lineal descendant of the named individual whose human remains are described in this notice.

**Requests for Repatriation**

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in ADDRESSES. Requests for repatriation may be submitted by:

1. Any one or more of the lineal descendants, Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after August 17, 2023. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the lineal descendant identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: July 6, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–15108 Filed 7–17–23; 8:45 am]

BILLING CODE 4312–52–P

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## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0036181; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Santa Barbara Museum of Natural History, Santa Barbara, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Santa Barbara Museum of Natural History has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Island County, WA.

**DATES:** Repatriation of the human remains in this notice may occur on or after August 17th.

**ADDRESSES:** Luke Swetland, President and CEO, Santa Barbara Museum of Natural History, 2559 Puesta del Sol, Santa Barbara, CA 93105, telephone (805) 682–4711, email *lswetland@sbnature2.org.*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Santa Barbara Museum of Natural History. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Santa Barbara Museum of Natural History.

**Description**

Human remains representing, at minimum, three individuals were removed from Island County, Washington. According to accession and catalogue records, these human remains—two crania and three tibiae—came from ''Pen's Cove'' (Penn Cove) on Whidbey Island, and are Protohistoric Period ''Skagit.'' The human remains were apparently given to, or collected by, the late Travis Hudson, likely in the late 1960s, when he was in the Navy and stationed on Whidbey Island. In 1973, Hudson donated these human remains to the Santa Barbara Museum of Natural History when he became Curator of Anthropology. No associated funerary objects are present.

**Cultural Affiliation**

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: Geographical, kinship, biological, archeological, linguistic, folkloric, oral traditional, historical, and other information or expert opinion.

**Determinations**

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Santa Barbara Museum of Natural History has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Samish Indian Nation; Stillaguamish Tribe of Indians of Washington; Swinomish Indian Tribal Community; and the Tulalip Tribes of Washington.

**Requests for Repatriation**

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in ADDRESSES. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after August 17, 2023. If competing requests for repatriation are received, the Santa Barbara Museum of Natural

History must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Santa Barbara Museum of Natural History is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: July 6, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–15098 Filed 7–17–23; 8:45 am]

**BILLING CODE 4312–52–P**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0036182; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Santa Barbara Museum of Natural History, Santa Barbara, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Santa Barbara Museum of Natural History has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from San Juan County, Utah.

**DATES:** Repatriation of the human remains in this notice may occur on or after August 17, 2023.

**ADDRESSES:** Luke Swetland, President and CEO, Santa Barbara Museum of Natural History, 2559 Puesta del Sol, Santa Barbara, CA 93105, telephone (805) 682–4711, email *lswetland@sbnature2.org.*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Santa Barbara Museum of Natural History. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Santa Barbara Museum of Natural History.

#### Description

Human remains representing, at minimum, three individuals were removed from San Juan County, Utah. In 1970, these human remains were removed by Waldo George Abbott from a road construction site (likely Highway 95). That same year, Abbott donated them to the Santa Barbara Museum of Natural History, where he was Curator of Ornithology and Mammalogy. The human remains consist of the nearly complete skeleton of an adult male, and the skeletal remains of two infants. The remains of these individuals likely date to the Pueblo I Period (750–900 CE), No associated funerary objects are present.

#### Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: Geographical, kinship, biological, archeological, linguistic, folkloric, oral traditional, historical, and other information or expert opinion.

#### Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Santa Barbara Museum of Natural History has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico, & Utah; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Tesuque, New Mexico; San Juan Southern Paiute Tribe of Arizona; Ute Mountain Ute Tribe; and the Zuni Tribe of the Zuni Reservation, New Mexico.

#### Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after August 17, 2023. If competing requests for repatriation are received, the Santa Barbara Museum of Natural History must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Santa Barbara Museum of Natural History is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: July 6, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–15099 Filed 7–17–23; 8:45 am]

**BILLING CODE 4312–52–P**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0036191; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the ''Fort Apache Indian School'' (official name: Theodore Roosevelt Boarding School) in Navajo County, AZ; the Sherman Institute in Riverside County, CA; and the U.S. Indian Vocational School in Bernalillo County, NM.

**DATES:** Repatriation of the human remains in this notice may occur on or after August 17, 2023.

**ADDRESSES:** Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

## Description

Human remains representing, at minimum, 22 individuals were collected at the ''Fort Apache Indian School'' (official name: Theodore Roosevelt Boarding School) in Whiteriver, Navajo County, AZ. The human remains include hair clippings collected from 21 individuals identified as ''Apache.'' Of that number, one individual is recorded as being 15 years old; eight individuals are recorded as being 18 years old; seven individuals are recorded as being 19 years old; one individual is recorded as being 20 years old; two individuals are recorded as being 22 years old; one individual is recorded as being 62 years old; and one individual is of unknown age. The human remains also include hair clippings collected from one individual identified as ''Apache/White'' and recorded as being 20 years old. Miss Ann Chatham took the hair clippings at the ''Fort Apache Indian School'' (official name: Theodore Roosevelt Boarding School) between 1930 and 1933. Chatham sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were collected at the Sherman Institute in Riverside County, CA. The human remains are hair clippings collected from two individuals identified as ''Apache.'' One of them is recorded as being 22 years old and the other is recorded as being 21 years old. Samuel H. Gilliam took the hair clippings at the Sherman Institute between 1930 and 1933. Gilliam sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were collected at the U.S. Indian Vocational School in Albuquerque, Bernalillo County, NM. The human remains are hair clippings collected from two individuals identified as ''Apache,'' one of whom is recorded as being 16 years old. Reuben Perry took the hair clippings at the U.S. Indian Vocational School in Albuquerque between 1930 and 1933. Perry sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

## Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: kinship and anthropological.

## Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate lineal descendants, Indian Tribes, and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of 26 individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.

## Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES.** Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after August 17, 2023. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: July 6, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–15107 Filed 7–17–23; 8:45 am]

BILLING CODE 4312–52–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NAGPRA–NPS0036180; PPWOCRADN0–PCU00RP14.R50000]**

## Notice of Inventory Completion: Mütter Museum of the College of Physicians of Philadelphia, Philadelphia, PA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Mütter Museum of the College of Physicians of Philadelphia has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Santa Barbara, CA.

**DATES:** Repatriation of the human remains in this notice may occur on or after August 17, 2023.

**ADDRESSES:** Kate Quinn, Executive Director, Mütter Museum and Historic Medical Library, College of Physicians of Philadelphia, 19 S 22nd Street, Philadelphia, PA 19103, telephone (215) 399–2336, email *kquinn@collegeofphysicians.org.*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Mütter Museum of the College of Physicians of Philadelphia. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Mütter Museum of the College of Physicians of Philadelphia.

## Description

At an unknown date, human remains representing, at minimum, one individual were removed Santa Barbara, CA. Records indicate that these human remains were removed from a burial mound at the Santa Barbara Mission. On or before 1872, the human remains were in the possession of Dr. Thomas M. Logan of San Francisco, CA. The human remains were donated to the Mutter Museum at an unknown date (Dr. Logan died in 1876). The human remains (number 1167.00) consist of a skull. No known individual was identified. No associated funerary objects are present.

## Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological, geographical, and historical.

## Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Mütter Museum of the College of Physicians of Philadelphia has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

## Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after August 17, 2023. If competing requests for repatriation are received, the Mütter Museum of the College of Physicians of Philadelphia must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Mütter Museum of the College of Physicians of Philadelphia is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: July 6, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–15097 Filed 7–17–23; 8:45 am]

BILLING CODE 4312–52–P

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# DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NAGPRA–NPS0036186; PPWOCRADN0–PCU00RP14.R50000]**

## Notice of Intent To Repatriate Cultural Items: U.S. Department of the Interior, Fish and Wildlife Service, Dungeness National Wildlife Refuge, Sequim, WA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Fish and Wildlife Service, Dungeness National Wildlife Refuge (Dungeness NWR) intends to repatriate a certain cultural item that meets the definition of an unassociated funerary object and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural item was removed from Clallam County, WA.

**DATES:** Repatriation of the cultural item in this notice may occur on or after August 17, 2023.

**ADDRESSES:** Jennifer Brown-Scott, Project Leader, Washington Maritime National Wildlife Refuge Complex, 715 Holgerson Road, Sequim, WA 98382, telephone (360) 457–8451, email *jennifer_brownscott@fws.gov.*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Dungeness NWR. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by Dungeness NWR.

## Description

The one cultural item was removed from Clallam County, WA. The cultural item, a dugout canoe, is under control of the U.S. Fish and Wildlife Service and is currently in the custody of the Jamestown S'Klallam Tribe. This unassociated funerary object was removed from Dungeness Spit on Dungeness National Wildlife Refuge in June of 1980. In 1984, the canoe was loaned to the Museum and Arts Center in Sequim to be displayed outdoors, under a protective shelter. In 1993, the Museum and Arts Center notified the U.S. Fish and Wildlife Service that it was terminating the loan agreement. On September 3, 1993, the U.S. Fish and Wildlife Service contacted the Jamestown S'Klallam Tribe and offered to loan the canoe and the protective shelter to the Tribe, and on September 10, 1993, the Tribe accepted the offer and took custody of the canoe. The one unassociated funerary item is a dugout canoe.

## Cultural Affiliation

The cultural item in this notice is connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, geographical, and historical.

## Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, Dungeness NWR has determined that:

- The one cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

• There is a relationship of shared group identity that can be reasonably traced between the cultural item and the Jamestown S'Klallam Tribe.

**Requests for Repatriation**

Additional, written requests for repatriation of the cultural item in this notice must be sent to the Responsible Official identified in **ADDRESSES.** Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after August 17, 2023. If competing requests for repatriation are received, Dungeness NWR must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. Dungeness NWR is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: July 6, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–15103 Filed 7–17–23; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0036190; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the Pawnee Indian Reservation, Pawnee County, OK.

**DATES:** Repatriation of the human remains in this notice may occur on or after August 17, 2023.

**ADDRESSES:** Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

**Description**

Human remains representing, at minimum, two individuals were collected at the Pawnee Indian Reservation in Pawnee County, OK. The human remains are hair clippings collected from one individual who was recorded as being 13 years old, and one individual who was recorded as being 15 years old. Both individuals were identified as ''Ponca.'' Arvel Snyder took the hair clippings at the Pawnee Indian Reservation between 1930 and 1933. Snyder sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

**Cultural Affiliation**

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: kinship and anthropological.

**Determinations**

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate lineal descendants, Indian Tribes, and Native Hawaiian organizations, the PMAE has determined that:

• The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.

• There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Ponca Tribe of Indians of Oklahoma.

**Requests for Repatriation**

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES.** Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after August 17, 2023. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: July 6, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–15106 Filed 7–17–23; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0036189; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and

Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the ''Carson Indian School'' (now Stewart Indian School), Carson City County, NV.

**DATES:** Repatriation of the human remains in this notice may occur on or after August 17, 2023.

**ADDRESSES:** Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

## Description

Human remains representing, at minimum, one individual were collected at ''Carson Indian School'' (now Stewart Indian School), Carson City County, NV. The human remains are hair clippings collected from an individual identified as ''Umpqua'' and recorded as being 16 years old. Frederic Snyder took the hair clippings at the ''Carson Indian School'' between 1930 and 1933. Snyder sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

## Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: kinship and anthropological.

## Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate lineal descendants, Indian Tribes, and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Cow Creek Band of Umpqua Tribe of Indians.

## Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after August 17, 2023. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: July 6. 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–15105 Filed 7–17–23; 8:45 am]

BILLING CODE 4312–52–P

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# DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–PWR–REDW–34432; PS.SPPWLA0054.00.1]**

## Minor Boundary Revision at Redwood National Park

**AGENCY:** National Park Service, Interior.

**ACTION:** Notification of boundary revision.

**SUMMARY:** The boundary of Redwood National Park is revised to include four parcels of land totaling 91.6 acres, more or less, located in Humboldt County, California, immediately adjoining the boundaries of Redwood National Park.

**DATES:** The effective date of this boundary revision is July 18, 2023.

**ADDRESSES:** The map depicting the above-referenced modification is on file and available for viewing at the following locations: Redwood National Park, 1111 Second Street, Crescent City, CA 95531; National Park Service, Interior Regions 8, 9, 10, and 12, Pacific West Land Resources Program Center, 333 Bush Street, Suite 500, San Francisco, CA 94104; and National Park Service, Department of the Interior, 1849 C Street NW, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Realty Officer Truda Stella, National Park Service, Pacific West Land Resources Program Center, Pacific West Region, 333 Bush Street, San Francisco, California; telephone (206) 561–7978.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, pursuant to 16 U.S.C. 79b, the boundary of Redwood National Park is modified to include four adjoining tracts containing 91.6 acres of land. The boundary revision is depicted on Map No. REDW 167 180370, dated June 2022.

16 U.S.C. 79b authorizes the Secretary of the Interior to modify the Park boundary for carrying out the purposes of the Park by publication of a revised drawing or boundary description in the **Federal Register** and by filing said revision with appropriate county officials for Del Norte and Humboldt Counties, California. The appropriate officials have been notified. This boundary revision and subsequent acquisition will provide habitat benefit and recreational opportunities consistent with the purposes of the Park. Subsequent to publication of this notice, the National Park Service will acquire the properties from Save the Redwoods League, a nonprofit organization.

**William Shott,**

*Acting Regional Director, National Park Service, Interior Regions 8, 9, 10 &12.*

[FR Doc. 2023–15122 Filed 7–17–23; 8:45 am]

BILLING CODE 4312–52–P

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**[NPS–WASO–NAGPRA–NPS0036193; PPWOCRADN0–PCU00RP14.R50000]**

## Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the Sherman Institute, Riverside County, CA.

**DATES:** Repatriation of the human remains in this notice may occur on or after August 17, 2023.

**ADDRESSES:** Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

**Description**

Human remains representing, at minimum, two individuals were collected at the Sherman Institute in Riverside County, CA. The human remains are hair clippings collected from two individuals identified as ''Hoopa,'' one recorded as 16 years old and the other recorded as 17 years old. Samuel R. Gilliam took the hair clippings at the Sherman Institute between 1930 and 1933. Gilliam sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

**Cultural Affiliation**

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: kinship and anthropological.

**Determinations**

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate lineal descendants, Indian Tribes, and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Hoopa Valley Tribe, California.

**Requests for Repatriation**

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after August 17, 2023. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: July 6, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–15109 Filed 7–17–23; 8:45 am]

**BILLING CODE 4312–52–P**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**[NPS–NERO–GATE–35965; PPNEGATEB0, PPMVSCS1Z.Y00000]**

## Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee Notice of Public Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Meeting notice.

**SUMMARY:** In accordance with the Federal Advisory Committee Act of 1972, the National Park Service (NPS) is hereby giving notice that the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee (Committee) will meet as indicated below.

**DATES:** The virtual meeting will take place on Tuesday, September 19, 2023. The meeting will begin at 9:00 a.m. until 2:00 p.m., with a public comment period at 11:30 a.m. to 12:00 p.m. (EASTERN), with advance registration required. Individuals that wish to participate must contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than Thursday, September 14, 2023, to receive instructions for accessing the meeting.

**FOR FURTHER INFORMATION CONTACT:** This will be a virtual meeting. Anyone interested in attending should contact Daphne Yun, Acting Public Affairs Officer, Gateway National Recreation Area, 210 New York Avenue, Staten Island, New York 10305, by telephone (718) 815–3651, or by email *daphne_yun@nps.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** The Committee was established on April 18, 2012, by authority of the Secretary of the Interior (Secretary) under 54 U.S.C. 100906(a) and is regulated by the Federal Advisory Committee Act. The Committee provides advice to the Secretary, through the Director of the NPS, on matters relating to the Fort Hancock Historic District of Gateway

National Recreation Area. All meetings are open to the public.

*Purpose of the Meeting:* The Gateway National Recreation Area will discuss leasing updates, working group updates, social equity related to leasing, and general park updates. The final agenda will be posted on the Committee's website at *https://www.forthancock21.org* prior to the meeting. The website includes meeting minutes from all prior meetings.

Interested persons may present, either orally or through written comments, information for the Committee to consider during the public meeting. Written comments will be accepted prior to, during, or after the meeting. Members of the public may submit written comments by mailing them to the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Due to time constraints during the meeting, the Committee is not able to read written public comments submitted into the record. Individuals or groups requesting to make oral comments at the public Committee meeting will be limited to no more than three minutes per speaker. All comments will be made part of the public record and will be electronically distributed to all Committee members. Detailed minutes of the meeting will be available for public inspection within 90 days of the meeting.

*Meeting Accessibility/Special Accommodations:* The meeting is open to the public. Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

*Public Disclosure of Comments:* Before including your address, phone number, email address, or other personal identifying information in your written comments, you should be aware that your entire comment including your personal identifying information will be publicly available. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Authority:* 5 U.S.C. ch. 10.

**Alma Ripps,**

*Chief, Office of Policy.*

[FR Doc. 2023–15164 Filed 7–17–23; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0036184; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Connecticut Office of State Archaeology, Connecticut State Museum of Natural History, University of Connecticut, Storrs, CT

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Connecticut State Museum of Natural History (CSMNH) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Hennepin County, MN.

**DATES:** Repatriation of the human remains and associated funerary objects in this notice may occur on or after August 17, 2023.

**ADDRESSES:** Dr. Jacqueline Veninger-Robert, University of Connecticut, 75 N. Eagleville Road, Unit 3023, Storrs, CT 06269, telephone (860) 486–6953, email *jacqueline.veninger@uconn.edu.*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the CSMNH. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the CSMNH.

#### Description

Human remains representing, at minimum, five individuals were removed from Hennepin County, MN. In the 1880s, a resident of Colebrook, Connecticut purchased an island in Lake Minnetonka, Hennepin County, Minnesota, to construct a sporting lodge. During construction, a burial mound was disturbed, and the human remains of at least five individuals and a ceramic vessel were exhumed and brought back to Connecticut. More than 100 years later, these human remains and this ceramic vessel were given to the Colebrook Historical Society by the Colebrook resident's descendants, and in 2014, the human remains and associated funerary objects were transferred to the Connecticut Office of State Archaeology (OSA). Forensic examination conducted in 2014 determined that the fragmentary human remains belong to two adults, two juveniles, and one infant. The two associated funerary objects are one lot consisting of ceramic vessel fragments and one mineral fragment.

#### Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following type of information was used to reasonably trace the relationship: geographical.

#### Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the CSMNH has determined that:

- The human remains described in this notice represent the physical remains of five individuals of Native American ancestry.
- The two objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Lower Sioux Indian Community in the State of Minnesota; Prairie Island Indian Community in the State of Minnesota; Shakopee Mdewakanton Sioux Community of Minnesota; and the Upper Sioux Community, Minnesota.

#### Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization

not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after August 17, 2023. If competing requests for repatriation are received, the CSMNH must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The CSMNH is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: July 6, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–15101 Filed 7–17–23; 8:45 am]

BILLING CODE 4312–52–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0036188; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the Chilocco Indian Agricultural School, Kay County, OK.

**DATES:** Repatriation of the human remains in this notice may occur on or after August 17, 2023.

**ADDRESSES:** Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

#### Description

Human remains representing, at minimum, one individual were collected at the Chilocco Indian Agricultural School, Kay County, OK. The human remains are hair clippings were collected from an individual identified as ''Kiowa'' and recorded as being 14 years old. Lawrence E. Correll took the hair clippings at the Chilocco Indian Agricultural School between 1930 and 1933. Correll sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

#### Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: kinship and anthropological.

#### Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate lineal descendants, Indian Tribes, and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Kiowa Indian Tribe of Oklahoma.

#### Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after August 17, 2023. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: July 6, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–15104 Filed 7–17–23; 8:45 am]

BILLING CODE 4312–52–P

## INTERNATIONAL TRADE COMMISSION

### Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Icemaking Machines and Components Thereof, DN 3687;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Hoshizaki America, Inc. on July 12, 2023. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain icemaking machines and components thereof. The complaint names as respondents: Blue Air FSE LLC of Gardena, CA; and Bluenix Co., Ltd. of South Korea. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3687'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary *at EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: July 12, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2023–15135 Filed 7–17–23; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 332–599]**

### Distributional Effects of Trade and Trade Policy on U.S. Workers, 2026 Report

**AGENCY:** United States International Trade Commission

**ACTION:** Notice of investigation.

**SUMMARY:** Following receipt on January 25, 2023, of a request from the U.S. Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930, the U.S. International Trade Commission (Commission) instituted Investigation No. 332–599, Distributional Effects of Trade and Trade Policy on U.S. Workers, 2026 Report, for the purpose of providing the first of five reports on the potential distributional effects of goods and services trade and trade policy on U.S. workers and underrepresented and underserved communities. The Trade Representative requested that the report

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

build upon the information gathered by the Commission in its 2022 report on distributional effects. As part of this investigation, the Commission will also host two seminar series on new research related to distributional effects.

**DATES:** Week of October 16, 2023, and week of July 15, 2024: Virtual seminars hosted by the Commission, with presenters invited by the Commission.

*To be determined:* Community-based discussions and the symposium (notification by separate **Federal Register** notice at a later date)

*January 20, 2026:* Transmittal of Commission report to the Office of USTR.

**ADDRESSES:** All Commission offices, including the Commission's hearing rooms, are located in the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. All written submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Co-Project Leader Jennifer Powell (202–205–3450 or *jennifer.powell@usitc.gov*), Co-Project Leader Saad Ahmad (202–205–3331 or *saad.ahmad@usitc.gov*), or Deputy Project Leader Tamar Khachaturian (202–205–3299 or *tamar.khachaturian@usitc.gov*) for information specific to this investigation. For information on the legal aspects of this investigation, contact Brian Allen (202–205–3034 or *brian.allen@usitc.gov*) or William Gearhart (202–205–3091 or *william.gearhart@usitc.gov*) of the Commission's Office of the General Counsel. The media should contact Jennifer Andberg, Office of External Relations (202–205–3404 or *jennifer.andberg@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its website (*https://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

**SUPPLEMENTARY INFORMATION:**

*Background:* The Commission instituted this investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). The U.S. Trade Representative, referring to the Commission's 2022 report (USITC, *Distributional Effects of Trade and Trade Policy on U.S. Workers,* Investigation No. 332–587, USITC Publication 5374, October 2022, *https://www.usitc.gov/sites/default/files/publications/332/pub5374.pdf*), requested that the Commission, building on that report, conduct a further investigation on the potential distributional effects of goods and services trade and trade policy on U.S. workers and underrepresented and underserved communities. The Trade Representative requested that the Commission prepare a series of five reports that synthesize and critically review information on the distributional effects of goods and services trade and trade policy on U.S. workers and underrepresented and underserved communities. The Trade Representative asked that the Commission deliver the first of these reports on January 20, 2026, and deliver the remaining reports at 3-year intervals, on January 20, 2029; January 20, 2032; January 20, 2035; and January 20, 2038. The Commission will institute investigations and publish notices of investigation relating to the remaining reports at the appropriate time.

The Trade Representative asked that the Commission, in identifying these effects, gather information through:

1. Community-based open conversations targeted to the interests and concerns of specific underrepresented and underserved demographic and geographic communities. These conversations may take a variety of forms (including, but not limited to, group discussions and informal one-on-one interviews) and may be on- or off-the-record. They should include individual community members, workers, and representatives of organizations that represent and serve specific underrepresented and underserved communities. Other participants could include members or representatives of think tanks; academic and other research institutions; labor unions; State and local governments; non-Federal governmental entities; civil society organizations; community-based stakeholders such as minority-owned businesses; business incubators; Historically Black Colleges and Universities (HBCUs); Hispanic-Serving Institutions (HSIs); Tribal Colleges and Universities (TCUs); Asian American and Native American Pacific Islander-Serving Institutions (AANAPISIs); other Minority-Serving Institutions (MSIs); community colleges; and local and national civil rights organizations;

2. A symposium focused on academic or similar research on the distributional effects of trade and trade policy on underrepresented and underserved communities, including results of existing analysis, evaluation of methodologies, the use of public and restricted data in current analysis, identification of gaps in data and/or in the economic literature, and proposed analysis that could be done with restricted data; and

3. Economic literature on the distributional effects of trade and trade policy on underrepresented and underserved communities including, among other things, the data limitations raised in these analyses.

For the seminars being held the weeks of October 16, 2023, and July 15, 2024, the Commission will invite researchers to present recent work on topics related to distributional effects of trade and trade policy in a seminar setting. These seminars may also include relevant research from related fields outside trade, for example, examining the distributional effects of other policies on U.S. workers and underrepresented and undeserved communities, to the extent such research would be useful in developing ways to analyze the distributional effects of trade. The Commission expects that all presentations during these two weeks will be available for public viewing. Further information regarding these events, as well as instructions on how the public may view them, will be provided no later than one month prior to the events through press releases and information posted on the Commission's website at *https://www.usitc.gov/research_and_analysis/ongoing/distributional_effects_332.*

The Commission intends to publish a notice in the **Federal Register** at a later date, of the time, place, and procedures to be followed for the community-based discussions and academic symposium and for the filing of written submissions from interested parties in this first investigation. As requested by the Trade Representative, the Commission will deliver the first report on January 20, 2026. Since the Trade Representative has indicated that her office intends to make this report available to the public in its entirety, the Commission will not include confidential business or national security classified information in its report.

By order of the Commission.

Issued: July 12, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2023–15141 Filed 7–17–23; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–692 and 731–TA–1628 (Preliminary)]**

## Certain Pea Protein From China; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–692 and 731–TA–1628 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of certain pea protein from China, provided for in subheadings 3504.00.10, 3504.00.50, and 2106.10.00 of the Harmonized Tariff Schedule of the United States,[1] that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by August 28, 2023. The Commission's views must be transmitted to Commerce within five business days thereafter, or by September 5, 2023.

**DATES:** July 12, 2023.

**FOR FURTHER INFORMATION CONTACT:** Tyler Berard (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

[1] Subject merchandise may also be reported under HTSUS statistical reporting number 2308.00.9890.

**SUPPLEMENTARY INFORMATION:**

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on July 12, 2023, by PURIS Proteins LLC, Minneapolis, Minnesota.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Office of Investigations will hold an in-person staff conference in connection with the preliminary phase of these investigations beginning at 9:30 a.m. on August 2, 2023. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before July 31, 2023. Please provide an email address for each conference participant in the email. Information on conference procedures, format, and participation will be available on the Commission's Public Calendar. A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before 5:15 p.m. on August 7, 2023, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties shall file written testimony and supplementary material in connection with their presentation at the conference no later than noon on August 1, 2023. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on Filing Procedures, available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

*Authority:* These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 13, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2023–15196 Filed 7–17–23; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1209 (Rescission)]**

### Certain Movable Barrier Operator Systems and Components Thereof; Notice of Commission Decision To Institute a Rescission Proceeding and To Rescind the Remedial Orders; Termination of the Rescission Proceeding

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to institute a rescission proceeding and to rescind the remedial orders issued in the underlying investigation. The rescission proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:** Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** On August 10, 2020, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on a complaint filed by Overhead Door Corporation of Lewisville, Texas and GMI Holdings Inc. of Mount Hope, Ohio (collectively, ''Overhead Door''). *See* 85 FR 48264–65 (Aug. 10, 2020). The complaint, as supplemented, alleged a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain movable barrier operator systems and components thereof by reason of infringement of U.S. Patent Nos. 8,970,345 (''the '345 patent''); 7,173,516 (''the '516 patent''); 7,180,260 (''the '260 patent''); 9,483,935 (''the '935 patent''); 7,956,718 (''the '718 patent''); and 8,410,895 (''the '895 patent''). *See id.* The notice of investigation named The Chamberlain Group, Inc. (now, The Chamberlain Group, LLC) of Oak Brook, Illinois (''Chamberlain'') as the respondent in this investigation. *See id.*

On February 10, 2021, the Commission terminated the investigation as to the '516 patent based on the withdrawal of the allegations in the complaint as to that patent. *See* Order No. 10 (Jan. 19, 2021), *unreviewed by* Comm'n Notice (Feb. 10, 2021).

On February 9, 2022, the Commission issued a final determination finding a violation of section 337, based on Chamberlain's infringement of the asserted claims of the '935, '718, and '895 patents, but not the '345 and '260 patents. *See* 87 FR 8605–06 (Feb. 15, 2022). The Commission further determined to: (1) issue a limited exclusion order against Chamberlain's infringing products and a cease and desist order against Chamberlain (collectively, the ''remedial orders''); and (2) set a bond during the period of Presidential review in the amount of one hundred (100) percent of the entered value of the infringing articles. *See id.* On March 30, 2022, the Commission issued modified remedial orders to confirm that the covered products or articles in the remedial orders include garage door openers, gate operators, and commercial operators. *See* 87 FR 19709–10 (Apr. 5, 2022).

On April 11 and 12, 2022, respectively, Overhead Door and Chamberlain filed appeals from the Commission's final determination with the U.S. Court of Appeals for the Federal Circuit. *See Chamberlain Grp., LLC* v. *ITC,* Appeals Nos. 22–1664, 22–1656 (consolidated).

On August 5, 2022, the Commission instituted an enforcement proceeding under Commission Rule 210.75 (19 CFR 210.75) to investigate alleged violations of the remedial orders by Chamberlain's legacy and redesigned products. *See* 87 FR 48039 (Aug. 5, 2022). In addition to Overhead Door and Chamberlain (collectively, ''the Private Parties''), the Office of Unfair Import Investigations was also named as a party to the enforcement proceeding. *See id.*

On December 21, 2022, the Commission terminated the enforcement proceeding as to the '718 patent based on withdrawal of the enforcement complaint as to that patent. *See* Order No. 14 (Dec. 1, 2022), *unreviewed by* Comm'n Notice (Dec. 21, 2022).

On June 13, 2023, the parties filed a joint stipulation of voluntary dismissal of the appeals. On June 14, 2023, the Federal Circuit dismissed the appeals. *See Chamberlain Grp., LLC* v. *ITC,* Order, Appeal No. 22–1664, ECF No. 95 (Fed. Cir. June 14, 2023).

On June 13, 2023, the Private Parties jointly moved to terminate the enforcement proceeding based on settlement. On June 14, 2023, the Administrative Law Judge issued an initial determination (Order No. 26) granting the joint motion to terminate the enforcement proceeding based on settlement.

Also on June 13, 2023, the Private Parties filed a joint petition to rescind the remedial orders (original and modified) based on the settlement agreement.

In view of the settlement agreement between the Private Parties, the Commission finds that the conditions justifying the remedial orders no longer exist, and therefore, granting the petition is warranted under 19 U.S.C. 1337(k) and 19 CFR 210.76. Accordingly, the Commission has determined to institute a rescission proceeding and to rescind the remedial orders (original and modified). The rescission proceeding is terminated.

The Commission's vote on this determination took place on July 12, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 12, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2023–15133 Filed 7–17–23; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1209 (Enforcement)]**

### Certain Movable Barrier Operator Systems and Components Thereof; Notice of Commission Decision Not To Review an Initial Determination Terminating the Enforcement Proceeding Based on Settlement; Termination of the Proceeding

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 26) of the presiding Administrative Law Judge (''ALJ'') terminating the enforcement proceeding based on settlement. The enforcement proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:** Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** On August 10, 2020, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on a complaint filed by Overhead Door Corporation of Lewisville, Texas and GMI Holdings Inc. of Mount Hope, Ohio (collectively, ''Overhead Door''). *See* 85 FR 48264–65 (Aug. 10, 2020). The complaint, as supplemented, alleged a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain movable barrier operator systems and components thereof by reason of infringement of U.S. Patent Nos. 8,970,345 (''the '345 patent''); 7,173,516 (''the '516 patent''); 7,180,260 (''the '260 patent''); 9,483,935 (''the '935 patent''); 7,956,718 (''the '718 patent''); and 8,410,895 (''the '895 patent''). *See id.* The notice of investigation named The Chamberlain Group, Inc. (now, The Chamberlain Group, LLC) of Oak Brook, Illinois (''Chamberlain'') as the respondent in this investigation. *See id.*

On February 10, 2021, the Commission terminated the investigation as to the '516 patent based on the withdrawal of the allegations in the complaint as to that patent. *See* Order No. 10 (Jan. 19, 2021), *unreviewed by* Comm'n Notice (Feb. 10, 2021).

On February 9, 2022, the Commission issued a final determination finding a violation of section 337, based on Chamberlain's infringement of the asserted claims of the '935, '718, and '895 patents, but not the '345 and '260 patents. *See* 87 FR 8605–06 (Feb. 15, 2022). The Commission further determined to: (1) issue a limited exclusion order against Chamberlain's infringing products and a cease and desist order against Chamberlain (collectively, the ''remedial orders''); and (2) set a bond during the period of Presidential review in the amount of one hundred (100) percent of the entered value of the infringing articles. *See id.* On March 30, 2022, the Commission issued modified remedial orders to confirm that the covered products or articles in the remedial orders include garage door openers, gate operators, and commercial operators. *See* 87 FR 19709–10 (Apr. 5, 2022).

On April 11 and 12, 2022, respectively, Overhead Door and Chamberlain filed appeals from the Commission's final determination with the U.S. Court of Appeals for the Federal Circuit. *See Chamberlain Grp., LLC* v. *ITC,* Appeals Nos. 22–1664, 22–1656 (consolidated).

On August 5, 2022, the Commission instituted an enforcement proceeding under Commission Rule 210.75 (19 CFR 210.75) to investigate alleged violations of the remedial orders by Chamberlain's legacy and redesigned products. *See* 87 FR 48039 (Aug. 5, 2022). In addition to Overhead Door and Chamberlain (collectively, ''the Private Parties''), the Office of Unfair Import Investigations (''OUII'') was also named as a party to the enforcement proceeding. *See id.*

On December 21, 2022, the Commission terminated the enforcement proceeding as to the '718 patent based on withdrawal of the enforcement complaint as to that patent. *See* Order No. 14 (Dec. 1, 2022), *unreviewed by* Comm'n Notice (Dec. 21, 2022).

On June 13, 2023, the parties filed a joint stipulation of voluntary dismissal of the appeals. On June 14, 2023, the Federal Circuit dismissed the appeals. *See Chamberlain Grp., LLC* v. *ITC,* Order, Appeal No. 22–1664, ECF No. 95 (Fed. Cir. June 14, 2023).

On June 13, 2023, the Private Parties jointly moved to terminate the enforcement proceeding based on settlement. The joint motion states that OUII supports the motion.

On June 14, 2023, the ALJ issued the subject ID (Order No. 26) granting the joint motion to terminate the enforcement proceeding based on settlement. The ID finds that the joint motion complies with Commission Rule 210.21(b)(1), 19 CFR 210.21(b)(1). *See* ID at 2–3. Specifically, the ID notes that the joint motion includes confidential and public copies of the settlement agreement. *See id.* at 2. In addition, the motion states that ''there are no other agreements, written or oral, express or implied, between the Private Parties concerning the subject matter of this proceeding.'' *See id.* Furthermore, in accordance with Commission Rule 210.50(b)(2), 19 CFR 210.50(b)(2), the ID finds ''no evidence that terminating this proceeding on the basis of settlement would adversely affect'' the public interest. *See id.* at 3.

No petition for review of the subject ID was filed.

The Commission has determined not to review the subject ID. The enforcement proceeding is terminated.

The Commission's vote on this determination took place on July 12, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 12, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2023–15119 Filed 7–17–23; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–1224]**

### Importer of Controlled Substances Application: Biopharmaceutical Research Company

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of application.

**SUMMARY:** Biopharmaceutical Research Company has applied to be registered as

an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before August 17, 2023. Such persons may also file a written request for a hearing on the application on or before August 17, 2023.

**ADDRESSES:** The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.34(a), this is notice that on April 28, 2023, Biopharmaceutical Research Company 11045 Commercial Parkway Castroville, California 95012–3209, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Marihuana Extract | 7350 | I |
| Marihuana | 7360 | I |
| Tetrahydrocannabinols | 7370 | I |

The company plans to import Marihuana Extract (7350), Marihuana (7360) and Tetrahydrocannabinols (7370) as flowering plants and cannabis derivatives to support analytical chemistry analyses, research and the manufacturing of dosage forms for pre-clinical and clinical trials. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

**Matthew Strait,**

*Deputy Assistant Administrator.*

[FR Doc. 2023–15185 Filed 7–17–23; 8:45 am]

BILLING CODE P

## DEPARTMENT OF JUSTICE

**[OMB Number 1123–0014]**

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Application for Certificates of Pardon for the Offense of Simple Possession of Marijuana

**AGENCY:** Office of the Pardon Attorney, Department of Justice.

**ACTION:** 30-Day notice.

**SUMMARY:** The Office of the Pardon Attorney, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on May 9, 2023, allowing a 60-day comment period.

**DATES:** The comment period for the notice published on March 3, 2023, is extended. Comments should be received on or before August 15, 2023. August 17, 2023.

**FOR FURTHER INFORMATION CONTACT:** If you have 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: Kira Gillespie, Deputy Pardon Attorney, Office of the Pardon Attorney, 950 Pennsylvania Avenue NW, Main Justice—RFK Building, Washington, DC 20530; *kira.gillespie@usdoj.gov;* (202) 616–6073.

**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 agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and/or
—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.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 1123–0014. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

**Overview of This Information Collection**

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *Title of the Form/Collection:* Application for Certificates of Pardon for the Offense of Simple Possession of Marijuana.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* There is no agency form number for this collection. The applicable component within the Department of Justice is the Office of the Pardon Attorney.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected Public: Individuals or households. The obligation to respond is voluntary.

*Abstract:* The purpose of this collection is to gather information necessary to enable the Office of the Pardon Attorney, U.S. Department of Justice to expeditiously administer the provisions of the Executive Order 10467, a proclamation granting pardons to individuals charged or convicted of simple possession of marijuana. The collection will enable individuals to apply for certificates of pardon, restoring political, civil, and other rights by implementing a process to provide certificates of pardon as provided by the order.

5. *Obligation to Respond:* Voluntary.

6. *Total Estimated Number of Respondents:* 20,000.

7. *Estimated Time per Respondent:* 2 hours.

8. *Frequency:* Once a year.

9. *Total Estimated Annual Time Burden:* 40,000 hours.

10. *Total Estimated Annual Other Costs Burden:* $0.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: July 12, 2023.

**Darwin Arceo,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2023–15111 Filed 7–17–23; 8:45 am]

**BILLING CODE 4410–29–P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

**[Prohibited Transaction Exemption 2023–16; Exemption Application No. D–12026]**

### Exemption From Certain Prohibited Transaction Restrictions Involving the Unit Corporation Employees' Thrift Plan (the Plan or the Applicant) Located in Tulsa, Oklahoma

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of exemption.

**SUMMARY:** This document contains a notice of exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This exemption permits the acquisition and holding by the Plan participants' accounts of warrants (the Warrants) issued by Unit Corporation, the Plan sponsor, in connection with Unit Corporation's chapter 11 bankruptcy filing (the Bankruptcy Filing) in exchange for the participants' waiver of claims against certain ''Released Parties'' (the Transactions).

**DATES:** The exemption will be in effect on the date that this grant notice is published in the **Federal Register** and will continue until the date all Warrants are exercised, sold, or expire.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Brennan of the Department at (202) 693–8456. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On February 9, 2023, the Department published a notice of proposed exemption in the **Federal Register** [1] permitting the acquisition and holding by the participants' accounts of the Warrants in connection with the Bankruptcy Filing in exchange for the participants' waiver of claims against the Released Parties.[2] The Department makes the requisite findings under ERISA section 408(a) that the exemption is (1) administratively feasible, (2) in the interest of the plan and its participants and beneficiaries, and (3) protective of the rights of the plan's participants and beneficiaries, so long as all of the exemption conditions are met. This exemption provides only the relief specified in its text and does not provide relief from violations of any law other than the prohibited transaction provisions of ERISA expressly stated herein. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, taken as a whole, necessary for the Department to grant the relief requested by the Applicant. Absent these or similar conditions, the Department would not have granted this exemption.

The Applicant requested an individual exemption pursuant to ERISA section 408(a) in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

**Background**

*Unit Corporation.* As discussed in further detail in the proposed exemption, Unit Corporation is an energy company engaged in oil and natural gas exploration. Unit Corporation stock is currently traded on the over-the-counter marketplace following its delisting from the New York Stock Exchange as a result of its Bankruptcy Filing (as discussed in more detail below).

*The Plan.* The Plan is a participant-directed 401(k) individual account plan that covers 472 participants and holds approximately $70,127,000 in total assets. Fidelity Management Trust Company (Fidelity) serves as directed trustee and recordkeeper for the Plan. The Unit Corporation Benefits Committee (the Benefits Committee) serves as the Plan Administrator with overall responsibility for the operation and administration of the Plan and as the named fiduciary for purposes of investment-related matters.

*Unit Common Stock.* As of September 3, 2020, the Plan held 4,932,864 shares of Unit common stock (Old Unit Common Stock), which then comprised 0.68% of the Plan's total assets.[3] Plan participants who held Old Unit Common Stock as of September 3, 2020, are hereinafter referred to as ''Invested Participants.'' Provisions of the Trust Agreement covering the voting of Employer Stock [4] state that: ''Each

[1] 88 FR 8463 (February 9, 2023).

[2] Unit Corporation's Reorganization Plan states that the Released Parties include: (a) Unit Corporation; (b) the Reorganized Unit Corporation; (c) the Debtor-in-possession Agent; (d) the Debtor-in-possession Lenders; (e) the RBL Agent (the agent for secured parties holding First-Priority Lien Obligations); (d) the RBL Lenders (a type of asset-based lending (ABL) commonly used in the oil and gas sector, reserve based loans are made against, and secured by, an oil and gas field or a portfolio of undeveloped or developed and producing oil and gas assets; (e) the Consenting Noteholders; (f) the Exit Facility Agent; (g) the Exit Facility Lenders; and (h) the Subordinated Notes Indenture Trustee.

[3] At the time, the Plan's 4,932,864 shares represented approximately 9% of all outstanding Old Unit Common Stock.

[4] For purposes of this trust provision, the term ''Employer Stock'' refers to shares of both Old Unit

participant with an interest in the Stock Fund shall have the right to direct the Trustee as to the manner in which the Trustee is to vote (including not to vote) that number of shares of Employer Stock that is credited to his account.''

*The Bankruptcy Filing.* On May 22, 2020, Unit Corporation and certain of its affiliates filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of Texas, Houston Division under Case No. 20–327401 (the Bankruptcy Filing).[5] On May 26, 2020, the New York Stock Exchange (NYSE) suspended trading in Old Unit Common Stock because of the Bankruptcy Filing.

On June 19, 2020, Unit Corporation filed a Debtors' First Revised Proposed Joint Chapter 11 Plan of Reorganization (the Reorganization Plan). Subsequently, on July 30, 2020, the Bankruptcy Court confirmed Unit Corporation's Reorganization Plan and Unit Corporation emerged from bankruptcy protection on September 3, 2020, at which time shares of Old Unit Common Stock were canceled.

*The Warrants.* Under the Bankruptcy Reorganization Plan, Unit Corporation exchanged Old Unit Common Stock for the Warrants. Each Warrant entitles its registered holder to receive from Unit Corporation one share of newly-issued common stock in Unit Corporation (New Unit Common Stock) upon the exercise of the Warrant through the payment of an Exercise Price during an Exercise Period. The exchange rate for the Warrants is 1 to .03460447, where one share of Old Unit Common Stock converts to .03460447 Warrants.

*Acceptance or Rejection of the Warrants.* As holders of the Old Unit Common Stock, Invested Participants qualify to receive the Warrants under the Reorganization Plan. The Warrants will be issued to the Plan after the Department grants this final exemption. To accept the Warrants, an Invested Participant must agree to release potential claims against Unit Corporation and its affiliates (*i.e.,* the Released Parties). The Applicant represents that this liability release (the Liability Release) was imposed by the Bankruptcy Court and the creditors and applies to all former holders of Old Unit Common Stock, including the Plan.[6] This proposed exemption requires the Liability Release to be described to the Invested Participants in a clearly written communication from Unit Corporation.

As a condition of this exemption, the acquisition of the Warrants by the accounts of the Invested Participants must be implemented on the same material terms as the acquisition of the Warrants by all shareholders of Old Unit Common Stock. Further, each Invested Participant must receive the same proportionate number of Warrants based on the number of shares of Old Unit Common Stock held by each shareholder.

*Exercising the Warrants.* The Applicant states that the final exercise price for the Warrants is $63.74. Decisions regarding the exercise or sale of the Warrants can be made only by the individual Invested Participants in whose accounts the Warrants are allocated. In this regard, an Invested Participant can exercise their Warrants only during an Exercise Period, which will begin on the effective date of this final exemption and end on the earliest of: (a) September 3, 2027; (b) the consummation of a cash sale (as defined in the Warrant Agreement); or (c) the consummation of a liquidation, dissolution or winding up of Unit Corporation.

The Plan Trustee will not allow Invested Participants to exercise the Warrants held in their Plan accounts if the fair market value of New Unit Common Stock is less than the exercise price of the Warrants at that time. Each Warrant that is not exercised during the Exercise Period will expire upon the conclusion of the Exercise Period. To protect Invested Participants, this exemption requires Unit Corporation to notify and inform each Invested Participant in writing at least thirty days before the conclusion of the Exercise Period that each Warrant held in the Invested Participant's account will expire upon the conclusion of the Exercise Period.

*Selling the Warrants.* The Invested Participants may also sell the Warrants in over-the-counter (OTC) markets where sale prices for the Warrants will be determined by supply and demand and not by any independent valuation of the Warrants.

*Disclosures Associated with the Warrants.* As a condition of this exemption, the terms of the Warrants Offering must be described to the Invested Participants in clearly written communications containing all material terms provided by the Applicant. In addition to the prospectus for the Warrant Offering, Invested Participants must receive a separate communication from the Applicant that clearly explains all aspects of the Warrants Offering, including: (a) that Unit Corporation is granting the Warrants to former holders of Old Unit Common Stock; (b) how the Warrants work; (c) that the decision regarding whether to accept or reject the Warrants is the decision of the Invested Participant; and (d) the liability release described above.

*The Independent Fiduciary.* On September 23, 2020, Unit Corp and the Committee retained Newport Trust Company (Newport) to serve as the Independent Plan Fiduciary. Newport represents that: (a) it does not have any prior relationship with any parties in interest to the Plan; (b) the total fee it has received from any party in interest to the Plan does not exceed 1% of Newport's annual revenues from all sources based upon its prior income tax year; and (c) no party related to Unit Corporation has, or will, indemnify Newport in whole or in part for negligence and/or for any violation of state or federal law that may be attributable to Newport in performing its duties as Independent Fiduciary on behalf of the Plan.

*Independent Fiduciary Report.* On January 29, 2021, Newport completed its Independent Fiduciary Report, wherein it determined that the Transactions are prudent, in the interest of, and protective of, the Plan and the Invested Participants. Newport states that its recommendation to the Committee to pass through the decision whether to accept or reject the Warrants to Invested Participants comports with the Plan's standard practice of granting Invested Participants individual discretion over shareholder matters and with the Plan's standing practice for corporate actions.

Newport further states that allowing the Plan to hold the Warrants places Invested Participants on equal footing with other non-Plan shareholders of Old Unit Common Stock and that this pass-through empowers Invested Participants to make an election that is consistent with their particular economic interests. Newport asserts that Invested Participants who choose to accept the Warrants can realize value through the future exercise or sale of the Warrants, while Invested Participants who choose to reject the Warrants would maintain their legal right to bring claims against Unit Corporation.

*Statutory Findings.* As required by ERISA section 408(a), the Department is granting this exemption, because it finds

Common Stock and New Unit Common Stock that are held in participants' accounts.

[5] Jointly administered under Case No. 20–327401.

[6] The Applicant states that such releases, which are generally applied to creditors in exchange for cash and other property (including warrants), are common in the context of bankruptcy reorganizations. Liability releases allow the debtor-in-possession to operate its business free from potential claims arising pre-bankruptcy, so long as all similarly situated creditors and other claimants are treated equivalently.

that the favorable terms of the Transactions together with the protective conditions included herein are appropriately protective and in the interest of the Plan and its participants and beneficiaries. In this regard, the Department notes that (i) the Independent Fiduciary must represent the interests of the Plan for all purposes with respect to the Transactions; (ii) the Invested Participants who choose to accept the Warrants could realize value through the future exercise or sale of the Warrants, while Invested Participants who choose to reject the Warrants would maintain their legal right to bring claims against Unit Corporation; and (iii) Invested Participants will pay no fees or commissions and will only be allowed to exercise the Warrants for economic gain. Absent the receipt of Warrants, the Department notes that the Invested Participants may not receive any value for the shares of Old Unit Common Stock they held before the Bankruptcy Filing.[7]

**Written Comments**

In the proposed exemption, the Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption. All comments and requests for a hearing were due to the Department by March 27, 2023. The Department received only one written comment, which was from the Applicant, and did not receive any requests for a public hearing.

*Comments From Unit Corporation*

*Comment 1: Exercising the Warrants.* Section 8 of the proposed exemption states, in relevant part: ''An Invested Participant may exercise all or any whole number of their Warrants at any time during the Exercise Period . . .''

The Applicant clarifies that on a quarterly basis, Unit Corporation will instruct Fidelity to exercise Warrants for Invested Participants seeking to exercise their warrants, and Fidelity will sell existing holdings in the Invested Participants' accounts to create the liquidity needed to exercise the Warrants. In this regard, Fidelity will sell investments on a pro-rata basis across the participant's current investments and deposit the proceeds into a money market fund. After the assets are deposited into the money market fund, they will be sent to the Transfer Agent collectively for all participants who are exercising the warrants on a quarterly basis. Invested Participants will not be able to move money in or out of the money market fund as it will be used only to facilitate the payment of the Warrants.

*Department's Response.* The Department acknowledges and accepts the Applicant's factual clarifications.

*Comment 2: Selling the Warrants.* Section 8 of the proposed exemption states, in relevant part: ''Invested Participants will have the right to sell the Warrants allocated to their Plan accounts on the open market at any time before the Warrant expiration date in the same manner as other holders of the Warrants.''

The Applicant clarifies that according to Fidelity, Invested Participants with Warrants in their Plan account will be allowed to place a trade any time. However, these requests will be bundled with other Invested Participants' requests and the actual trades will occur as a monthly block trade. The Applicant states that Fidelity will provide ''best efforts'' to liquidate the Warrants, which will trade on the over-the-counter market, and the trading volume may not fully support the potential sales volume. The Applicant states that different strategies will be used such as spreading the sales volume over time to minimize the impact of the volume as well as contacting wholesalers to sell a block of Warrants.

*Department's Response.* The Department acknowledges and accepts the Applicant's factual clarifications.

*Comment 3: Name of the Independent Fiduciary.* The proposed exemption in Section 13 and Section I(e) refers to the Independent Fiduciary as ''Newport Trust Company of New York, NY.'' The Applicant requests that the Department instead refer to the Independent Fiduciary as ''Newport Trust Company.''

*Department's Response.* The Department acknowledges and accepts the Applicant's factual clarification.

*Comment 4: Exchange where the Warrants will be Sold.* Section III(f) of the proposed exemption states, ''If any of the Invested Participants fail to provide the Trustee with instructions to exercise or sell the Warrants received by July 30, 2027, the Warrants will be automatically sold in blind transactions on the New York Stock Exchange . . .''

The Applicant requests that the Department change ''New York Stock Exchange'' to ''over-the-counter''.

*Department's Response.* The Department acknowledges and accepts the Applicant's factual correction.

The complete application file (D–12026) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, please refer to the notice of proposed exemption published in the **Federal Register** on February 9, 2022, at 88 FR 8463.

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) does not relieve a fiduciary or other party in interest from certain requirements of other ERISA provisions, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with ERISA section 404(a)(1)(B).

(2) As required by ERISA section 408(a), the Department hereby finds that the exemption is: (a) administratively feasible; (b) in the interests of the affected plan and its participants and beneficiaries; and (c) protective of the rights of the participants and beneficiaries of such plan.

(3) This exemption is supplemental to, and not in derogation of, any other ERISA provisions, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of determining whether the transaction is in fact a prohibited transaction.

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transactions that are the subject of the exemption are true and accurate at all times.

Accordingly, after considering the entire record developed in connection with the Applicant's exemption application, the Department has determined to grant the following exemption under the authority of ERISA section 408(a), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B:[8]

[7] The Department notes that by granting this exemption it is not expressing any views regarding whether Invested Participants should ultimately accept or reject the Warrants.

[8] 76 FR 66637, 66644 (October 27, 2011).

**Exemption**

*Section I. Definitions*

(a) The term ''Bankruptcy Filing'' means Unit Corporation's May 22, 2020 filing for relief under Chapter 11 of Title 11 of the United States Code, in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, under Case No. 20–327401.

(b) The term ''Exercise Period'' means the period during which Invested Participants can exercise their Warrants that will end on the earliest of the following: (1) September 3, 2027; (2) the consummation of a cash sale (as defined in the Warrant Agreement); or (3) the consummation of a liquidation, dissolution or winding up of Unit Corporation.

(c) The term ''Invested Participants'' means Plan participants who held shares of Old Unit Common Stock as of the date of the Bankruptcy Filing.

(d) The term ''the Plan'' means the Unit Corporation Employees' Thrift Plan.

(e) The term ''Independent Fiduciary'' means Newport Trust Company (Newport) or a successor Independent Fiduciary, to the extent Newport or the successor Independent Fiduciary continues to serve in such capacity, and who:

(1) Is not an affiliate of Unit Corporation and does not hold an ownership interest in Unit Corporation or affiliates of Unit Corporation;

(2) Was not a fiduciary with respect to the Plan before its appointment to serve as the Independent Fiduciary;

(3) Has acknowledged in writing that it:

(i) Is a fiduciary with respect to the Plan and has agreed not to participate in any decision regarding any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(ii) Has appropriate technical training or experience to perform the services contemplated by the exemption;

(4) Has not entered into any agreement or instrument that violates the prohibitions on exculpatory provisions in ERISA section 410 or the Department's regulation relating to indemnification of fiduciaries at 29 CFR 2509.75–4;

(5) Has not received gross income from Unit Corporation (including Unit Corporation affiliates) for any fiscal year in an amount that exceeds two percent (2%) of the Independent Fiduciary's gross income from all sources for the prior fiscal year. This provision also applies to a partnership or corporation of which the Independent Fiduciary is an officer, director, or 10 percent (10%) or more partner or shareholder, and includes as gross income amounts received as compensation for services provided as an independent fiduciary under any prohibited transaction exemption granted by the Department; and

(6) No organization or individual that is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from Unit Corporation or from affiliates of Unit Corporation while serving as an Independent Fiduciary. This prohibition will continue for a period of six months after the party ceases to be an Independent Fiduciary and/or the Independent Fiduciary negotiates any transaction on behalf of the Plan during the period that the organization or individual serves as an Independent Fiduciary.

(f) The term ''Released Parties'' means: (1) Unit Corporation; (2) the Reorganized Unit Corporation; (3) the Debtor-in-possession Agent; (4) the Debtor-in-possession Lenders; (5) the RBL Agent; (6) the RBL Lenders;[9] (7) the Consenting Noteholders; (8) the Exit Facility Agent; (9) the Exit Facility Lenders; and (10) the Subordinated Notes Indenture Trustee.

(g) The term ''Unit Corporation'' means Unit Corporation and any affiliate of Unit Corporation.

(h) The term ''Warrants'' means the Warrants issued by Unit Corporation in connection with the Bankruptcy Filing that entitle their registered holders to receive the Warrants, pursuant to an exchange rate of 1 to .03460447, where one share of Old Unit Common Stock will convert to .03460447 Warrants, through the payment of an Exercise Price during the Exercise Period.

*Section II. Covered Transactions*

The restrictions of ERISA sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) shall not apply to: (1) the acquisition by the Invested Participant accounts, of the Warrants issued by Unit Corporation, the Plan sponsor, in connection with the Bankruptcy Filing, in exchange for a waiver of claims against Released Parties; and (2) the holding of the Warrants by the Plan. In order to receive such relief, the conditions in Section III must be met in conformance with the definitions set forth in Section I.

[9] RBL stands for ''Reserve Based Lending.''

*Section III. Conditions*

(a) The acquisition of the Warrants by the accounts of the Invested Participants is implemented on the same material terms as the acquisition of the Warrants by all shareholders of Old Unit Common Stock;

(b) The acquisition of the Warrants by the accounts of Invested Participants resulted from an independent corporate act of Unit Corporation;

(c) Each shareholder of Old Unit Common Stock, including each of the accounts of the Invested Participants, receives the same proportionate number of Warrants, and this proportionate number of Warrants is based on the number of shares of Old Unit Common Stock held by each shareholder;

(d) The Warrants are acquired pursuant to, and in accordance with, provisions under the Plan for the individually-directed investment of the accounts by the Invested Participants whose accounts in the Plan held Old Unit Common Stock;

(e) The decision regarding the acquisition, holding and disposition of the Warrants by the accounts of the Invested Participants have been and will continue to be made by the Invested Participants whose accounts received the Warrants;

(f) If any of the Invested Participants fail to provide the Trustee with instructions to exercise or sell the Warrants received by July 30, 2027, the Warrants will be automatically sold in blind transactions in over-the-counter (OTC) markets, and the sales proceeds will be distributed pro-rata to the accounts of the Invested Participants whose Warrants are sold;

(g) No brokerage fees, commissions, subscription fees, or other charges have been paid or will be paid by the Plan or the Invested Participants' accounts for the acquisition and holding of the Warrants, and no commissions, fees, or expenses have been paid or will be paid by the Plan or the Invested Participants' accounts to any related broker in connection with the sale or exercise of any of the Warrants or the acquisition of the New Unit Common Stock through the exercise of the Warrants;

(h) Unit Corporation does not influence any Invested Participant's election with respect to the Warrants;

(i) The terms of the Offering of the Warrants are described to the Invested Participants in clearly-written communications from Unit Corporation containing all material terms of the Warrant Offering. In addition to the prospectus for the Warrant Offering, Invested Participants must receive a separate communication from Unit

Corporation that clearly explains all aspects of the Warrants Offering, including: (1) that Unit Corporation is granting the Warrants to former holders of Old Unit Common Stock; (2) how the Warrants work; (3) that the decision regarding whether to accept or reject the Warrants is made solely by the Invested Participants; and (4) the liability release. The Independent Fiduciary described in (j) below must review and confirm that the communications sent to participants meet the requirements of this exemption;

(j) An Independent Fiduciary that is unrelated to Unit Corporation and/or its affiliates and acting solely on behalf of the Plan has determined that:

(1) The Proposed Transactions are prudent, in the interest of, and protective of the Plan and its participants and beneficiaries; and

(2) The Plan may enter into the Proposed Transactions in accordance with the requirements of this exemption;

(k) The Independent Fiduciary must document its initial and final determinations in written reports that include a detailed analysis regarding whether the Proposed Transactions are in the interests of the Plan and the Invested Participants, and protective of the rights of Invested Participants of the Plan;

(l) The Independent Fiduciary or an appropriate Plan fiduciary will monitor the holding and sale of warrants by the plan in accordance with the obligations of prudence and loyalty under ERISA section 404(a) to ensure that the Proposed Transactions remain prudent, protective and in the interests of the participants.

(m) No later than 90 days after the end of the Exercise Period, the Independent Fiduciary must submit a written statement to the Department confirming and demonstrating that all requirements of the exemption have been met. In its written statement, the Independent Fiduciary must confirm that all Invested Participants have received everything to which they are entitled pursuant to the terms of this exemption, the Warrant Agreement, and any other documents relevant to this exemption.

(n) The Independent Fiduciary must represent that it has not and will not enter into any agreement or instrument that violates ERISA section 410 or 29 CFR 2509.75–4;

(o) At least thirty days before the conclusion of the Exercise Period, Unit Corporation must notify and inform each Invested Participant in writing that each Warrant held in the Invested Participant's account will expire and all rights under the Warrants and the Warrant Agreement will cease upon the conclusion of the Exercise Period; and

(p) All of the material facts and representations set forth in the Summary of Facts and Representations are true and accurate at all times. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described by the Applicant in the application, the exemption will cease to apply as of the date of the change.

*Effective Date:* The exemption will be in effect on the date that this grant notice is published in the **Federal Register** and will continue until the date all Warrants are exercised, sold, or expire.

Signed at Washington, DC, this 11th day of July 2023.

**George Christopher Cosby,**

*Director Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.*

[FR Doc. 2023–15144 Filed 7–17–23; 8:45 am]

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## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Derricks Standard

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that the agency receives on or before August 17, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

*Comments are invited on:* (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** The paperwork provisions of the Standard specify requirements for marking the rated load on derricks, preparing certification records to verify the inspection of derrick ropes, and posting warning signs while the derrick is undergoing adjustments and repairs. Certification records must be maintained and disclosed upon request. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 28, 2023 (88 FR 12699).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

*Agency:* DOL–OSHA.

*Title of Collection:* Derricks Standard.

*OMB Control Number:* 1218–0222.

*Affected Public:* Private Sector—Businesses or other for-profits.

*Total Estimated Number of Respondents:* 500.

*Total Estimated Number of Responses:* 7,750.

*Total Estimated Annual Time Burden:* 1,336 hours.

*Total Estimated Annual Other Costs Burden:* $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

**Nicole Bouchet,**

*Acting Departmental Clearance Officer.*

[FR Doc. 2023–15145 Filed 7–17–23; 8:45 am]

BILLING CODE 4510–26–P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2023–0002]**

### Advisory Committee on Construction Safety and Health (ACCSH): Notice of Meetings

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice of ACCSH Committee and Workgroup meetings.

**SUMMARY:** The Advisory Committee on Construction Safety and Health (ACCSH) will meet August 9, 2023. ACCSH Workgroups will meet on August 10, 2023.

**DATES:**

*ACCSH meeting:* ACCSH will meet from 9 a.m. to 4 p.m., EDT, Wednesday, August 9, 2023.

*ACCSH Workgroup meetings:* ACCSH Workgroups will meet Thursday, August 10, 2023. (See ACCSH Workgroup Meetings in the **SUPPLEMENTARY INFORMATION** section of this notice for ACCSH Workgroup meetings scheduled times.)

**ADDRESSES:**

*Submission of comments and requests to speak:* Submit comments and requests to speak at the ACCSH meeting by Thursday, August 3, 2023, identified by the docket number for this **Federal Register** notice (Docket No. OSHA–2023–0002), using the following method:

*Electronically:* Comments and requests to speak, including attachments, must be submitted electronically at: *https://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

*Requests for special accommodations:* Submit requests for special accommodations for this ACCSH meeting by Thursday, August 3, 2023, to Ms. Gretta Jameson, OSHA, Directorate of Construction, U.S. Department of Labor; telephone: (202) 693–2020; email: *jameson.grettah@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:**

*For press inquiries:* Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*For general information about ACCSH:* Mr. Damon Bonneau, OSHA, Directorate of Construction, U.S. Department of Labor; telephone (202) 693–2183; email: *bonneau.damon@dol.gov.*

*Telecommunication requirements:* For additional information about the telecommunication requirements for the meeting, please contact Ms. Gretta Jameson, OSHA, Directorate of Construction, U.S. Department of Labor; telephone: (202) 693–2020; email: *jameson.grettah@dol.gov.*

*For copies of this* **Federal Register** *Notice:* Electronic copies of this **Federal Register** Notice are available at: *https://www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available on OSHA's website at *www.osha.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

ACCSH advises the Secretary of Labor and the Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) in the formulation of standards affecting the construction industry, and on policy matters arising in the administration of the safety and health provisions under the Contract Work Hours and Safety Standards Act (Construction Safety Act (CSA)) (40 U.S.C. 3701 *et seq.*) and the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) (see also 29 CFR 1911.10 and 1912.3). In addition, the CSA and OSHA regulations require the Assistant Secretary to consult with ACCSH before the agency proposes occupational safety and health standards affecting construction activities (40 U.S.C. 3704; 29 CFR 1911.10).

ACCSH operates in accordance with the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), and its implementing regulations (41 CFR 102–3 *et seq.*); and Department of Labor Manual Series Chapter 1–900 (3/25/2022). ACCSH generally meets two to four times a year.

## II. Meetings

*ACCSH Meeting*

ACCSH will meet from 9 a.m. to 4 p.m., EDT, Wednesday, August 9, 2023. The meeting is open to the public.

*Meeting agenda:* The tentative agenda for this meeting includes:

- Assistant Secretary's agency update and remarks;
- Directorate of Construction industry update;
- ACCSH Workgroup discussion; and
- Public comment period.

ACCSH Workgroup Meetings

In conjunction with the ACCSH meeting, ACCSH Workgroups will meet on Thursday, August 10, 2023. Workgroups and times for the workgroup meetings will be established during the ACCSH meeting on August 9, 2023. ACCSH Workgroup meetings are open to the public.

## III. Meeting Information

The ACCSH Committee and ACCSH Workgroups will meet in Conference Room C–5320, Room 6, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Public attendance at the ACCSH Committee and Workgroup meetings will be in-person and virtual. In-person attendance will be limited to the first 25 people who register to attend the meetings in person. Please contact Ms. Gretta Jameson, OSHA, Directorate of Construction, U.S. Department of Labor; telephone: (202) 693–2020; email: *jameson.grettah@dol.gov,* to register. In-person meeting attendance registration must be completed by Thursday, August 3, 2023. Meeting in-person attendees must use the visitor's entrance located at 3rd & C Streets, NW. Virtual meeting attendance information will be posted in the Docket (Docket No. OSHA–2023–0002) and on the ACCSH website, *https://www.osha.gov/advisorycommittee/accsh,* prior to the meeting.

*Requests to speak and speaker presentations:* Attendees who wish to address ACCSH must submit a request to speak, as well as any written or electronic presentation, by Thursday, August 3, 2023, using the method listed in the **ADDRESSES** section of this notice. The request must state:

- The amount of time requested to speak;
- The interest you represent (*e.g.,* business, organization, affiliation), if any; and
- A brief outline of your presentation.

PowerPoint presentations and other electronic materials must be compatible with PowerPoint 2010 and other Microsoft Office 2010 formats.

Alternately, you may request to address ACCSH briefly during the public-comment period. At her discretion, the ACCSH Chair may grant requests to address ACCSH as time and circumstances permit.

*Docket:* OSHA will place comments, requests to speak, and speaker presentations, including any personal information you provide, in the public docket without change, and those documents may be available online at: *https://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information such as Social Security Numbers and birthdates. OSHA also places in the public docket the meeting transcript, meeting minutes, documents presented at the meeting, and other documents pertaining to the ACCSH meeting. These documents are available online at: *https://www.regulations.gov.* To read or download documents in the public docket for this ACCSH meeting, go to Docket No. OSHA–2023–0002 at: *https://www.regulations.gov.* All documents in the public docket are listed in the index; however, some documents (*e.g.,* copyrighted material) are not publicly available to read or download through *https://www.regulations.gov.* All submissions are available for inspection and copying, when permitted, at the OSHA Docket Office. For information on using *https://www.regulations.gov* to make submissions or to access the docket, click on the ''Help'' tab at the top of the homepage. Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available through that website and for assistance in using the internet to locate submissions and other documents in the docket.

*Authority and Signature*

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice pursuant to 29 U.S.C. 655, 40 U.S.C. 3704, Secretary of Labor's Order No. 8–2020 (85 FR 58393), 5 U.S.C. App. 2, and 29 CFR part 1912.

Signed at Washington, DC, on July 11, 2023.

**James S. Frederick,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2023–15146 Filed 7–17–23; 8:45 am]

**BILLING CODE 4510–26–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice: 23–073]**

### National Space Council Users' Advisory Group; Meeting

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act (FACA), as amended, NASA announces a meeting of the National Space Council Users' Advisory Group (UAG).

**DATES:** Friday, August 4, 2023, from 11:00 a.m.—2:00 p.m., Eastern Time.

**ADDRESSES:** Virtual meeting.

*Virtual Access via internet and Phone:* Access information links for both virtual video and audio lines will be posted in advance at the following UAG website: *https://www.nasa.gov/content/national-space-council-users-advisory-group.*

**FOR FURTHER INFORMATION CONTACT:** Mr. James Joseph Miller, UAG Designated Federal Officer and Executive Secretary, Space Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 262–0929 or *jj.miller@nasa.gov.*

The agenda for the meeting will include the following:

• Opening Remarks and Introductions by UAG Chair, General Lester Lyles (USAF, Ret.),

• Expert Presentations based on UAG Subcommittee Focus Areas

• Updates from UAG Subcommittee Chairs:

—Exploration and Discovery

—Economic Development and Industrial Base

—Climate and Societal Benefits

—Data and Emerging Technology

—STEM Education, Diversity & Inclusion and Outreach

—National Security

• Roundtable Discussion

• Next Steps

For further information about membership and a detailed Agenda, visit the UAG website at: *https://www.nasa.gov/content/national-space-council-users-advisory-group.*

**Patricia Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2023–15184 Filed 7–17–23; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Sunshine Act Meetings

**TIME AND DATE:** 10:00 a.m., Thursday, July 20, 2023.

**PLACE:** Board Room, 7th Floor, Room 7B, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. 2023 Mid-Session Budget

2. NCUA Rules and Regulations, Federal Credit Union Bylaws

**CONTACT PERSON FOR MORE INFORMATION:** Melane Conyers-Ausbrooks, Secretary of the Board, Telephone: 703–518–6304.

**Melane Conyers-Ausbrooks,**

*Secretary of the Board.*

[FR Doc. 2023–15244 Filed 7–14–23; 11:15 am]

**BILLING CODE 7535–01–P**

## NATIONAL SCIENCE FOUNDATION

### Membership of National Science Foundation's Senior Executive Service Performance Review Board

**AGENCY:** National Science Foundation.

**ACTION:** Notice.

**SUMMARY:** The National Science Foundation is announcing the members of the Senior Executive Service Performance Review Board.

**ADDRESSES:** Comments should be addressed to Branch Chief, Executive Services, Division of Human Resource Management, National Science Foundation, Room W15219, 2415 Eisenhower Avenue, Alexandria, VA 22314.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer Munz at the above address or (703) 292–2478.

**SUPPLEMENTARY INFORMATION:** The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Karen Marrongelle, Chief Operating Officer, Chairperson

Wonzie Gardner, Jr., Chief Human Capital Officer and Office Head, Office of Information and Resource Management

Simon Malcomber, Deputy Assistant Director, Directorate for Biological Sciences

Sean Jones, Assistant Director, Directorate for Mathematical and Physical Sciences

Erwin Gianchandani, Assistant Director, Directorate for Technology, Innovation and Partnerships

Evan Heit, Division Director, Division of Research on Learning in Formal and Informal Settings, Directorate for Education and Human Resources

Maren Williams, Division Director, Division of Administrative Services, Office of Information and Resource Management

William Malyszka, Division Director, Division of Human Resource Management and PRB Executive Secretary

This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

Dated: July 12, 2023.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2023–15117 Filed 7–17–23; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2022–0187]**

## Information Collection: NRC Form 629, Authorization for Payment by Credit Card

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of submission to the Office of Management and Budget; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, NRC Form 629, ''Authorization for Payment by Credit Card.''

**DATES:** Submit comments by August 17, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2022–0187 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–2022–0187.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The supporting statement, NRC Form 629, and *Pay.gov* screenshot are available in ADAMS under Accession Nos. ML23130A040, ML23017A134, and ML23130A042.
- NRC's PDR: The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. ET, Monday through Friday, except Federal holidays.
- NRC's Clearance Officer: A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

*B. Submitting Comments*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

### II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, NRC Form 629, ''Authorization for Payment by Credit Card.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on March 1, 2023 (88 FR 12996).

1. *The title of the information collection:* NRC Form 629, Authorization for Payment by Credit Card.
2. *OMB approval number:* 3150–0190.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 629.
5. *How often the collection is required or requested:* As needed.
6. *Who will be required or asked to respond:* NRC licensees.
7. *The estimated number of annual responses:* 300.
8. *The estimated number of annual respondents:* 300.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 50.
10. *Abstract:* The NRC bills licensees, applicants, and individuals for the payment of civil penalties, full cost licensing fees, inspection fees, and other fees. The five methods used to pay bills owed to the NRC are: (1) Payment by Automated Clearinghouse Network (ACH); (2) Payment by Credit Card; (3) Payment by Electronic Funds Transfer/FedWire; (4) Payment by Check, and (5) Payment by Digital Wallet. NUREG/BR–0254, ''Payment Methods'' provides instructions on how to transfer monies owed to the NRC; no information is collected by the NRC in using this brochure. NRC Form 629, ''Authorization for Payment by Credit Card'' is an optional form used to authorize payment by credit card.

Dated: July 12, 2023.

For the Nuclear Regulatory Commission.

**David C. Cullison,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 2023–15131 Filed 7–17–23; 8:45 am]

**BILLING CODE 7590–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. CP2022–34]**

## New Postal Products

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* July 19, 2023.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

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## I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

[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).

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

## II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2022–34; *Filing Title:* Notice of United States Postal Service of Modification to Inbound Competitive Multi-Service IRA–USPS II Agreement; *Filing Acceptance Date:* July 12, 2023; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* July 19, 2023.

This Notice will be published in the **Federal Register**.

**Erica A. Barker,**

*Secretary.*

[FR Doc. 2023–15156 Filed 7–17–23; 8:45 am]

**BILLING CODE 7710–FW–P**

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# SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–97887; File No. SR–MIAX–2023–28]**

## Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

July 12, 2023.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 29, 2023, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to extend the waiver period for certain non-transaction fees applicable to Market Makers [3] that trade solely in Proprietary Products [4] until December 31, 2023.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Fee Schedule to extend the waiver period for certain non-transaction fees applicable to Market Makers that trade solely in Proprietary Products until December 31, 2023.

Background

On October 12, 2018, the Exchange received approval from the Commission to list and trade on the Exchange options on the SPIKES® Index, a new index that measures expected 30-day volatility of the SPDR S&P 500 ETF Trust (commonly known and referred to by its ticker symbol, ''SPY'').[5] The Exchange adopted its initial SPIKES

[3] The term ''Market Makers'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[4] The term ''Proprietary Product'' means a class of options that is listed exclusively on the Exchange. *See* Exchange Rule 100.

[5] *See* Securities Exchange Act Release No. 84417 (October 12, 2018), 83 FR 52865 (October 18, 2018) (SR–MIAX–2018–14) (Order Granting Approval of a Proposed Rule Change by Miami International Securities Exchange, LLC to List and Trade on the Exchange Options on the SPIKES® Index).

options transaction fees on February 15, 2019 and adopted a new section of the Fee Schedule—Section 1)a)xi), SPIKES—for those fees.[6] Options on the SPIKES Index began trading on the Exchange on February 19, 2019.

On May 31, 2019, the Exchange filed its first proposal in a series of proposals with the Commission to amend the Fee Schedule to waive certain non-transaction fees applicable to Market Makers that trade solely in Proprietary Products (including options on the SPIKES Index) beginning June 1, 2019, through June 30, 2023.[7] In particular, the Exchange adopted fee waivers for Membership Application fees, monthly Market Maker Trading Permit fees, Application Programming Interface (''API'') Testing and Certification fees for Members,[8] and monthly MIAX Express Interface (''MEI'') Port[9] fees assessed to Market Makers that trade solely in Proprietary Products (including options on SPIKES) throughout the entire period of June 1, 2019 through June 30, 2023. The Exchange now proposes to extend the waiver period for the same non-transaction fees applicable to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until December 31, 2023. In particular, the Exchange proposes to waive Membership Application fees, monthly Market Maker Trading Permit fees, Member API Testing and Certification fees, and monthly MEI Port fees assessed to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until December 31, 2023.

Membership Application Fees

The Exchange currently assesses a one-time Membership Application fee for applications of potential Members. The Exchange assesses a one-time Membership Application fee on the earlier of (i) the date the applicant is certified in the membership system, or (ii) once an application for MIAX membership is finally denied. The one-time application fee is based upon the applicant's status as either a Market Maker or an Electronic Exchange Member (''EEM'').[10] A Market Maker is assessed a one-time Membership Application fee of $3,000.

The Exchange proposes that the waiver for the one-time Membership Application fee of $3,000 for Market Makers that trade solely in Proprietary Products (including options on SPIKES) will be extended from June 30, 2023 until December 31, 2023, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposed change is to continue to provide an incentive for potential Market Makers to submit membership applications, which should result in an increase of potential liquidity in Proprietary Products, including options on SPIKES. Even though the Exchange proposes to extend the waiver of this particular fee, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness that the Exchange intends to assess such a fee after December 31, 2023.

Trading Permit Fees

The Exchange issues Trading Permits that confer the ability to transact on the Exchange. MIAX Trading Permits are issued to Market Makers and EEMs. Members receiving Trading Permits during a particular calendar month are assessed monthly Trading Permit fees as set forth in the Fee Schedule. As it relates to Market Makers, MIAX currently assesses a monthly Trading Permit fee in any month the Market Maker is certified in the membership system, is credentialed to use one or more MIAX MEI Ports in the production environment and is assigned to quote in one or more classes. MIAX assesses the monthly Market Maker Trading Permit fee for its Market Makers based on the greatest number of classes listed on MIAX that the MIAX Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate is the lesser of either the per class basis or percentage of total national average daily volume measurements. A MIAX Market Maker is assessed a monthly Trading Permit fee according to the following table:[11]

| Type of trading permit | Monthly MIAX trading permit fee | Market maker assignments (the lesser of the applicable measurements below) Ω | |
|---|---|---|---|
| | | Per class | % of national average daily volume |
| Market Maker (includes RMM, LMM, PLMM). | $7,000.00 | Up to 10 Classes | Up to 20% of Classes by volume. |
| | 12,000.00 | Up to 40 Classes | Up to 35% of Classes by volume. |
| | *17,000.00 | Up to 100 Classes | Up to 50% of Classes by volume. |
| | *22,000.00 | Over 100 Classes | Over 50% of Classes by volume up to all Classes listed on MIAX. |

Ω Excludes Proprietary Products.

* For these Monthly MIAX Trading Permit Fee levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be $15,500 instead of the fee otherwise applicable to such level.

[6] *See* Securities Exchange Release No. 85283 (March 11, 2019), 84 FR 9567 (March 15, 2019) (SR–MIAX–2019–11). The Exchange initially filed the proposal on February 15, 2019 (SR–MIAX–2019–04). That filing was withdrawn and replaced with SR–MIAX–2019–11. On September 30, 2020, the Exchange filed its proposal to, among other things, reorganize the Fee Schedule to adopt new Section 1)b), Proprietary Products Exchange Fees, and moved the fees and rebates for SPIKES options into new Section 1)b)i). *See* Securities Exchange Act Release Nos. 90146 (October 9, 2020), 85 FR 65443 (October 15, 2020) (SR–MIAX–2020–32); 90814 (December 29, 2020), 86 FR 327 (January 5, 2021) (SR–MIAX–2020–39).

[7] *See* Securities Exchange Act Release Nos. 86109 (June 14, 2019), 84 FR 28860 (June 20, 2019) (SR–MIAX–2019–28); 87282 (October 10, 2019), 84 FR 55658 (October 17, 2019) (SR–MIAX–2019–43); 87897 (January 6, 2020), 85 FR 1346 (January 10, 2020) (SR–MIAX–2019–53); 89289 (July 10, 2020), 85 FR 43279 (July 16, 2020) (SR–MIAX–2020–22); 90146 (October 9, 2020), 85 FR 65443 (October 15, 2020) (SR–MIAX–2020–32); 90814 (December 29, 2020), 86 FR 327 (January 5, 2021) (SR–MIAX–2020–39); 91498 (April 7, 2021), 86 FR 19293 (April 13, 2021) (SR–MIAX–2021–06); 93881 (December 30, 2021), 87 FR 517 (January 5, 2022) (SR–MIAX–2021–63); 95259 (July 12, 2022), 87 FR 42754 (July 17, 2022) (SR–MIAX–2022–24); 96007 (October 7, 2022), 87 FR 62151 (October 13, 2022) (SR–MIAX–2022–32); 96588 (December 28, 2022), 88 FR 381 (January 4, 2023) (SR–MIAX–2022–47).

[8] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[9] Full Service MEI Ports provide Market Makers with the ability to send Market Maker simple and complex quotes, eQuotes, and quote purge messages to the MIAX System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per matching engine. *See* Fee Schedule, *infra* note 11.

[10] The term ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[11] *See* Fee Schedule, Section 3)b).

MIAX proposes that the waiver for the monthly Trading Permit fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) will be extended from June 30, 2023 to December 31, 2023, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposed change is to continue to provide an incentive for Market Makers to provide liquidity in Proprietary Products on the Exchange, which should result in increasing potential order flow and volume in Proprietary Products, including options on SPIKES. Even though the Exchange proposes to extend the waiver of this particular fee, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness to potential Members seeking a Trading Permit that the Exchange intends to assess such a fee after December 31, 2023.

The Exchange also proposes that Market Makers who trade Proprietary Products (including options on SPIKES) along with multi-listed classes will continue to not have Proprietary Products (including SPIKES) counted toward those Market Makers' class assignment count or percentage of total national average daily volume. This exclusion is noted with the symbol ''Ω'' following the table that shows the monthly Trading Permit fees currently assessed to Market Makers in Section 3)b) of the Fee Schedule.

API Testing and Certification Fee

The Exchange assesses an API Testing and Certification fee to all Members depending upon Membership type. An API makes it possible for Members' software to communicate with MIAX software applications, and is subject to Members testing with, and certification by, MIAX. The Exchange offers four types of interfaces: (i) the Financial Information Exchange Port (''FIX Port''),[12] which enables the FIX Port user (typically an EEM or a Market Maker) to submit simple and complex orders electronically to MIAX; (ii) the MEI Port, which enables Market Makers to submit simple and complex electronic quotes to MIAX; (iii) the Clearing Trade Drop Port (''CTD Port''),[13] which provides real-time trade clearing information to the participants to a trade on MIAX and to the participants' respective clearing firms; and (iv) the FIX Drop Copy Port (''FXD Port''),[14] which provides a copy of real-time trade execution, correction and cancellation information through a FIX Port to any number of FIX Ports designated by an EEM to receive such messages.

API Testing and Certification fees for Market Makers are assessed (i) initially per API for CTD and MEI ports in the month the Market Maker has been credentialed to use one or more ports in the production environment for the tested API and the Market Maker has been assigned to quote in one or more classes, and (ii) each time a Market Maker initiates a change to its system that requires testing and certification. API Testing and Certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. The Exchange currently assesses a Market Maker an API Testing and Certification fee of $2,500. The API Testing and Certification fees represent costs incurred by the Exchange as it works with each Member for testing and certifying that the Member's software systems communicate properly with MIAX's interfaces.

MIAX proposes to extend the waiver of the API Testing and Certification fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) from June 30, 2023 until December 31, 2023, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposed change is to continue to provide an incentive for potential Market Makers to develop software applications to trade in Proprietary Products, including options on SPIKES. Even though the Exchange proposes to extend the waiver of this particular fee, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness that the Exchange intends to assess such a fee after December 31, 2023.

MEI Port Fees

MIAX assesses monthly MEI Port fees to Market Makers in each month the Member has been credentialed to use the MEI Port in the production environment and has been assigned to quote in at least one class. The amount of the monthly MEI Port fee is based upon the number of classes in which the Market Maker was assigned to quote on any given day within the calendar month, and upon the class volume percentages set forth in the Fee Schedule. The class volume percentage is based on the total national average daily volume in classes listed on MIAX in the prior calendar quarter. Newly listed option classes are excluded from the calculation of the monthly MEI Port fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume. The Exchange assesses MIAX Market Makers the monthly MEI Port fee based on the greatest number of classes listed on MIAX that the MIAX Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate that is the lesser of either the per class basis or percentage of total national average daily volume measurement. MIAX assesses MEI Port fees on Market Makers according to the following table: [15]

| Monthly MIAX MEI fees | Market maker assignments (the lesser of the applicable measurements below) Ω | |
|---|---|---|
| | Per class | % of national average daily volume |
| $5,000.00 | Up to 5 Classes | Up to 10% of Classes by volume. |
| $10,000.00 | Up to 10 Classes | Up to 20% of Classes by volume. |

[12] A FIX Port is an interface with MIAX systems that enables the Port user (typically an Electronic Exchange Member or a Market Maker) to submit simple and complex orders electronically to MIAX. *See* Fee Schedule, Section 5)d)i).

[13] Clearing Trade Drop (''CTD'') provides Exchange members with real-time clearing trade updates. The updates include the Member's clearing trade messages on a low latency, real-time basis. The trade messages are routed to a Member's connection containing certain information. The information includes, among other things, the following: (i) trade date and time; (ii) symbol information; (iii) trade price/size information; (iv) Member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); (v) Exchange Member Participant Identifier (''MPID'') for each side of the transaction, including Clearing Member MPID; and (vi) strategy specific information for complex transactions. CTD Port Fees will be assessed in any month the Member is credentialed to use the CTD Port in the production environment. *See* Fee Schedule, Section 5)d)iii.

[14] The FIX Drop Copy Port (''FXD'') is a messaging interface that will provide a copy of real-time trade execution, trade correction and trade cancellation information for simple and complex orders to FIX Drop Copy Port users who subscribe to the service. FIX Drop Copy Port users are those users who are designated by an EEM to receive the information and the information is restricted for use by the EEM only. FXD Port Fees will be assessed in any month the Member is credentialed to use the FXD Port in the production environment. *See* Fee Schedule, Section 5)d)iv.

[15] *See* Fee Schedule 5)d)ii).

| Monthly MIAX MEI fees | Market maker assignments (the lesser of the applicable measurements below) Ω | |
|---|---|---|
| | Per class | % of national average daily volume |
| $14,000.00 | Up to 40 Classes | Up to 35% of Classes by volume. |
| $17,500.00 * | Up to 100 Classes | Up to 50% of Classes by volume. |
| $20,500.00 * | Over 100 Classes | Over 50% of Classes by volume up to all Classes listed on MIAX. |

Ω Excludes Proprietary Products.

* For these Monthly MIAX MEI Fees levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be $14,500 instead of the fee otherwise applicable to such level.

MIAX proposes to extend the waiver of the monthly MEI Port fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) from June 30, 2023 until December 31, 2023, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposal is to continue to provide an incentive to Market Makers to connect to MIAX through the MEI Port such that they will be able to trade in MIAX Proprietary Products. Even though the Exchange proposes to extend the waiver of this particular fee, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness that the Exchange intends to assess such a fee after December 31, 2023.

The Exchange notes that for the purposes of this proposed change, other Market Makers who trade MIAX Proprietary Products (including options on SPIKES) along with multi-listed classes will continue to not have Proprietary Products (including SPIKES) counted toward those Market Makers' class assignment count or percentage of total national average daily volume. This exclusion is noted by the symbol ''Ω'' following the table that shows the monthly MEI Port Fees currently assessed for Market Makers in Section 5)d)ii) of the Fee Schedule.

The proposed extension of the fee waivers are targeted at market participants, particularly market makers, who are not currently members of MIAX, who may be interested in being a Market Maker in Proprietary Products on the Exchange. The Exchange estimates that there are fewer than ten (10) such market participants that could benefit from the extension of these fee waivers. The proposed extension of the fee waivers does not apply differently to different sizes of market participants, however the fee waivers do only apply to Market Makers (and not EEMs).

Market Makers, unlike other market participants, take on a number of obligations, including quoting obligations that other market participants do not have. Further, Market Makers have added market making and regulatory requirements, which normally do not apply to other market participants. For example, Market Makers have obligations to maintain continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and to not make bids or offers or enter into transactions that are inconsistent with a course of dealing. Accordingly, the Exchange believes it is reasonable and not unfairly discriminatory to continue to offer the fee waivers to Market Makers because the Exchange is seeking additional liquidity providers for Proprietary Products, in order to enhance liquidity and spreads in Proprietary Products, which is traditionally provided by Market Makers, as opposed to EEMs.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [16] in general, and furthers the objectives of Section 6(b)(4) of the Act [17] in particular, in that it is an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the proposal to extend the fee waiver period for certain non-transaction fees for Market Makers that trade solely in Proprietary Products is an equitable allocation of reasonable fees because the proposal continues to waive non-transaction fees for a limited period of time in order to enable the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants in MIAX's Proprietary Products, including options on SPIKES. The Exchange believe the proposed extension of the fee waivers is fair and equitable and not unreasonably discriminatory because it applies to all market participants not currently registered as Market Makers at the Exchange. Any market participant may choose to satisfy the additional requirements and obligations of being a Market Maker and trade solely in Proprietary Products in order to qualify for the fee waivers.

The Exchange believes that the proposed extension of the fee waivers is equitable and not unfairly discriminatory for Market Makers as compared to EEMs because Market Makers, unlike other market participants, take on a number of obligations, including quoting obligations that other market participants do not have. Further, Market Makers have added market making and regulatory requirements, which normally do not apply to other market participants. For example, Market Makers have obligations to maintain continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and to not make bids or offers or enter into transactions that are inconsistent with a course of dealing.

The Exchange believes it is reasonable and equitable to continue to waive the one-time Membership Application Fee, monthly Trading Permit Fee, API Testing and Certification Fee, and monthly MEI Port Fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) until December 31, 2023, since the waiver of such fees provides incentives to interested market participants to trade in Proprietary Products. This should result in increasing potential order flow and liquidity in MIAX Proprietary Products, including options on SPIKES.

The Exchange believes it is reasonable and equitable to continue to waive the

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4) and (5).

API Testing and Certification fee assessable to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until December 31, 2023, since the waiver of such fees provides incentives to interested Members to develop and test their APIs sooner. Determining system operability with the Exchange's system will in turn provide MIAX with potential order flow and liquidity providers in Proprietary Products.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory that Market Makers who trade in Proprietary Products along with multi-listed classes will continue to not have Proprietary Products counted toward those Market Makers' class assignment count or percentage of total national average daily volume for monthly Trading Permit Fees and monthly MEI Port Fees in order to incentivize existing Market Makers who currently trade in multi-listed classes to also trade in Proprietary Products, without incurring certain additional fees.

The Exchange believes that the proposed extension of the fee waivers constitutes an equitable allocation of reasonable fees and other charges among its Members and issuers and other persons using its facilities. The proposed extension of the fee waivers means that all prospective market makers that wish to become Market Maker Members of the Exchange and quote solely in Proprietary Products may do so and have the above-mentioned fees waived until December 31, 2023. The proposed extension of the fee waivers will continue to not apply to potential EEMs because the Exchange is seeking to enhance the quality of its markets in Proprietary Products through introducing more competition among Market Makers in Proprietary Products. In order to increase the competition, the Exchange believes that it must continue to waive entry type fees for such Market Makers. EEMs do not provide the benefit of enhanced liquidity which is provided by Market Makers, therefore the Exchange believes it is reasonable and not unfairly discriminatory to continue to only offer the proposed fee waivers to Market Makers (and not EEMs). Further, the Exchange believes it is reasonable and not unfairly discriminatory to continue to exclude Proprietary Products from an existing Market Maker's permit fees and port fees, in order to incentive such Market Makers to quote in Proprietary Products. The amount of a Market Maker's permit and port fee is determined by the number of classes quoted and volume of the Market Maker. By excluding Proprietary Products from such fees, the Exchange is able to incentivize Market Makers to quote in Proprietary Products. EEMs do not pay permit and port fees based on the classes traded or volume, so the Exchange believes it is reasonable, equitable, and not unfairly discriminatory to only offer the exclusion to Market Makers (and not EEMs).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes that the proposal to extend certain of the non-transaction fee waivers until December 31, 2023 for Market Makers that trade solely in Proprietary Products would increase intra-market competition by incentivizing new potential Market Makers to quote in Proprietary Products, which will enhance the quality of quoting and increase the volume of contracts in Proprietary Products traded on MIAX, including options on SPIKES. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity for the Exchange's Proprietary Products. Enhanced market quality and increased transaction volume in Proprietary Products that results from the anticipated increase in Market Maker activity on the Exchange will benefit all market participants and improve competition on the Exchange.

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes for each separate type of market participant (new Market Makers and existing Market Makers) will be assessed equally to all such market participants. While different fees are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances as discussed above. For example, Market Makers have quoting obligations that other market participants (such as EEMs) do not have.

Inter-Market Competition

The Exchange does not believe that the proposed rule changes will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed extension of the fee waivers applies only to the Exchange's Proprietary Products (including options on SPIKES), which are traded exclusively on the Exchange.

*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)(ii) of the Act,[18] and Rule 19b–4(f)(2)[19] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–MIAX–2023–28 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–MIAX–2023–28. 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. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/*

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

[19] 17 CFR 240.19b–4(f)(2).

*rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MIAX–2023–28 and should be submitted on or before August 8, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2023–15129 Filed 7–17–23; 8:45 am]

**BILLING CODE 8011–01–P**

[20] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–97883; File No. SR–MIAX–2023–26]**

## Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

July 12, 2023.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2023, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Fee Schedule (''Fee Schedule'') to extend the SPIKES Options Market Maker Incentive Program (the ''Incentive Program'') until December 31, 2023.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/miax-options/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Fee Schedule to extend the Incentive Program until December 31, 2023.

On September 30, 2021, the Exchange filed its initial proposal to implement a SPIKES Options Market Maker Incentive Program for SPIKES options to incentivize Market Makers[3] to improve liquidity, available volume, and the quote spread width of SPIKES options beginning October 1, 2021, and ending December 31, 2021.[4] Technical details regarding the Incentive Program were published in a Regulatory Circular on September 30, 2021.[5] On October 12, 2021, the Exchange withdrew SR–MIAX–2021–45 and refiled its proposal to implement the Incentive Program to provide additional details.[6] In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (December 31, 2021) unless the Exchange filed another 19b–4 Filing to amend the fees (or extend the Incentive Program).[7]

Between December 23, 2021 and March 22, 2023, the Exchange filed several proposals to extend the Incentive Program, with the last extension period ending June 30, 2023.[8] In each of those filings, the Exchange specifically noted that the Incentive Program would expire at the end of the then-current period unless the Exchange filed another 19b–4 Filing to amend the fees (or extend the Incentive Program).[9] The Exchange now proposes to extend the Incentive Program until December 31, 2023.[10]

The Exchange proposes to extend the Incentive Program for SPIKES options to continue to incentivize Market Makers to improve liquidity, available volume, and the quote spread width of SPIKES options. Currently, to be eligible to participate in the Incentive Program, a Market Maker must meet certain minimum requirements related to quote spread width in certain in-the-money (ITM) and out-of-the-money (OTM) options as determined by the Exchange and communicated to Members via Regulatory Circular.[11] Market Makers must also satisfy a minimum time in the market in the front 2 expiry months of 70%, and have an average quote size of 25 contracts. The Exchange established two separate incentive compensation pools that are used to compensate Market Makers that satisfy the criteria pursuant to the Incentive Program.

The first pool (Incentive 1) has a total amount of $40,000 per month, which is allocated to Market Makers that meet the minimum requirements of the Incentive Program. Market Makers are required to meet minimum spread

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Market Makers'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[4] *See* SR–MIAX–2021–45.

[5] *See* MIAX Options Regulatory Circular 2021–56, SPIKES Options Market Maker Incentive Program (September 30, 2021) available at *https://www.miaxglobal.com/sites/default/files/circular-files/MIAX_Options_RC_2021_56.pdf.*

[6] *See* Securities Exchange Act Release No. 93424 (October 26, 2021), 86 FR 60322 (November 1, 2021) (SR–MIAX–2021–49).

[7] *See id.*

[8] *See* Securities Exchange Act Release Nos. 93881 (December 30, 2021), 87 FR 517 (January 5, 2022) (SR–MIAX–2021–63); 94574 (April 1, 2022), 87 FR 20492 (April 7, 2022) (SR–MIAX–2022–12); 95259 (July 12, 2022), 87 FR 42754 (July 17, 2022) (SR–MIAX–2022–24); 96007 (October 7, 2022), 87 FR 62151 (October 13, 2022) (SR–MIAX–2022–32); 96007 (October 7, 2022), 87 FR 62151 (October 13, 2022) (SR–MIAX–2022–32); 96588 (December 28, 2022), 88 FR 381 (January 4, 2023) (SR–MIAX–2022–47); 97239 (April 3, 2023), 88 FR 20930 (April 7, 2023) (SR–MIAX–2023–13).

[9] *See id.*

[10] The Exchange notes that at the end of the extension period, the Incentive Program will expire unless the Exchange files another 19b–4 Filing to amend the terms or extend the Incentive Program.

[11] *See supra* note 5.

width requirements in a select number of ITM and OTM SPIKES option contracts as determined by the Exchange and communicated to Members via Regulatory Circular.[12] A complete description of how the Exchange calculates the minimum spread width requirements in ITM and OTM SPIKES options can be found in the published Regulatory Circular.[13] Market Makers are also required to maintain the minimum spread width, described above, for at least 70% of the time in the front two (2) SPIKES options contract expiry months and maintain an average quote size of at least 25 SPIKES options contracts. The amount available to each individual Market Maker is capped at $10,000 per month for satisfying the minimum requirements of the Incentive Program. In the event that more than four Market Makers meet the requirements of the Incentive Program, each qualifying Market Maker is entitled to receive a pro-rated share of the $40,000 monthly compensation pool dependent upon the number of qualifying Market Makers in that particular month.

The second pool (Incentive 2 Pool) is capped at a total amount of $100,000 per month which is used during the Incentive Program to further incentivize Market Makers who meet or exceed the requirements of Incentive 1 (''qualifying Market Makers'') to provide tighter quote width spreads. The Exchange ranks each qualifying Market Maker's quote width spread relative to each other qualifying Market Maker's quote width spread. Market Makers with tighter spreads in certain strikes, as determined by the Exchange and communicated to Members via Regulatory Circular,[14] are eligible to receive a pro-rated share of the compensation pool as calculated by the Exchange and communicated to Members via Regulatory Circular,[15] not to exceed $25,000 per Member per month. Qualifying Market Makers are ranked relative to each other based on the quality of their spread width (*i.e.,* tighter spreads are ranked higher than wider spreads) and the Market Maker with the best quality spread width receives the highest rebate, while other eligible qualifying Market Makers receive a rebate relative to their quality spread width.

The Exchange proposes to extend the Incentive Program until December 31, 2023. The Exchange does not propose to make any amendments to how it calculates any of the incentives provided for in Incentive Pools 1 or 2. The details of the Incentive Program can continue to be found in the Regulatory Circular that was published on September 30, 2021 to all Exchange Members.[16] The purpose of this extension is to continue to incentivize Market Makers to improve liquidity, available volume, and the quote spread width of SPIKES options. The Exchange will announce the extension of the Incentive Program to all Members via a Regulatory Circular.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[17] in general, and furthers the objectives of Section 6(b)(4) of the Act[18] in particular, in that it is an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to extend the Incentive Program for Market Makers in SPIKES options until December 31, 2023. The Incentive Program is reasonably designed because it will continue to incentivize Market Makers to provide quotes and increased liquidity in select SPIKES options contracts. The Incentive Program is reasonable, equitably allocated and not unfairly discriminatory because all Market Makers in SPIKES options may continue to qualify for Incentive 1 and Incentive 2, dependent upon each Market Maker's quoting in SPIKES options in a particular month. Additionally, if a SPIKES Market Maker does not satisfy the requirements of Incentive Pool 1 or 2, then it simply will not receive the rebate offered by the Incentive Program for that month.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to continue to offer this financial incentive to SPIKES Market Makers because it will continue to benefit all market participants trading in SPIKES options. SPIKES options is a Proprietary Product on the Exchange and the continuation of the Incentive Program encourages SPIKES Market Makers to satisfy a heightened quoting standard, average quote size, and time in market. A continued increase in quoting activity and tighter quotes may yield a corresponding increase in order flow from other market participants, which benefits all investors by deepening the Exchange's liquidity pool, potentially providing greater execution incentives and opportunities, while promoting market transparency and improving investor protection.

The Exchange believes that the Incentive Program is equitable and not unfairly discriminatory because it will continue to promote an increase in SPIKES options liquidity, which may facilitate tighter spreads and an increase in trading opportunities to the benefit of all market participants. The Exchange believes it is reasonable to operate the Incentive Program for a continued limited period of time to strengthen market quality for all market participants. The resulting increased volume and liquidity will benefit those Members who are eligible to participate in the Incentive Program and will also continue to benefit those Members who are not eligible to participate in the Incentive Program by providing more trading opportunities and tighter spreads.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes that the proposed extension of the Incentive Program to December 31, 2023 would continue to increase intra-market competition by incentivizing Market Makers to quote SPIKES options, which will continue to enhance the quality of quoting and increase the volume of contracts available to trade in SPIKES options. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity for SPIKES options. Enhanced market quality and increased transaction volume in SPIKES options that results from the anticipated increase in Market Maker activity on the Exchange will benefit all market participants and improve competition on the Exchange.

[12] *See id.*

[13] *See id.*

[14] *See id.*

[15] *See id.*

[16] *See id.*

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4) and (5).

Inter-Market Competition

The Exchange does not believe that the proposed rule changes will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed extension of the Incentive Program applies only to the Market Makers in SPIKES Options, which are traded exclusively on the Exchange.

*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)(ii) of the Act,[19] and Rule 19b–4(f)(2)[20] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–MIAX–2023–26 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–MIAX–2023–26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MIAX–2023–26 and should be submitted on or before August 8, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2023–15126 Filed 7–17–23; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

[20] 17 CFR 240.19b–4(f)(2).

[21] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–97885; File No. SR–CboeEDGA–2023–010]**

### Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

July 12, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2023, Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA") proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform ("EDGA Equities") by revising the fee associated with fee code DQ. The Exchange proposes to implement these changes effective July 3, 2023.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Securities Exchange Act of 1934 (the "Act"), to which market participants may direct their order flow. Based on publicly

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

available information,[3] no single registered equities exchange has more than 15% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Taker-Maker'' model whereby it pays credits to members that remove liquidity and assesses fees to those that add liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that remove and provide liquidity, respectively. Currently, for orders in securities priced at or above $1.00, the Exchange provides a standard rebate of $0.00180 per share for orders that remove liquidity and assesses a fee of $0.0030 per share for orders that add liquidity.[4] For orders in securities priced below $1.00, the Exchange does not assess any fees or provide any rebates for orders that add or remove liquidity.[5] Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

The Exchange currently offers fee code DQ, which is appended to Midpoint Discretionary Orders (''MDOs'')[6] using the Quote Depletion Protection (''QDP'')[7] order instruction which add liquidity to the EDGA Book.[8] QDP is designed to provide enhanced protections to MDOs by tracking significant executions that constitute the best bid or offer on the EDGA Book and enabling Users to avoid potentially unfavorable executions by preventing MDOs entered with the optional QDP instruction from exercising discretion to trade at more aggressive prices when QDP has been triggered.[9] Currently, MDOs entered with a QDP instruction and which add liquidity to the EDGA Book are appended fee code DQ and assessed a flat fee of $0.0010 per share in securities at or above $1.00 and 0.30% of dollar value for securities priced below $1.00. The Exchange now proposes to amend the fee associated with fee code DQ from $0.0010 per share in securities at or above to $1.00 to $0.0015 per share. There is no proposed change in the fee assessed to securities priced below $1.00.

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.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] 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)[12] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)[13] as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes the proposed amendment to the fee associated with fee code DQ is reasonable as it does not represent a significant departure from the Exchange's general pricing structure. The Exchange notes that the proposed amendment to the fee associated with fee code DQ represents a modest increase over existing prices and yet the proposed fee is lower than other similar fees assessed to orders that add liquidity to the EDGA Book.[14] In addition, the Exchange believes the proposed amendment represents an equitable allocation of fees and rebates and is not unfairly discriminatory because the fees will apply to all Members who add liquidity utilizing an MDO with a QDP instruction, equally.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fees associated with fee code DQ would apply to all Members equally in that all Members would be subject to the same flat fee for the execution of an MDO with a QDP instruction that adds liquidity to the Exchange. Both MDO and the associated QDP instruction are available to all Members on an equal and non-discriminatory basis. As a result, any Member can decide to use (or not use) the QDP instruction based on the benefits provided by that instruction in potentially avoiding unfavorable executions, and the associated charge that the Exchange proposes to amend.

Next, the Exchange believes the proposed rule changes does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems.

[3] See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (June 22, 2023), available at *https://www.cboe.com/us/equities/market_statistics/*.

[4] *See* EDGA Equities Fee Schedule, Standard Rates.

[5] *Id.*

[6] *See* Exchange Rule 11.8(e).

[7] *See* Exchange Rule 11.8(e)(10).

[8] *See* Exchange Rule 1.5(d).

[9] *See* Securities Exchange Act Release No. 89016 (June 4, 2020), 85 FR 35488 (June 10, 2020) (SR-CboeEDGA–2020–005) (''Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Rule Relating to MidPoint Discretionary Orders to Allow Optional Offset or Quote Depletion Protection Instructions'').

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

[13] 15 U.S.C. 78f(b)(4)

[14] *See, e.g.,* EDGA Equity Fee Schedule, Fee Codes DA, DM, and HA.

Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 15% of the market share.[15] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [16] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[17] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

[15] *Supra* note 1.

[16] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[17] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

**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 [18] and paragraph (f) of Rule 19b–4 [19] 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.

**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–CboeEDGA–2023–010 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–CboeEDGA–2023–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions. You should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeEDGA–2023–010 and should be submitted on or before August 8, 2023.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2023–15128 Filed 7–17–23; 8:45 am]

**BILLING CODE 8011–01–P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34–97881; File No. SR–CboeEDGA–2023–009]**

## Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

July 12, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2023, Cboe EDGA Exchange, Inc. (''Exchange'' or ''EDGX'') 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 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 EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform (''EDGA Equities'') by amending the definition of ADV and the definition of the Russell Reconstitution Day. The Exchange proposes to implement these changes effective June 22, 2023.[3]

The ''definitions'' section of the Exchange's Fee Schedule defines various terms used throughout the Fee Schedule. As explained under the definitions of ADAV, ADV, and TCV,[4] the Exchange currently excludes the Russell Reconstitution Day from the calculation of ADAV, ADV, and TCV, each of which are calculated on a monthly basis.[5] The Russell Reconstitution Day is defined in the Fee Schedule as ''the last Friday in June.''[6] While generally the Russell Reconstitution Day does occur on the last Friday in June, in months [sic] where there are five Fridays in June the Russell Reconstitution Day instead falls on the fourth Friday in June. The Exchange proposes to amend the definition of Russell Reconstitution Day to ''the fourth Friday in June''[7] in order to provide a more accurate description of the date which will not be included in the calculation of ADAV, ADV, and TCV to its Members.[8]

The Exchange also proposes to amend the definition of ADV in order to correct an inadvertent removal of the word ''average''. The proposed revised definition of ADV would read ''average daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day.'' This proposed definition will align the definition of ADV on the Exchange with the definition of ADV on the Exchange's affiliates.[9] The Exchange is not proposing to make any other changes to the Definitions in its Fee Schedule and will announce the change via a Trade Desk notice to Members.

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.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] 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)[12] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)[13] as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

In particular, the Exchange believes its proposal to amend the definition of the ''Russell Reconstitution Day'' is not designed to permit unfair discrimination between customer, issuers, brokers, or dealers and is designed to provide for the equitable allocation of fees. Specifically, the proposal is intended only to add clarity to the Exchange's Fee Schedule by providing Members with additional certainty as to their level of rebates and costs for trading during the month of June and involves no substantive change. Further, the Exchange's proposal to amend the definition of ADV is intended to correct an inadvertent deletion of the word ''average'' and align the definition of ADV with the definition found on the Exchange's affiliates. Additionally, the proposed changes promote just and equitable principles of trade and are designed to remove impediments to and perfect the mechanism of a free and open market and a national market system as they provides transparency to Members regarding how ADV is calculated and which date in the month of June will not be included in the calculation of ADAV, ADV, and TCV.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of

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[3] The Exchange initially filed the proposed fee change on June 22, 2023 (SR–CboeEDGA–2023–008). On June 30, 2023, the Exchange withdrew that proposal and submitted this proposal.

[4] ''ADAV'' means average daily added volume calculated as the number of shares added per day and ''ADV'' means daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day. ADAV and ADV are calculated on a monthly basis. ''TCV'' means total consolidated volume as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. The Exchange notes that it intends to amend the definition of ADV, discussed *infra.*

[5] The Russell Reconstitution Day is generally characterized by high trading volumes, much of which are derived from market participants who are not generally as active entering the market to rebalance their holdings in-line with the annual rebalancing of the Russell indices. The Exchange, along with other competing exchanges, excludes the Russell Reconstitution Day from certain volume calculations as the high trading volumes can significantly impact trading and quoting calculations.

[6] *See* EDGA Equities Fee Schedule, Definitions.

[7] *See* Russell U.S. Equity Indices Construction and Methodology, available at *https://research.ftserussell.com/products/downloads/Russell-US-indexes.pdf* (last accessed June 21, 2023).

[8] *See* Rule 1.5(n) (''Member''). The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

[9] *See, e.g.,* EDGX Equities Fee Schedule, Definitions.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

[13] 15 U.S.C. 78f(b)(4).

individual stocks for all types of orders, large and small.''

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe that its proposal to revise the definitions of ''ADV'' and ''Russell Reconstitution Day'' will have any impact on competition as the changes are only intended to add clarity to the Exchange's Fee Schedule and involve no substantive change.

Next, the Exchange believes the proposed rule changes does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. By providing Members with a greater level of certainty as to how their volume is calculated and to which date in the month of June will be excluded from the calculation of ADAV, ADV, and TCV, the Exchange is providing additional certainty as to the level of rebates and costs for trading during the month of the Russell reconstitution, which could promote competition between the Exchange and other execution venues. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and paragraph (f) of Rule 19b–4 [15] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

• Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeEDGA–2023–009 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–CboeEDGA–2023–009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeEDGA–2023–009 and should be submitted on or before August 8, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34–97884; File No. SR–NYSEARCA–2023–44]**

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Shares of the Bitwise Bitcoin ETP Trust Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares)**

July 12, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 28, 2023, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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**

The Exchange proposes to list and trade shares of the Bitwise Bitcoin ETP Trust under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the Bitwise Bitcoin ETP Trust (the ''Trust''),[4] under NYSE Arca Rule 8.201–E, which governs the listing and trading of Commodity-Based Trust Shares.[5]

According to the Registration Statement, the Trust will not be registered as an investment company under the Investment Company Act of 1940,[6] and is not required to register thereunder. The Trust is not a commodity pool for purposes of the Commodity Exchange Act.[7]

The Exchange represents that the Shares satisfy the requirements of NYSE Arca Rule 8.201–E and thereby qualify for listing on the Exchange.[8]

Bitwise Bitcoin ETP Trust

Operation of the Trust [9]

The Trust will issue the Shares, which represent units of undivided beneficial ownership of the Trust. The Trust is a Delaware statutory trust and will operate pursuant to a trust agreement (the ''Trust Agreement'') between Bitwise Investment Advisers, LLC (the ''Sponsor'' or ''Bitwise'') and Delaware Trust Company, as the Trust's trustee (the ''Trustee''). The Trust will engage a third party custodian to act as the bitcoin custodian for the Trust (the ''Bitcoin Custodian'') to maintain custody of the Trust's bitcoin assets.[10] The Trust will engage a third party service provider to serve as the administrator and transfer agent (in such capacities, the ''Administrator'' and the ''Transfer Agent'').

According to the Registration Statement, the investment objective of the Trust is to seek to provide exposure to the value of bitcoin held by the Trust, less the expenses of the Trust's operations. In seeking to achieve its investment objective, the Trust will hold bitcoin and establish its Net Asset Value (''NAV'') at the end of every business day by reference to the CF Bitcoin-Dollar US Settlement Price (''CME US Reference Rate'').[11]

Under normal circumstances, the Trust's only asset will be bitcoin, and, under limited circumstances, cash. The Trust will not use derivatives that may subject the Trust to counterparty and credit risks.[12] The Trust will process all creations and redemptions in-kind, and accrue all ordinary fees in bitcoin (rather than cash), as a way of seeking to ensure that the Trust holds the desired amount of bitcoin-per-share. The Trust will not purchase or sell bitcoin, other than if the Trust liquidates or must pay expenses not contractually assumed by the Sponsor. Instead, financial institutions authorized to create and redeem Shares (each, an ''Authorized Participant'') will deliver, or cause to be delivered, bitcoin to the Trust in exchange for Shares of the Trust, and the Trust will deliver bitcoin to Authorized Participants when those Authorized Participants redeem Shares of the Trust.

Bitcoin, Bitcoin Market, Bitcoin Trading Platforms and Regulation of Bitcoin

The following sections, drawn from the Registration Statement, describe bitcoin, including the historical development of bitcoin and the Bitcoin network, how a person holds bitcoin, how to use bitcoin in transactions, the ''exchange'' market where bitcoin can be bought, held and sold, and the bitcoin ''over-the-counter'' (''OTC'') market.

Bitcoin

Bitcoin was first described in a white paper released in 2008 and published under the name ''Satoshi Nakamoto.'' The protocol underlying Bitcoin was subsequently released in 2009 as open source software and currently operates on a worldwide network of computers.

The Bitcoin network utilizes a digital asset known as ''bitcoin,'' which can be transferred among parties via the internet. Unlike other means of electronic payments such as credit card transactions, one of the advantages of bitcoin is that it can be transferred without the use of a central administrator or clearing agency. As a central party is not necessary to administer bitcoin transactions or maintain the bitcoin ledger, the term decentralized is often used in descriptions of bitcoin. Unless it is using a third party service provider, a party transacting in bitcoin is generally not afforded some of the protections that may be offered by intermediaries.

The first step in using the Bitcoin network for transactions is to download specialized software referred to as a ''bitcoin wallet.'' A user's bitcoin wallet can run on a computer or smartphone, and can be used both to send and to receive bitcoin. Within a bitcoin wallet, a user can generate one or more unique ''bitcoin addresses,'' which are conceptually similar to bank account numbers. After establishing a bitcoin address, a user can send or receive bitcoin from his or her bitcoin address to another user's bitcoin address. Sending bitcoin from one bitcoin address to another is similar in concept to sending a bank wire from one person's bank account to another person's bank account; however, such transactions are not managed by an

[4] The Trust is a Delaware statutory trust that was formerly known as the Bitwise Bitcoin ETF Trust. On October 14, 2021, the Trust filed with the Commission an initial registration statement (the ''Registration Statement'') on Form S–1 under the Securities Act of 1933 (15 U.S.C. 77a). The description of the operation of the Trust herein is based, in part, on the Registration Statement.

[5] Commodity-Based Trust Shares are securities issued by a trust that represents investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the trust.

[6] 15 U.S.C. 80a–1.

[7] 17 U.S.C. 1.

[8] With respect to the application of Rule 10A–3 (17 CFR 240.10A–3) under the Act, the Trust relies on the exemption contained in Rule 10A–3(c)(7).

[9] The description of the operation of the Trust, the Shares and the bitcoin market contained herein are based, in part, on the Registration Statement. *See* note 4, *supra*.

[10] When capitalized, references to ''Bitcoin'' are to the Bitcoin network or the Bitcoin protocol. When lowercase, references to ''bitcoin'' are to the digital asset native to the Bitcoin network, which asset is the underlying commodity held by the Trust.

[11] The CME US Reference Rate is a daily reference rate of the US Dollar price of one bitcoin, calculated at 4:00 p.m. E.T. The CME US Reference Rate utilizes the same methodology as the CME CF Bitcoin Reference Rate (the ''CME UK Reference Rate''), which is calculated at 4:00 p.m. London time and was designed by the CME Group and Crypto Facilities Ltd to facilitate the development of financial products, including the cash settlement of bitcoin futures traded on the Chicago Mercantile Exchange (''CME''). Andrew Paine and William J. Knottenbelt, ''Analysis of the CME CF Bitcoin Reference Rate and CME CF Bitcoin Real Time Index,'' Imperial College Centre for Cryptocurrency Research and Engineering, November 14, 2016, available at *https://www.cmegroup.com/trading/files/bitcoin-white-paper.pdf.*

[12] The Trust may sell bitcoin and temporarily hold cash as part of a liquidation of the Trust or to pay certain extraordinary expenses not assumed by the Sponsor. Under the Trust Agreement, the Sponsor has agreed to assume the normal operating expenses of the Trust, subject to certain limitations. For example, the Trust will bear any indemnification or litigation liabilities as extraordinary expenses. In addition, the Trust may, from time to time, passively receive, by virtue of holding bitcoin, certain additional digital assets (''IR Assets'') or rights to receive IR Assets (''Incidental Rights'') through a fork of the Blockchain or an airdrop of assets. The Trust Agreement requires that the Sponsor analyze as soon as possible, whether or not such Incidental Rights and IR Assets should be disclaimed. In the event the Sponsor instructs the Bitcoin Custodian to claim such Incidental Rights and IR Assets, it will immediately distribute such Incidental Rights and IR Assets to shareholders of record.

intermediary and erroneous transactions generally may not be reversed or remedied once sent.

The amount of bitcoin associated with each bitcoin address, as well as each bitcoin transaction to or from such bitcoin address, is transparently reflected in the Bitcoin network's distributed ledger (''Blockchain'') and can be viewed by websites that operate as ''Blockchain explorers.'' Copies of the Blockchain exist on thousands of computers on the Bitcoin network throughout the internet. A user's bitcoin wallet will either contain a copy of the Blockchain or be able to connect with another computer that holds a copy of the Blockchain. The innovative design of the Bitcoin network protocol allows each Bitcoin user to trust that their copy of the Blockchain will generally be updated consistent with each other user's copy.

When a Bitcoin user wishes to transfer bitcoin to another user, the sender must first request a Bitcoin address from the recipient. The sender then uses his or her Bitcoin wallet software to create a proposed transaction that is confirmed and settles when included in the Blockchain. The transaction would reduce the amount of bitcoin allocated to the sender's address and increase the amount allocated to the recipient's address, in each case by the amount of bitcoin desired to be transferred. The transaction is completely digital in nature, similar to a file on a computer, and it can be sent to other computers participating in the Bitcoin network; however, the use of cryptographic verification is believed to prevent the ability to duplicate or counterfeit bitcoin.

Bitcoin Protocol

The Bitcoin protocol is built using open source software allowing for any developer to review the underlying code and suggest changes. There is no official company or group responsible for making modifications to Bitcoin. There are, however, a number of individual developers that regularly contribute to the reference software known as ''Bitcoin Core,'' a specific distribution of Bitcoin software that provides the *de-facto* standard for the Bitcoin protocol.

Significant changes to the Bitcoin protocol are typically accomplished through a so-called ''Bitcoin Improvement Proposal'' or BIP. Such proposals are generally posted on websites, and the proposals explain technical requirements for the protocol change as well as reasons why the change should be accepted by users. Because Bitcoin has no central authority, updating the reference software's Bitcoin protocol will not immediately change the Bitcoin network's operations. Instead, the implementation of a change is achieved by users (including transaction validators known as ''miners'') downloading and running the updated versions of Bitcoin Core or other Bitcoin software that abides by the new Bitcoin protocol. Users and miners must accept any changes made to the Bitcoin source code by downloading a version of their Bitcoin software that incorporates the proposed modification of the Bitcoin network's source code. A modification of the Bitcoin network's source code or protocol is only effective with respect to those Bitcoin users and miners who download it. If an incompatible modification is accepted by a less than overwhelming percentage of users and miners, a division in the Bitcoin network will occur such that one network will run the pre-modification source code and the other network will run the modified source code. Such a division is known as a ''fork'' in the Bitcoin network.

Bitcoin Transactions

A bitcoin transaction is similar in concept to an irreversible digital check. The transaction contains the sender's bitcoin address, the recipient's bitcoin address, the amount of bitcoin to be sent, a transaction fee and the sender's digital signature. Bitcoin transactions are secured by cryptography known as ''public-private key cryptography,'' represented by the bitcoin addresses and digital signature in a transaction's data file. Each Bitcoin network address, or wallet, is associated with a unique ''public key'' and ''private key'' pair, both of which are lengthy alphanumeric codes, derived together and possessing a unique relationship.

The use of key pairs is a cornerstone of the Bitcoin network technology. This is because the use of a private key is the only mechanism by which a bitcoin transaction can be signed. If a private key is lost, the corresponding bitcoin is thereafter permanently non-transferable. Moreover, the theft of a private key provides the thief immediate and unfettered access to the corresponding bitcoin. Bitcoin users must therefore understand that in this regard, bitcoin is similar to cash: that is, the person or entity in control of the private key corresponding to a particular quantity of bitcoin has *de facto* control of the bitcoin.

The public key is visible to the public and analogous to the Bitcoin network address. The private key is a secret and is used to digitally sign a transaction in a way that proves the transaction has been signed by the holder of the public-private key pair, and without having to reveal the private key. A user's private key must be kept safe in accordance with appropriate controls and procedures to ensure it is used only for legitimate and intended transactions. If an unauthorized third person learns of a user's private key, that third person could apply the user's digital signature without authorization and send the user's bitcoin to their or another bitcoin address, thereby stealing the user's bitcoin. Similarly, if a user loses his private key and cannot restore such access (*e.g.,* through a backup), the user may permanently lose access to the bitcoin associated with that private key and bitcoin address.

To prevent the possibility of double-spending of bitcoin, each validated transaction is recorded, time stamped and publicly displayed in a ''block'' in the Blockchain, which is publicly available. Thus, the Bitcoin network provides confirmation against double-spending by memorializing every transaction in the Blockchain, which is publicly accessible and downloaded in part or in whole by all users of the Bitcoin network software program. Any user may validate, through their Bitcoin wallet or a Blockchain explorer, that each transaction in the Bitcoin network was authorized by the holder of the applicable private key, and Bitcoin network mining software consistent with reference software requirements validates each such transaction before including it in the Blockchain. This cryptographic security ensures that bitcoin transactions may not generally be counterfeited, although it does not protect against the ''real world'' theft or coercion of use of a Bitcoin user's private key, including the hacking of a Bitcoin user's computer or a service provider's systems.

A Bitcoin transaction between two parties is recorded if included in a valid block added to the Blockchain, when that block is accepted as valid through consensus formation among Bitcoin network participants. A block is validated by confirming the cryptographic hash value included in the block's data and by the block's addition to the longest confirmed Blockchain on the Bitcoin network. For a transaction, inclusion in a block in the Blockchain constitutes a ''confirmation'' of validity. As each block contains a reference to the immediately preceding block, additional blocks appended to and incorporated into the Blockchain constitute additional confirmations of the transactions in such prior blocks, and a transaction included in a block for the first time is confirmed once against double-spending. This layered confirmation process makes changing historical blocks (and reversing transactions) exponentially more difficult the further back one goes in the Blockchain.

The process by which bitcoin are created and bitcoin transactions are verified is called ''mining.'' To begin mining, a user, or ''miner,'' can download and run a mining ''client,'' which, like regular Bitcoin network software programs, turns the user's computer into a ''node'' on the Bitcoin network, and in this case has the ability to validate transactions and add new blocks of transactions to the Blockchain.

Miners, through the use of the bitcoin software program, engage in a set of prescribed, complex mathematical calculations in order to verify transactions and compete for the right to add a block of verified transactions to the Blockchain and thereby confirm bitcoin transactions included in that block's data. The miner who successfully ''solves'' the complex mathematical calculations has the right to add a block of transactions to the Blockchain and is then rewarded by a grant of bitcoin, known as a ''coinbase,'' plus any transaction fees paid for the transactions included in such block. Bitcoin is created and allocated by the Bitcoin network protocol and distributed through mining, subject to a strict, well-known issuance schedule. The supply of bitcoin is programmatically limited to 21 million bitcoin in total. As of June 16, 2023, approximately 19,401,000 bitcoin had been mined.

Confirmed and validated bitcoin transactions are recorded in blocks added to the Blockchain. Each block contains the details of some or all of the most recent transactions that are not memorialized in prior blocks, as well as a record of the award of bitcoin to the miner who added the new block. Each unique block can only be solved and added to the Blockchain by one miner, therefore, all individual miners and mining pools on the Bitcoin network must engage in a competitive process of constantly increasing their computing power to improve their likelihood of solving for new blocks. As more miners join the Bitcoin network and its processing power increases, the Bitcoin network adjusts the complexity of a block-solving equation to maintain a predetermined pace of adding a new block to the Blockchain approximately every ten minutes.

The Bitcoin Market and Bitcoin Trading Platforms

In addition to using bitcoin to engage in transactions, investors may purchase and sell bitcoin to speculate as to the value of bitcoin in the bitcoin market, or as a long-term investment to diversify their portfolio. The value of bitcoin within the market is determined, in part, by (i) the supply of and demand for bitcoin in the bitcoin market, (ii) market expectations for the expansion of investor interest in bitcoin and the adoption of bitcoin by users, (iii) the number of merchants that accept bitcoin as a form of payment, and (iv) the volume of private end-user-to-end-user transactions.

Although the value of bitcoin is determined by the value that two transacting market participants place on bitcoin through their transaction, the most common means of determining a reference value is by surveying one or more trading platforms where secondary markets for bitcoin exist. The most prominent bitcoin trading platforms are often referred to as ''exchanges'', although they neither report trade information nor are they regulated in the same way as a national securities exchange. As such, there is some difference in the form, transparency and reliability of trading data from bitcoin trading platforms. Generally speaking, bitcoin data is available from these trading platforms with publicly disclosed valuations for each executed trade, measured against a fiat currency such as the US Dollar or Euro, or against another digital asset (for example, bitcoin trades against the US Dollar are reflected in the ''USD–BTC Pair'').

Currently, there are many bitcoin trading platforms operating worldwide and trading platforms represent a substantial percentage of bitcoin buying and selling activity, and, therefore, provide large data sets for the market valuation of bitcoin. A bitcoin trading platform provides investors with a way to purchase and sell bitcoin, similar to stock exchanges like the New York Stock Exchange or NASDAQ, which provide ways for investors to buy stocks and bonds in the so-called ''secondary market.'' Unlike stock exchanges, which are regulated to monitor securities trading activity, bitcoin trading platforms are largely regulated as money services businesses (or a foreign regulatory equivalent) and are required to monitor for and detect money-laundering and other illicit financing activities that may take place on their platform. Bitcoin trading platforms operate websites designed to permit investors to open accounts with the trading platform and then purchase and sell bitcoin.

As with conventional stock exchanges, an investor opening a trading account and wishing to transact at a bitcoin trading platform must deposit an accepted government-issued currency into their account, or a previously acquired digital asset. The process of establishing an account with a bitcoin trading platform and trading bitcoin is different from, and should not be confused with, the process of users sending bitcoin from one bitcoin address to another bitcoin address, such as to pay for goods and services. This latter process is an activity that occurs wholly within the confines of the Bitcoin network, while the former is an activity that occurs largely on private websites and databases owned by the trading platform.

In addition to the bitcoin trading platforms that provide spot markets for bitcoin, an OTC trading market has emerged for digital assets. The bitcoin OTC market demonstrates flexibility in terms of quotes, price, size, and other factors. The OTC market has no formal structure and no open-outcry meeting place, and typically involves bilateral agreements on a principal-to-principal basis. Parties engaging in OTC transactions will agree upon a price—often via phone, email, or chat—and then one of the two parties will initiate the transaction. For example, a seller of bitcoin could initiate the transaction by sending the bitcoin to the buyer's bitcoin address. The buyer would then wire US Dollars to the seller's bank account. OTC trading tends to occur in large blocks of bitcoin. All risks and issues related to creditworthiness are between the parties directly involved in the transaction. OTC market participants include institutional entities, such as hedge funds, family offices, private wealth managers, high-net-worth individuals that trade bitcoin on a proprietary basis, and brokers that offer two-sided liquidity for bitcoin.

Beyond the spot bitcoin trading platforms and the OTC market, a number of unregulated bitcoin derivatives trading platforms exist that offer traders the ability to gain leveraged and/or short exposure to the price of bitcoin through perpetual futures, quarterly futures, and other derivative contracts.

Finally, the trading of regulated bitcoin futures contracts launched on the CME in December 2017.[13] A further discussion of the CME bitcoin futures market (''CME Market'') is included in

[13] *See* note 32, *infra.*

the section entitled ''Standard for Approval—The CME Market,'' below.

Authorized Participants will have the option of purchasing and selling bitcoin used in Creation Unit transactions with the Trust either on bitcoin trading platforms, in the OTC markets, or in direct bilateral transactions. In addition, Authorized Participants may utilize futures to hedge bitcoin exposure relating to the purchase and redemption of Creation Units.

Valuation of the Trust's Bitcoin

The CME US Reference Rate, CME UK Reference Rate and CME Bitcoin Real Time Price

According to the Registration Statement, the CME UK Reference Rate was established by the CME Group and Crypto Facilities Ltd. to be used in the creation of financial products tied to bitcoin. The CME UK Reference Rate is fixed once per day at 4:00 p.m. London time, based on the methodology set forth below and applying data from constituent trading platforms (''Constituent Platforms''). The CME US Reference Rate was introduced in February 2021 and is designed to apply the CME UK Reference Rate methodology, but with a fix once per day at 4:00 p.m. Eastern time (''E.T.''). Although the CME UK Reference Rate has a longer history and is used to settle bitcoin futures on the CME Market, the Trust has determined to utilize the CME US Reference Rate to establish the NAV because the CME US Reference Rate is calculated as of the same time as the NAV and is based on the same methodology and data sources as the CME UK Reference Rate.

The CME Group and Crypto Facilities Ltd. also publish a continuous real-time bitcoin price index, known as the ''CME Bitcoin Real Time Price,'' using data from the Constituent Platforms.

The CME US Reference Rate, CME UK Reference Rate and CME Bitcoin Real Time Price are administered by Crypto Facilities Ltd., with the selection of Constituent Platforms performed by an oversight committee.[14] A trading platform is eligible to be selected as a Constituent Platform if it facilitates spot trading of bitcoin against the USD–BTC Pair and makes trade data and order data available through an Automatic Programming Interface with sufficient reliability, detail and timeliness. Additional initial and continuing eligibility requirements apply to the Constituent Platforms.

Each of the CME US Reference Rate, which has been calculated and published since February 2021, and CME UK Reference Rate, which has been calculated and published since November 2016, aggregates during a calculation window the trade flow of several spot bitcoin trading platforms into the US Dollar price of one bitcoin as of their respective calculation time. Specifically, the CME US Reference Rate is calculated based on the ''Relevant Transactions'' (as defined below) of each of its Constituent Platforms, which are currently Bitstamp, Coinbase, Gemini, itBit, Kraken and LMAX, as follows:

1. All Relevant Transactions are added to a joint list, recording the trade price and size for each transaction.
2. The list is partitioned into a number of equally-sized time intervals.
3. For each partition separately, the volume-weighted median trade price is calculated from the trade prices and sizes of all Relevant Transactions. A volume-weighted median differs from a standard median in that a weighting factor, in this case trade size, is factored into the calculation.
4. The CME US Reference Rate or CME UK Reference Rate, as applicable, is then determined by the equally-weighted average of the volume-weighted medians of all partitions.

The CME Bitcoin Real Time Price uses similar data sources, but is calculated once per second based on the weighted mid-price-volume curve, which is a measure of the active bid and ask volume present on a Constituent Platform's order book.

The CME US Reference Rate, CME UK Reference Rate, and CME Bitcoin Real Time Price do not include any bitcoin futures prices in their respective methodologies. A ''Relevant Transaction'' is any ''cryptocurrency versus legal tender spot trade that occurs during the TWAP [Time Weighted Average Price] Period'' on a Constituent Platform in the USD–BTC Pair that is reported and disseminated by Crypto Facilities Ltd., as calculation agent for the CME US Reference Rate, CME UK Reference Rate and CME Bitcoin Real Time Price.

Net Asset Value

Under normal circumstances, the Trust's only asset will be bitcoin. The Trust's bitcoin are carried, for financial statement purposes, at fair value, as required by the U.S. generally accepted accounting principles (''GAAP''). The Trust's NAV and NAV per Share will be determined by the Administrator once each Exchange trading day as of 4:00 p.m. E.T., or as soon thereafter as practicable. The Administrator will calculate the NAV by multiplying the number of bitcoin held by the Trust by the CME US Reference Rate for such day, and subtracting the accrued but unpaid expenses and liabilities of the Trust. The NAV per Share is calculated by dividing the NAV by the number of Shares then outstanding. The Administrator will determine the price of the Trust's bitcoin by reference to the CME US Reference Rate, which is published and calculated as set forth above.

Intraday Trust Value

In order to provide updated pricing information relating to the Shares for use by investors and market professionals throughout the domestic trading day, the Exchange will calculate and disseminate throughout the core trading session, every 15 seconds each trading day, an intraday trust value (''ITV''). The ITV will be calculated throughout the trading day by using the prior day's holdings at close of business and the most recently reported price level of the CME Bitcoin Real Time Price as reported by Bloomberg, L.P. or another reporting service, or another price of bitcoin derived from updated bids and offers indicative of the spot price of bitcoin. The ITV will be widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session.

Creation and Redemption of Shares; In-Kind Transaction Activity

The Trust Shares

According to the Registration Statement, the Shares shall represent undivided beneficial ownership of the Trust. The Trust creates and redeems Shares from time to time, but only in one or more Creation Units. A Creation Unit is only made in exchange for delivery to the Trust or the distribution by the Trust of the amount of bitcoin represented by the Creation Unit being created or redeemed, the amount of which is representative of the combined NAV of the number of Shares included in the Creation Units being created or redeemed determined as of 4:00 p.m. E.T. on the day the order to create or redeem Creation Units is properly received. Except when aggregated in Creation Units or under extraordinary circumstances permitted under the

[14] This summary does not represent a complete description of the CME US Reference Rate, the CME UK Reference Rate and CME Bitcoin Real Time Price. Additional information on administration and methodologies, may be found at CF Benchmarks' website, available at *https://www.cfbenchmarks.com/indices/XBTUSD_US_RR*, *https://www.cfbenchmarks.com/indices/BRR*, and *https://www.cfbenchmarks.com/indices/BRTI*. The CME US Reference Rate, the CME UK Reference Rate and CME Bitcoin Real Time Price are registered benchmarks under the European Benchmarks Regulation.

Trust Agreement, the Shares are not redeemable securities. A Creation Unit will initially consist of at least 25,000 Shares, but may be subject to change.

Authorized Participants are the only persons that may place orders to create and redeem Creation Units. Authorized Participants must be (i) registered broker-dealers or other securities market participants, such as banks and other financial institutions, that are not required to register as broker-dealers to engage in securities transactions described below, and (ii) Depository Trust Company (''DTC'') Participants. To become an Authorized Participant, a person must enter into an Authorized Participant Agreement with the Trust and/or the Trust's marketing agent (the ''Marketing Agent'').

Creation Procedures

On any business day, an Authorized Participant may create Shares by placing an order to purchase one or more Creation Units with the Transfer Agent through the Marketing Agent. Such orders are subject to approval by the Marketing Agent and the Transfer Agent. For purposes of processing creation and redemption orders, a ''business day'' means any day other than a day when the Exchange is closed for regular trading. To be processed on the date submitted, creation orders generally must be placed before 4 p.m. E.T. or the close of regular trading on the Exchange, whichever is earlier. The day on which an order is received by the Transfer Agent and approved by the Marketing Agent, is considered the creation order date. All Creation Units are processed in-kind. By placing a creation order, an Authorized Participant agrees to deposit, or cause to be deposited, bitcoin with the Trust by initiating a Bitcoin transaction to a Bitcoin network address identified by the Trust. Prior to the delivery of Creation Units for a creation order, the Authorized Participant must also have wired to the Transfer Agent the nonrefundable transaction fee due for the creation order. Authorized Participants may not withdraw a creation request. If an Authorized Participant fails to consummate the foregoing, the order may be cancelled.

The total creation deposit amount required to create each Creation Unit is an amount of bitcoin that is in the same proportion to the total assets of the Trust, net of accrued expenses and other liabilities, on the date the order to purchase is properly received, as the number of Shares to be created under the creation order is in proportion to the total number of Shares outstanding on the date the order is received. The Sponsor causes to be published each business day morning, prior to the commencement of trading on the Exchange, the amount of bitcoin that will be required to be deposited in exchange for one Creation Unit for such business day.

Redemption Procedures

According to the Registration Statement, the procedures by which an Authorized Participant can redeem one or more Creation Units mirror the procedures for the creation of Creation Units. On any business day, an Authorized Participant may place an order with the Transfer Agent through the Marketing Agent to redeem one or more Creation Units. To be processed on the date submitted, redemption orders generally must be placed before 4 p.m. E.T. or the close of regular trading on the Exchange, whichever is earlier. A redemption order will be effective on the date it is received by the Administrator and approved by the Marketing Agent (''Redemption Order Date''). The redemption procedures allow Authorized Participants to redeem Creation Units and do not entitle an individual shareholder to redeem any Shares in an amount less than a Creation Unit, or to redeem Creation Units other than through an Authorized Participant.

The redemption distribution from the Trust will consist of a transfer to the redeeming Authorized Participant, or its agent, of an amount of bitcoin representing the amount of bitcoin held by the Trust evidenced by the Shares being redeemed. The redemption distribution amount is determined in the same manner as the determination of the bitcoin deposit amount discussed above. The Sponsor causes to be published each business day morning, prior to the commencement of trading on the Exchange, the redemption distribution amount relating to a Creation Unit applicable for such business day.

The redemption distribution due from the Trust will be delivered once the Transfer Agent notifies the Bitcoin Custodian and the Sponsor that the Authorized Participant has delivered the Shares represented by the Creation Units to be redeemed to the Trust's DTC account. If the Trust's DTC account has not been credited with all of the Shares of the Creation Units to be redeemed, the redemption distribution will be delayed until such time as the Transfer Agent confirms receipt of all such Shares.

Once the Transfer Agent notifies the Bitcoin Custodian and the Sponsor that the Shares have been received in the Trust's DTC account, the Sponsor will instruct the Bitcoin Custodian to transfer the redemption bitcoin amount from the Trust Bitcoin Account to the Authorized Participant's bitcoin custody account. All redemption orders are processed in-kind. By placing a redemption order, an Authorized Participant agrees to receive bitcoin. If an Authorized Participant fails to consummate the foregoing, the order may be cancelled.

Fee Accrual

According to the Registration Statement, the only ordinary expense of the Trust is expected to be the Sponsor's fee, which shall accrue daily in bitcoin and be payable monthly in bitcoin.

Impact of the Exclusive Use of In-Kind Creations, Redemptions and Fee Accruals

The Sponsor believes that the exclusive use of in-kind creations, redemptions and fee accruals, in all situations except when the Trust is required to liquidate or to pay extraordinary expenses, provides long-term investors in the Trust with redundant but strong protection. The in-kind structure ensures that the Trust maintains the appropriate amount of bitcoin-per-Share in all scenarios, regardless of the US Dollar calculation of NAV or the CME US Reference Rate.

Background

The Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.[15] Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission regulated futures market.[16] Further to this point,

[15] *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the ''Winklevoss Order'').

[16] *See* streetTRACKS Gold Shares, Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614, 64618–19 (Nov. 5, 2004) (SR–NYSE–2004–22) (the ''First Gold Approval Order''); iShares COMEX Gold Trust, Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751, 3754–55 (Jan. 26, 2005) (SR–Amex–2004–38); iShares Silver Trust,

the Commission's prior orders have noted that the spot commodities and currency markets for which it has previously approved spot exchange traded products (''ETPs'') are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the First Gold Approval Order ''was based on an assumption that the currency market and the spot gold market were largely unregulated.'' [17]

As such, the regulated market of significant size test does not require that the spot bitcoin market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act. With this in mind, the bitcoin futures market, as defined below, is the proper market to consider in determining whether there is a related regulated market of significant size.

Further to this point, the Exchange notes that the Commission has recently approved proposals related to the listing and trading of funds that would primarily hold bitcoin futures that are registered under the Securities Act of 1933 instead of the 1940 Act.[18] In the Teucrium Approval Order, the Commission found the bitcoin futures market to be a regulated market of significant size as it relates to bitcoin futures that is also inconsistent with prior disapproval orders for ETPs that would hold actual bitcoin instead of derivatives contracts (''Spot Bitcoin ETPs'') that use the exact same pricing methodology as the bitcoin futures. As further discussed below, the bitcoin futures market represents a regulated market of significant size as it relates both to the bitcoin futures market and to the spot bitcoin market.

Bitcoin Futures ETFs

The Exchange and Sponsor applaud the Commission for allowing the launch of exchange-traded funds (''ETFs'') registered under the 1940 Act and the recent Bitcoin Futures Approval Orders that provide exposure to bitcoin primarily through bitcoin futures (''Bitcoin Futures ETFs''). Allowing such products to list and trade is a

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Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967, 14968, 14973–74 (Mar. 24, 2006) (SR–Amex–2005–072); ETFS Gold Trust, Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993, 22994–95, 22998, 23000 (May 15, 2009) (SR–NYSEArca–2009–40); ETFS Silver Trust, Exchange Act Release No. 59781 (Apr. 17, 2009), 74 FR 18771, 18772, 18775–77 (Apr. 24, 2009) (SR–NYSEArca–2009–28); ETFS Palladium Trust, Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895, 68896 (Dec. 29, 2009) (SR–NYSEArca–2009–94) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60971 (Nov. 9, 2009), 74 FR 59283, 59285–86, 59291 (Nov. 17, 2009)); ETFS Platinum Trust, Exchange Act Release No. 61219 (Dec. 22, 2009), 74 FR 68886, 68887–88 (Dec. 29, 2009) (SR–NYSEArca–2009–95) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant platinum futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60970 (Nov. 9, 2009), 74 FR 59319, 59321, 59327 (Nov. 17, 2009)); Sprott Physical Gold Trust, Exchange Act Release No. 61496 (Feb. 4, 2010), 75 FR 6758, 6760 (Feb. 10, 2010) (SR–NYSEArca–2009–113) (notice of proposed rule change included NYSE Arca's representation that the COMEX is one of the ''major world gold markets,'' that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' and that NYMEX, of which COMEX is a division, is a member of the Intermarket Surveillance Group, Exchange Act Release No. 61236 (Dec. 23, 2009), 75 FR 170, 171, 174 (Jan. 4, 2010)); Sprott Physical Silver Trust, Exchange Act Release No. 63043 (Oct. 5, 2010), 75 FR 62615, 62616, 62619, 62621 (Oct. 12, 2010) (SR–NYSEArca–2010–84); ETFS Precious Metals Basket Trust, Exchange Act Release No. 62692 (Aug. 11, 2010), 75 FR 50789, 50790 (Aug. 17, 2010) (SR–NYSEArca–2010–56) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold, silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62402 (Jun. 29, 2010), 75 FR 39292, 39295, 39298 (July 8, 2010)); ETFS White Metals Basket Trust, Exchange Act Release No. 62875 (Sept. 9, 2010), 75 FR 56156, 56158 (Sept. 15, 2010) (SR–NYSEArca–2010–71) (notice of proposed rule change included NYSE Arca's representation that ''the most significant silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62620 (July 30, 2010), 75 FR 47655, 47657, 47660 (Aug. 6, 2010)); ETFS Asian Gold Trust, Exchange Act Release No. 63464 (Dec. 8, 2010), 75 FR 77926, 77928 (Dec. 14, 2010) (SR–NYSEArca–2010–95) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold futures exchanges are the COMEX and the Tokyo Commodity Exchange,'' that ''COMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 63267 (Nov. 8, 2010), 75 FR 69494, 69496, 69500–01 (Nov. 12, 2010)); Sprott Physical Platinum and Palladium Trust, Exchange Act Release No. 68430 (Dec. 13, 2012), 77 FR 75239, 75240–41 (Dec. 19, 2012) (SR–NYSEArca–2012–111) (notice of proposed rule change included NYSE Arca's representation that ''[f]utures on platinum and palladium are traded on two major exchanges: The New York Mercantile Exchange . . . and Tokyo Commodities Exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 68101 (Oct. 24, 2012), 77 FR 65732, 65733, 65739 (Oct. 30, 2012)); APMEX Physical—1 oz. Gold Redeemable Trust, Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817, 27818 (May 11, 2012) (SR–NYSEArca–2012–18) (notice of proposed rule change included NYSE Arca's representation that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross- reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 66627 (Mar. 20, 2012), 77 FR 17539, 17542–43, 17547 (Mar. 26, 2012)); JPM XF Physical Copper Trust, Exchange Act Release No. 68440 (Dec. 14, 2012), 77 FR 75468, 75469–70, 75472, 75485–86 (Dec. 20, 2012) (SR–NYSEArca–2012–28); iShares Copper Trust, Exchange Act Release No. 68973 (Feb. 22, 2013), 78 FR 13726, 13727, 13729–30, 13739–40 (Feb. 28, 2013) (SR–NYSEArca–2012–66); First Trust Gold Trust, Exchange Act Release No. 70195 (Aug. 14, 2013), 78 FR 51239, 51240 (Aug. 20, 2013) (SR–NYSEArca–2013–61) (notice of proposed rule change included NYSE Arca's representation that FINRA, on behalf of the exchange, may obtain trading information regarding gold futures and options on gold futures from members of the Intermarket Surveillance Group, including COMEX, or from markets ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 69847 (June 25, 2013), 78 FR 39399, 39400, 39405 (July 1, 2013)); Merk Gold Trust, Exchange Act Release No. 71378 (Jan. 23, 2014), 79 FR 4786, 4786–87 (Jan. 29, 2014) (SR–NYSEArca–2013–137) (notice of proposed rule change included NYSE Arca's representation that ''COMEX is the largest gold futures and options exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' including with respect to transactions occurring on COMEX pursuant to CME and NYMEX's membership, or from exchanges ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' Exchange Act Release No. 71038 (Dec. 11, 2013), 78 FR 76367, 76369, 76374 (Dec. 17, 2013)); Long Dollar Gold Trust, Exchange Act Release No. 79518 (Dec. 9, 2016), 81 FR 90876, 90881, 90886, 90888 (Dec. 15, 2016) (SR–NYSEArca–2016–84).

[17] *See* Winklevoss Order at 37592.

[18] *See* Exchange Act Release Nos. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (the ''Teucrium Approval Order'') and 94853 (May 5, 2022) (collectively, with the Teucrium Approval, the ''Bitcoin Futures Approval Orders'').

productive first step in providing U.S. investors and traders with transparent, exchange listed tools for expressing a view on bitcoin. The Bitcoin Futures Approval Orders, however, have created a logical inconsistency in the application of the standard the Commission applies when considering bitcoin ETP proposals.

As discussed below, the standard applicable to bitcoin ETPs is whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size in the underlying asset.[19] Previous disapproval orders have made clear that a market that constitutes a regulated market of significant size is generally a futures and/or options market based on the underlying reference asset rather than the spot commodity markets, which are often unregulated.[20] However, the Exchange notes that in the Teucrium Approval Order, the Commission noted that the CME's surveillances can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts indirectly by trading outside of the CME bitcoin futures market:

> The CME 'comprehensively surveils futures market conditions and price movements on a real time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.' Thus, the CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts, whether that attempt is made by directly trading on the CME bitcoin futures market or indirectly by trading outside of the CME bitcoin futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non cash assets held by the proposed ETP.[21]

Bitcoin futures pricing is based on pricing from spot bitcoin markets. If CME's surveillances can capture the effects of trading on the relevant spot markets on the pricing of bitcoin futures, CME should equally be able to capture the effects of trading on the relevant spot markets on the pricing of Spot Bitcoin ETPs. Moreover, this strongly suggests that the CME bitcoin futures market represents a regulated market of significant size.

Standard for Approval

How the Exchange's Proposed Rule Conforms to the Requirements of the Act

To date, the Commission has considered and published disapproval orders relating to numerous proposed Spot Bitcoin ETPs, including multiple prior proposals in respect of the Trust.[22] In each of these disapprovals, the Commission determined that the filing failed to demonstrate that the proposal was consistent with the requirements of

[19] As further discussed below, the proposal satisfies this standard because the bitcoin futures market represents a regulated market of significant size.

[20] *See* Winklevoss Order at 37593, specifically footnote 202, which includes the language from numerous approval orders for which the underlying futures markets formed the basis for approving series of ETPs that hold physical metals, including gold, silver, palladium, platinum, and precious metals more broadly; and 37600, specifically where the Commission provides that ''when the spot market is unregulated—the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset.'' As noted above, the spot market for a spot commodity ETP need not be ''regulated'' in order for a spot commodity ETP to be approved by the Commission, and the Commission has in fact looked to such derivatives markets as the regulated market of significant size because such spot commodities markets are largely unregulated.

[21] *See* Teucrium Approval Order, 87 FR at 21679.

[22] *See, e.g.,* Order Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, to BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, to List and Trade Shares Issued by the Winklevoss Bitcoin Trust, Release No. 34–80206 (Mar. 10, 2017), 82 FR 14076 (March 16, 2017); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the SolidX Bitcoin Trust under NYSE Arca Equities Rule 8.201, Release No. 34–80319 (Mar. 28, 2017), 82 FR 16247 (April 3, 2017); Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, to List and Trade Shares of the Winklevoss Bitcoin Trust (''Second Winklevoss Order''), Release No. 34–83723 (July 26, 2018), 83 FR 37579 (August 1, 2018); Order Disapproving a Proposed Rule Change to List and Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF, Release No. 34–83904 (Aug. 22, 2018), 83 FR 43934 (August 28, 2018); Order Disapproving a Proposed Rule Change Relating to Listing and Trading of the Direxion Daily Bitcoin Shares, Release No. 34–83912 (Aug. 22, 2018), 83 FR 43912 (August 28, 2018); Order Disapproving a Proposed Rule Change to List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF (''GraniteShares Order''), Release No. 34–83913 (Aug. 22, 2018), 83 FR 43923 (August 28, 2018); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Bitwise Bitcoin ETF Trust Under NYSE Arca Rule 8.201–E (''First Bitwise Order''), Release No. 34–87267 (Oct. 9, 2019), 84 FR 55382 (October 16, 2019) (subsequently withdrawn while the delegated action was under review by the Commission on Jan. 13, 2020; see SR–NYSEArca–2019–01, 85 FR 73819 (November 19, 2020); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) and to List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201–E, Release No. 34–88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (''USBT Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the WisdomTree Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Release No. 34–93700 (Dec. 1, 2021), 86 FR 69322 (Dec. 7, 2021) (SR–CboeBZX–2021–024) (''WisdomTree Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Valkyrie Bitcoin Fund Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares), Release No. 34–93859 (Dec. 22, 2021), 86 FR 74156 (Dec. 29, 2021) (SR–NYSEArca–2021–31) (''Valkyrie Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Kryptoin Bitcoin ETF Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Release No. 34–93860 (Dec. 22, 2021), 86 FR 74166 (Dec. 29, 2021) (SR–CboeBZX–2021–029) (''Kryptoin Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the First Trust SkyBridge Bitcoin ETF Trust Under NYSE Arca Rule 8.201–E, Release No. 34–94006 (Jan. 20, 2022), 87 FR 3869 (Jan. 25, 2022) (SR–NYSEArca–2021–37) (''SkyBridge Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Wise Origin Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Release No. 34–94080 (Jan. 27, 2022), 87 FR 5527 (Feb. 1, 2022) (SR–CboeBZX–2021–039) (''Wise Origin Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the NYDIG Bitcoin ETF Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares), Release No. 34–94395 (Mar. 10, 2022), 87 FR 14932 (Mar. 16, 2022) (SR–NYSEArca–2021–57) (''NYDIG Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Global X Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Release No. 34–94396 (Mar. 10, 2022), 87 FR 14912 (Mar. 16, 2022) (SR–CboeBZX–2021–052) (''Global X Order''); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Release No. 34–94571 (Mar. 31, 2022), 87 FR 20014 (Apr. 6, 2022) (SR–CboeBZX–2021–051) (''ARK 21Shares Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the One River Carbon Neutral Bitcoin Trust Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares), Release No. 34–94999 (May 27, 2022), 87 FR 33548 (June 2, 2022) (SR–NYSEArca–2021–67) (''One River Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Bitwise Bitcoin ETP Trust Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares), Release No. 34–95179 (June 29, 2022), 87 FR 40282 (July 6, 2022) (SR–NYSEArca–2021–89) (''Second Bitwise Order''); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of Grayscale Bitcoin Trust under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares), Release No. 34–95180 (June 29, 2022), 87 FR 40299 (July 6, 2022) (SR–NYSEArca–2021–90) (''Grayscale Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the WisdomTree Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Release No. 34–96011 (Oct. 11, 2022), 87 FR 62466 (Oct. 14, 2022) (SR–CboeBZX–2022–006) (''WisdomTree Order II''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Release No. 34–96751 (Jan. 26, 2023), 88 FR 6328 (Jan. 31, 2023) (SR–CboeBZX–2021–031) (''ARK 21Shares Order II''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the VanEck Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Release No. 34–97102 (Mar. 10, 2023).

Section 6(b)(5) of the Act[23] and, in particular, the requirement that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices.[24]

The principal means by which a national securities exchange may satisfy the requirements of Section 6(b)(5) of the Act[25] is through entry into comprehensive surveillance-sharing agreements that ''help to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making [the ETP] less readily susceptible to manipulation.''[26] These comprehensive surveillance-sharing agreements enable the Exchange to obtain information necessary to detect and deter market manipulation and other trading abuses upon request of information from one party to the other.[27]

In the Second Winklevoss Order, the Commission laid out both the importance and definition of a surveilled, regulated market of significant size. Specifically, the Commission explained that:

[for all] commodity-trust ETPs approved to date for listing and trading, there has been in every case at least one significant, regulated market for trading futures on the underlying commodity—whether gold, silver, platinum, palladium, or copper—and the ETP listing exchange has entered into surveillance-sharing agreements with, or held Intermarket Surveillance Group membership in common with, that market.[28]

Further, on an illustrative and not exclusive basis, the Commission interpreted the terms 'significant market' and 'market of significant size' to include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist the ETP listing market in detecting and deterring misconduct, and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[29]

This two-prong definition of the term ''significant market'' came to be known as the ''Winklevoss Standard,'' and will be referred to as such in this proposal. In the First Bitwise Order, the Commission built upon the Winklevoss Standard and provided important additional guidance on how a listing exchange might demonstrate that a bitcoin derivatives market meets the Commission's definition of ''significant'':

> [T]he lead-lag relationship between the bitcoin futures market and the spot market ... is central to understanding whether it is reasonably likely that a would-be manipulator of the ETP would need to trade on the bitcoin futures market to successfully manipulate prices on those spot platforms that feed into the proposed ETP's pricing mechanism. In particular, if the spot market leads the futures market, this would indicate that it would not be necessary to trade on the futures market to manipulate the proposed ETP, even if arbitrage worked efficiently, because the futures price would move to meet the spot price.[30]

In response to this, in the rule proposal disapproved in the USBT Order, the sponsor and listing exchange attempted to establish that the CME Market satisfied the requirements of a regulated market of significant size as laid out in the First Bitwise Order. The rule change proposal referenced, among other items, a statistical analysis conducted by the Sponsor examining whether the CME Market led the bitcoin spot market from a price discovery perspective. The Commission rejected this argument for specific reasons, noting (among other things) that:

> the [s]ponsor has not provided sufficient details supporting this conclusion, and unquestioning reliance by the Commission on representations in the record is an insufficient basis for approving a proposed rule change in circumstances where, as here, the proponent's assertion would form such an integral role in the Commission's analysis and the assertion is subject to several challenges. For example, the [s]ponsor has not provided sufficient information explaining its underlying analysis, including detailed information on the analytic methodology used, the specific time period analyzed, or any information that would enable the Commission to evaluate whether the findings are statistically significant or time varying.

Nonetheless, the Commission made it clear that a future ETP application could potentially meet the Winklevoss Standard through identifying a regulated market of significant size. Specifically, the Commission noted that an existing or new bitcoin futures market could achieve significant size such that an Exchange might demonstrate, through a surveillance sharing agreement, that a proposed rule change could satisfy the requirements of the Act.[31]

As discussed in detail below, the Sponsor's analysis demonstrates that the Exchange can meet the burden presented by Section 6(b)(5) of the Act and, in particular, the requirement that

[23] 15 U.S.C. 78f(b)(5).

[24] In the Second Winklevoss Order, First Bitwise Order and USBT Order, the Commission determined that the proposing exchange had not established that bitcoin markets were uniquely resistant to fraud or manipulation, which unique resistance might provide protections such that the proposing exchange ''would not necessarily need to enter into a surveillance sharing agreement with a regulated significant market.'' Second Winklevoss Order 83 FR at 37591, First Bitwise Order 84 FR at 55386, and USBT Order 85 FR at 12597. In the Second Winklevoss Order, GraniteShares Order, First Bitwise Order and USBT Order, the Commission determined that, while the existing, regulated derivatives markets (including the CME Market) was a regulated market, the proposing exchanges had not demonstrated that the regulated derivatives markets had achieved significant size. *See* Second Winklevoss Order 83 FR at 37601, First Bitwise Order 84 FR at 55410, and USBT Order 85 FR at 12597. In the Second Winklevoss Order, First Bitwise Order and USBT Order, the Commission determined that a proposing exchange had established neither that it had a surveillance sharing agreement with a group of underlying bitcoin trading platforms, nor that such bitcoin trading platforms constituted regulated markets of significant size with respect to bitcoin. *See* Second Winklevoss Order 83 FR 37590–37591, First Bitwise Order 84 FR at 55407 and USBT Order 85 FR at 12615.

[25] 15 U.S.C. 78f(b)(5).

[26] *See* Notice of Filing and Order Granting Immediate Effectiveness of Proposed Rule Change by American Stock Exchange, Incorporated Relating to the Listing of Commodity Indexed Preferred or Debt Securities, Exchange Act Release No. 35518 (Mar. 21, 1995), 60 FR 15804, 15807, 15807 n.21 (Mar. 27, 1995) (SR–Amex–94–30). *See also* Notice of Filing and Order Granting Immediate Effectiveness of Proposed Rule Change by American Stock Exchange, Incorporated Relating to the Listing of Commodity Indexed Preferred or Debt Securities, Exchange Act Release No. 36885 (Feb. 26, 1996), 61 FR 8315, 8319 n.17 (Mar. 4, 1996) (SR–Amex–95–50).

[27] The Commission has described a comprehensive surveillance sharing agreement as including an agreement under which a self-regulatory organization may expressly obtain information on (i) market trading activity, (ii) clearing activity and (iii) customer identity, and where existing rules, laws or practices would not impede access to such information. *See* Letter from Brandon Becker, Director, Division of Market Regulation, Commission, to Gerard D. O'Connell, Chairman, Intermarket Surveillance Group (June 3, 1994), available at *https://www.sec.gov/divisions/marketreg/mr-noaction/isg060394.htm* (''ISG Letter''). The Commission has emphasized the importance of surveillance sharing agreements, noting that ''[s]uch agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products, Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952, 70954, 70959 (Dec. 22, 1998) (File No. S7–13–98) (''NDSP Adopting Release'').

[28] Second Winklevoss Order, 83 FR 37594.

[29] *Id.* The Commission further noted that ''[t]here could be other types of ''significant markets'' and ''markets of significant size,'' but this definition is an example that will provide guidance to market participants.''

[30] First Bitwise Order, 84 FR at 55411. *See also* USBT Order 85 FR at 12612.

[31] In past disapproval orders for bitcoin ETPs, the Commission acknowledged that the CME, and therefore the CME Market, is regulated by the CFTC, but that the proposing exchanges had not demonstrated that the CME Market represented a significant market. *See* note 24, *supra*.

the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices by demonstrating that the CME Market (i) is a regulated market; (ii) participates in a surveillance sharing agreement with the Exchange; and (iii) satisfies the Commission's ''significant market'' definition under the Winklevoss Standard.

The CME Market

The CME Group announced the planned launch of bitcoin futures on October 31, 2017, the trading of which began on December 17, 2017.[32] The futures are cash-settled based on the CME UK Reference Rate, the methodology of which is described above. Nearly every measurable metric related to bitcoin futures has generally trended up since launch, although certain notional volume calculations have decreased roughly in line with the decrease in the price of bitcoin. For example, there were 143,215 bitcoin futures contracts traded in April 2023 (approximately $20.7 billion) compared to 193,182 ($5 billion), 104,713 ($3.9 billion), 118,714 ($42.7 billion), and 111,964 ($23.2 billion) contracts traded in April 2019, April 2020, April 2021, and April 2022, respectively.[33]

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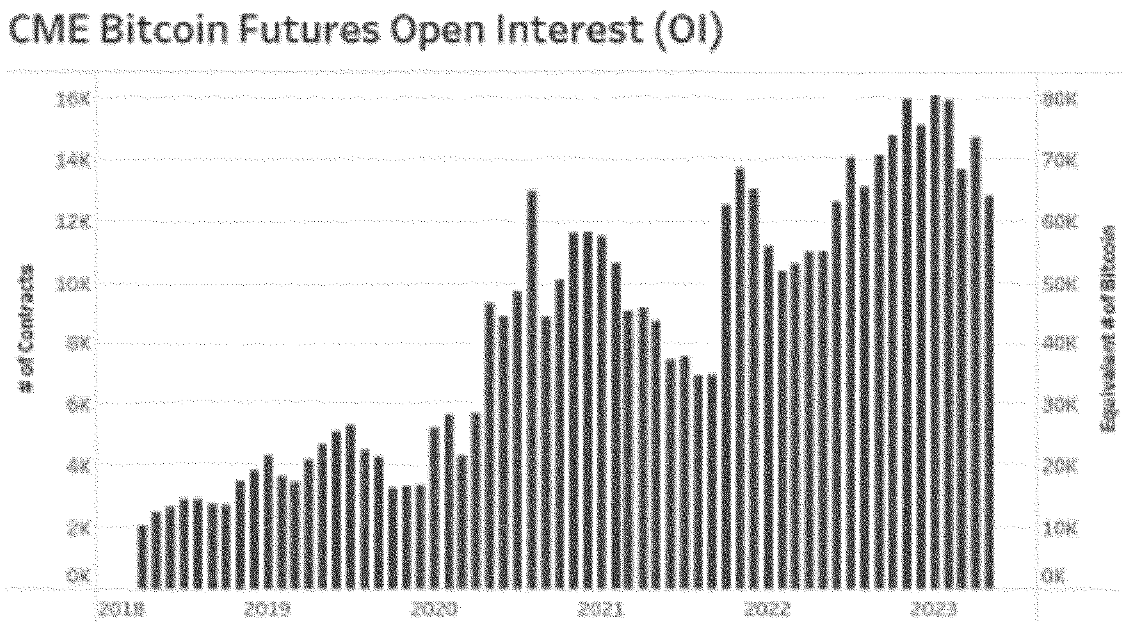
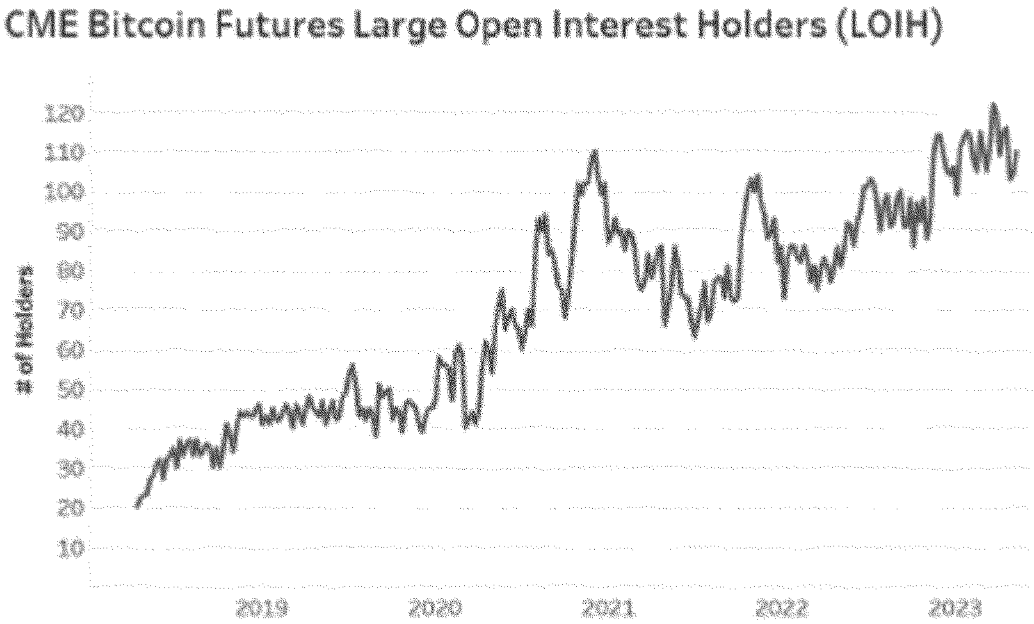



The number of large open interest holders[34] and unique accounts trading bitcoin futures have both increased, even in the face of heightened bitcoin price volatility.

[32] ''CME Group Announces Launch of Bitcoin Futures,'' October 31, 2017, available at *https://www.cmegroup.com/media-room/press-releases/2017/10/31/cme_group_announceslaunchofbitcoinfutures.html.* At the same time as the launch of the CME Market, the Cboe Futures Exchange, LLC announced and subsequently launched Cboe bitcoin futures. *See* ''CFE to Commence Trading in Cboe Bitcoin (USD) Futures Soon,'' December 01, 2017, available at *cdn.cboe.com/resources/release_notes/2017/Cboe-Bitcoin-USD-Futures-Launch-Notification.pdf.* Each future was cash settled, with the CME Market tracking the CME UK Reference Rate and the Cboe bitcoin futures tracking a bitcoin trading platform daily auction price. The Cboe Futures Exchange, LLC subsequently discontinued its bitcoin futures market effective June 2019. ''Cboe put the brakes on bitcoin futures,'' March 15, 2019, available at *https://www.reuters.com/article/us-cboe-bitcoin/cboe-puts-the-brakes-on-bitcoin-futures-idUSKCN1QW261.* The Trust uses the CME US Reference Rate to calculate its NAV.

[33] Source: CME, Yahoo Finance 4/30/23.

[34] A large open interest holder in bitcoin futures is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. At a price of approximately $29,268.81 per bitcoin on 4/30/2023, more than 100 firms had outstanding positions of greater than $3.65 million in bitcoin futures.

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The Commission has previously recognized that the CME Market qualifies as a regulated market [35] and that surveillance-sharing agreements are in place with the CME by virtue of common membership in the Intermarket Surveillance Group (''ISG'').[36] Both the Exchange and the CME are members of the ISG.[37]

The CME Market Meets the Commission's Definition of a ''Significant Market''

As the following analysis based on the Sponsor's research demonstrates, the CME Market satisfies the Commission's definition of a ''significant market.'' [38] Specifically, the Sponsor's analysis shows that prices on the CME Market consistently lead prices on the bitcoin spot market and the unregulated bitcoin futures market, such that it is reasonably likely that a would-be manipulator of the ETP would need to trade bitcoin futures on the CME Market. The Sponsor's analysis also demonstrates that it is unlikely that trading in the ETP would be the predominant influence on prices in the CME Market.

Data Sources for Evaluating the Bitcoin Market

In evaluating whether the CME Market qualifies as a significant market, the Sponsor has engaged in an extensive research effort to evaluate the lead-lag relationship between the CME Market and both the bitcoin spot market and the unregulated bitcoin futures market. Given that lead-lag and price discovery research is sensitive to data quality, it was critical from the beginning that the Sponsor gather high-quality bitcoin trading data on a historical and an ongoing basis.

Bitcoin trading platforms exist in multiple countries and operate under a variety of regulatory regimes. There are generally no requirements for these platforms to provide data on their trading activity in a uniform fashion to a centralized database. As a result, there currently is no equivalent to the Consolidated Tape Association (''CTA'') in the US, which offers a single source of agreed upon trading data for publicly traded equities in the US.

Over the years, however, a variety of private data providers have emerged that consolidate trading data from large numbers of bitcoin trading platforms. The Sponsor undertook a detailed survey of these data providers in May 2020, evaluating them on metrics including data quality, trading platform coverage, cost, service quality, and reputation. The goal of this survey was to determine which provider or set of providers the Sponsor would use in its research.

The Sponsor cataloged bitcoin data providers commonly referenced in the industry, and supplemented this list by conducting broad web searches to identify additional bitcoin data providers and by consulting a third-party survey.[39] Aggregating these steps resulted in a total of 29 firms examined by the Sponsor, of which 14 offered the specific type of data (bitcoin tick data) needed to conduct lead-lag analysis. The Sponsor evaluated these 14 firms on four separate criteria:

- *Data coverage.* All else equal, more trading platforms are better than fewer.
- *Data quality.* Data gathered by third-party providers should match the actual activity that takes place on each trading platform, with as few errors as possible.
- *Cost.* The cost of licensing the data from a given provider should be reasonable.
- *Corporate Factors.* Available facts should give confidence that the provider in question will continue to operate in a robust manner over a meaningful period of time.

Data quality was weighted heavily in the assessment of data providers, as it has a direct impact on the output of price discovery research. Still, the other three factors were important as well. Based on this analysis, the Sponsor

[35] *See* First Bitwise Order, 84 FR at 55410, n. 456 (''the Commission recognizes that the CFTC comprehensively regulates CME . . .''). *See also* Second Winklevoss Order, 83 FR at 37594 & at note 202, GraniteShares Order 83 FR at 43929, and USBT Order, 85 FR at 12597.

[36] As the Commission explained in the First Bitwise Order, common membership between a proposing exchange and a futures market such as the CME (and therefore the CME Market) in the ISG functions as ''the equivalent of a comprehensive surveillance sharing agreement.'' *See* First Bitwise Order, 84 FR at 55410, n.456.

[37] A list of the current members of ISG is available at *https://www.isgportal.org.*

[38] This proposal details the data sources, time periods, and statistical methods used by the Sponsor to demonstrate that the CME Market qualifies as a significant market relative to the Trust. As such, the surveillance sharing agreement, in place through common membership in the ISG, will allow the Exchange to detect and deter potential manipulations and other misconduct and to satisfy its obligations under Section 6(b)(5) of the Act. *See* 15 U.S.C. 78f(b)(5).

[39] *See* The Block, ''The State of Digital Asset Data and Infrastructure,'' May 14, 2020, available at *https://www.theblockcrypto.com/post/63689/research-report-the-state-of-the-digital-asset-data-and-infrastructure-commissioned-by-blockset.*

elected to use Coin Metrics as the core data provider. At the time, Coin Metrics offered coverage of 26 trading platforms, and had exceptionally high data quality based on the statistical analysis performed by the Sponsor.[40]

To supplement Coin Metrics' data, the Sponsor evaluated data providers that covered a large number (>100) of bitcoin trading platforms. Of these providers, CoinAPI scored the best on its four-factor evaluation system, including scoring well on data quality. Based on this analysis, the Sponsor elected to use CoinAPI data to supplement Coin Metrics data where necessary to conduct its analysis.

Data on the CME Market was obtained directly from the CME Group.

Winklevoss Standard Prong 1: Reasonable Likelihood

The first prong of the Winklevoss Standard requires demonstrating a reasonable likelihood that a person attempting to manipulate a bitcoin ETP would also have to trade on the CME Market.[41] In prior disapproval orders, the Commission stated that demonstrating a ''lead-lag relationship'' between prices on the CME Market and the underlying bitcoin spot market is ''central'' to understanding this reasonable likelihood.[42]

As detailed below, through extensive statistical analysis and careful consideration of third-party evaluations of these markets, the Sponsor has demonstrated that the CME Market leads the bitcoin spot market and the unregulated bitcoin futures market, such that it is reasonably likely that a person attempting to manipulate the ETP would also have to trade on the CME Market, thus satisfying the first prong of the Winklevoss Standard.

The Statistical Approaches to Demonstrating a Lead-Lag Relationship

The Sponsor conducted a detailed review of both academic and practitioner papers that focus on lead-lag relationships in financial markets. The literature review revealed that there are two primary approaches to conducting such analysis:

- *Information Share (IS)/Component Shares (CS) Price Discovery Analysis.* This type of analysis is based on the principle that there is a common ''efficient'' price for any asset being traded on multiple platforms. It allows you to construct a model of the relationship between different platforms by comparing their price series against this common efficient price, and testing which price series is faster to incorporate new information; and
- *Time-Shift Lead-Lag Analysis (TSLL).* TSLL is a more intuitive approach to evaluating lead-lag relationships between markets. It involves taking two time series of price data and offsetting (or ''shifting'') them against each other to determine what offset, or ''lag,'' produces the highest cross-correlation between the two series.

Both IS/CS price discovery analysis and TSLL have an extensive history in the financial literature, and each comes with its own strengths and weaknesses. As such, the Sponsor has evaluated the CME Market using both of the major academic approaches.

*IC/CS Price Discovery Research on the Bitcoin Spot Market vs. the CME Market*

Information share (IS) and component share (CS) are two variants of a core analytical approach to price discovery research that traces its roots back to 1995.[43] It is sometimes referred to in the literature as ''common efficient price''-based analysis, ''fundamental price''-based analysis, or simply ''price discovery'' analysis.

Price discovery analysis is based on the idea that, in a perfectly efficient market, new information should be reflected simultaneously in the price of an asset as it trades on different platforms. In practice, however, this is not the case; some platforms move before others. In addition, some market moves are simply ''noise'' that do not reflect a change in the fundamental price at all. Price discovery analysis attempts to measure the speed and accuracy with which each trading platform incorporates new information into its price. Platforms that are faster to incorporate new information while being better at avoiding noise are considered to have a ''higher share'' of price discovery.

Despite the paired nature of IS/CS values, the convention in the literature is to present only one value in the results tables, leaving the other implied. The Sponsor followed that convention, only reporting the IS/CS value of the CME Market, as it is compared to each spot bitcoin trading platform. Therefore, an IS/CS value above 50% indicates that the CME Market leads price discovery compared with the spot bitcoin trading platform in question.

The Sponsor's review of the historical literature surrounding IS/CS price discovery analysis comparing the CME Market and the bitcoin spot market identified ten academic and practitioner studies evaluating the two markets, which are itemized and summarized in the table below (a single long horizontal table has been divided here into two parts).[44]

| No. | Title | Year | Authors |
|---|---|---|---|
| 1 | Bitcoin futures—What use are they? [1] | 2018 | Corbet, Lucey, et al. |
| 2 | Price discovery in bitcoin spot or futures? [2] | 2019 | Baur and Dimpfl. |
| 3 | An analysis of price discovery between bitcoin futures and spot markets [3]. | 2019 | Kapar and Olmo. |
| 4 | Price discovery, high-frequency trading and jumps in bitcoin markets [4] | 2019 | Alexander and Heck. |
| 5 | What role do futures markets play in bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective [5]. | 2019 | Hu, Hou, and Oxley. |
| 6 | The development of bitcoin futures: Exploring the interactions between cryptocurrency derivatives [6]. | 2019 | Akyildirim, Corbet, et al. |
| 7 | Price discovery in bitcoin futures [7] | 2020 | Fassas, Papadamou, and Koulis. |
| 8 | The determinants of price discovery on bitcoin markets [8] | 2020 | Entrop, Frijns, and Seruset. |

[40] For instance, in one portion of the study, the Sponsor downloaded the full record of trades (2,523,481 trades) directly from Bitfinex, a spot bitcoin trading platform, for the month of March 2020. It then compared these trades with data pulled from participating data providers, looking for three types of data errors: duplicated trades, erroneous trades, and missing trades. Coin Metrics had zero data errors; its competitors had between two and 4,929 errors in their data samples. The Sponsor repeated the analysis using trade data from Coinbase and LBank, two additional bitcoin trading platforms; Coin Metrics again had zero data errors.

[41] *See* note 22 [sic], *supra*, and accompanying text.

[42] *See* note 23 [sic], *supra*, and accompanying text.

[43] Hasbrouck, J. (1995), One security, many markets: Determining the contributions to price discovery. *The Journal of Finance*, 5050(4), 1175–1199. Gonzalo, J., and Granger, C. (1995), Estimation of common long-memory components in cointegrated systems. *Journal of Business & Economic Statistics*, 13(1), 27–35.

[44] This table is replicated from material previously provided to the Commission. See Matthew Hougan, Hong Kim and Satyajeet Pal, Price discovery in the modern bitcoin market: Examining lead-lag relationships between the bitcoin spot and bitcoin futures market, February 16, 2021, as amended and supplemented (''Bitwise Prong One Paper'').

| No. | Title | Year | Authors |
|---|---|---|---|
| 9 | Bitcoin spot and futures market microstructure [9] | 2020 | Aleti and Mizrach. |
| 10 | Efficient price discovery in the bitcoin markets [10] | 2020 | Chang, Herrmann, and Cai. |

[1] Corbet, S., Lucey, B., Peat, M., and Vigne, S. (2018), Bitcoin futures—What use are they? *Economics Letters* (172), 23–27.
[2] Baur, D.G., and Dimpfl, T. (2019), Price discovery in bitcoin spot or futures? *The Journal of Futures Markets* (39)7, 803–817.
[3] Kapar, B., and Olmo, J. (2019). An analysis of price discovery between bitcoin futures and spot markets. *Economics Letters,* (174), 62–64.
[4] Alexander, C., and Heck, D. (2019), Price discovery, high-frequency trading and jumps in bitcoin markets. SSRN Electronic Journal.
[5] Hu, Y., Hou, Y.G., Oxley, L. (2020), What role do futures markets play in bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective. *International Review of Financial Analysis* (72).
[6] Akyildirim, E., Corbet, S., Katsiampa, P., Kellard, N., and Sensoy, A. (2020), The development of bitcoin futures: Exploring the interactions between cryptocurrency derivatives. *Finance Research Letters* (34).
[7] Fassas, A., Papadamou, S., Koulis, A. (2020), Price discovery in bitcoin futures. *Research in International Business and Finance* (52).
[8] Entrop, O., Frijns B., Seruset, M. (2020), The determinants of price discovery on bitcoin markets. *The Journal of Futures Markets,* (40)5, 816–837.
[9] Aleti, S., and Mizrach, B. (2020), Bitcoin spot and futures market microstructure. *The Journal of Futures Markets* (41)2, 194–225.
[10] Chang, A., Herrmann, W, and Cai, W. (2020), Efficient price discovery in the bitcoin markets. *Wilshire Phoenix,* October 14, 2020, available at *https://www.wilshirephoenix.com/efficient-price-discovery-in-the-bitcoin-markets/.*

| No. | Authors | CME IS (%) | CME CS (%) | Intervals | Time period | Result |
|---|---|---|---|---|---|---|
| 1 | Corbet, Lucey, et al. | 15 | 18 | 1 min | [1] | Spot leads. |
| 2 | Baur and Dimpfl | 14 | 14 | 15 min | 12/18/2017–10/18/2018. | Spot leads. |
| 3 | Kapar and Olmo | 89 | | 1 day | 12/18/2017–05/16/2018. | Futures lead. |
| 4 | Alexander and Heck | 66 | 73 | 30 min | 12/18/2017–06/30/2019. | Futures lead. |
| 5 | Hu, Hou, and Oxley | 55 | | 1 day | 12/18/2017–06/16/2019. | Futures lead. |
| 6 | Akyildirim, Corbet, et al. | 91–97 | 67–87 | 1/5/10/15/30/60 min | 12/18/2017–02/26/2018. | Futures lead. |
| 7 | Fassas, Papadamou, and Koulis. | 97 | 77 | 1 hour | 01/01/2018–12/31/2018. | Futures lead. |
| 8 | Entrop, Frijns, and Seruset. | 50 | 53 | 1 min | 12/18/2017–03/31/2019. | Mixed. |
| 9 | Aleti and Mizrach | 53–55 | 68–91 | 5 min | 01/02/2019–02/28/2019. | Futures lead. |
| 10 | Chang, Herrmann, and Cai. | | 63 | 1 min | 07/01/2019–12/31/2019. | Futures lead. |

[1] Corbet et al. (2018) do not specify the time period of the price discovery analysis presented. *See* note 49 [sic], *infra,* and accompanying text.

As the above table indicates, a majority of papers support the notion that the CME Market leads price discovery using IS and/or CS when compared to the bitcoin spot market. Because the methodologies and findings of each paper are nuanced, the Sponsor examined each paper in detail. The analysis begins with the majority opinion that the CME Market leads the bitcoin spot market:

• Kapar and Olmo (2019) was the first paper to assert that, contrary to the two studies that came before it (Corbet et al. (2018) and Baur and Dimpfl (2019)), the data ''clearly reflect the leadership of the Bitcoin futures markets with respect to the spot market.'' The paper attributed 89% of IS to the futures market.

Kapar and Olmo (2019) relies on daily price data, which means the study may not capture intraday information flow. Still, long-run relationships are relevant in holistically describing the relative strength one market has compared with another. The authors illustrated the importance of long-run relationships, saying, ''when the market is in contango we can expect increases in the spot price in the next period. In contrast, when the market is in backwardation, the VECM suggests a fall in spot prices to correct departures from equilibrium.'' In other words, the authors found that if there is a gap between the spot and futures price on a given day, the spot price is more likely to correct toward the futures price than vice versa.

• Alexander and Heck (2019) similarly found that there was ''strong evidence that both CME and CBOE futures have played the leading role in price discovery.'' Unlike Kapar and Olmo (2019), Alexander and Heck (2019) used intraday data with a 30-minute timing interval. Their analysis ran from December 18, 2017 to June 30, 2019, the longest time period among the ten studies the Sponsor discovered. It showed that the CME Market led the bitcoin spot market with 66% of IS and 73% of CS during that time.

Interestingly, the authors noted strong price leadership from the CME Market during Q2 2019, the last quarter they studied. In fact, Q2 2019 boosted the overall IS from the study from 57% to 66%, and CS from 50% to 73%. This increase in the CME Market's contribution to price discovery aligned with significant growth in volume on the CME Market after Q1 2019.[45]

In 2020, Alexander and Heck published a second paper in which the authors highlight the role unregulated futures and perpetual swaps from trading platforms such as Bitmex, Huobi, and OKEx play in the bitcoin market.[46] The analysis involves a complex, multidimensional approach to price discovery analysis conducted across eight different markets and four different exposure types (unregulated futures, regulated futures, perpetual swaps, and spot markets), each with different levels of microstructure friction and data integrity. These

[45] The monthly ADV in the CME Market grew from $60 million in March 2019 to $230 million in April 2019, according to data from the CME Group. In Q3 2020, the CME Market had a $365 million ADV.

[46] Alexander, C., and Heck, D. (2020), Price discovery in bitcoin: the impact of unregulated markets. *Journal of Financial Stability* (50), Article Number 100776.

complications make it difficult to draw a direct comparison of this paper's results with the ten studies included in the table above.[47]

- Hu et al. (2020) added to the literature, saying, ''What we contribute to this literature here, especially compared to Alexander & Heck (2019), is that we consider price discovery in the Bitcoin futures markets that allow for time-varying approaches,'' noting that cointegrating relationships can be interrogated more comprehensively using time-varying approaches. The authors conclude that, ''Bitcoin futures markets dominate the price discovery process using a time-varying version of an information share measures of the IS and GIS types.'' This finding provides additional clarity around the time-dependency of other price discovery analytical results.
- Akyildirim, Corbet et al. (2019) conducted its analysis in five-, ten-, 15-, 30-, and 60-min price data intervals to reach a range of IS and CS outcomes in order to test robustness across different data time intervals. The finding that the CME Market led the bitcoin spot market was consistent across all studied time intervals.
- Fassas et al. (2020) added another record to the body of literature finding that the CME Market led the bitcoin spot market, saying, ''Our study confirms [the] Akyildirim et al. (2019), Alexander et al. (2019) and Kapar and Olmo (2019) conclusion that bitcoin futures markets, while in their relative youth, have portrayed evidence of price discovery leadership compared to the spot market.'' Fassas et al. (2020) arrives at this conclusion after applying price discovery measures to the entire year of 2018 with hourly price data.
- Aleti and Mizrach (2020) explores the market microstructure of four spot trading platforms (Bitstamp, Coinbase, Kraken, and itBit) and the CME Market over a relatively narrow two-month time period (January 2, 2019 to February 28, 2019). The paper reports separate CME Market IS values for each of the four spot trading platforms, ranging from 53% versus itBit to 55% versus Bitstamp, and four CME Market CS values ranging from 68% versus itBit to 91% versus Kraken. All of these tests find that the CME Market led price discovery against each of the spot trading platforms.
- Chang et al. (2020) explored a more recent time period (the ''second half of 2019'') and found that the CME Market led the spot market in price discovery with a CS of 63%.

It is worth noting that—as explored in Putnins (2013)[48]—IS and CS price discovery metrics can face challenges when comparing markets that differ by tick size, trade frequency, and other microstructure frictions. Specifically, these measures bias against finding price formation in markets like the CME Market that have larger tick sizes or less frequent trades. In spite of these headwinds, a majority of the studies in the table above found the CME Market led price discovery against bitcoin spot market.[49]

The Sponsor also evaluated three studies where the authors noted that the spot market led the CME Market or had mixed results:

- Corbet et al. (2018) is the earliest study examining whether the futures or spot market lead in the bitcoin market. It reached the conclusion that the spot market led, with IS and CS values assigned to the CME Market of just 15% and 18%, respectively. The time period of the price discovery analysis is not clear from the paper, and it is possible that, being the earliest paper, the period was very short. Akyildirim, Corbet, et al. (2019), a study that shares the same co-author (Corbet) but examines different data sets, arrived at the opposite conclusion, as noted above, determining that the futures market had the dominant share of price discovery. Discussing the difference between the two papers, Akyildirim, Corbet, et al. (2019) notes that Corbet et al. (2018) was based on a shorter time period, and for that reason, could have found a relationship that has since reversed.[50]
- Baur and Dimpfl (2019) is the other study that found the bitcoin spot market led the bitcoin futures market. This paper, however, has an important methodological flaw that led the CME Market contribution to appear artificially low: the authors conducted their price discovery analysis on a per-lifetime-of-each-contract basis, rather than a standard rolling-contract basis.

Alexander and Heck (2019) explore this issue extensively, going as far as running a similar per-lifetime-of-each-contract analysis to observe how much lower the futures market contribution can appear. The authors concluded that ''[t]his apparently leading role of the spot market is not surprising since, during the first few months after the introduction of a contract, there is always another contract with a nearer maturity where almost all trading activity occurs. So any finding that the spot market dominates the price discovery process is merely an artefact of very low trading volumes when the contract is first issued.''

Baur and Dimpfl (2019) acknowledge this issue and run a rolling-futures model of the same analysis for contracts traded on the Cboe, using a fairly standard methodology where the studied contract is rolled over one day prior to maturity. This led to a significantly higher share of price discovery for the Cboe contract, albeit one that still did not dominate the bitcoin spot market. Unfortunately, the authors were unable to do the same analysis for CME futures, noting that the continuous price data approach was ''only feasible for the Cboe futures as there are short gaps in our CME data.''

It is not clear why such data gaps existed, as CME data is readily available. Additionally, it is not appropriate to assume that, if the authors had studied a rolling-futures version of the CME analysis, the result would also have aligned with the findings of the rolling-futures version of the Cboe analysis. There were fewer

[47] The direct question around whether the CME Market leads or lags price discovery compared to the unregulated bitcoin futures market is explored in detail in a following sub-section titled ''Examining Lead-Lag Relationships Between The Unregulated Bitcoin Futures Market And The CME Bitcoin Futures Market.''

[48] Putnins, T., What do price discovery metrics really measure? *Journal of Empirical Finance*, 23 (9), September 2013.

[49] The Commission has previously cited mixed or unsettled academic literature on lead-lag analysis in its bitcoin ETP disapproval orders. *See* USBT Order, 84 FR at 12613. Of course, the existence of variable results in IS/CS analysis, either within one study or a group of studies, is not in isolation sufficient to determine that a commodity futures market does not satisfy the concerns of the Act. There are multiple commodity markets where the Commission has approved ETPs based in part on the existence of a regulated derivatives market of significant size where select IS/CS studies find that the related derivatives market is not the main source of price discovery. For instance, Dimpfl et al. (2017) found that futures markets account for less than 10% of IS price discovery in markets like corn, wheat, soybeans, cattle, and lean hogs. Dimpfl, T., Flad, M., and Jung, R. (2017), Price discovery in agricultural commodity markets in the presence of futures speculation. *Journal of Commodity Markets*, March 2017. Similarly, Narayan and Sharma (2018), examined data on 15 commodities markets from 1977 to 2012, found that spot led futures in nine commodities (canola, cocoa, coffee, corn, gold, platinum, silver, soybean oil, and soybean yellow), and that futures dominated in just six commodities (copper, crude oil, platinum, soybean meal, sugar and wheat). Narayan, P. and Sharma, S. (2018), An analysis of time-varying commodity market price discovery. *International Review of Financial Analysis*, May 2018.

[50] Akyildirim, Corbet, et al. (2019) notes that ''in contrast to results based on a shorter period as in Corbet et al. (2018a), it appears that as the new cryptocurrency futures markets developed, they presented substantial leadership in price discovery over spot Bitcoin markets.'' This view is repeated in the conclusion, which says, ''while earlier research found that information flows and price discovery were transmitted from spot to futures markets, this research verifies that this relationship has since reversed, most likely explained by the influx of institutional and sophisticated investors.''

CME bitcoin futures contracts in the data set than in the Cboe data set (four versus seven), and each of the CME contracts had a longer lifetime (or ''Sample Period,'' as shown in Table 1 of the paper), likely leading to a stronger bias from this methodological flaw.

Therefore, the Sponsor concluded that Baur and Dimpfl (2019) failed to address whether the CME Market as a whole leads price discovery versus the bitcoin spot market.

- Entrop et al. (2020) arrives at a mixed result. In aggregate, the paper finds that the CME Market leads, noting that the futures exchange has an average IS value of 50% and average CS value of 53%. The paper also found that the CME Market led price discovery in a majority of months studied, noting, ''We find that, on average, the futures market leads the price formation process in 9 (contract) months, while the spot market is the leader in the remaining (6) months.'' The paper, however, does note that the spot market led the CME Market in a statistically significant way in the last two months of the study (February and March 2019), and in nonsignificant ways in select other months. These findings led the authors to the claim that ''the leading market has changed.'' The Sponsor noted that Aleti and Mizrach (2020) and Alexander and Heck (2019) explored price discovery in overlapping time periods and reached a different conclusion.

In summary, the Sponsor concluded that the majority of academic and practitioner papers support the view that the CME Market leads price discovery as compared with the bitcoin spot market. Of the ten available papers, seven clearly find that the CME Market leads, and an eighth (Entrop et al. (2020)) has aggregate results in favor of the CME Market leading. Of the two papers that conclude that the spot market leads, one was an early paper that potentially studied a very limited time period (Corbet et al. (2018)) and the other (Baur and Dimpfl (2019)) has an important methodological flaw that limits its applicability to the question at hand.

In addition to the literature review above, the Sponsor conducted its own analysis of IS/CS price discovery between the CME Market and the bitcoin spot market. In preparing its analysis, the Sponsor considered that the academic literature on bitcoin price discovery does not have a single approach to defining ''the bitcoin spot market.'' Many studies, such as Baur and Dimpfl (2019), use a single bitcoin trading platform as a proxy for all existing spot platforms; others, such as Aleti and Mizrach (2020), evaluate a small number (typically two to five) of bitcoin trading platforms as representative of the bitcoin spot market; still others, like Kapar and Olmo (2019), use an aggregated price (in their case, the Coindesk Bitcoin USD Price Index, which draws on a screened subset of global bitcoin trading platforms).

The Sponsor evaluated the CME Market and ten bitcoin trading platforms, more than the number used in other studies encountered in the Sponsor's academic literature review. These trading platforms included all five Constituent Platforms represented in the CME U.S. Reference Rate and the CME UK Reference Rate (Bitstamp, Coinbase, Gemini, itBit and Kraken), along with five additional bitcoin trading platforms with high reported trading volume (Binance, Bitfinex, Huobi, LBank, and OKEx). These trading platforms include both the largest USD–BTC Pair trading platform by reported volume (Coinbase) and the largest tether-BTC pair trading platform by reported volume (Binance).[51]

The Sponsor used available trade data, from the inception of the CME bitcoin futures contract on December 18, 2017 through the end of September 30, 2020. The results aligned with the majority of academic and practitioner research in finding that the CME Market leads the bitcoin spot market. The results are statistically significant for all ten trading platforms when evaluated from both an IS and a CS perspective.

The Sponsor presents the results in both full time period and monthly formats. Academic literature commonly presents results as full time period results; however, the Sponsor noted that shorter time periods such as the monthly results may be more appropriate given the potential for time variation in the bitcoin trading market.

The table below shows the IS and CS for the CME Market versus each of the ten spot trading platforms averaged across the entire time period (December 18, 2017 to September 30, 2020), along with a 95% confidence interval for those results. The * indicates that the results are statistically significant (p-value <0.05). Note that all of the IS and CS values and their confidence intervals are above the 50% mark, indicating that CME Market led all of the ten spot trading platforms across this time period.

| | CME IS (%) | Confidence interval (%) | CME CS (%) | Confidence interval (%) |
|---|---|---|---|---|
| Binance | *58.32 | 56.78–59.86 | *57.38 | 55.45–59.32 |
| Bitfinex | *65.75 | 64.22–67.29 | *65.08 | 63.28–66.89 |
| Bitstamp | *64.10 | 62.74–65.47 | *68.03 | 66.21–69.86 |
| Coinbase | *60.60 | 59.20–62.00 | *60.88 | 58.99–62.77 |
| Gemini | *56.44 | 55.03–57.84 | *56.73 | 54.73–58.72 |
| Huobi | *60.91 | 59.34–62.49 | *58.97 | 56.96–60.98 |
| itBit | *53.33 | 51.91–54.75 | *52.97 | 50.93–55.00 |
| Kraken | *63.17 | 61.58–64.76 | *63.24 | 61.29–65.19 |
| LBank | *66.03 | 63.95–68.11 | *63.51 | 61.34–65.68 |
| OKEx | *56.19 | 54.74–57.64 | *53.60 | 51.73–55.47 |

To provide additional context to this finding, the Sponsor also examined each market on a calendar-month-by-calendar-month basis. This calendar-month-segmented approach allowed the Sponsor to evaluate the potential for time variation in price discovery leadership between the CME Market and the bitcoin spot market over shorter periods.

The table below displays the percentage of months that the CME Market led price discovery versus each of the ten evaluated spot trading platforms since the launch of the CME

[51] While reported volumes on bitcoin trading platforms need to be considered with caution, Coinbase and Binance regularly appear as the top trading platform for the USD–BTC Pair and tether-BTC pair, respectively, on *CoinMarketcap.com* (*https://coinmarketcap.com/currencies/bitcoin/markets/*). Tether is a digital asset used as a ''stablecoin'' that has an intended value of $1.

bitcoin futures contract in December 2017. The exact numbers vary by exchange, but on average, the CME Market has led spot trading platforms from an IS perspective in 89% of evaluated months, and from a CS perspective in 80% of evaluated months.

| | % of months CME led IS | % of months CME led CS |
|---|---|---|
| Binance | 85 | 79 |
| Bitfinex | 94 | 91 |
| Bitstamp | 94 | 91 |
| Coinbase | 91 | 85 |
| Gemini | 82 | 76 |
| Huobi | 94 | 84 |
| itBit | 79 | 62 |
| Kraken | 94 | 91 |
| LBank | 90 | 80 |
| OKEX | 85 | 65 |
| Average | 89 | 80 |

Taken together, these findings support the conclusion that the CME Market leads price discovery compared with the bitcoin spot market, and that leadership is generally persistent across the full time period.

Time-Shift Lead-Lag Analysis on the Bitcoin Spot Market vs. the CME Market

The Sponsor also examined time-shift lead-lag analysis (TSLL), the other popular academic approach to investigating market leadership. TSLL is an attempt to find the direction and length of the lead-lag relationship between two price series that maximizes the predictive strength of one price series against another. The analysis is performed by shifting one price series forward or backward in time relative to another series and calculating the cross-correlation between the two series and is repeated for many different lag periods to see which amount of lag of one price series results in the highest cross-correlation between the two price series. The amount of lead or lag that results in the highest cross-correlation is referred to as ''lead-lag time.''

The Sponsor analyzed the TSLL relationship between the CME Market and the same ten bitcoin spot trading platforms evaluated using IS/CS price discovery analysis. The analysis utilized available trade data from the inception of the CME bitcoin futures contract on December 18, 2017 through the end of the study on September 30, 2020.

The results of the Sponsor's TSLL analysis align with the results of its IS/CS analysis and demonstrate that the CME Market leads all evaluated spot trading platforms over the duration of the study.

The table below shows the lead-lag time (the amount of lead or lag that results in the highest cross-correlation between two price series) for the CME Market versus each of the ten spot trading platforms, calculated daily, and averaged across the entire time period (December 18, 2017 to September 30, 2020). The table also shows the 95% confidence interval for those results. A positive value indicates the CME Market leading by that amount of seconds. A negative value would indicate CME Market lagging by that amount of seconds. The * indicates the result being statistically significant (p-value <0.05), meaning the lead-lag time for the entire time period lies squarely within the positive (or negative) value territory.

| | Lead-lag time (seconds) | Confidence interval (seconds) |
|---|---|---|
| Binance | *7.28 | 6.53–8.03 |
| Bitfinex | *9.03 | 8.33–9.73 |
| Bitstamp | *6.52 | 5.96–7.08 |
| Coinbase | *8.42 | 7.65–9.18 |
| Gemini | *6.51 | 5.91–7.11 |
| Huobi | *7.57 | 6.96–8.18 |
| itBit | *8.63 | 7.89–9.37 |
| Kraken | *17.19 | 16.00–18.38 |
| Lbank | *16.62 | 15.37–17.87 |
| OKEx | *8.27 | 7.41–9.13 |

The lead-lag times vary slightly by trading platform, but are all contained within a positive value band of 6.51–17.19 seconds, indicating CME leading. All results are statistically significant.

The results of our TSLL analysis support the conclusion of our IS/CS analysis, showing that the CME Market leads each of the ten evaluated spot trading platforms in a statistically significant manner over the duration of the study.

These findings across both types of statistical analysis are, perhaps, unsurprising. Futures markets often lead price discovery when compared to spot markets. As described in papers like Garbade and Silver (1983),[52] Chan (1992),[53] and Fleming et al. (1996),[54] futures benefit from leverage, lower transaction costs, and access to short exposure. In addition, in the bitcoin market, the regulated nature of the CME

[52] Garbade, K. and Silber, W. (1983), Price movements and price discovery in futures and cash markets. *The Review of Economics and Statistics* 65(2), 289–297.

[53] Chan, K. (1992), A further analysis of the lead-lag relationship between the cash market and stock index futures market. *The Review of Financial Studies* (5)1, 123–152.

[54] Fleming et al. (1996), Trading Costs and the relative rates of price discovery in stock, futures, and option markets. *Journal of Futures Markets* 16(4), 353–387.

Market may attract more professional investors than unregulated spot markets. These professional investors may have advantages over retail investors from an available capital, technology, information flow, and trading speed perspective. Such conditions may be expected to continue into the future, particularly as bitcoin sees continued and expanded adoption as an investable asset among professional and institutional investors.

Examining Lead-Lag Relationships Between the Unregulated Bitcoin Futures Market and the CME Bitcoin Futures Market

After completing its analysis showing that the CME Market leads price discovery compared to the bitcoin spot market, the Sponsor considered whether the CME Market leads price discovery compared to the unregulated bitcoin futures market.

A number of unregulated bitcoin futures trading platforms (''Unregulated Futures Platforms'') exist, so the first step in this analysis was to determine which Unregulated Futures Platforms to consider.

The Sponsor gathered data from CoinGecko, a popular crypto data provider, which maintains an extensive list of Unregulated Futures Platforms and their futures contracts.[55] CoinGecko tracks two categories of contracts: perpetual futures and quarterly futures. Perpetual futures are cash-settled futures that do not have an expiration date, while quarterly futures settle on a calendar basis and must be rolled forward to maintain exposure. Aggregating these two categories generated a list of 33 Unregulated Futures Platforms. The Sponsor elected to evaluate the seven largest Unregulated Futures Platforms based on open interest: Binance, BitMEX, Bybit, Deribit, Huobi and OKEx. Together, these Unregulated Futures Platforms accounted for approximately 80% of all open interest captured by CoinGecko at the time of the analysis on May 4, 2021.

Because some offer both perpetual and quarterly contracts, the Sponsor selected from each Unregulated Futures Platform the contract type and specific contract with the highest level of open interest: perpetual futures for Binance, BitMEX, Bybit and Deribit, and quarterly futures for Huobi and OKEx.

The Sponsor used the full period of data available for each Unregulated Futures Platform, through the end of Q1, 2021. The data start month for each Unregulated Futures Platform was:

- Binance: September 2019
- BitMEX: December 2017 [56]
- Bybit: October 2019
- Deribit: August 2018
- Huobi: August 2019
- OKEx: October 2018

As with the CME Market's monthly futures contract, Huobi and OKEx's quarterly futures contracts were rolled one day prior to expiration in order to create a continuous price series.

The table below highlights key statistics for the highest open interest contract on each of the evaluated Unregulated Futures Platforms, plus the CME Market, for the month of May 2021: Open Interest, Trading Volume, and Required Margin. The CME Market row is highlighted in gray.

| | Open Interest | Trading Volume | Required Margin |
|---|---|---|---|
| **Bybit** | $1,666,878,515 | $7,438,356,443 | 1% |
| **Binance** | $1,575,326,903 | $21,718,058,270 | <1% |
| **CME** | $1,404,125,298 | $1,840,129,468 | 33% |
| **OKEx** | $842,460,775 | $2,112,965,793 | <1% |
| **Huobi** | $680,431,607 | $5,823,998,157 | <1% |
| **BitMEX** | $664,421,615 | $2,656,967,907 | 1% |
| **Deribit** | $599,004,598 | $1,264,134,910 | 1% |

The contracts differ significantly along each of these tracked metrics. For instance, Bybit perpetual futures have the highest open interest, while Binance perpetual futures have the highest trading volume.

The Sponsor noted the stark difference in required margin between the CME Market and all of the evaluated Unregulated Futures Platforms. The Unregulated Futures Platforms in this study offer clients leverage at ratios ranging from 100-to-1 to 125-to-1,

[55] CoinGecko (*https://www.coingecko.com/en/coins/bitcoin#markets*). Navigate to the ''Perpetuals'' (perpetual futures) and ''Futures'' (predominantly quarterly futures) sub tabs within the ''Markets'' tab.

[56] BitMEX was the only platform that existed and has data available from the inception of the CME bitcoin futures market on December 17, 2017. OKEx claims to have launched bitcoin futures trading as early as June 2013, but historical data for OKEx is not available before October 2018. Binance, Bybit, Deribit and Huobi all launched bitcoin futures trading after the inception of the CME bitcoin futures market, between 2018 and 2019.

meaning the required margin is 1% or less of the notional value of open contract positions. By comparison, the maximum leverage ratio for the CME bitcoin futures contract is 3-to-1, meaning a 33% required margin ratio.

While traders on a given Unregulated Futures Platform do not always make use of the full amount of potential leverage, industry reports suggest that the level of realized leverage on Unregulated Futures Platforms is high. For instance, a 2019 report from BitMEX found that the average level of realized leverage for BitMEX bitcoin perpetual futures for the year ending April 2019 was approximately 27-to-1, meaning an average maintained margin of less than 4%.[57]

The high leverage ratios offered by Unregulated Futures Platforms mean that, at any given moment, the amount of capital committed to any one of these unregulated futures contracts is likely significantly lower than the amount of capital committed to the CME bitcoin futures contract. As a hypothetical example, assuming an average margin of 4% (*i.e.,* 25-to-1 leverage), the amount of capital backing the $7.26 billion in aggregate open interest across the seven unregulated futures contracts can be estimated at $363 million. By comparison, assuming a 33% margin (the minimum required), the capital backing the $1.40 billion of open interest on the CME bitcoin futures contract is at least $462 million. In other words, it is possible that the amount of capital committed to the CME bitcoin futures contract is larger than the capital committed to all of the evaluated Unregulated Futures Platform futures contracts, combined.

The Sponsor's analysis noted that it is not clear, looking just at these top-level statistics alone, that the CME Market or any of the Unregulated Futures Platforms is likely to lead price discovery. To make this determination, the Sponsor compared data from the CME Market and each of the Unregulated Futures Platforms using the same statistical techniques used to evaluate price discovery between the CME Market and spot bitcoin trading platforms.

The table below shows the results of the Sponsor's IS and CS analysis, comparing the CME Market with each of the seven Unregulated Futures Platforms over the duration of the study. Each Unregulated Futures Platform evaluation has its own date range, based on the length of data available for such platform.

As in the spot market analysis, IS and CS values above 50% indicate that the CME Market led price discovery against a given Unregulated Futures Platform over the duration of the study period. A * indicates that the results are statistically significant (p-value < 0.05). The confidence interval column shows a 95% confidence interval for the context.

The results show that the CME Market has led price discovery against each of the seven Unregulated Futures Platforms across the duration of the study. The results are statistically significant for all platforms when evaluated from an IS perspective, and for six of seven platforms from a CS perspective.

| | CME IS (%) | Confidence interval (%) | CME CS (%) | Confidence interval (%) | Data range |
|---|---|---|---|---|---|
| Binance | *55.30 | 53.64–56.96 | *54.01 | 51.41–56.61 | Sept 2019–Mar 2021. |
| BitMEX | *63.67 | 62.30–65.04 | *63.33 | 61.68–64.99 | Dec 2017–Mar 2021 |
| Bybit | *61.50 | 59.69–63.30 | *60.26 | 57.75–62.77 | Oct 2019–Mar 2021. |
| Deribit | *56.91 | 55.56–58.26 | *56.20 | 54.23–58.17 | Aug 2018–Mar 2021. |
| Huobi | *55.25 | 53.33–57.17 | *53.85 | 51.36–56.33 | Aug 2019–Mar 2021. |
| OKEx | *53.04 | 51.45–54.63 | 51.22 | 49.14–53.31 | Oct 2018–Mar 2021. |

The Sponsor also compared the CME Market against each Unregulated Futures Platform on a month-by-month basis. The table below shows the percentage of months that the CME Market led IS/CS price discovery against each Unregulated Futures Platform:

| | % of Months CME led IS | % of Months CME led CS | Data range |
|---|---|---|---|
| Binance | 84 | 74 | Sept 2019–Mar 2021. |
| BitMEX | 93 | 90 | Dec 2017–Mar 2021. |
| Bybit | 100 | 94 | Oct 2019–Mar 2021. |
| Deribit | 88 | 78 | Aug 2018–Mar 2021. |
| Huobi | 85 | 70 | Aug 2019–Mar 2021. |
| OKEx | 73 | 60 | Oct 2018–Mar 2021. |

These monthly results support the conclusion of the Sponsor's full duration analysis in finding that the CME Market leads each of the seven Unregulated Futures Platforms from an IS and CS perspective.

In addition to its IS/CS analysis, the Sponsor also examined the CME Market and each of the Unregulated Futures Platforms using TSLL analysis. The table below shows the lead-lag time (the amount of lead or lag that results in the highest cross-correlation between two price series) for the CME Market versus each of the seven Unregulated Futures Platforms, calculated daily and averaged across the entire time period applicable to the Unregulated Futures Platform. The table also shows the 95% confidence interval for those results.

A positive value indicates the CME Market leading by that amount of seconds. A negative value would indicate CME Market lagging. The * indicates the result being statistically significant (p-value < 0.05), meaning the lead-lag time for the entire time period

[57] BitMEX Leverage Statistics, April 2019 (*https://blog.bitmex.com/bitmex-leverage-statistics-april-2019/*).

lies squarely within the positive (or negative) value territory.

| | Lead-lag time (seconds) | Confidence interval (seconds) | Data range |
|---|---|---|---|
| Binance | * 3.07 | 2.50–3.65 | Sept 2019–Mar 2021. |
| BitMEX | * 7.23 | 6.76–7.70 | Dec 2017–Mar 2021. |
| Bybit | * 5.13 | 4.56–5.70 | Oct 2019–Mar 2021. |
| Deribit | * 4.98 | 4.47–5.49 | Aug 2018–Mar 2021. |
| Huobi | * 2.34 | 2.21–2.47 | Aug 2019–Mar 2021. |
| OKEx | * 3.47 | 2.94–4.00 | Oct 2018–Mar 2021. |

The results show that prices on the CME Market led prices on the Unregulated Futures Platforms by 2–7 seconds in a statistically significant manner. These results are in-line with the results of the IS/CS analysis, and support the finding that the CME Market leads price discovery compared to the unregulated bitcoin futures market.

That these findings demonstrating that the CME Market leads the unregulated bitcoin futures market in price discovery might surprise some market observers, given the higher total notional volumes on the Unregulated Futures Platforms. Besides the possibility that the self-reported trading volumes on Unregulated Futures Platforms could be inflated, the Sponsor theorizes that highly levered retail investors with limited capital on the Unregulated Futures Platforms may be opening and closing positions more frequently, resulting in higher notional volumes, but with lesser impact on price discovery relative to well capitalized, long-term oriented professional investors on the CME Market. In addition, professional investors may have advantages over retail investors from a technology, information flow, and trading speed perspective. Such conditions may be expected to continue into the future, particularly as bitcoin sees continued and expanded adoption as an investable asset among professional and institutional investors.

Conclusion of Winklevoss Standard Prong 1: Reasonable Likelihood

The first prong of the Winklevoss Standard requires demonstrating a reasonable likelihood that a person attempting to manipulate a bitcoin ETP would also have to trade on the CME Market. In prior disapproval orders, the Commission has stated that demonstrating a lead-lag relationship between prices on the CME Market and the underlying bitcoin spot market is ''central'' to understanding this reasonable likelihood.

As detailed herein, through extensive statistical analysis and careful consideration of third-party evaluations of these markets, the Sponsor has demonstrated that the CME Market leads the bitcoin spot market and the unregulated bitcoin futures market, such that it is reasonably likely that a person attempting to manipulate the ETP would also have to trade on the CME Market, thus satisfying the first prong of the Winklevoss Standard.

Winklevoss Standard Prong 2: Predominant Influence

The second prong of the Winklevoss Standard requires demonstrating that it is unlikely that trading in the Trust would become the predominant influence on prices in the CME Market. As detailed below, the Sponsor's analysis shows that trading in the Trust is unlikely to become the predominant influence on prices in the CME Market, even when assuming aggressive estimates of first-year flows of $4.7 billion and average daily trading volume of $143 million.[58]

Estimating the Likely First-Year Flows Into a Bitcoin ETP

The Sponsor examined extensive data from other ETPs and a well-known, publicly traded bitcoin trust to estimate the likely first-year flows into a newly approved bitcoin ETP.

First, the Sponsor examined first-year flows into all ETPs currently listed on the market, using data from FactSet.[59] The Sponsor excluded ETPs with negative first-year flows.

Of the more than 2,200 ETPs with positive or flat first-year flows:

- The median ETP attracted $28 million in flows during its first year on the market.
- The ETP with the highest first-year flows in history—the Invesco QQQ Trust (Nasdaq: QQQ)—attracted $5.35 billion in flows.

The table below highlights the ten ETPs with the highest first-year flows in ETP history.

| Fund | Ticker | Year-one flows ($M) |
|---|---|---|
| Invesco QQQ Trust | QQQ | 5,351 |
| Communication Services Select Sector SPDR | XLC | 5,186 |
| iShares MSCI EAFE ETF | EFA | 4,292 |
| JPMorgan BetaBuilders Europe ETF | BBEU | 4,187 |
| PIMCO Active Bond ETF | BOND | 4,116 |
| JPMorgan BetaBuilders Japan ETF | BBJP | 3,755 |
| JPMorgan BetaBuilders Canada ETF | BBCA | 3,656 |
| iShares Select Dividend ETF | DVY | 3,245 |
| Real Estate Select Sector SPDR Fund | XLRE | 3,171 |
| SPDR Gold Shares | GLD | 3,010 |

[58] *See* Matthew Hougan, Hong Kim and Satyajeet Pal, Price discovery in the modern bitcoin market: Examining lead-lag relationships between the bitcoin spot and bitcoin futures market, February 16, 2021, as amended and supplemented (''Bitwise Prong One Paper'').

[59] Data obtained from FactSet on November 30, 2020.

As the analysis shows, $5.35 billion is the outer limit of historical first-year flows into a bitcoin ETP. There is no precedent for an ETP attracting more than this in its first year on the market. The Sponsor concluded it is unlikely that a bitcoin ETP will experience the highest first-year flows in history, particularly given the relative size of the bitcoin market compared to the markets captured by the ETPs above, which target parts or all of the equity, bond, real estate, and gold markets.[60]

To provide a more detailed comparison, the Sponsor also examined first-year flows into first-to-market single-commodity ETPs. Bitcoin is considered a commodity by the Commodity Futures Trading Commission,[61] and one way to view a potential bitcoin ETP is as a first-to-market single-commodity ETP offering exposure to bitcoin in the same manner that the SPDR Gold Shares (NYSEArca: GLD) was a first-to-market single-commodity ETP offering exposure to gold, and the iShares Silver Trust (NYSEArca: SLV) was a first-to-market single-commodity ETP offering exposure to silver.

The following table shows the first-year flows into every first-to-market single-commodity ETP currently available in the U.S., again using data from FactSet.[62] First-year flows range from $3.01 billion for GLD to negative $1 million for the iPath Bloomberg Lead Subindex Total Return ETN (NYSEArca: LD).[63]

| Commodity | Ticker | Year-one flows ($M) |
| --- | --- | --- |
| Gold | GLD | $3,010 |
| Silver | SLV | 1,730 |
| Crude Oil | USO | 827 |
| Platinum | PPLT | 708 |
| Palladium | PALL | 603 |
| Natural Gas | UNG | 374 |
| Corn | CORN | 115 |
| Coffee | JO | 48 |
| Gasoline | UGA | 28 |
| Sugar | SSG | 12 |
| Soybeans | SOYB | 10 |
| Cotton | BAL | 7 |
| Nickel | JJN | 2 |
| Copper | CPER | 2 |
| Wheat | WEAT | 1 |
| Cocoa | NIB | 1 |
| Aluminum | JJU | 1 |
| Carbon Credits | GRN | 0 |
| Tin | JJT | 0 |
| Lead | LD | −1 |

These figures provide additional context on the likely upper bound of potential flows into a bitcoin ETP.

Finally, the Sponsor examined the Grayscale Bitcoin Trust (OTCQX: GBTC), a publicly traded grantor trust that holds bitcoin directly with a third-party custodian. As of December 31, 2020, GBTC was the only product that provided investors with readily accessible exposure to bitcoin through traditional brokerage accounts, and has been available to U.S. investors since May 2015.[64] A bitcoin ETP and GBTC will likely compete for investor allocations.

GBTC is different from an ETP in certain ways, including that the structure does not allow for redemptions, that it has a different regulatory status than an ETP, and that shares of GBTC are materially more likely to trade at significant and variable premiums and/or discounts to the net asset value of the trust. GBTC does, however, permit creations, allowing it to accommodate flows to reflect investor demand. As such, it can be a useful data set for analyzing investor demand for exposure to bitcoin through a traditional brokerage window and what impact flows from such demand can have on prices in the CME Market.[65]

In its most successful year, GBTC attracted a record $4.7 billion in flows in 2020, according to Grayscale Investments.[66] The fund's previous record was $472 million, set in 2019. 2020's record flows occurred during a sustained bull market for bitcoin, as bitcoin's price rose 306% in 2020.[67]

Based on the foregoing assessments, the Sponsor utilized $4.7 billion as its working estimate for first-year flows into a new bitcoin ETP. The Sponsor believed this estimate to be aggressive, as it assumes that a bitcoin ETP will:

- be the third-fastest-growing ETP in history, out of more than 2,200 products with positive year-one flows;
- significantly surpass (by more than 50%) the first-year flows into GLD, which experienced the highest first-year flows in first-to-market single-commodity ETP history; and
- match the highest annual flow in GBTC's history, achieved during a strong bull market, all while the new ETP is forced to compete for market share with GBTC itself.

Evaluating the Potential Influence of ETP Flows on Prices in the CME Market

The Sponsor analyzed whether such flows into a first-to-market bitcoin ETP would cause such ETP to be the predominant influence on prices in the CME Market.

Based on information on the flows into GBTC that are publicly available from multiple sources,[68] the Sponsor analyzed with historical data whether $4.7 billion in flows into a bitcoin investment product in a single year would be likely to cause that product to

[60] At year-end 2020, the total market capitalization of bitcoin was $539 billion, according to *blockchain.com.* By comparison, the global market capitalization of the equity market was $95 trillion and the outstanding value of the global bond market was $106 trillion in 2019, according to the most recently published SIFMA Capital Markets Fact Book (September 2020), available at *https://www.sifma.org/wp-content/uploads/2020/09/US-Fact-Book-2020-SIFMA.pdf;* the professionally managed global real estate market was $9.6 trillion in 2019, according to MSCI's Market Size Report on Global Real Estate, available at *https://www.msci.com/real-estate/market-size-report;* and the total value of above-ground gold was $10 trillion on December 31, 2020, according to the World Gold Council available at *https://www.gold.org/goldhub/data/above-ground-stocks.*

[61] The Commodity Futures Trading Commission has argued successfully in federal courts that digital assets such as bitcoin are commodities. *See, e.g., Commodity Futures Trading Commission* v *McDonnell and CabbageTech, Corp.*, 18–CV–361 (E.D.N.Y. March 6, 2018) and *Commodity Futures Trading Commission* v *My Big Coin Pay, Inc.*, 18–cv–10077–RWZ (D. Mass. Sept. 26, 2018).

[62] Data obtained from FactSet on November 30, 2020.

[63] Negative flows occur when a product is seeded with a certain amount of capital but some of that capital is redeemed over time, and there are no offsetting creations.

[64] *See* OTC Markets Group Inc., press release, May 5, 2015. OTC Markets Group Welcomes Bitcoin Investments Trust to OTCQX, available at *https://www.prnewswire.com/news-releases/otc-markets-group-welcomes-bitcoin-investment-trust-to-otcqx-300077150.html.*

[65] The Sponsor notes that one difference between the creation/redemption and arbitrage mechanism between GBTC and an ETP is that newly created shares in GBTC are not immediately available to be sold in the secondary market. Instead, after purchasing shares, an investor must hold the shares for 6-months before they are permitted to be traded on the secondary market. This creates a longer holding period for an arbitrageur, as compared to a typical ETP arbitrage trade where an authorized participant may immediately trade newly created shares into the secondary market. For example, to capture arbitrage on GBTC shares trading at a premium, an arbitrageur would need to short sell GBTC shares while buying spot bitcoin, deliver the bitcoin for creation of GBTC shares, and hold those shares for six months until they are released from transfer restriction and can be delivered to the short sellers to close out the trade. But while the holding period of the GBTC share premium arbitrage is at minimum 6 months, the buying in the spot bitcoin market occurs, in this case, right before the creation date, which is the date inflows into GBTC are recorded. In addition, institutional arbitrageurs are not the only cohort that can create shares for GBTC. Accredited investors may also subscribe for GBTC shares either by contributing bitcoin or delivering cash. For cash orders, Genesis Trading Global, Inc., the ''authorized participant'' of the trust, purchases the bitcoin for the given cash amount by 6 p.m. ET on the day the cash is provided by the subscriber.

[66] *See* Grayscale Investments, Digital Asset Investment Report, Q4 2020 (*grayscale.co/insights/grayscale-q4-2020-digital-asset-investment-report/*).

[67] Bitcoin's price rose from $7,147 on December 31, 2019 to $29,026 on December 31, 2020 according to the Coin Metrics bitcoin reference rate, available at *https://coinmetrics.io/reference-rates/.*

[68] Information on GBTC creation of shares is available from the issuer, reports on Form 8–K filed by the issuer on *sec.gov*, and third party websites such as Bloomberg.

become the predominant influence on prices in the CME Market.

The Sponsor's statistical analysis examined the relationship of flows into GBTC in 2020 and the changes in the price of bitcoin, using both daily and weekly flows.[69] Daily (or weekly) flows were calculated from Bloomberg data by multiplying the change in outstanding shares of the trust by the net asset value per share of that day (or week). Daily (or weekly) percentage price changes of bitcoin were calculated using the 4:00 p.m. E.T. bitcoin reference rate from Coin Metrics.[70]

The charts below show the results of the Sponsor's analysis. Each dot represents a daily (or weekly) flow into GBTC and the corresponding daily (or weekly) change in the price of bitcoin. As such, there are 253 dots in the first chart representing each trading day, and 52 dots in the second chart representing each week in 2020.

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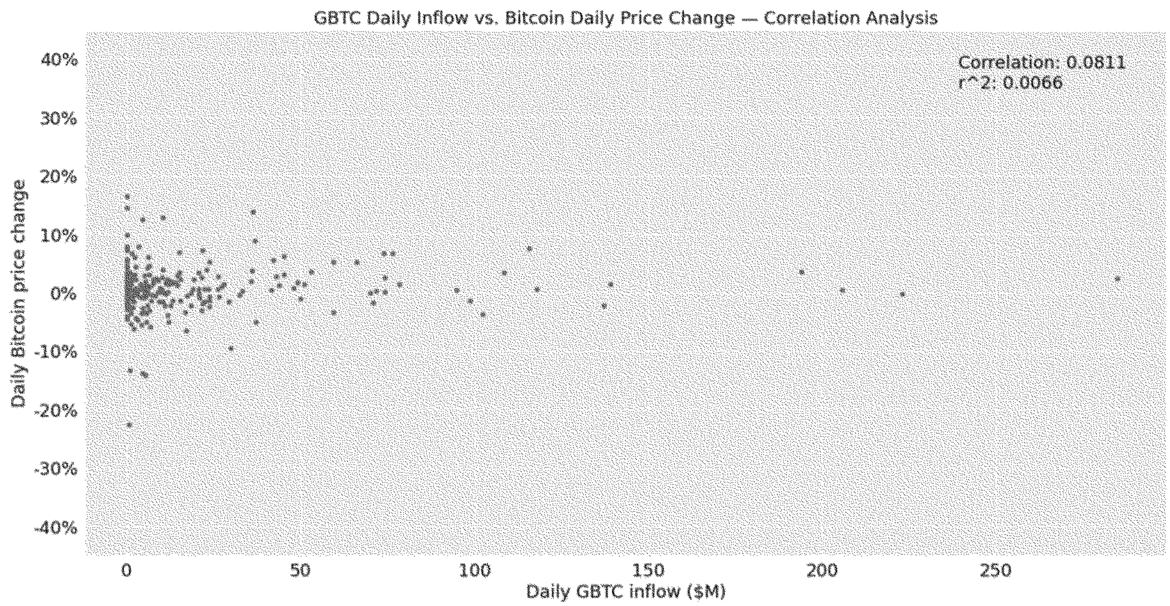


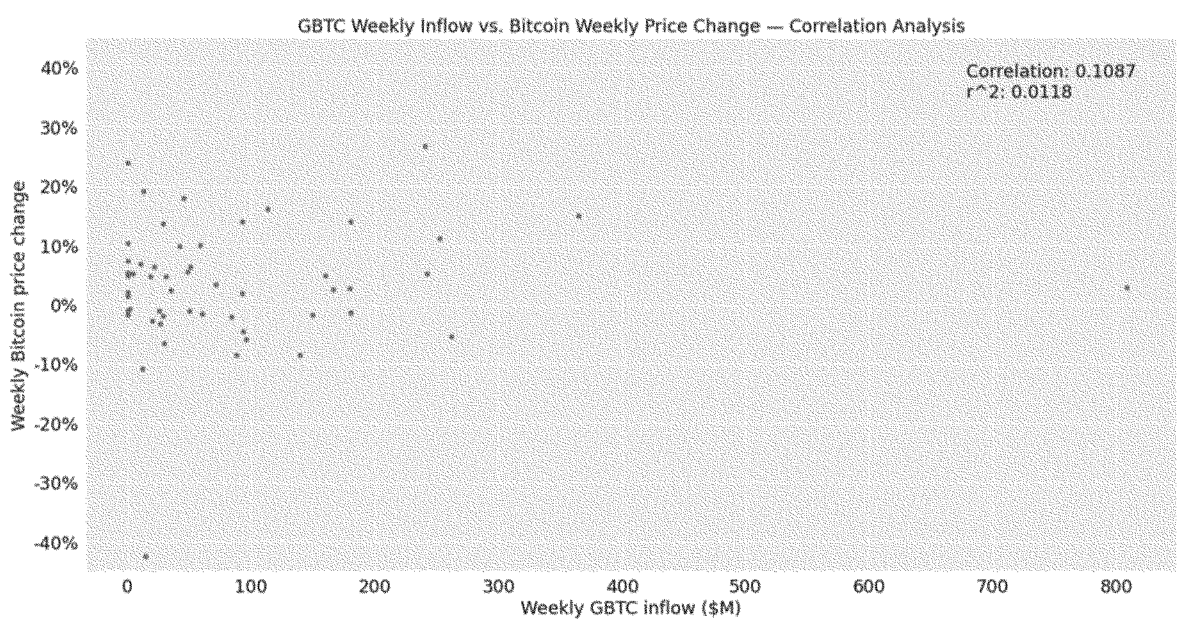


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The data shows there is no meaningful relationship between daily and weekly flows into GBTC and changes in the price of bitcoin, despite

[69] The Sponsor has used both single day and weekly flows, acknowledging that the buying activity for an in-kind creation may not necessarily occur in a single day leading up to the creation date. Instead, an investor might build their position over time. Using both daily and weekly flows helps to capture more of this extended possibility.

[70] *See* note 67, *supra*.

the aggregate flows being $4.7 billion: The correlation for daily results is 0.08 and the correlation for weekly results is 0.11, both of which are low.

The experience of outlier days and weeks with large flows supports this conclusion. For instance, the largest one-day flow occurred on December 22, 2020, when $285 million flowed into the fund; bitcoin's price moved up 2.3% that day, within the normal daily range for a bitcoin price move.[71]

Similarly, the largest one-week flow occurred for the week ending December 27, 2020, when GBTC attracted approximately $809 million in flows; bitcoin's price settled up just 2.9% that week, again within the normal range for a weekly price move.[72]

Based on this statistical analysis, the Sponsor concluded that it is unlikely that the aggressive estimate of first-year flows into a bitcoin ETP ($4.7 billion) would cause it to become the predominant influence on prices in the CME Market.

Estimating the Likely Trading Volume of a Bitcoin ETP

Beyond the impact of investment flows, the Sponsor considered whether secondary market trading in the Shares would be likely to become the predominant influence on prices in the CME Market. The Sponsor was able to draw on two relevant comparisons to create estimates of the likely trading volume of a bitcoin ETP.

First, the Sponsor considered trading in GBTC, using secondary market data from Bloomberg. Shares of GBTC are publicly quoted on the OTCQX Best Market and are widely available to U.S. investors through traditional brokerage accounts. As such, although GBTC operates under a different regulatory structure than an ETP and has historically traded at significant and variable premiums and discounts to its net asset value, the historical turnover of GBTC provide one estimate of the future turnover of a bitcoin ETP. GBTC's average daily trading volume (ADV) in 2020 was $103 million. On a monthly basis, that figure ranged from $37 million in April 2020 to $368 million December 2020, as reported in the table below.

Examining ADV in isolation offers only a partial picture, however. Trading activity in GBTC is correlated with the product's assets under management (AUM), which is in turn linked to bitcoin's price. The table below shows the ''ADV/AUM Ratio'' for GBTC for each month in 2020, using the month-end AUM as the denominator. Although the absolute size of the ADV ranges widely across 2020, the ADV/AUM ratio stays fairly consistent, running from 1.10% (April and September) to 2.21% (February). The average ADV/AUM ratio for the year was 1.54%.

| Month | ADV (M) | AUM (M) | ADV/AUM ratio (%) |
|---|---|---|---|
| Jan 2020 | $43 | $3,191 | 1.36 |
| Feb 2020 | 66 | 2,997 | 2.21 |
| Mar 2020 | 44 | 2,249 | 1.96 |
| Apr 2020 | 37 | 3,313 | 1.10 |
| May 2020 | 68 | 4,034 | 1.68 |
| Jun 2020 | 52 | 3,870 | 1.33 |
| Jul 2020 | 65 | 5,264 | 1.23 |
| Aug 2020 | 89 | 6,018 | 1.47 |
| Sep 2020 | 57 | 5,167 | 1.10 |
| Oct 2020 | 95 | 7,728 | 1.23 |
| Nov 2020 | 259 | 13,060 | 1.98 |
| Dec 2020 | 368 | 20,445 | 1.80 |
| *Average* | *103* | *6,445* | *1.54* |

Applying this average ADV/AUM ratio to the $4.7 billion working estimate of first-year flows into a bitcoin ETP, the estimated daily trading volume would be approximately $72 million at the end of the ETP's first year.

A second comparison that may be useful is to examine the case of other first-to-market commodity ETPs. GLD is the largest such ETP, and therefore trading activity of GLD[73] may provide a useful comparison. Using the same methodology as with GBTC, the Sponsor examined the ADV/AUM ratio of GLD for every month in 2020. The ratio value ranged from 1.65% (September) to 5.93% (March). The average ratio was 3.04%.

| Month | ADV (M) | AUM (M) | ADV/AUM ratio (%) |
|---|---|---|---|
| Jan 2020 | $1,206 | $46,053 | 2.62 |
| Feb 2020 | 2,010 | 47,348 | 4.25 |
| Mar 2020 | 2,903 | 48,916 | 5.93 |
| Apr 2020 | 1,828 | 57,343 | 3.19 |
| May 2020 | 1,819 | 62,557 | 2.91 |
| Jun 2020 | 1,606 | 67,484 | 2.38 |
| Jul 2020 | 2,215 | 78,789 | 2.81 |
| Aug 2020 | 3,312 | 79,163 | 4.18 |
| Sep 2020 | 1,272 | 76,941 | 1.65 |
| Oct 2020 | 1,376 | 75,889 | 1.81 |
| Nov 2020 | 1,855 | 73,285 | 2.53 |
| Dec 2020 | 1,369 | 71,558 | 1.91 |

[71] The standard deviation of the daily percentage price change of bitcoin in 2020 using the Coin Metrics bitcoin reference rate was 4.38%.

[72] The standard deviation of the weekly percentage price change of bitcoin in 2020 using the Coin Metrics bitcoin reference rate was 10.35%.

[73] *See* GLD historical market data, available at *https://www.spdrgoldshares.com/usa/historical-data/*.

| Month | ADV (M) | AUM (M) | ADV/AUM ratio (%) |
|---|---|---|---|
| *Average* | *1,901* | *65,022* | *3.04* |

Applying GLD's ADV/AUM ratio to the $4.7 billion working estimate of first-year flows into a bitcoin ETP, the estimated daily trading volume would be approximately $143 million. The Sponsor elected to use this estimate of $143 million as its working estimate for average daily trading volume of a new bitcoin ETP at the end of its first year. The Sponsor believes this estimate to be aggressive, as it assumes that a bitcoin ETP will:

- be the third-fastest-growing ETP in history, out of more than 2,200 products with positive year-one flows.
- have an ADV/AUM ratio approximately two times higher than that of GBTC, which also offers exposure to bitcoin through traditional brokerage accounts.

Evaluating the Potential Influence of Secondary Market Trading in ETP Shares on Prices in the CME Market

The CME Market had an average daily trading volume of $392 million in 2020. The lowest month, April 2020, had an average daily trading volume of $176 million, and the highest month, December 2020, had an average daily trading volume of $935 million. The table below shows the ADV of the CME Market each month in 2020.

| Month | CME ADV (M) |
|---|---|
| Jan 2020 | $408 |
| Feb 2020 | 401 |
| Mar 2020 | 202 |
| Apr 2020 | 176 |
| May 2020 | 305 |
| Jun 2020 | 223 |
| Jul 2020 | 252 |
| Aug 2020 | 455 |
| Sep 2020 | 397 |
| Oct 2020 | 329 |
| Nov 2020 | 665 |
| Dec 2020 | 935 |

Given that the average daily trading volume of the CME Market in 2020 was 174% higher at $392 million than the Sponsor's aggressive estimate of a new bitcoin ETP's potential trading volume of $143 million, the Sponsor found that it is unlikely that trading in a new bitcoin ETP will cause such ETP to become the predominant influence on prices in the CME Market.

Conclusion of Winklevoss Standard Prong 2: Predominant Influence

The second prong of the Winklevoss Standard requires demonstration that it is unlikely that trading in the Trust would become the predominant influence on prices in the CME Market.

As detailed herein, the Sponsor's analysis shows that trading in the Trust is unlikely to become the predominant influence on prices in the CME Market, even when assuming aggressive estimates of first-year flows of $4.7 billion and average daily trading volume of $143 million.

* * * * *

In conclusion, as the foregoing analysis and data demonstrates, the proposal has met its burden presented by Section 6(b)(5) of the Act[74] and, in particular, the requirement that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, by demonstrating that the CME Market (i) is a regulated market; (ii) participates in a surveillance sharing agreement with the Exchange; and (iii) satisfies the Commission's ''significant market'' definition under the Winklevoss Standard.

Availability of Information Regarding the Shares and Bitcoin

The NAV will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The ITV will be calculated every 15 seconds throughout the core trading session each trading day, and available through online information services.

The Sponsor will cause information about the Shares to be posted to the Trust's website (*https://www.bitwiseinvestments.com/*): (i) the NAV and NAV per Share for each Exchange trading day, posted at end of day; (ii) the daily holdings of the Trust, before 9:30 a.m. E.T. on each Exchange trading day; (iii) the Trust's effective prospectus, in a form available for download; and (iv) the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Trust. For example, the Trust's website will include (i) the prior business day's trading volume, the prior business day's reported NAV and closing price, and a calculation of the premium and discount of the closing price or mid-point of the bid/ask spread at the time of NAV calculation (''Bid/Ask Price'') against the NAV; and (ii) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The Trust's website will be publicly available prior to the public offering of Shares and accessible at no charge.

Investors may obtain on a 24-hour basis bitcoin pricing information based on the CME U.S. Reference Rate, CME UK Reference Rate and CME Bitcoin Real Time Price, bitcoin spot market prices and bitcoin futures price from various financial information service providers. Current bitcoin spot market prices are also generally available with bid/ask spreads from bitcoin trading platforms, including the Constituent Platforms of the CME US Reference Rate.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Trust.[75] Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The Exchange may halt trading during the day in which an interruption to the dissemination of the ITV occurs.[76] If the interruption to the dissemination of the ITV persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. The Exchange may also halt trading if the value of the underlying commodity is no longer calculated or available on

[74] 15 U.S.C. 78f(b)(5).

[75] *See* NYSE Arca Rule 7.12–E.

[76] A limit up/limit down condition in the futures market would not be considered an interruption requiring the Trust to be halted.

at least a 15-second delayed basis from a source unaffiliated with the Sponsor, Trust, Bitcoin Custodian or the Exchange or if the Exchange stops providing a hyperlink on its website to any such unaffiliated commodity value.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. in accordance with NYSE Arca Rule 7.34–E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.201–E. The trading of the Shares will be subject to NYSE Arca Rule 8.201–E(g), which sets forth certain restrictions on Equity Trading Permit (''ETP'') Holders acting as registered Market Makers in Commodity-Based Trust Shares to facilitate surveillance.[77] The Exchange represents that, for initial and continued listing, the Trust will be in compliance with Rule 10A–3 under the Act,[78] as provided by NYSE Arca Rule 5.3–E. A minimum of 100,000 Shares of the Trust will be outstanding at the commencement of trading on the Exchange.

Surveillance

The Exchange represents that trading in the Shares of the Trust will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[79] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The Exchange further represents that it may obtain information regarding trading in the Shares and the CME Market from the CME and other markets and other entities that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[80] The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and the CME Market with the CME and other markets and entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, the CME Market and the underlying commodity, as applicable, from such markets and other entities.

Also, pursuant to NYSE Arca Rule 8.201–E(g), the Exchange is able to obtain information regarding trading in the Shares, bitcoin futures and the underlying bitcoin through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market.

In addition, the Exchange has a general policy prohibiting the improper distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (i) the description of the index, portfolio or referenced asset, (ii) limitations on index or portfolio holdings or reference assets, or (iii) the applicability of Exchange listing rules specified in this rule filing will constitute continued listing requirements for listing the Shares on the Exchange.

The Sponsor has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 9.2–E(a).

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[81] that an exchange have rules that are 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, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201–E. Further, the Exchange has demonstrated that the proposed rule change satisfies the Winklevoss Standard with respect to the CME Market.

As discussed above, both existing academic literature and the Sponsor's own studies show that the CME Market leads price discovery relative to the bitcoin spot market. As a result, and given that the Sponsor has demonstrated that it is unlikely that trading in the Shares will become the predominant influence upon prices in the CME Market, the CME Market represents a regulated market of significant size, and that there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade on that market to successfully manipulate the Shares.[82]

The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares and the CME Market in all trading sessions and to deter and detect

[77] Under NYSE Arca Rule 8.201–E(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying commodity, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Rule 11.3–E requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares). As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

[78] 17 CFR 240.10A–3.

[79] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[80] For a list of the current members of ISG, see *https://isgportal.org/*. The Exchange notes that not all components of the Trust may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[81] 15 U.S.C. 78f(b)(5).

[82] *See* notes 22 [sic] and 23 [sic], *supra*, and accompanying text.

attempted manipulation of the Shares or other violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and bitcoin futures with the CME and other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange is also able to obtain information regarding trading in the Shares and bitcoin futures or the underlying bitcoin through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The Trust's website will also include a form of the prospectus for the Trust that may be downloaded. The website will include the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Trust. The Trust's website will include (i) daily trading volume, the prior business day's reported NAV and closing price, and a calculation of the premium and discount of the closing price or mid-point of the Bid/Ask Price against the NAV; and (ii) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The Trust's website will be publicly available prior to the public offering of Shares and accessible at no charge.

Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of a new type of exchange-traded product based on the price of bitcoin that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

*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 purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of a new type of Commodity-Based Trust Share based on the price of bitcoin that will enhance competition among market participants, to the benefit of investors and the marketplace.

*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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2023–44 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2023–44. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2023–44 and should be submitted on or before August 8, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[83]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2023–15127 Filed 7–17–23; 8:45 am]

**BILLING CODE 8011–01–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket Number USTR–2023–0005]**

## Extension of the Comment Period: Request for Comments Regarding the Work of the North American Competitiveness Committee

**AGENCY:** Office of the United States Trade Representative (USTR).

[83] 17 CFR 200.30–3(a)(12).

**ACTION:** Extension of the comment period.

**SUMMARY:** Since entry into force of the United States-Mexico-Canada Agreement (USMCA), the United States, Canada, and Mexico (the Parties) have focused the work of the North American Competitiveness Committee (Committee) on expanding trilateral cooperation on North American workforce development issues and establishing mechanisms for cooperation during emergency situations that affect North American trade flows, including by establishing a joint understanding of critical infrastructure priorities in North America. USTR is seeking public comments and recommendations for these and potential additional workstreams for the Committee relevant to enhancing North American competitiveness. USTR is extending the deadline to submit comments by 30 days, until August 17, 2023.

**DATES:** The deadline for the submission of written comments is August 17, 2023.

**ADDRESSES:** You should submit written comments through the Federal eRulemaking Portal: *https://www.regulations.gov* (*Regulations.gov*). Follow the instructions for submissions in parts IV and V below.

**FOR FURTHER INFORMATION CONTACT:** For procedural questions concerning written comments, please contact Randall Oliver, Director for Canada, Office of Western Hemisphere Affairs, at *Randall.T.Oliver@ustr.eop.gov* or (202) 395–9449 in advance of the deadline and before transmitting a comment.

**SUPPLEMENTARY INFORMATION:**

## I. Comment Extension

On June 16, 2023 (88 FR 39502), USTR published a notice with a request for comments concerning additional workstreams for the Committee relevant to enhancing North American competitiveness. This notice extends the deadline for submission of comments until August 17, 2023. For convenience, USTR is repeating the background and information on solicitation of comments below.

## II. Background

The purpose of the Committee, which was established under Chapter 26 of the USMCA, is to:

- develop and implement cooperative activities in support of a strong economic environment that incentivizes production in North America;
- facilitate regional trade and investment;
- enhance a predictable and transparent regulatory environment;
- encourage the swift movement of goods and the provision of services throughout the region; and
- respond to market developments and emerging technologies.

The Parties agreed that the Committee should not detract from or unnecessarily duplicate work that is taking place under other USMCA committees or in other venues such as bilateral cooperation mechanisms, including the U.S.-Mexico High-Level Economic Dialogue and the Roadmap for a Renewed U.S.-Canada Partnership. The Parties also agreed that projects for the Committee must be based on targeted and specific proposals to maximize effectiveness and impact.

To coordinate U.S. government policy for the Committee, USTR has established a Trade Policy Staff Committee (TPSC) Subcommittee on North American Competitiveness (TPSC Subcommittee) comprised of officials from across the U.S. government.

## III. Public Comments

USTR invites interested parties to submit comments to assist USTR and the TPSC Subcommittee in recommending additional workstreams for the Committee relevant to enhancing North American competitiveness. Comments should be responsive to the Committee activities described in the USMCA at Article 26.1, namely:

- effective approaches and information-sharing activities to support a competitive environment in North America that facilitates trade and investment between the Parties, and promotes economic integration and development within the free trade area;
- ways to further assist traders of a Party to identify and take advantage of trade opportunities under the USMCA;
- recommendations aimed at enhancing the participation of SMEs, and enterprises owned by under-represented groups including women, indigenous peoples, youth, and minorities;
- projects and policies to develop a modern physical and digital trade- and investment-related infrastructure, and improve the movement of goods and provision of services within the free trade area;
- action to combat market-distorting practices by non-Parties that are affecting the North American region; and
- cooperative activities for trade and investment between the Parties with respect to innovation and technology, including best practices in their application.

In addition, USTR invites interested parties to submit comments to assist USTR and the TPSC Subcommittee in the ongoing implementation of current work under the Committee related to North American workforce development and cooperation among the Parties during emergency situations that affect North American trade flows, including the establishment of a joint understanding of critical infrastructure priorities in North America described in Decision #5 of the Free Trade Commission of the USMCA.

Comments could address, among other topics:

- recommendations aimed at developing procedures for coordination and consultation in response to specific emergency situations;
- effective approaches and mechanisms to timely consult with industries and other non-governmental stakeholders, including workers, most directly impacted by the disruption of North American trade flows in an emergency situation;
- existing projects and policies to engage with state, local, tribal, or territorial governments to address disruptions to trade in emergency situations; and
- examples of activities related to re-establishing the flow of trade after emergency situations.

USTR requests small businesses (generally defined by the Small Business Administration as firms with fewer than 500 employees) or organizations representing small business members that submit comments to self-identify as such, so that we may be aware of issues of particular interest to small businesses.

## IV. Procedures for Written Submissions

To be assured of consideration, submit your written comments by the August 17, 2023 11:59 p.m. EDT deadline. All submission must be in English. USTR strongly encourages submissions via *Regulations.gov*, using Docket Number USTR–2023–0005.

To make a submission via *Regulations.gov*, enter Docket Number USTR–2023–0005 in the 'search for' field on the home page and click 'search.' The site will provide a search results page listing all documents associated with this docket. Find a reference to this notice by selecting 'notice' under 'document type' in the 'refine documents results' section on the left side of the screen and click on the link entitled 'comment.'

*Regulations.gov* allows users to make submissions by filling in a 'type comment' field or by attaching a document using the 'upload file' field. USTR prefers that you provide submissions in an attached document and note 'see attached' in the 'comment' field on the online submission form. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If you use an application other than those two, please indicate the name of the application in the 'type comment' field.

You will receive a tracking number upon completion of the submission procedure at *Regulations.gov*. The tracking number is confirmation that *Regulations.gov* received your submission. Keep the confirmation for your records. USTR is not able to provide technical assistance for *Regulations.gov*.

For further information on using *Regulations.gov*, please consult the resources provided on the website by clicking on 'How to Use Regulations.gov' on the bottom of the home page. USTR may not consider submissions that you do not make in accordance with these instructions.

If you are unable to provide submissions as requested, please contact Randall Oliver, Director for Canada, Office of Western Hemisphere Affairs, in advance of the deadline at *Randall.T.Oliver@ustr.eop.gov* or (202) 395–9449, to arrange for an alternative method of transmission. USTR will not accept hand-delivered submissions. General information concerning USTR is available at *www.ustr.gov.*

## V. Business Confidential Information (BCI) Submissions

If you ask USTR to treat information you submit as BCI, you must certify that the information is business confidential and you would not customarily release it to the public. For any comments submitted electronically containing BCI, the file name of the business confidential version should begin with the characters 'BCI.' You must clearly mark any page containing BCI with 'BUSINESS CONFIDENTIAL' at the top of that page. Filers of submissions containing BCI also must submit a public version of their submission that will be placed in the docket for public inspection. The file name of the public version should begin with the character 'P.'

## VI. Public Viewing of Review Submissions

USTR will post written submissions in the docket for public inspection, except properly designated BCI. You can view submissions at *Regulations.gov* by entering Docket Number USTR–2023–0005 in the search field on the home page.

**William Shpiece,**

*Chair of the Trade Policy Staff Committee, Office of the United States Trade Representative.*

[FR Doc. 2023–15134 Filed 7–17–23; 8:45 am]

**BILLING CODE 3390–F3–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[Docket No. FHWA–2023–0022]**

### Notice of Intent To Prepare an Environmental Impact Statement for a Proposed Highway Project; Madison to Wisconsin Dells, Wisconsin

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (USDOT).

**ACTION:** Notice of intent to prepare an environmental impact statement (EIS).

**SUMMARY:** FHWA, in coordination with the Wisconsin Department of Transportation (WisDOT), is issuing this Notice of Intent (NOI) to solicit comment and advise the public, agencies, and stakeholders that an environmental impact statement will be prepared to study potential improvements to 67 miles of Interstates 39, 90, and 94 (I–39/90/94) in Dane, Columbia, Sauk, and Juneau counties, Wisconsin. The study corridor begins at United States Highway (US) 12/18 in Madison and terminates at US 12/Wisconsin State Highway (WIS) 16 in Wisconsin Dells. The study will also evaluate I–39 from its split with I–90/94 (the I–39 I–90/94 split) to Levee Road near Portage. Persons or agencies who may be affected by the study are encouraged to comment on the information in this NOI and the NOI Additional Information document. All comments received in response to this NOI document will be considered, and any information presented herein, including the preliminary purpose and need, preliminary alternatives, and potential impacts, may be revised in consideration of comments.

**DATES:** Comments must be received on or before August 17, 2023.

**ADDRESSES:** This NOI and the NOI Additional Information document are available in the docket referenced above at *www.regulations.gov* and on the study website located at *https://wisconsindot.gov/Pages/projects/by-region/sw/399094/environ.aspx.* The NOI Additional Information document also will be mailed upon request. Interested parties are invited to submit comments by any of the following methods:

*Website:* For access to the documents, go to the Federal eRulemaking Portal located at *www.regulations.gov* or the study website located at *https://wisconsindot.gov/Pages/projects/by-region/sw/399094/environ.aspx.* Follow the online instructions on the Public Involvement page for submitting comments.

*Mailing address or for hand delivery or courier:* Federal Highway Administration Wisconsin Division, 525 Junction Road, Suite 8000, Madison, WI 53717.

*Study email address: dotswrinterstatestudy@dot.wi.gov.*

All submissions should include the agency name and the docket number that appears in the heading of this notice. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided. A summary of the comments received will be included in the Draft EIS.

**FOR FURTHER INFORMATION CONTACT:**

*FHWA:* Bethaney Bacher-Gresock, Environmental Manager, Federal Highway Administration—Wisconsin Division, 525 Junction Road, Suite 8000, Madison, WI 53717; email: *bethaney.bacher-gresock@dot.gov;* 608–662–2119.

*WisDOT:* Dan Schave, PE, Project Supervisor, Wisconsin Department of Transportation, 2101 Wright Street, Madison, WI 53704, *daniel.schave@dot.wi.gov,* 608–246–3251.

Persons interested in receiving study information can also use the study email address referenced above to be added to the study mailing list.

**SUPPLEMENTARY INFORMATION:** FHWA and WisDOT are committed to public involvement for this study. FHWA, as the lead Federal agency, and WisDOT as joint lead agency/study sponsor, are preparing an EIS to evaluate transportation solutions on I–39/90/94 between Madison and Wisconsin Dells, in Dane, Columbia, Sauk, and Juneau counties, Wisconsin. The EIS will be prepared in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 United States Code [U.S.C.] 4321, *et seq.*), 23 U.S.C. 139, Council on Environmental Quality (CEQ) regulations implementing NEPA (40 Code of Federal Regulations [CFR] 1500–1508), FHWA regulations implementing NEPA (23 CFR 771.101–771.139), and applicable Federal, State, and local laws and regulations.

The NOI Additional Information document includes additional details about early coordination activities with study committees, the public, agencies, and major stakeholders to introduce the study and seek early input on the purpose and need, alternatives, and potential environmental issues. All public comments will be considered, and changes may be made to the study as a result.

The purpose of this notice is to bring relevant comments, information, and analyses to the attention of FHWA and WisDOT as early in the process as possible. FHWA requests comments and suggestions on the purpose and need, study alternatives and impacts, and the identification of any relevant information, studies or analyses of any kind concerning impacts to the quality of the human and natural environment. The study purpose and need and/or the study alternatives may be revised based on comments received during the comment period on this notice.

**Preliminary Purpose and Need for the Proposed Action**

The purpose of the I–39/90/94 study is to address existing and future traffic demands, safety issues, aging and outdated corridor infrastructure, and corridor resiliency. The need for proposed improvements sets the stage for developing and evaluating possible alternatives. Traffic volumes and congestion are increasing, impacting travel reliability. Heavy recreational, commuting and freight traffic uniquely affect traffic operations in the study corridor. Recreational traffic occurs typically on Fridays and Sundays in the summer. Crashes at many locations along the study corridor exceed the statewide average crash rate. Congestion and geometric/design deficiencies contribute to elevated crash rates. Pavement maintenance projects are anticipated in 24 of the next 30 years somewhere in the study corridor, which presents ongoing travel delay and congestion for daily commercial and recreational traffic. There are 113 structures in the I–39/90/94 study corridor. 84 structures will be over 50 years old in the year 2030. In addition to aging structures, many bridges do not meet current vertical and lateral design standards. Flood events in 2008 and 2018 caused partial or full interstate closures, impacting corridor resilience. Closures disrupt vital connections for commerce and emergency services. The closures cause substantial indirection for detoured traffic, causing congestion and delays on alternate routes. The study's purpose and need statement may be revised based on the consideration of public and agency comments.

**Preliminary Description of the Proposed Action and Alternatives the Environmental Impact Statement Will Consider**

WisDOT and FHWA are developing a range of alternatives for detailed study in the Draft EIS. Alternatives development will include consideration of agency and public comments received during the NOI comment period. In addition to the No Build alternative, potential alternatives include Transportation Demand Management/Transportation System Management and Operations alternative and Build alternatives. A description of alternatives is provided below.

The No Build alternative assumes no improvements other than those implemented for routine maintenance. The No Build alternative assumes the I–39/90/94 bridge replacement over the Wisconsin River and the WIS 60 interchange reconstruction, both in Columbia County, will be completed. WisDOT plans to replace the I–39/90/94 bridges over the Wisconsin River as a separate project; FHWA and WisDOT completed an Environmental Assessment and Finding of No Significant Impact in June 2021. Construction is expected to start in 2024. The bridge replacement has independent utility; the bridges will be reconstructed to accommodate future potential improvements to I–39/90/94 evaluated during this study, thus not forcing or foreclosing future alternatives.

WisDOT and FHWA also completed a Categorical Exclusion in September 2019 for reconstructing the I–39/90/94 interchange with WIS 60. The bridges need replacement due to structural deterioration. The reconstruction project has independent utility; the interchange will be reconstructed to accommodate future potential improvements to I–39/90/94 evaluated during this study, thus not forcing or foreclosing future alternatives. FHWA approved an Interstate Access Justification Report for the interchange in June 2020. WisDOT began construction in summer 2022 to replace the interstate bridges at WIS 60 and reconfigure the interchange ramps.

The Transportation Demand Management/Transportation System Management and Operations alternative includes regional strategies to manage travel demand and operational efficiency, which will include transit investments by others. This alternative would not meet the study purpose and need as a standalone alternative, but WisDOT expects to include several of these measures in other Build Alternatives.

The preliminary I–39/90/94 mainline Build Alternatives range from Spot Improvements to Freeway Modernization alternatives.

- *Off Alignment (East Reliever).* As part of a previous study, WisDOT evaluated four off alignment alternatives, or east reliever route. WisDOT eliminated off alignment alternatives from further study based on the alternatives' greater impacts compared to freeway modernization alternatives, which address purpose and need.
- *Spot Improvements.* This alternative would retain the existing highway in its existing configuration and would include only spot safety and operational improvements with minimal or no right of way acquired. This alternative does not meet the study purpose and WisDOT will not advance the alternative for continued study.
- *Freeway Modernization.* WisDOT will continue to evaluate three Build modernization alternatives that would reconstruct the freeway to modern design standards whenever possible. All the modernization alternatives will also consider implementing strategies to improve operations, including Collector-Distributor (C–D) lanes, managed lanes, and/or auxiliary lanes. In the vicinity of the I–39 I–90/94 Split, where the interstate mainline has been impacted by prior flood events, all modernization alternatives include a combination of profile adjustments and waterway crossing design to reduce flood risk.
- *Modernization of Existing Travel Lanes.* This alternative retains the existing interstate freeway lane configuration, but it would be reconstructed to modern design standards along the existing alignment. Reconstruction would replace pavement, bridges, and interchanges, while making the improvements described above.
- *Modernization Plus Added General-Purpose Lane.* This alternative would reconstruct I–39/90/94 with 12-foot shoulders, similar to the Freeway Modernization alternative, but provide an additional general-purpose lane in each direction along the present freeway alignment throughout a majority of the corridor.
- *Modernization Hybrid.* This alternative would reconstruct I–39/90/94 with a combination of maintaining the same number of lanes and adding a general purpose lane. The Modernization Hybrid alternative also includes managed lanes, C–D lanes and auxiliary lanes to further manage traffic. Managed lanes could be used in a variety of situations including part-time

hard shoulder running (time of day, day of week, or time of year), high-occupancy vehicle (HOV) lanes, transit only lanes, or Connected and Automated Vehicles (CAV). From US 12/18 to the I–39 I–90/94 Split, the interstate would feature the same number of general-purpose lanes as are currently present and include an 18-foot inside shoulder that could be utilized as a managed lane. C–D lanes are proposed between the I–94/WIS 30 and US 151 interchanges. Auxiliary lanes are proposed between the US 12/18 and I–94/WIS 30 interchanges and between the US 151 and WIS 19 interchanges. A general-purpose lane would be added to I–90/94 from the I–39 I–90/94 Split to the US 12/WIS 16 interchange. I–39 from the I–39 I–90/94 Split to Levee Road would maintain the same number of lanes as the existing condition.

All modernization alternatives would include alternatives that reconstruct 15 interchanges in the study corridor. In response to a request from the city of Madison and in alignment with local and regional plans, WisDOT will also evaluate potential new interchange access at Hoepker Road on I–39/90/94, and at a proposed extension of Milwaukee Street on I–94, located east of the interchange with I–39/90. These new interchanges may or may not be part of the preferred alternative, depending on public and agency input and how well the interchange alternatives meet purpose and need. The NOI Additional Information document provides more detail on interchange alternatives under consideration.

The alternatives may be revised based on the consideration of public and agency comments. The range of reasonable alternatives will be finalized after consideration of comments received during the comment period on this notice and will be documented in the Draft EIS.

**Brief Summary of Expected Impacts**

The EIS will evaluate the potential social, economic, and environmental impacts/effects resulting from the implementation of the Build and No Build alternatives. FHWA and WisDOT will seek input from the public and agencies during the EIS development process regarding the effects of the project. WisDOT identified preliminary impacts of alternatives, which is provided in the NOI Additional Information document. The following key resources and issues have been identified for evaluation in the EIS and supporting technical studies:

*Wetlands and Waters of the United States:* Build alternatives would likely require fill and removal of material from Waters of the United States and impacts to wetlands considered to be jurisdictional by the U.S. Army Corps of Engineers (USACE) and impacts to wetlands and waterways considered to be jurisdictional by the Wisconsin Department of Natural Resources (WDNR).

*Floodplains:* I–39/90/94 travels through areas where prior flooding events along the Wisconsin and Baraboo rivers required closing or partially closing the interstate. The Build alternatives may require floodplain filling and measures to avoid, minimize and mitigate flood risks on the interstate, as well as surrounding properties.

*Section 4(f) and/or Section 6(f) Public Lands:* The Build alternatives anticipate potential use at the Pine Island Wildlife Area. A *de minimis* use at the Glacial Drumlin Trail is anticipated where it crosses under I–39/90/94. No uses are anticipated at the Baraboo River Waterfowl Production Area in Columbia County, nor the Cherokee Marsh Wildlife Area, McCarthy Park, Token Creek Park, and Northeast Park in Dane County.

*Section 4(f) and/or Section 106 Historic Resources:* There are properties in the study corridor area of potential effect that are either listed, eligible or potentially eligible for listing on the National Register of Historic Places. Historic or potentially historic properties include Rocky Arbor State Park, houses, farmsteads, commercial properties, a school and a chapel. FHWA and WisDOT will assess effects and determine if there is a potential use of the property during the alternatives refinement and Section 106 consultation processes with the State Historic Preservation Office and other consulting parties.

*Threatened and Endangered Species:* Federal- and State-listed species occur in the study corridor. FHWA and WisDOT will determine effects through alternatives refinement, United States Fish and Wildlife (USFWS) Section 7 consultation and coordination with the WDNR under the WisDOT/WDNR Cooperative Agreement.

*Right of Way Acquisition and Relocations:* Build alternatives would likely require full and partial acquisitions of residential and non-residential properties abutting the study corridor.

*Farmland and Agricultural Impacts:* Build alternatives would likely require partial acquisition from farm properties abutting the study corridor and potentially require an Agricultural Impact Statement in coordination with State and Federal agencies depending on the magnitude of impacts.

*Noise:* Noise sensitive receptors, including homes, parks, schools, and churches are present throughout the study corridor. FHWA and WisDOT will identify impacts during alternatives refinement.

*Environmental Justice:* Low-income and minority environmental justice populations are present along the study corridor, primarily in the Madison metropolitan area and Wisconsin Dells. Preliminary impact analyses do not anticipate full acquisitions of either residential or non-residential properties where environmental justice populations are present. Partial acquisitions may occur. Analysis and public involvement will be conducted during the NEPA review to assess whether the Build alternatives would result in any disproportionately high and adverse effects on low-income and minority communities.

The EIS will evaluate the expected impacts and benefits to the known resources above, as well as the following resources: land use, social and community resources, economics, air quality, transportation systems, ecosystem resources, stormwater and water quality, hazardous waste sites, and visual resources. The EIS will evaluate direct, indirect, and cumulative impacts to these resources, as applicable. The level of review of the identified resources will be commensurate with the anticipated effects to each resource from the proposed project and will be governed by the statutory and regulatory requirements applicable to those resources. The analyses and evaluations conducted for the EIS will identify the potential for effects, whether the anticipated effects would be beneficial or adverse, as well as avoidance and mitigation measures for unavoidable adverse effects.

Additional information on the purpose and need statement, alternatives, potential project environmental impacts, as well as the draft Coordination Plan for Agency and Public Involvement is provided within the NOI Additional Information document available for review in the docket established for this study and on the study website as noted in the **ADDRESSES** section. The studies to identify the impacts as well as the analyses of impacts from the retained alternatives will be presented in the Draft EIS. FHWA and WisDOT are inviting public input during the NOI comment period. The identification of impacts for analysis in the Draft EIS may be revised due to the consideration of public comments.

**Anticipated Permits and Other Authorizations**

Permits and authorizations anticipated for the project include a Section 401 water quality certification and a Section 404 permit under the Clean Water Act (33 U.S.C. 1344). FHWA and WisDOT will prepare evaluations under Section 4(f) of the USDOT Act of 1966 (23 U.S.C. 138 and 49 U.S.C. 303) and Section 6(f) of the Land and Water Conservation Fund Act of 1965 (54 U.S.C. 200302); will perform consultation under Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 300101–307108) concurrently with the NEPA environmental review process; and will consult with the USFWS in accordance with Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*). FHWA and WisDOT will also work with Cooperating and Participating Agencies, to determine if additional permits or authorizations are required under these or other authorities.

**Schedule for the Decision-Making Process**

After this NOI is issued, WisDOT will coordinate with the Participating and Cooperating agencies to develop study documentation and the Draft EIS. The Draft EIS is anticipated to be issued in Spring 2024. The combined Final EIS and Record of Decision is anticipated to be issued in Fall 2024, within 24 months of the publication of this NOI. Per 23 U.S.C. 139(d)(10), permits and authorizations should be completed by no later than 90 days after the issuance of the Record of Decision. However, for this project WisDOT has requested in accordance with 23 U.S.C. 139(d)(10)(C)(ii) that the 404 permit and 401 water quality certification follow a different timeline because the construction date is not expected until 2026 or later.

**Description of Agency and Public Review and Scoping Process**

FHWA and WisDOT held public involvement meetings on September 13 and 14, 2022, to introduce the corridor study. The agencies also hosted an early coordination meeting with potential Cooperating and Participating Agencies on September 13, 2022. During both the public and agency meetings FHWA and WisDOT provided a study overview, the preliminary NEPA milestone schedule, and reviewed the preliminary study purpose and need and alternatives anticipated to be evaluated during the NEPA process. At the agency coordination meeting, FHWA and WisDOT also included a discussion of the anticipated roles and responsibilities of Cooperating and Participating Agencies. FHWA and WisDOT provided a 30-day comment period for public and agency input on preliminary study information provided in those meetings.

FHWA and WisDOT held a second agency coordination meeting with invited Cooperating and Participating Agencies on January 30, 2023, to present the range of alternatives and preliminary impacts associated with mainline and interchange alternatives. WisDOT forwarded summaries of the purpose and need statement and range of alternatives, as well as a draft Coordination Plan for Agency and Public Involvement and draft Impact Analysis Methodology for a 30-day comment period between April 26, 2023, and May 26, 2023.

FHWA and WisDOT held a second round of public involvement meetings on April 12 and 13, 2023, to present the range of alternatives and preliminary impacts for the interstate mainline and interchanges, as well as two new potential interchanges at Hoepker Road on I–39/90/94 and an extension of Milwaukee Street on I–94, both in the city of Madison, Dane County.

The public and agency scoping process is continuing with the publication of this NOI. WisDOT will announce the NOI on the study website and provide a link to a narrated presentation explaining the scoping process and opportunities to provide comments during the scoping process. Comments from the agencies and the public are requested within this NOI comment period; the study purpose and need and/or the study alternatives may be revised based on comments received, as noted below.

Meetings with Cooperating and Participating Agencies will be held throughout the environmental review process. The draft Coordination Plan for Agency and Public Involvement included within the NOI Additional Information document describes how the public and agencies will continue to be engaged during EIS development. The Draft EIS will be available for public and agency review and comment prior to the Public Hearing.

**Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Proposed Action**

The NOI Additional Information document includes the preliminary purpose and need statement, preliminary range of alternatives and the draft Coordination Plan for Agency and Public Involvement, including the NEPA milestones and permit schedules. With this notice, FHWA and WisDOT request and encourage State, tribal, and local agencies, and the public to review the NOI and NOI Additional Information document and submit comments on any aspect of the study. Specifically, agencies and the public are asked to identify and submit potential alternatives for consideration and any information, such as anticipated significant issues or environmental impacts and analyses, relevant to the proposed study for consideration by the Lead and Cooperating Agencies in developing the Draft EIS. Any information presented herein, including the purpose and need, alternatives, and anticipated impacts may be revised after consideration of the comments. Comments must be received August 17, 2023.

There are several methods to submit comments as described in the **ADDRESSES** section of this notice. Any questions concerning this proposed action, including comments relevant to alternatives, information, and analyses, should be directed to FHWA or WisDOT at the physical addresses, email addresses, or phone numbers provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

**Authority:** 42 U.S.C. 4321 *et seq.;* 23 U.S.C. 139; 23 CFR part 771.

**Glenn D. Fulkerson,**

*Division Administrator, FHWA Wisconsin Division, Madison, Wisconsin.*

[FR Doc. 2023–15199 Filed 7–17–23; 8:45 am]

**BILLING CODE 4910–RY–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2023–0051]**

### Hours of Service of Drivers: John Olier; Application for Exemption

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), (DOT).

**ACTION:** Notice of final disposition; denial of application for exemption.

**SUMMARY:** FMCSA announces its decision to deny the application from John Olier requesting an exemption from certain hours of service (HOS) regulations including the 11-, 14-, and 70-hour rules with all ''mandatory break'' periods which would include the 10-hour and 30-minute break requirements. The applicant requests a

permanent exemption for himself and believes that his safe driving record and experience demonstrate an equivalent level of safety. FMCSA analyzed the application and public comments and determined that the exemption would not likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

**FOR FURTHER INFORMATION CONTACT:** Ms. Pearlie Robinson, Driver and Carrier Operations Division; Office of Carrier, Driver, and Vehicle Safety Standards; FMCSA; 202–366–4225; *pearlie.robinson@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## I. Public Participation

*Viewing Comments and Documents*

To view comments, go to *www.regulations.gov,* insert the docket number ''FMCSA–2023–0051'' in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''View Related Comments.''

To view documents mentioned in this notice as being available in the docket, go to *www.regulations.gov,* insert the docket number ''FMCSA–2023–0051'' in the keyword box, click ''Search,'' and choose the document to review.

If you do not have access to the internet, you may view the docket by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

## II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely maintain a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision from which the applicant will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)). If the exemption is denied, the notice will explain the reasons for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

## III. Background

*Current Regulatory Requirements*

To reduce the possibility of driver fatigue, FMCSA's HOS regulations in 49 CFR part 395 limit the time drivers of commercial motor vehicles (CMVs) may drive and require certain off-duty periods to ensure that individuals stay awake and alert while driving. The HOS regulations in 49 CFR 395.3(a)(1) prohibit an individual from continuing to drive after 11 hours driving. Further, under 49 CFR 395.3(a)(2) drivers may not drive after having been on duty for a period of 14 consecutive hours until they have been off duty for a minimum of 10 consecutive hours, or the equivalent of at least 10 consecutive hours off duty. Section 395.3(a)(3)(ii) mandates that drivers take a 30-minute break after driving for a period of 8 cumulative hours without at least a 30-minute interruption. The break may be satisfied by any non-driving period of 30 consecutive minutes (*i.e.,* on-duty not driving, off duty, sleeper berth, or any combination of these taken consecutively). Section 395.3(b)(1) prohibits drivers for a motor carrier that does not operate CMVs every day of the week from driving a CMV after being on duty for 60 hours during any 7 consecutive days, and section 395.3(b)(2) prohibits drivers for a motor carrier that operates CMVs every day of the week from driving a CMV after being on duty for 70 hours in any 8 consecutive days.

## IV. Applicant's Request

The applicant requests a permanent exemption from 49 CFR 395.3(a)(1), section 395.3(a)(2), section 395.3(a)(3), section 395.3(a)(3)(ii), and section 395.3(b)(2). The proposed exemption is solely for the applicant. He states that the current regulatory requirements which include limitations on driving time and on-duty time and require certain rest periods, force him to drive outside of his body's healthy circadian rhythm. The applicant asserts that the HOS rules create unsafe driving conditions for him, other drivers, and the public.

## V. Method To Ensure an Equivalent or Greater Level of Safety

The applicant states that he has never had an accident or incident involving safety. He asserts that his prior military experience, which trained him to work with little or no sleep periods enables him to recognize the warning signs of fatigue and respond appropriately. He implies that this training combined with his extensive driving experience enable him to safely operate a CMV without complying with the HOS regulations. He further asserts that operating under various exemptions, such as the exemption for agricultural commodities, for more than 75% of his driving time has resulted in less stress, fewer disruptions to his schedule, improved health, and improved productivity.

## VI. Public Comments

On March 3, 2023, FMCSA published Mr. Olier's application for exemption and requested public comment (88 FR 13492). The Agency received 113 comments. Although 13 comments focused more on eliminating or relaxing the HOS rules than the exemption application, 83 comments supported the exemption.

For example, Richard Fuller wrote, ''As a former US Air Force Member myself I think he does deserve the permanent exemption but i also think anyone who meets the record with a career as a professional driver with a clean slate such as myself since 1990 33 years clean and still going deserves this opportunity to work freely in a messed up world!'' Jeff Pack wrote, ''As another special operations veteran, we have to be in sync with what our body is telling us. Please grant his hos application.'' An anonymous individual said, ''You do for one you better do all but yeah, I agree with him, your body, you should know how your body operate.''

Seventeen commenters opposed the exemption. An anonymous individual, for example, wrote: ''Granting an individual person a waiver opens up an area for everyone to seek deregulations of hours of service. The rules are in place for a reason and should be enforced uniformly.'' Maxwell McManus wrote, ''I implore FMCSA to consider that Mr. [Olier] has failed to provide sufficient evidence that his operations exempted from the hours of service rules are safer in nature or provide a higher level of safety to himself, the general public, and the trucking industry as a whole.''

Joint comments were filed by the Truck Safety Coalition (TSC), Citizens for Reliable and Safe Highways, and Parents Against Tired Truckers. In the joint comment TSC ''strongly requests this inadequately justified exemption to HOS requirements be denied in full. Large truck crash fatalities continue to increase at an alarming pace, and it is incumbent on the Department of Transportation and FMCSA to take every measure possible to reverse this trend and affirm life safety as its top priority by denying the request in full.''

## VII. FMCSA Safety Analysis and Decision

FMCSA evaluated Mr. Olier's application and public comments. FMCSA denies the exemption request. Mr. Olier failed to establish that he would likely maintain a level of safety equivalent to, or greater than, the level achieved without the exemption. The Agency established and enforces the HOS regulations to keep fatigued drivers off the public roadways and reduce the risk of crashes. Research studies demonstrate that long work hours reduce sleep and harm driver health, and that crash risk increases with work hours. The HOS regulations impose limits on when and how long an individual may drive, to ensure that drivers stay awake and alert, and to reduce the possibility of cumulative fatigue. The Agency concurs with commenters that if it exempts one individual from the HOS regulations, it could open the door for a huge number of similar exemption requests. Such a result would be inconsistent with a primary goal of the HOS regulations, which is to prevent crashes arising out of fatigued driving.

For the above reasons, John Olier's exemption application is denied.

**Earl Stanley Adams, Jr.,**

*Deputy Administrator.*

[FR Doc. 2023–15170 Filed 7–17–23; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0696]**

## Agency Information Collection Activity: Availability of Educational Licensing and Certification Records

**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:** Written comments and recommendations on the proposed collection of information should be received on or before September 18, 2023.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0696'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0696'' in any correspondence.

**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.

*Authority:* 10 U.S.C.16136, 38 U.S.C. 3034, 3241, 3323, 3673(d), 3689, 3690 and 38 CFR 21.4209.

*Title:* Availability of Educational Licensing and Certification Records, OMB #2900–0696.

*OMB Control Number:* 2900–0696.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* The VA uses this information to decide whether Veterans and beneficiaries of educational assistance have been properly paid, and whether educational institutions and organizations, or entities offering approved licensing and certification tests are following the applicable sections of 10 U.S.C. 16136, 38 U.S.C. 3034, 3241, 3323, 3673(d), 3689, 3690 and 38 CFR 21.4209.

*Affected Public:* Educational Institutions and Organizations or Entities.

*Estimated Annual Burden:* 5,242 hours.

*Estimated Average Burden Time per Respondent:* 2 hours (120 minutes).

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 2,621.

By direction of the Secretary.

**Maribel Aponte,**

*VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.*

[FR Doc. 2023–15149 Filed 7–17–23; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

## National Research Advisory Council; Reestablishment

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice of intent.

**SUMMARY:** We are giving notice that the Secretary of Veterans Affairs intends to reestablish the National Research Advisory Council for a 2-year period. The Secretary has determined that the Committee is necessary and in the public interest.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Moragne, Committee Management Office, Department of Veterans Affairs, Advisory Committee Management Office (00AC), 810 Vermont Avenue NW, Washington, DC 20420; email at *Jeffrey.Moragne@va.gov* or (202) 714–1578.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Secretary of Veterans Affairs intends to reestablish the National Research Advisory Council for two (2) years from the filing date of the charter's reestablishment. The Committee advises the Secretary of Veterans Affairs and the Under Secretary for Health (USH) and makes recommendations on the nature and scope of research and development sponsored and/or conducted by the

Veterans Health Administration (VHA) to include: (1) the policies and projects of the Office of Research and Development (ORD); (2) the focus of research on the high priority health care needs of Veterans; (3) the balance of basic, applied, and outcomes research; (4) the scientific merit review process; (5) the appropriate mechanisms by which ORD can leverage its resources to enhance the research financial base; (6) the rapid response to changing health care needs, while maintaining the stability of the research infrastructure; and (7) the protection of human subjects of research.

Dated: July 13, 2023.

**LaTonya L. Small,**

*Federal Advisory Committee Management Officer.*

[FR Doc. 2023–15166 Filed 7–17–23; 8:45 am]

BILLING CODE P

# FEDERAL REGISTER

Vol. 88 Tuesday,
No. 136 July 18, 2023

Part II

## Small Business Administration

13 CFR Parts 107 and 121
Small Business Investment Company Investment Diversification and Growth; Final Rule

**SMALL BUSINESS ADMINISTRATION**

**13 CFR Parts 107 and 121**

**RIN 3245–AH90**

## Small Business Investment Company Investment Diversification and Growth

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** On October 19, 2022, the U.S. Small Business Administration (''SBA'' or ''Agency'') published a notice of proposed rulemaking (''NPRM'' or ''proposed rule'') to revise the regulations for the Small Business Investment Company (''SBIC'') program to significantly reduce barriers to program participation for new SBIC fund managers and funds investing in underserved communities and geographies, capital intensive investments, and technologies critical to national security and economic development. The proposed rule introduced an additional type of SBIC (''Accrual SBICs'') to increase program investment diversification and patient capital financing for Small Businesses, modernize rules to lower financial barriers to program participation, and incorporate the statutory requirements of the Spurring Business in Communities Act of 2017, which was enacted on December 19, 2018. This final rule implements proposed regulatory changes as modified to address comments SBA received.

**DATES:** This rule is effective August 17, 2023.

**FOR FURTHER INFORMATION CONTACT:**

*Policy:* Bailey G. DeVries, Associate Administrator of the Office of Investment and Innovation, Small Business Administration, *oii.frontoffice@sba.gov,* 202–941–6064. This phone number can also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

*Regulatory Comments/***Federal Register** *Docket:* Nathan Putnam, Office of Investment and Innovation, Small Business Administration, *oii.frontoffice@sba.gov,* 202–699–1746. This phone number can also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

**SUPPLEMENTARY INFORMATION:**

## I. Background Information

### *A. Small Business Investment Company Program*

The mission of the SBIC program is to enhance small business access to capital by stimulating and supplementing ''the flow of private equity capital and long-term loan funds which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, and which are not available in adequate supply.'' SBA carries out this mission by licensing and monitoring privately owned and managed investment funds that raise capital from private investors (''Private Capital'') and issue SBA-guaranteed Debentures (''Debentures'') to make private long-term equity and debt investments into qualifying Small Businesses.

SBA currently has two types of Debentures available for private funds that have received an SBIC license: a current pay (or ''Standard'') Debenture and a ''Discount'' Debenture. The vast majority of licensed SBICs applying for SBA Leverage use the Standard Debenture with a ten-year maturity and interest due and payable on a semi-annual basis. This structure aligns with the cash flows of a subset of private fund strategies, including funds with mezzanine, private credit, and leveraged buyout strategies because private funds utilizing such mezzanine, private credit, or leveraged buyout strategies typically generate fund-level cash liquidity within the time period required to meet semi-annual interest payments. The Discount Debenture is issued at a steep discount to face value and accrues to face value over five years, at which time SBICs must pay current interest; this Debenture is only available for low and moderate income (LMI) investments and Energy Saving Qualified Investments (as defined in 13 CFR 107.50). Although SBICs have invested almost 20% of their investments in LMI areas, as of December 31, 2021, less than 0.5% of Debentures committed and issued since Fiscal Year (''FY'') 2000 used the Discount Debenture to make such investments. No SBIC has used the Discount Debenture for Energy Saving Qualified Investments. Market feedback suggests that the reason SBICs do not utilize the Discount Debenture is due to the steep discount at issue and the misalignment of the required interest payments commencing at year five to the typical cash flow patterns of patient capital investors, such as long-duration private equity funds. Between FYs 1994 through 2004, SBA was authorized to issue Participating Securities, which were an SBIC Program instrument designed to support equity investors. The program ceased due to losses in that program.

Based on SBA's analysis of SBICs licensed for the legacy Participating Securities instrument, SBA found widespread evidence that participating security SBIC losses were largely due to the instrument's statutorily mandated structural flaws and regulations which enabled high risk portfolio construction decisions. These issues were further exacerbated by macro-economic conditions, concentration in early-stage venture (which, at the time, was an emerging alternative investment strategy), and pervasive information asymmetry in the venture market in the early 2000s. One of the major flaws in the participating security was that SBA advanced interest payments (known as ''prioritized payments'') on behalf of the Licensee and was only repaid out of the Licensee's profits. Since over half of these SBICs were not profitable, less than half of the $2.8 billion in prioritized payments advanced by SBA were reimbursed by SBICs licensed in the Participating Securities program. Due to the complexities associated with the statutory Participating Securities distribution waterfall, computing a single distribution required a significant amount of time and effort on the part of the Licensee and SBA. For example, Licensees were required to file hard copies of the computation documents with SBA for regulatory monitoring and examination purposes. These complications increased the workload on SBA to calculate each distribution, increased fund administration expenses for the Licensee, and created loopholes whereby Licensees could sequence profits distributions such that SBA would receive only its capped share of profits (typically less than 10%). In several cases, private investors received substantial returns based on early profit distributions and the SBIC would subsequently incur losses, resulting in SBA being the only party not fully repaid. Further, Licensees in the Participating Securities program typically did not have diverse portfolios and SBA did not consider portfolio diversification at the fund-of-fund level as a means to mitigate risk, an important consideration in modern portfolio theory. As a result, about half of the participating securities financings prior to 2001 were in computers, information technology, and related professional technical services. Additionally, almost half of the participating securities financings prior to 2001 were in companies under two years of age at first financing. As a result, when the ''dot com'' bubble financial downturn arrived in 2000, the SBIC portfolio was not appropriately diversified for sustained portfolio financial performance.

Between October 1, 2016, and September 30, 2021, SBICs provided over $29 billion in financings to Small Businesses. However, only 18 percent of Debenture SBIC financings were in the form of patient capital equity investments, and less than a quarter of SBICs licensed were focused on equity. Over 75 percent of all financings of Small Businesses by Debenture SBICs included a debt component. During this same timeframe, SBA licensed 116 SBICs with almost $7.8 billion in initial Private Capital, and two-thirds of licenses were approved for subsequent funds from asset management firms that had previously received an SBIC license. As of December 31, 2021, SBA had 298 operating SBICs across 207 asset management firms with almost $35 billion in Regulatory Capital and Debentures, including undrawn commitments.

*B. Notice of Proposed Rulemaking*

The Small Business Investment Act of 1958, as amended (the ''Act'') declares to be the policy of the Congress and the purpose of the Act to improve and stimulate the national economy in general and the small-business segment thereof. The Act states as the intention of Congress ''financial assistance under this Act, when practicable, priority be accorded to small business concerns which lease or purchase equipment and supplies which are produced in the United States'' and ''financial assistance provided hereunder shall not result in a substantial increase of unemployment in any area of the country.'' The Act further authorizes the SBA Administrator ''to prescribe regulations governing the operations of small business investment companies.''

On October 19, 2022, SBA proposed changes to 13 CFR part 107 (87 FR 63436) to reduce barriers to program participation for new SBIC fund managers and funds investing in (i) underserved communities and geographies, (ii) capital intensive investments, and (iii) technologies critical to national security and economic development. This rule also was intended to implement Executive Order (''E.O.'') 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, by reducing financial and administrative barriers to participation in the SBIC program and modernizing the program's license offerings to align with a more diversified set of new funds investing in underserved small businesses. Changes included (1) implementing a new type of Debenture (''Accrual Debenture'') designed to align with the cash flows of long-term, equity-oriented funds (''Accrual SBICs''); (2) revising the existing prohibited investment requirements under 13 CFR 107.720 that permit SBICs to invest in relenders or reinvestors under specific circumstances; (3) modernizing the licensing, operations, and examinations rules to lower costs and administrative barriers faced by new funds applying to the SBIC program; (4) implementing a formal licensee ''Watchlist'' process; (5) implementing a consistent approach to investor and SBA distributions; (6) implementing some of the modernization improvements it received through a **Federal Register** notification (82 FR 38617) and round tables in 2017; and (7) formally implementing the Spurring Business in Communities Act, Public Law 115–333.

*C. Comments*

SBA received 15 comment letters related to the proposed rule or the SBIC program and two comments that were not related to the proposed rule or the SBIC program. Those comments that addressed the content of the proposed rule or were pertinent to the rule are discussed in the Section-by-Section Analysis below. Some of the comments related to the SBIC program were not directly within the scope of the rule but are briefly addressed below.

Comments Related to the SBIC Program But Not Directly Within Scope of the Proposed Rulemaking

Three comments focused on the timeline of the SBIC licensing process, a matter addressed in the context of applicants from Underlicensed States within proposed changes to 13 CFR 107.300. One comment focused on whether anticipated approval timeframes for applicants who have successfully raised Private Capital could be shortened. Two comments focused on how an expedited licensing process would be valuable and how a clear, defined, expedited timeline could be critical to increasing underserved fund manager applications. In response to these comments, SBA intends to move forward with two courses of action: (1) introduce an expedited subsequent fund licensing process for eligible applicants while maintaining current risk management standards and practices (see discussion of Expedited Subsequent Fund licensing in section II.D. and revisions to 13 CFR 107.305, below), and (2) modify standard operating procedures to increase transparency in the licensing process and decrease potential tail-end delays.

One commenter recommended an amendment to 13 CFR 107.501 requiring SBA to publish in the **Federal Register** the names of SBICs that were licensed and the dates on which SBICs were licensed. SBA appreciates this recommendation and will publish license approvals in the **Federal Register** within 30 business days of the end of the month in which the license was approved by the SBA Administrator.

One commenter encouraged SBA to underscore the importance of operational capability to the SBIC program by adopting an exclusion from the management fee offset requirement for fees paid by portfolio companies to operations teams aligned formally with an SBIC licensee. SBA agrees that operating partners, venture partners, portfolio services teams and venture studio models provide valuable technical assistance and networking for SBIC portfolio concerns. SBA recognizes the management fee offset (including fees for services provided to portfolio concerns) is often negotiated between private funds and their limited partners and will approve the scope and type of services included or excluded from management fee offsets during the licensing process. Upon licensure, an SBIC Licensee must adhere to the scope of the approved management fee plan.

One commenter suggested, in pursuit of increased fund manager diversity, that SBA create new programs that help Licensees, particularly new Licensees, increase their chances of success while gaining valuable experience. SBA agrees with the posture of ''field-building'' and seeks to do so in this final rule through (a) reducing regulatory restrictions on investments in reinvestors and (b) the introduction of the Accrual Debenture, both of which will enable access to capital to more first-time and emerging fund managers through SBIC fund-of-funds strategies.

One commenter suggested putting processes in place for SBICs to collect and share data of entrepreneurs obtaining capital disaggregated by gender, race, and ethnicity. SBA agrees that transparency into the demographics, as well as more detailed geographic data, of portfolio concerns and licensees will enable greater public understanding of the SBIC program impact. As such, SBA is making modifications to existing data collections that enable voluntarily reporting of this information from licensees and their portfolio concerns.

One commenter suggested SBA work more closely with limited partners (investors in SBICs) and share SBIC program financial returns information, as it could help first-time and emerging managers raise more Private Capital. SBA agrees with this comment. As such, SBA is considering modifications to the existing Form 468 to consistently collect industry standard investment performance metrics including Total Value to Paid-in Capital, Distributed to Paid-in Capital, Residual Value to Paid-in Capital, and Gross and Net Internal Rate of Return on a quarterly and annual basis. This will enable SBA to publicly report on the investment performance of the overall SBIC portfolio, by vintage year, investment strategy and emerging vs. established SBIC funds. SBA will not publicly disclose the investment returns of individual Licensees.

One commenter suggested SBA create a diversity working group which would include SBA staff, principals of SBIC Licensees, and industry participants. This working group would support the stated efforts of SBA to recruit a more diverse set of managers to the SBIC program. SBA agrees with the substance of this comment and believe that this can be addressed through the Agency's recently announced Federal Advisory Committee (the SBA Investment Capital Advisory Committee) established under the Federal Advisory Committee Act.

One commenter requested SBA consider rule changes now and in the future that would further encourage the SBIC program to focus on technology and tech-driven companies which address critical national priorities, including addressing climate change, strengthening supply chains, improving health outcomes, and bolstering national security. SBA agrees with the substance of this comment. The program-wide diversification rules support prioritization of undercapitalized industries and technologies, particularly those aligned to seeding, scaling and transitioning technologies critical to U.S. national security.

One commenter expressed support for SBA's proposed rule extending the affiliation exceptions under 13 CFR 121.103(b)(5) to private equity partnerships organized as a 3(c)(7) funds. The commentator also referenced a 2015 comment letter concerning 13 CFR 107.720(b) and suggested further modification to SBA's passive business investment rule. SBA does not intend to change the passive investment rules.

One commenter supports a rule that lowers barriers and advances racial equity and asks that the rule consider opportunities to support emerging managers. SBA agrees with the substance of this comment and is implementing several program modernizations to support this objective including removal of ''reinvestment'' restrictions which prohibit Section 301(c) Licensees from investing in a fund-of-funds capacity in emerging managers, scaled licensing fees, and reductions in administrative burdens.

One commenter suggested SBICs licensed under the proposed rule should be allowed to participate to a limited degree (10–15 percent of the total invested into a company) in secondary sales—*i.e.,* supplementary funding provided at financing for purposes other than funding the operations of a Small Business. SBA agrees this has become a standard industry practice. Current regulations do not restrict partial secondary sales from current investors in future financing rounds.

One commenter proposed an additional change to the definition of Leverageable Capital by suggesting a definition change to the sum of Regulatory Capital, excluding unfunded commitments, and the greater of $0 or 50 percent times the total of the financed investments made by the Licensee less the Leverage provided by SBA and Regulatory Capital, excluding unfunded commitments. SBA appreciates this suggestion and notes that SBA is revising the definition of Regulatory Capital to be more explicit regarding how to interpret the exclusion clause. As such, SBA is revising the *exclusion of questionable commitments* to clarify that an unfunded commitment may be questionable due to lack of enforceable legal agreements under United States law or an issue of collectability for financial or any other reason, or both. SBA notes that the unfunded commitment of an investor that has satisfied the applicable net worth test set forth in the definition of Institutional Investor will not be of questionable collectability (for financial reasons) if the Licensee's Limited Partnership Agreement (or other governing agreement) contains sufficient remedies against defaulting investor to ensure collection. Furthermore, SBA is revising the definition of *Regulatory Capital* to highlight the distinction between Regulatory Capital and Leverageable Capital—*i.e.,* that Regulatory Capital which is not in the form of unfunded commitments is Leverageable Capital.

General Comments About the Rulemaking

One commenter asked why the proposed rule refers to October 1, 2023, several times. SBA is removing the reference to October 1, 2023, except with respect to implementation of the minimum Annual Charge. One commenter suggested that SBA follow this comment period with an ''Interim Final Rule'' instead of a final rule. SBA has followed the Federal rulemaking and comment process. During the 60-day public comment period, SBA raised awareness for the proposed rule through events noted on the **Federal Register**. (*See, e.g.,* 87 FR 68109) The comments received by SBA are robust and significant relative to historical rulemaking feedback received on regulations governing the SBIC program. SBA is confident that the robust engagement from the public enables the agency to publish and implement a final rule.

One commenter stated that they are supportive of increased ''underserved'' focus. SBA appreciates support for the increased focus on underserved communities and industries.

## II. Section by Section Analysis

### *A. Section 107.50 Definition of Terms*

In the proposed rulemaking, SBA proposed adding two terms associated with the new Accrual Debenture discussed in section I.B. of this rule: ''Accrual Debenture'' and ''Accrual Small Business Investment Company (''Accrual SBIC'').'' The Accrual Debenture means a Debenture issued at face value that accrues interest over its ten-year term, where SBA guarantees all principal and unpaid accrued interest. As discussed in the preamble, SBA believes that the Standard Debenture does not align with the cash flows needed for patient capital strategies primarily investing in the equity of or providing revenue-based financing to Small Businesses.

One commenter supported the introduction of Accrual Debenture SBICs and administrative changes to facilitate access for first-time fund managers. SBA appreciates this support for the Accrual Debenture financial instrument and administrative changes to facilitate access.

Two commenters supported expansion of the asset classes and strategies of private funds participating in the SBIC program, yet had concerns about incorporating ''highly risky, very long-term, early investments which may span 10–15 years before failure or success are determined.'' There were additional comments regarding the management and oversight of taxpayer exposure to potential defaults and losses in the SBIC Program. One commenter urged SBA to publicly produce the distribution models displaying how the SBIC program will maintain a zero-subsidy rate with the addition of an alternative debenture instrument to the existing semi-annual interest payment debenture instrument. SBA appreciates the public's concern for portfolio risk management and credit risk management processes in a Federal credit program. Among others, risks in private investing come in many forms. including illiquidity risk, duration risk, volatility risk, concentration risk, credit risk, and tail-event risk. Over several decades, SBA has found that illiquidity risk, duration risk, and strategy concentration risk correlate with the highest risk of overall program losses. The Accrual Debenture instrument combined with the portfolio diversification rules address these three primary risk considerations through cash flow matching, duration and repayment management, and guardrails to prevent the overall program from over-concentrating in more volatile 'risk-on' strategies. As with all private fund investments, proper investment and operational due diligence and ongoing portfolio monitoring is essential to safeguarding capital.

Three comments remarked on the control provisions related to Accrual SBICs. One comment was concerned that by excluding control equity funds from securing licenses for the Accrual Debenture, SBA will hamper its ability to achieve the goals of the SBIC program noting that allowing control equity strategies will reduce the overall risk of the new Accrual class. Another comment encouraged SBA to include buyout funds in Accrual SBICs by removing the restriction that they are required to own less than 50 percent at the time of initial financing. SBA also received a comment noting that strict requirements may limit the universe of investible companies and interest from investors and suggested that SBA further study the potential impact of these requirements. Finally, two comments raised general concerns around the provision that Accrual SBIC licensees will generally own no more than 50 percent of the Small Business at initial Financing. SBA agrees with the recommendation to encourage more private markets flexibility and dynamism with the adoption of the Accrual Debenture instrument. As such, SBA is removing both the language in the proposed rule which restricted ownership of a portfolio concern at the time of initial Financing to less than 50% and the guidance that at least 75% of financing by an Accrual SBIC be classified as equity. SBA's objective with the introduction of the Accrual Debenture is to offer a financial product aligned to investment strategies with longer duration and strategies with more episodic distributions to investors. The introduction of the Accrual Debenture instrument is intended to ensure that SBA can support the full spectrum and the dynamic nature of private market investments in Small Businesses. Between the existing Standard Debenture and the Accrual Debenture instrument, SBA will increase program flexibility for greater private market participation resulting in increased benefits to small businesses. One comment stated that the increase in the oversight that the rule implements would result in costs to the taxpayer or increased fees. That commenter further noted that fee changes should consider rising interest rates and that when capital is drawn incrementally, taxpayer losses associated with rising inflation and interest rates are reduced. SBA has taken such factors into account in the program subsidy model which includes the President's Economic Assumptions. The model forecasts interest rates based on macro-economic conditions. Interest rates are set at the time of funding draws which mitigates risk of future taxpayer losses.

One commenter expressed concerns that the nature of the repayment terms of the Accrual Debenture could pose the same type of issues that resulted from the Participating Securities program. SBA performed extensive analysis and modeling of the historical defaults, repayments, recoveries and losses across Debenture instruments and the Participating Securities instrument when preparing the proposed rulemaking.

The following table summarizes preliminary modeling outputs for anticipated fiscal year cohort 2024 Accrual SBIC commitments.

| SBIC type | Fiscal year cohort | Lifetime defaults (% of disbursements) | Lifetime recoveries (% of defaults) | Net loss rate (% of disbursements) |
|---|---|---|---|---|
| Accrual | 2024 | 35.78 | 67.77 | 11.53 |

SBA assumes a higher default risk profile and net loss rate for anticipated Accrual Debenture Leverage compared to Standard Debenture leverage. This assumption is supported by an analysis of third-party private equity industry data and historical SBIC debenture performance data. Because accrued interest and leverage is repaid as profit distributions become available, SBA considered how fund performance will impact the expected loss rate on Accrual Debentures. SBA therefore estimated distribution to paid-in capital (DPI) and total value to paid-in capital (TVPI) assumptions for the Accrual SBIC population using custom venture capital and private equity benchmarks relevant to anticipated Accrual SBIC funds. These distributional assumptions are fed into a cash flow engine to estimate leverage repayments and defaults for anticipated Accrual SBIC Leverage commitments. SBA estimates the terminal DPI distribution for Accrual SBIC funds in the table shown below. The median terminal DPI assumption is just above the forecasted breakeven point to repay all accrued interest and leverage (approximately 1.20). SBA forecasts defaults on funds assumed to have a DPI at debenture maturity below the forecasted breakeven point.

| Metric | 10th percentile | 25th percentile | 50th percentile | 75th percentile | 90th percentile |
|---|---|---|---|---|---|
| DPI | 0.26 | 0.68 | 1.26 | 1.98 | 3.62 |

After blending forecasted cash flows for anticipated Accrual and Standard SBIC leverage and factoring in the estimated composition of debenture leverage by fund type (Accrual vs. Standard), SBA forecasts a 0.00 percent subsidy rate in the debenture program. To maintain a 0.00 percent subsidy rate in the debenture program, SBA estimates an annual fee charge landing between the annual charge implemented for fiscal years 2022 and 2023.

Further, SBA has taken several steps to mitigate risk to the program, such as limiting the leverage available to individual Accrual SBICs to one and one quarter tiers of leverage in relation to their Leverageable Capital and modifying the distribution waterfall for Accrual Debenture SBICs to ensure that SBA receives distributions on accrued interest and pro rata on principal with distributions to the private investors. SBA retains the ability to take action for regulatory defaults including uncured capital impairment, which remains vital to protecting U.S. taxpayer dollars.

The Accrual Debenture instrument is based on the successful features of the existing Debenture instrument with modifications to the distribution waterfall and timing of interest payments to reduce the risk of default and losses. The requirement for pro rata distributions to SBA is specifically designed to avoid the repayment issues that occurred in the Participating Securities program which included a flawed time-based return metric that enabled Participating Securities Licensees to pay a minimum amount to SBA and then forego future distributions if the SBIC subsequently performed poorly.

After consideration of all public comments, SBA has modified the final rule to state that the Accrual Debenture will only be available to Accrual SBICs and Reinvestor SBICs, defined in § 107.720, to align with the types of long-duration growth investing they primarily perform. Standard SBICs may only issue Standard Debentures and Discount Debentures. Approval to operate as an Accrual SBIC or Reinvestor SBIC is subject to SBA's investment due diligence, credit procedures, and statutory limitations. The final rule defines an Accrual SBIC as a Section 301(c) Licensee that elects at the time of licensing to issue Accrual Debentures. SBA expects that Accrual SBICs will most commonly be formed as limited partnerships that are subject to 13 CFR 107.160. These regulations will limit the Accrual Debenture to SBICs that focus on stimulating and supporting the creation and growth of Small Businesses.

A limitation of the Accrual Debenture is the amount of SBA leverage available to Accrual SBICs and Reinvestor SBICs. In order to determine the maximum amount of leverage that Accrual SBICs and Reinvestor SBICs may have outstanding, SBA will aggregate the total principal leverage plus ten years of accrued interest on such principal to determine the total Accrual Debentures that the Accrual SBIC may issue based on the statutory limitation. For example, if an Accrual SBIC has $100 million in Regulatory Capital, the total Accrual Debenture principal it may be approved for may be only $118 million if the forecast interest would accrue to approximately $57 million over a ten-year timeframe at a four percent interest rate, since higher amounts would result in SBA guaranteeing outstanding leverage amounts in excess of $175 million, the current statutory maximum for Leverage available to a single Licensee. SBIC applicants will be required to identify whether they intend to use Standard or Discount Debentures or if they intend to use the Accrual Debenture as an Accrual SBIC or Reinvestor SBIC.

SBA proposed modifying the definition of ''Associate'' regarding the status of an entity Institutional Investor based on its ownership interest in a Licensee. Currently an entity Institutional Investor whose ownership represents over 33 percent of the Licensee's Private Capital is considered an ''Associate''. SBA is revising regulations to change this to 50 percent or more to align with the financing practices of Community Development Corporations and other institutional investors seeking patient capital investment funds and first-time funds. Under the proposal, an entity Institutional Investor, as a limited partner in a partnership Licensee, will not be considered an Associate solely because that entity's investment in the Partnership, including commitments, represents 10 percent or more but less than 50 percent of the Licensee's Private Capital, provided that such investment also represents no more than five percent of the entity's net worth.

One commenter asked whether the definition of Associate is applicable to all types of SBICs and expressed reservations around financing practices misalignment between taxpayer-guaranteed Federal programs and not-for-profit community development corporations, which often focus heavily on real estate and affordable housing. SBA clarifies that the definition of Associate is applicable to all SBICs. Notwithstanding the focus of any type of potential Licensee, SBA regulations already restrict financings to certain real estate businesses. (See 13 CFR 107.720(c)) Moreover, SBA carefully evaluates the proposed investment strategy of each license applicant to ensure conformance with SBA regulations.

One commenter raised the potential unintended consequences of increasing, within the definition of Associate, the threshold percentage under which an entity Institutional Investor will be considered an Associate (from 33 percent to 50 percent) including the risk of giving a single investor nearly full control over governance matters including future amendments to a licensee's limited partnership agreement (LPA). The commenter recommended SBA withdraw the amendment and retain the current 33 percent threshold or, if it is raised, not increase beyond 35 percent. SBA seeks to increase regulatory flexibility through this final rule. The increased ownership threshold is a reflection of this principle. SBA appreciates that investors hold different governance and investment policy expectations which often must be agreed to by fund managers in order to receive a funding commitment. To protect the interests of limited partners in SBICs licensed prior to a final rule, SBA asserts this rule change *only* applies to funds licensed after the rule is implemented. Limited partners can align with the principals of SBICs on investor concentration and rights through their limited partnership agreement.

The proposed rule defined the term ''Annual Charge'' that is currently defined as ''Charge'' under current 13 CFR 107.50. SBA is implementing this change because this is typically the term used to refer to the annual fee associated with SBA-guaranteed Leverage in both SBA's website and much of its documentation, and more appropriately refers to the recurring payment associated with this Leverage fee. SBA will maintain the term ''Charge'' in its regulations for backwards compatibility, but indicate it has the same meaning as ''Annual Charge''. Currently, the term ''Charge'' is defined as the annual fee on Leverage issued on or after October 1, 1996. Since there is no outstanding Leverage issued prior to October 1, 1996, this language will be removed from the definition. The current definition also states that the Leverage is subject to the terms and conditions set forth in § 107.1130(d). This final rule adds a reference to § 107.585. Although current § 107.585 identifies restrictions regarding reductions in Regulatory Capital (which are typically performed in conjunction with a distribution to its private investors), this final rule expands § 107.585 to define new distribution requirements for Accrual SBICs issuing Leverage. (See § 107.585 later in this final rule.) The final rule adopts the definition substantially as proposed.

SBA proposed amending the definition of ''Control Person'' under § 107.50 to clarify what constitutes a controlling relationship over a Limited Partnership Licensee with a government sponsored non-profit management company relationship. Section 107.50 is amended to state that when over 30 percent of the Private Capital managed by the Licensee comes from unaffiliated and unassociated entities (outside of their association as an investor in the Licensee), the management company of the Licensee is a government sponsored non-profit entity and the general partner(s) of the Licensee are bound by a fiduciary duty to the investors in the Licensee, the management of the Licensee can be determined to be free from outside control.

One commenter noted it would be helpful to the public if SBA would (i) provide an example or examples of situations that meet the proposed definition of ''Control Person'', and (ii) provide additional information in the rule that explains how changing the definition of ''Control Person'' does not further lessen SBA's control of Licensees, which exists with the current definition of ''Control Person''. SBA respectfully notes that it does not exert control over Licensees. SBA further notes that as set forth in 13 CFR 107.305, appropriate evaluation and risk mitigation measures including but not limited to: due diligence, background checks, review of governance documents, transferee's liability contract and applicant certifications etc. are in place to ensure that SBA has properly evaluated any persons exerting control over Licensees.

Another commenter noted licensees or anchor funds that seek intentional or known future ownership of small businesses appears to be outside the intention or Statement of Policy by Congress in the Small Business Investment Act of 1958 for capital supplementation to small businesses versus control and ownership of small businesses. The SBA could not substantiate the commenters interpretation based on the Small Business Investment Act of 1958 and adds that permissive SBIC control of portfolio concerns for up to seven years is a longstanding principle of the program. The final rule adopts the definition substantially as proposed. In the proposed rulemaking, SBA sought public input for any suggested changes to ''Equity Capital Investments'' that SBA should consider. One commenter suggested that SBA adopt the definition of ''qualifying investment[s]'' for a venture capital fund from 17 CFR 275.203(l)–1 (Rule 203(l)–1 under the Investment Advisers Act of 1940) (or a substantially similarly definition). SBA will continue to maintain its definition of ''equity capital investments.'' The proposed rule included under § 107.50 the terms ''Final Licensing Fee'' and ''Initial Licensing Fee,'' as these terms have been defined in § 107.300 and used in § 107.410. The final rule adopts the definition substantially as proposed.

The proposed rule defined the term ''GAAP'' as ''Generally Accepted Accounting Principles'' as established by the Financial Accounting Standards Board (FASB), which refer to financial accounting and reporting standards for public and private companies and not for profit organizations in the United States. The U.S. Securities and Exchange Commission has recognized the financial accounting and reporting standards of the FASB as ''generally accepted'' under section 108 of the Sarbanes-Oxley Act. SBA is defining this term as the final rule refers to GAAP in various locations in the regulations.

SBA proposed amending the term ''Leverage'' to remove the inclusion of ''Participating Securities'' and ''Preferred Securities'' which are no longer available in the SBIC program and no longer outstanding in operating SBICs. While SBICs with outstanding Participating Securities Leverage remain in the Office of SBIC Liquidation, those Licensees are subject to the regulations at the time that Leverage was issued. SBA also is amending the term Leverage to clarify that Leverage and SBA's guarantee would apply to both the principal and unpaid accrued interest associated with the Accrual Debenture. This definition will clarify SBA's guarantee in relation to the new security and the Leverage maximum restrictions regarding Accrual Leverage. For example, SBA will not approve Accrual Debentures for an amount in which the principal balance and ten years of accrued interest are projected to exceed the statutory maximum for leverage available to any single licensee (currently $175 million). This definition also clarifies the total capital that SBA is guaranteeing at any time. For example, if an Accrual SBIC had $20 million principal in Accrual Debentures that accrued $4 million in interest, SBA's guarantee would be $24 million, as SBA's guarantee extends to the accrued interest. SBA is required under statute to guarantee both principal and interest on outstanding leverage. This final rule requires SBA to estimate the interest rate associated with any Accrual Debenture commitment in a conservative manner to ensure that the total capital that SBA guarantees does not exceed its overall authority set forth in the Act or other applicable Federal laws.

SBA proposed the terms ''Leveraged Licensee'' and ''Non-leveraged Licensee'' in § 107.50. Current regulations provide greater flexibility to Licensees that do not have outstanding Leverage and do not intend to issue leverage since SBA has no credit risk. This final rule will provide further benefits and flexibility to such Licensees. In order to simplify the regulations, Leveraged Licensees would include any Licensee with outstanding Leverage, Leverage commitments, Earmarked Assets (which are only associated with Licensees that issued Participating Securities), and any Licensee that intends to issue Leverage in the future. The intent of the certification is to ensure that SBA applies the appropriate scrutiny to any Licensee that intends to seek Leverage in the future. This regulation is not intended to prohibit subsequent SBIC funds from seeking Leverage. This final rule also defines Non-leveraged Licensee as a Licensee that has no outstanding Leverage or Leverage commitment, certifies (in writing) that such Licensee will not seek Leverage throughout the life of the fund, and has no Earmarked Assets. For example, if ABC, LP has outstanding Leverage of $10 million and subsequently (a) fully repays its outstanding Leverage, (b) has no further Leverage commitments, (c) has no Earmarked Assets, and (d) certifies that it will not seek any Leverage in the future, ABC, LP would be considered a Non-leveraged Licensee, even if the management company of ABC, LP also has a Leveraged Licensee (ABC II, LP) with outstanding Leverage of $20 million. As another example, if DEF, LP is granted an SBIC License and certifies to SBA (in writing) that it does not intend to issue Leverage, SBA would consider DEF, LP to be a Non-leveraged Licensee. This final rule adds the proposed terms substantially as proposed.

In the proposed rule, SBA proposed to define the term ''Qualified Line of Credit'' to describe a form of secured borrowing which would be available to leveraged licensees under § 107.550(c). Considering the matter further, SBA decided to use the more descriptive term ''Capital Call Line'' to align with industry terminology and to better describe what is essentially the same type of borrowing to be permitted under § 107.550(e). (See section II.I. of this rule.)

SBA proposed changing regulations to modify the term ''Retained Earnings Available for Distribution'' to include the acronym ''READ'' and to clarify that READ distributions must be performed in accordance with the proposed § 107.585. This final rule adopts the modification and clarifies that READ distributions must be performed in accordance with the revised § 107.585.

SBA proposed changing regulations to add the terms ''SBIC'' or ''Small Business Investment Company'' to have the same meaning as Licensee. SBA uses the terms ''SBIC'' and ''Licensee'' interchangeably throughout the regulations and in its policies and documents. SBA also proposed changing regulations to add the term ''SBIC website'' as *www.sba.gov/sbics,* which is the public website that SBA maintains all information on the SBIC program, including all standard operating procedures, policies, SBIC forms, and any reports that SBA publishes from time to time. Regulations refer to this site throughout the regulations. This final rule adopts the changes as proposed.

The proposed rule added the terms ''State'' and ''Underlicensed State'' in § 107.50 to support implementation of Public Law 115–333 which gives priority in Licensing to applicants headquartered in Underlicensed States with below median SBIC financing. The term ''State'' will be defined to include all fifty States, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territories with permanent populations (Guam, U.S. Virgin Islands, Northern Mariana Islands, and American Samoa). The term ''Underlicensed State'' means a State in which the number of operating licensees per capita is fewer than the median number for all States. To determine the per capita per State, SBA will use the most recent resident population from the U.S. Census as of the date of the calculation. SBA will publish the list of Underlicensed States periodically on the SBIC website.

One commenter expressed support of the ''under-licensed state'' concept and suggested expanding the concept to ''under-licensed region.'' Another commenter requested as an extension of the proposed change to include Underlicensed States where there are little to no licenses for minority and women-led SBIC funds. In this final rule, SBA is implementing regulations in support of the ''Spurring Business Act of 2017.'' Additionally, SBA has outlined an increased focus on ''underserved'' broadly in this final rule which includes geographies as well as communities. The final rule adds the terms substantially as proposed.

SBA proposed to add the term ''Total Leverage Commitment'' to have the meaning as defined in proposed § 107.300. This final rule adds the term ''Total Intended Leverage Commitment'' to have the meaning as defined in revised § 107.300. As discussed under that section, SBA is changing regulations to approve the Total Intended Leverage Commitment at the time of licensing.

SBA proposed changing regulations to add the term ''Enhanced Monitoring'' as defined in the proposed § 107.1850. As discussed under that section, SBA has replaced ''Enhanced Monitoring'' with ''Watchlist'' and is implementing the Watchlist process in this final rule (previously outlined under Standard Operating Procedures) to better monitor SBICs.

SBA proposed changing regulations to change the term ''Wind-up'' Plan to ''Wind-down'' Plan throughout part 107 because SBA believes that it better reflects the wind-down of a fund at the end of its life cycle. This final rule adopts the change as proposed.

*B. Section 107.150 Management Ownership Diversification Requirements*

This regulation identifies the SBIC ownership diversification requirement under section 302(c) of the Act (also referenced in part 107 as the ''diversification requirement''). That section requires SBIC ownership be ''sufficiently diversified from and unaffiliated with the ownership of the licensee in a manner that ensures independence and objectivity in the financial management and oversight of the investments and operations of the licensee.'' To ensure independence per statute, current § 107.150(b) requires that ''no Person or group of Persons who are Affiliates of one another may own or control, directly or indirectly, more than 70 percent of your Regulatory Capital or your Leverageable Capital.'' In the proposed rulemaking, SBA proposed changing regulations to remove the ''indirectly'' requirement to provide greater clarification as to sources of Regulatory Capital available to an SBIC.

As an exception to the diversification ownership requirement under § 107.150(b)(1), SBA allows an investor that is a Traditional Investment Company (a term defined in 13 CFR 107.150(b)(2)) to own and control more than 70 percent of the Licensee's Regulatory Capital. Such SBICs are essentially drop-down funds for that Traditional Investment Company and are structured exclusively to pool capital from more than one source for the purpose of investing and generate profits. SBA proposed changing regulations also to include non-profit entities to also own more than 70 percent of the Licensee's Regulatory Capital to facilitate capital raising efforts, particularly for first-time funds and funds targeting investments in underserved geographies and critical technologies.

By meeting the requirements of § 107.150(c)(2), such non-profit entities would be exempt from requirements under § 107.150(c)(1) which state that the management of the Licensee must be unaffiliated from the sources of Regulatory Capital. It should be noted that SBA will continue to review and monitor such entities to ensure that the SBIC is a for-profit vehicle for the non-profit, the management of the Licensee is bound by a fiduciary duty to investors, and to ensure such entities do not pose undue investment or operational risk to SBA.

Two commenters supported the regulation as proposed. One commenter suggested allowances for non-profit entities to control more than 70 percent of the Licensee's Regulatory Capital. SBA appreciates the comment. In terms of extending the allowance beyond that of ''traditional investment companies'', SBA believes, at this time, consistency with existing practices and regulations is most prudent and will not extend beyond the 70 percent threshold.

One commenter opposed the proposed modification to the definition of ''traditional investment company'' to include non-profit entities. SBA appreciates the comment and seeks to clarify that this modification to the existing regulations does not permit SBA to license a non-profit entity as an SBIC. By statute, SBICs must be for-profit entities. The modification to the regulation permits up to 70 percent of the regulatory capital contributed to the for-profit SBIC to come from non-profit management company of a limited partnership SBIC. Non-profit entities are already permitted as the management company of limited partnership SBICs. The final rule provides guidance as to the extent of Regulatory Capital that can be provided by a management company with non-profit status. After consideration of all public comments, the final rule adopts the proposed § 107.150 without change.

*C. Section 107.210 Minimum Capital Requirements for Licensees*

This section identifies minimum Private Capital requirements for SBICs. In the proposed reulemaking, SBA proposed amending the term ''Wind-up'' to ''Wind-down'' as previously discussed in section II.A. of this rule discussing § 107.50. SBA also proposed removing all references to ''Participating Securities'' since SBA no longer issues such leverage and any SBICs in SBA's portfolio that issued such leverage are either in Wind-down or are monitored by the Office of SBIC Liquidations.

Paragraph (a)(1) requires SBICs (with the exception of Early Stage SBICs) to have Regulatory Capital of at least $5 million, but provides an exception for SBA, in its sole discretion and based on a showing special circumstances and good cause, to license an applicant with only $3 million if the applicant: (i) meets its licensing standards with the exception of minimum capital; (ii) has a viable business plan reasonably projecting profitable operations; and (iii) has a reasonable timetable for achieving Regulatory Capital of at least $5 million. Public Law 115–333 specifically allows an applicant licensed under this exception and located in an Underlicensed State to receive up to 1 tier of Leverage until the Licensee meets the $5 million minimum Regulatory Capital requirement. SBA proposed changing regulations to specify that one example of ''good cause'' would be the applicant is headquartered in an Underlicensed State. If licensed, Leveraged Licensees from Underlicensed States would be eligible for up to 1 tier of Leverage until they raise the $5 million minimum Regulatory Capital requirement.

One commenter supports the regulations and encourages clarification and expansion of ''good cause'' to ensure the exception is applied fairly and not solely based on geography. SBA appreciates the comment and notes that the ''good cause'' exception is not solely based on geography. Consistent with existing regulations, ''good cause'' factors may be applied in a non-exclusive manner based on criteria already specified in § 107.210. Further, SBA notes that any SBIC licensee that receives a license under the ''good cause'' exception must satisfy the requirements of 13 CFR 107.210, including satisfaction of all licensing standards and requirements except the minimum capital requirement, as determined solely by SBA, a viable business plan reasonably projecting profitable operations, and a reasonable timetable for achieving Regulatory Capital of at least $5,000,000.

One commenter asserted hesitation with the low thresholds established by statute under the regulation because of the potential risk to the program from licensing under-capitalized licensees. The commenter also suggested SBA publish objective, quantifiable standards for fund sizes, ask Congress for higher ''low limit'', and warned SBA that using the ''good cause'' exception other than in rare instances involving a licensee's narrowly tailored circumstances would inject higher risk into the SBIC program that could trigger unintended consequences. Finally, the commenter suggested that Licensees should be allowed to accept ''indirect'' government funds, but this capital should not be leverageable. Further, it should not be used for satisfying the private market validation expectations for a license. SBA seeks to implement the statute as established by Congress. SBICs can accept government funds to the extent permitted by the Act. During the licensing process, SBA will continue to employ the concepts such as external validation and fund size viability when assessing applicants.

One commenter encouraged SBA to allow first-time managers to lower the Private Capital commitment threshold to between $10 to 15 million, in an effort to reduce barriers to program participation for first time and diverse fund managers. SBA shares the value of reducing barriers to participation for emerging and diverse managers. The expansion of reinvestor provisions coupled with the introduction of the Accrual Debenture seeks to enable access to capital to more first-time and emerging fund managers through targeted fund-of-funds SBIC relationships. SBA notes that SBICs with at least $5 million (or $3 million for ''good cause'') satisfies minimum capital requirements set forth in 13 CFR 107.210—however, SBICs must also meet the minimum adequacy requirements set forth in section 302(a)(3) of the Act. The final rule adopts the proposed § 107.210 without change.

*D. Section 107.300 License Application Form and Fee*

This regulation identifies the process and rules regarding applying for a License and the associated Licensing Fees. SBA proposed amending the introductory paragraph to give priority to applicants headquartered in Underlicensed States with below median SBIC financing dollars, in accordance with Public Law 115–333. Applicants may have branch offices in other locations, but the headquarters for the applicant must be in an Underlicensed State with below median SBIC financing dollars to receive priority. The proposed regulation provides that SBA will publish the list of States in a notice on the SBIC website, which was previously discussed under section II.A. of this rule. SBA also proposed changing regulations to ensure that once priority is established, such applicants will continue to receive priority throughout the licensing process. For example, if Iowa is identified as an Underlicensed State with below median financing and an applicant headquartered in Iowa applies to receive an SBIC license, SBA would give them priority in licensing. If SBA then published a new list of States qualifying for licensing priority after the applicant was given priority, the applicant would continue to have priority in both phases of the licensing process (initial review and final licensing) even if Iowa is no longer identified as an Underlicensed State with below median SBIC financing dollars.

SBA proposed amending paragraph (b) to identify that SBA will approve the total leverage commitments for the life of the Licensee at licensing. SBA believes that similar to private investors, SBA should approve the entire leverage commitment at licensing, based on the evaluation criteria set forth in § 107.305 and the maximum leverage commitment limits set forth in § 107.1150. This change is intended to (1) reduce the burden associated with separate commitment requests performed after the fund has been licensed and (2) reduce the uncertainty with regard to SBA's leverage commitment and consequently reduce the Private Capital raise timeframe for a prospective Licensee. SBA recognizes that Licensees often raise capital after licensing. However, SBA notes that it is important for Licensees to raise their capital prior to submitting their Licensing application for Final Review, as this practice will help SBA better evaluate applicants, monitor for potential risks, and process applications faster. SBA will continue to maintain its right to deny any new issuance of Leverage at the time of a debenture commitment funding draw request and to exercise other rights and remedies as discussed in part 107, subpart J, in the event of regulatory violations, including capital impairment. SBA is also seeking to better diversify its leverage portfolio for maximum impact across underserved sectors as finalized under § 107.320.

SBA proposed modifying its Licensing fees to lower financial barriers for new funds. Effective October 1, 2022, the Initial Licensing Fee is $11,500 and the Final Licensing Fee is $40,200 for a combined Licensing Fee of $51,700. Each year, SBA adjusts these fees based on the Consumer Price Index. Although larger more established funds can easily afford these fees, smaller funds and new fund managers view the fees as prohibitive to SBIC program participation given their smaller size. Additionally, SBA charges the same fee for applicants seeking to issue Debentures as those who do not intend to issue Debentures. SBA proposed to revise the Initial Licensing Fees based on its fund sequence (meaning the order of succession of the fund) as follows:

| Fund sequence | Initial licensing fee |
| --- | --- |
| Fund I | $5,000 |
| Fund II | 10,000 |
| Fund III | 15,000 |
| Fund IV+ | 20,000 |

SBA will determine the applicant's Fund Sequence based on the applicant's management team composition and experience as a team, including the business plan (also known as the strategy) of the fund provided in Phase I of the application process. For example, if the management team of applicant DEF I consists primarily of the same team members of funds ABC I and ABC II, SBA will consider the fund sequence of DEF I as a Fund III, regardless of the number in the applicant's name.

SBA proposed changing the Final Licensing Fee as the Final Licensing Base Fee plus 1.25 basis points multiplied by the Leverage dollar amount requested by the applicant, where the Final Licensing Base Fee would be as follows:

| Fund sequence | Final licensing base fee |
| --- | --- |
| Fund I | $10,000 |
| Fund II | 15,000 |
| Fund III | 25,000 |
| Fund IV+ | 30,000 |

For example, a fourth time fund seeking $175 million in Leverage would pay a Final Licensing Base Fee of $51,875, computed as $30,000 plus 1.25 basis points (or .0125 percent) times $175 million.

SBA believes that its Non-leveraged Licensees present less credit risk to SBA, while accomplishing the SBIC mission of providing equity and long-term loans to Small Businesses. SBA's final changes would effectively lower the combined Licensing Fee for all Non-leveraged applicants and lower the fees for applicants with less SBA leverage at risk and new funds. Fund managers seeking a fourth or later fund and seeking leverage would pay a higher fee, and the fee would scale with the dollar amount of SBA leverage sought by the Applicant. SBA notes that SBA's licensing costs are substantially higher than even the highest final combined Licensing Fee. SBA believes this modernized licensing fee model, which is designed to make fees commensurate with years of participation in the SBIC program and the dollar amount of SBA leverage at risk, will reduce cost barriers for small funds and new funds applying to the SBIC program.

SBA also proposed an application resubmission penalty fee of $10,000 for any applicant that has previously withdrawn or otherwise is not approved for a license that must be paid in addition to the Initial and Final Licensing Fees. SBA's final licensing fees remain below SBA's expenses required to process such applications. The intent of the resubmission fee is to impose a penalty for each time an applicant resubmits its application to offset the outlay of additional SBA time and resources. Applicants can request SBA approval to waive the resubmission penalty fee that SBA may consider on a case-by-case basis.

One commenter agreed with the proposed $10,000 application resubmission fee and encouraged SBA to have written, clear, consistent, objective, licensing criteria that are published and applied evenly and consistently across all applicants. Another comment suggested: (1) lower license fees should be exclusive to ''small'' applicants, (2) clarifying licensing metrics, (3) expanding the definition of qualifying experience to include relevant operating or investment experience. A third comment noted that the proposed regulatory changes are intended to expand the program and make it easier for applicants in certain geographical areas, but that this may take place at the expense of applicants that are otherwise equally qualified. A fourth comment agrees with the resubmission fee and suggested increased transparency to the applicant surrounding the application review process and timely communication from the licensing committee through the process. The commenter further suggested that if an exam finding during the application review process is the cause of denial, the applicant should be given a reasonable amount of time to resolve the finding. SBA agrees with the concept of reduced fees for first-time SBIC applicants. Consistent with the items raised by these commenters, SBA will implement an expedited licensing process for eligible subsequent license applicants (discussed below) and modernize standard operating procedures and policies to further reduce administrative, cost and time burdens on applicants.

Regarding Licensees with multiple SBIC licenses, one commenter noted opposition to proposed higher fees for licensing and examinations, noting the relative ease of processing those licenses. The commenter recommended that SBA include an optional accelerated license for qualified repeat SBIC managers, which option would be worth the increased fee. The commenter also recommends that SBA establish an accelerated licensing process for non-leveraged bank-owned SBICs, as it would improve the licensing process and justify the proposed fee increase. Another commenter believes increased fees for subsequent licenses penalizes funds with an established track record and may deter SBIC managers from continuing to obtain new licenses. In response to these comments, SBA will not implement changes to examination fees which were included in the proposed rule. Furthermore, SBA is introducing regulatory reforms which will reduce time and cost burdens associated with licensing for qualifying subsequent funds as a result of an expedited licensing process. Regulatory reforms to support an expedited and streamlined licensing process for qualifying subsequent fund applications are as follows:

*Expedited Subsequent Fund Licensing:* Management teams that are already operating one or more licensed SBICs must be in good operational and regulatory compliance standing with SBA in order to submit a license application for a subsequent fund. Subsequent fund license applicants must have at least two full years of operations from date of licensing of the most recently licensed SBIC (a longer or shorter operating history may be merited based on track record and prior performance). The financial performance and portfolio valuations of the current licensee(s) must demonstrate adequate coverage for any outstanding SBA Leverage. The current licensee(s) must also be able to present a clean audit opinion from the SBIC's independent public accountant, covering the most recent, full year of operations, and no unresolved regulatory violations for the most recent SBA exam covering a period ended within 12 months of the request being filed.

SBA will consider a series of factors when determining whether a subsequent fund applicant has demonstrated a commitment to best practices within the SBIC program.

*Streamlined Application Requirements for Subsequent Fund License Applicants:* Applicants operating an active Licensee, can apply under a ''Short-Form Subsequent Fund MAQ'' application by meeting the following eligibility criteria:

- *Consistent strategy and fund size*—targeted Regulatory Capital to be raised is ≤133% the size of their most recent SBIC fund (inflation adjustments will be considered). Same asset class and investment strategy as most recent license.

- *Clean Regulatory History*—no major findings, significant ''other matters'' or unresolved ''other matters'' related to licensees managed by the principals of applicant in the previous ten years.
- *Consistent LP-general partnership (GP) Dynamics*—no new limited partner will represent ≥33% of the Private Capital of the licensee upon reaching final close at target fund size or hard cap. The two largest investors in terms of committed capital have verbally committed to invest in the new fund pending receipt of license. The most recent Limited Partnership Agreement of the active Licensee and all Side Letters will have no substantive changes for the applicant fund.
- *Investment Performance Stability*—the most recent licensee net distributions to paid-in capital (DPI) and net total value to paid-in capital (TVPI) are at or above median vintage year and strategy performance benchmarks for the prior three quarters. The principals of the applicant are not managing a licensee in default or with high Capital Impairment (CIP).
- *Consistent or Reduced Leverage Management*—the applicant is requesting a leverage to Private Capital ratio ≤ the current or most recent SBIC licensee at target fund size or hard cap.
- *Firm stability*—subject to SBA's determination, no material changes to the broader firm, to include resignations, terminations, or retirements by members of the General Partnership, investment committee, broader investment team, or key finance and operations personnel that have a material adverse impact on the stability of the SBIC.
- *Promotions from within*—demonstration of a commercially reasonable effort of promoting internal investment team talent from within the firm/organization sponsoring the license.
- *Inclusive equity*—demonstration of a commercially reasonable effort of the appropriate/increased sharing of carry and/or management company economics with promoted talent or distribution of equitable or increasingly equitable economics among the partnership.
- *Federal Bureau of Investigation (FBI) Criminal and Internal Revenue Service (IRS) Background Check No Findings*—the sponsoring entity and all principals of the Licensee do not have an FBI criminal record and do not have IRS violations from the date of their most recent SBIC fund licensure.
- *No Outstanding or Unresolved Material Litigation Matters*—no outstanding or unresolved litigation matters involving allegations of dishonesty, fraud, or breach of fiduciary duty or otherwise requiring a report under § 107.660(c) or (d) as to a prior Licensee, the prospective Applicant's general partner, or any other person who was required by SBA to complete a personal history statement in connection with the license application.
- *No Outstanding Tax Liens*—on the principals applying to manage the licensee, on the most recent or active licensee, and on the sponsoring entity of the licensee.

Should an applicant fulfill and formally attest to meeting *all* of the above eligibility criteria, the applicant can submit a streamlined ''Short-Form Subsequent Fund MAQ''.

All named principals of the applicant will be subject to FBI criminal and IRS background checks as well as reference checks. Applicants with minimal and non-material changes to the active or most recent licensee LPA and any Side Letters, will be designated for expedited processing.

Regarding capital at licensure, one commenter welcomes the change to the licensing application fee but requested further clarity on the fee structure. One commenter had concerns regarding fund-raising challenges faced by first-time applicants fundraising at time of application. The commenter suggested SBA approve a specific maximum ratio of Leverage to Regulatory capital for the Licensee. Further, the commenter suggested that SBA implement a specific upper limit of Regulatory Capital that would be leverageable at the approved ratio. Another commenter expressed concern that the revised regulations could limit sources of capital and leverage, noting that SBICs could potentially be subject to upfront fees on unutilized leverage within the investment period. A third commenter noted capital flow into the program could be negatively impacted by licensing revisions, effectively eliminating post-license capital raise campaigns and requiring greater commitments up front from capital investors/limited partners. And finally, a fourth commenter recommended amending the proposal to continue to allow leverage commitments on capital raised post-licensing. The commenter noted concerns that the current proposal may negatively impact capital flow, limiting fund size, capacity to finance small businesses, and negatively impacting investors. In response, SBA clarifies that SBA Leverage commitments, up to the dollar amount indicated in the letter of intent to commit, must equal the ratio of SBA-to-private capital commitments indicated in that letter. Such SBA commitments be extended following Closings occurring within 12 months of licensing. These requests will be filled automatically, contingent upon the licensee certifying no material adverse changes (MACs) have occurred since licensing. This is intended to streamline and expedite the commitment request process. SBA further seeks to clarify language to distinguish between a 'Total Intended Leverage Commitment' letter of intent indicating a specific intended commitment dollar amount at Green Light and ratio of SBA leverage to Private Capital from SBA available upon licensing. Additionally, SBA seeks to further clarify the difference between the 'Total Intended Leverage Commitment' and 'commitment requests' made toward the amount indicated in the letter of intent to commit.

SBA seeks to clarify that SBA's commitment dollar amount will be limited such that leverage principal and projected interest must be less than or equal to the statutory cap on individual Licensee leverage, currently $175 million, for a Licensee issuing Accrual Debentures or leverage principal less than or equal to the statutory leverage cap for a Licensee issuing Standard Debentures. For both debenture instruments, Total Intended Leverage Commitment dollar amounts made to the applicant represents leverage principal. SBA defines the term ''Total Intended Leverage Commitment'' to mean the dollar amount or ratio of SBA Leverage Commitments to Private Capital that SBA will approve conditional upon closing the applicant's stated Private Capital target and conditional upon maintaining acceptable capital impairment (CIP) levels and regulatory compliance during the life of the license. SBA will provide the 'Total Intended Leverage Commitment' to the applicant in the Green Light Letter. The Total Intended Leverage Commitment dollar amount will be made final within 12 months of licensure or upon the Licensee's final closing, whichever occurs first. Licensees issuing Accrual Debentures shall not be permitted to make distributions within 12 months of Licensure.

Finally, it should be noted that SBA is amenable to and expects that most applicants will have multiple fund closings. It is acceptable to SBA for an applicant to have a fund closing and begin making investments prior to Licensing. However, the applicant bears the burden of assuming any risk should a license not be approved. One commenter identified that SBIC program administrative and operating costs are not covered by subsidy, noting that in 2017, less than 40 percent of SBA's administrative costs were offset by fees, leaving the taxpayer to bear the costs. The commenter stated that SBA should seek ways to reduce taxpayer costs associated with SBIC program expenses.

The table below displays the cost to administer the SBIC program. It includes direct costs from the operating budget, including contracts; compensation and benefits; Agency-wide costs, such as rent and telecommunications; and indirect costs.

| FY 2020 actual | FY 2021 actual | FY 2022 actual |
|---|---|---|
| $24,254,000 | $21,492,000 | $28,211,000 |

In FY2022, the return-on-investment (ROI) of taxpayer dollars as measured by the ratio of FY2022 financings to U.S. small businesses relative to program cost was 28,003 percent or $7.9 billion divided by $28,211,000. The same $28,211,000 resulted in 129,098 U.S. small business jobs created and sustained and enabled the program to operate with the necessary risk management and oversight practices and procedures to provide Federal funding to SBICs at zero subsidy to U.S. taxpayers. The final rule includes an expedited and streamlined licensing process for qualifying subsequent fund applications and SBA is finalizing § 107.300 substantially as proposed.

*E. Section 107.305 Evaluation of License Applicants*

Current § 107.305 discusses how SBA evaluates an applicant to the program. Paragraph (a) describes management qualifications. SBA is proposing to amend paragraph (a) to include two additional management qualifications. The first is relevant industry operational experience, which may be combined with investment skill to demonstrate managerial capacity. The second, if applicable, is the applicant's experience in managing a regulated business, including but not limited to an SBIC. Paragraph (b) describes how SBA evaluates an applicant's track record. SBA is amending paragraph (b) to include two additional performance qualifications. The first is the inclusion of an applicant's operating experience, which when combined with an investment team's prior relevant industry investing experience, is relevant in assessing an applicant's investment performance. The second addition, when applicable, is the applicant's past adherence to statutory and regulatory SBIC program requirements. This addition will be considered for applicants with past SBIC program experience.

Paragraph (c) describes how SBA evaluates the applicant's investment strategy. SBA is amending paragraph (c) to clarify that the applicant's investment strategy is to be contained in its business plan, as well as to underscore the importance of section 102 ''Statement of Policy'' of the Act which describes the public purpose of the SBIC program.

Two commenters encouraged SBA to continue making the licensing process more transparent and inclusive, noting current criteria limiting the potential pool of qualified managers. SBA is updating standard operating procedures and policies to reduce the burden of the licensing process on applicants and to improve transparency in the licensing process.

One commenter requested, in addition to relevant industry operational experience, inclusion of financial portfolio management experience in adjacent areas such as relevant experience in lending and early-stage equity investments. SBA agrees that relevant investment experience in adjacent areas is a valid consideration in the licensing process. SBA considers the totality of experience of the principals of the applicant during the licensing process. As the proposed rule is consistent with these principles, SBA is finalizing § 107.305 substantially as proposed.

*F. Section 107.320 Leverage Portfolio Diversification*

Current § 107.320 discusses how SBA evaluates Early Stage SBICs and reserves the right for SBA to maintain diversification among Early Stage SBICs with respect to the year they commence operations and their geographic location. In light of the fact that SBA used its entire Leverage authorization in FY 2021, SBA proposed modifying this regulation to reserve SBA's right to maintain Leverage portfolio diversification in approving Leverage commitments with respect to the year in which they commenced, the SBIC's geographic location, giving first priority to Licensees from Underlicensed States with below median SBIC financing dollars, their asset class and investment strategy. SBA's intent is to maximize the SBIC program's economic impact to underserved Small Businesses while managing risk through portfolio diversification. SBA notes that SBA will continue to license all qualified applicants based on its evaluation criteria and will not take into consideration any projected shortage or unavailability of leverage when reviewing and processing SBIC license applications.

One commenter believes 13 CFR 107.320 should remain unchanged, noting the SBIC Debenture program doesn't currently exhibit outsized losses due to a lack of portfolio diversification. The same commentor also expressed concern that the proposed rule could result in SBA having too great discretion in selecting program participants. The purpose of portfolio diversification is to ensure that SBA successfully meets the mission and intent of the SBIC program (as established by Congress) while mitigating overall SBIC program concentration risk in strategies which could present higher repayment risk and volatility risk and thus compromise the program's zero subsidy status. Ensuring SBA has discretion to mitigate program concentration in risk assets to mitigate against the potential for taxpayer losses is in line with best practice portfolio risk management approaches of public and private institutional investment programs.

One commenter stated that by prioritizing the approval of leverage commitments based on geographical characteristics, it may prolong the process for Licensees that are not headquartered in these areas. The final rule balances shifting licensing timelines with mitigating program risk. Through the introduction of expedited licensing for eligible subsequent funds and updates to standard operating procedures, SBA will improve licensing and leverage commitment timelines across the program, thus mitigating any risk of prolonged leverage commitment processes for Licensees. SBA is finalizing § 107.320 substantially as proposed.

*G. Section 107.501 Identification*

This regulation identifies requirements related acknowledgment of a Licensee as ''a Federal licensee under the Small Business Investment Act of 1958, as amended.''

One commenter recommended an amendment to 13 CFR 107.501 requiring SBA to publish in the **Federal Register** the names of SBICs that were licensed and the dates on which SBICs were licensed. Based on this comment, SBA is finalizing § 107.501 to include a requirement for SBA to publish license approvals in the **Federal Register** within 30 business days of the end of the month in which the license was approved by the SBA Administrator.

*H. Section 107.503 Licensee's Adoption of an Approved Valuation Policy*

This regulation requires Licensees to prepare and maintain a valuation policy that must be approved by SBA for use in determining the value of its investments. Current regulations require that Licensees adopt without change the model valuation policy set forth in SBA's Valuation Guidelines for SBICs or obtain SBA's prior approval of an alternative valuation policy. SBA established this requirement to ensure it could adequately monitor the SBIC portfolio, that valuations were performed in a reasonable and standard fashion, and to minimize Leverage losses in order to maintain zero subsidy cost. SBA recognizes that private equity typically uses valuations performed in accordance with GAAP and that many SBIC private investors require GAAP. This causes many SBICs to maintain two sets of valuations. SBA is currently working to re-evaluate this requirement for Leveraged Licensees. SBA is requiring both valuations based on SBA Valuation guidelines and those reported to their private investors in accordance with GAAP to assess the potential impact. SBA is also working with its valuation contractor to evaluate what changes to SBA's Valuation Guidelines would be necessary to make them GAAP compliant and the impact to SBA's monitoring and risk should SBA adopt GAAP compliant guidelines. SBA sought input from the public on this issue as part of this rulemaking. However, SBA recognizes that Non-leveraged Licensees pose no credit risk to SBA. In the proposed rule, SBA proposed that Non-leveraged Licensees (which include both those licensed as Non-leveraged Licensees and Licensees that fully repay Leverage and seek no further Leverage) may adopt a Valuation Policy in accordance with GAAP. SBA believes this will lower the burden associated with current regulations.

Current paragraph (d) requires licensees with outstanding Leverage or Earmarked assets to value their portfolio twice a year (at the end of the second quarter and the end of the fiscal year). SBA proposed to clarify that this requirement applies to all Leveraged Licensees and increase reporting from semi-annually to quarterly, commensurate with the required quarterly reporting of the Form 468.

One commenter agreed with the revision as written.

One commenter gave feedback including (1) the Form 468 is not accommodating of GAAP reporting, (2) that SBICWeb requires a redesign, (3) new reporting requirements can put undue burden on analysts, (4) reporting is cumbersome, (5) by changing accounting principles, it would be difficult to compare year over year results, (6) unlevered SBICs could be at a disadvantage with respect to determining when to make READ. With respect to the first five items, SBA is updating its technology, data collection, and filing processes to accommodate new reporting requirements and reduce the reporting burden on managers and SBA analysts. Further, SBA notes that if the valuations are not changing significantly, the level of effort to update the reporting is limited. If valuations do change significantly, this does increase the level of effort required in updating the reporting, however SBA believes that sufficient program oversight of this federally regulated financial institution necessitates this level of effort and unlevered SBICs are not positioned to be disadvantaged. After consideration of all comments, SBA is finalizing § 107.503 substantially as proposed.

*I. Section 107.504 Equipment and Office Requirements*

This regulation identifies the equipment and office requirements needed by SBICs to operate within the program. The current regulation requires a personal computer with a modem and internet access under paragraph (a) and the need for a facsimile capability under paragraph (b). SBA received industry comments that this regulation was outdated. Some SBICs indicated that they bought facsimile machines to ensure they complied with the requirement. The intent of this regulation is to ensure that SBICs can properly communicate with SBA, receive official correspondence, prepare and provide electronic reporting, and apply for Leverage. The proposed changes would eliminate the modem requirement under paragraph (a); eliminate the facsimile requirement under paragraph (b); and modify paragraph (a) to more broadly require that SBICs must have technology to securely send and receive emails, scan documents, and prepare and submit electronic information and reports required by SBA. This language would allow for reasonable changes in technology without the need to modify regulations. All SBICs already utilize this technology in their day-to-day operations. This change should reduce costs by eliminating unnecessary equipment.

One commenter concurred with the changes as written. SBA is finalizing § 107.504 substantially as proposed.

*J. Section 107.550 Prior Approval of Secured Third-Party Debt of Leveraged Licensees*

This regulation requires SBICs to obtain prior SBA approval for secured third-party debt for Leveraged Licensees.

Section 107.550(a) defines secured third-party debt to include Temporary Debt, a defined term in § 107.570 that applies only to SBICs with outstanding Participating Securities. Since there are no operating SBICs with outstanding Participating Securities, except in the Office of SBIC Liquidation, SBA proposed removing § 107.570 and references to Temporary Debt and Participating Securities in § 107.550.

Section 107.550(c) identifies rules associated with secured lines of credit in existence on April 8, 1994. SBA proposed to remove that requirement since it is obsolete.

SBA proposed replacing § 107.550(c) with a secured ''Qualified Line of Credit'' which SBICs could utilize without SBA prior approval. One commenter recommended clarifying the language in this section, and one commenter stated that the proposed terms will increase the administrative burden on Licensees as they would need to call capital more often. SBA agrees that the language required clarification and the terms should be more aligned to industry standard practices. Consequently, SBA is rescinding the proposed changes to § 107.550(c) and replacing it with this simplified update to the existing regulations by defining a ''Capital Call Line''.

Since the final rule provides an exemption from SBA approval for Capital Call Lines that SBA would likely have otherwise approved, the final rule eliminates paragraph (e) which discusses automatic 30-day approval for secured third-party debt. With the replacement of ''Qualified Line of Credit'' with ''Capital Call Line'', SBA is finalizing § 107.550 substantially as proposed.

*K. Section 107.570 Restrictions on Third-Party Debt of Issuers of Participating Securities*

This regulation identifies restrictions on third-party debt for SBICs that issued Participating Securities. As discussed under section II.L. of this rule, no operating SBICs have outstanding Participating Securities and SBA is no longer authorized to provides such Leverage. SBA proposed to remove this regulation.

SBA received no comments on this section. This final rule adopts the proposed removal of § 107.570.

*L. Section 107.585 Distributions and reductions in Regulatory Capital*

This section is currently titled ''Voluntary decrease in Licensee's Regulatory Capital'' and requires Licensees to obtain SBA's prior written approval to reduce Regulatory Capital by more than two percent in any fiscal year. Current § 107.1000(b)(2) exempts Non-leveraged Licensees from § 107.585 if the decrease does not result in Regulatory Capital below what is required by the Act and the regulations and is reported to SBA within 30 days. Typically, reductions in capital are performed in conjunction with a distribution that represents a return of capital, to its private investors. SBA allows profit distributions, also known as ''Retained Earnings Available for Distribution'' or ''READ'' without SBA prior approval, unless the Licensee was licensed as an Early Stage SBIC or if the SBIC issued Participating Securities.

SBA received comments from private investors that the existing regulations (prior to the proposed rule) were unclear as to when a Licensee could distribute to its investors. SBA has also had instances in which Leveraged Licensees made ''READ'' distributions, and subsequently wrote down assets that would have reduced or removed ''READ''. Leveraged Licensees must consider such write-downs before making such distributions to avoid ''improper'' distributions. SBA is also concerned that Accrual Licensees may distribute profits without repaying Leverage. In particular, equity investors often have returns that are less consistent than private creditor or mezzanine funds. SBA has incurred losses in several Licensees that returned profits to its private investors through early profit distributions and then wrote down assets later in the fund's life.

In the proposed rulemaking, SBA proposed to retitle this regulation to ''Distributions and Reductions in Regulatory Capital'' and modify the requirements to address these concerns. Three commenters raised that a change to the distribution waterfall of the Traditional Debenture. The SBA has considered this feedback and intends to apply the new pro rata distribution waterfall exclusively to the Accrual Debenture instrument and to institute a more flexible repayment timeframe to align with existing debenture pre-payment processes. Based on public comment, in issuing the final rule, SBA will not apply the modified distribution waterfall to Standard Debenture Licensees. This final rule thus separates distribution requirements based on three categories of SBICs: (1) Non-leveraged Licensees; (2) Standard Debenture SBICs; and (3) Accrual SBICs and Reinvestor SBICs. The rationale for these categories and the specific requirements follows.

(1) *Non-leveraged Licensees.* SBA is setting a separate set of requirements for Non-leveraged Licensees because they pose no credit risk to SBA. Final rules would allow Non-leveraged Licensees to distribute to their private investors without SBA prior approval as long as they retain sufficient Regulatory Capital to meet minimum capital requirements under § 107.210, unless such amounts are in accordance with their SBA approved Wind-up Plan. If a Non-leveraged Licensee does not have an SBA approved Wind-up Plan, they may make distributions, as long as such Non-leveraged Licensees retain sufficient Regulatory Capital to meet minimum capital requirements under § 107.210. If a Non-leveraged Licensee has an SBA-approved Wind-down Plan, their Regulatory Capital can drop below the minimum capital requirements if such amounts are in accordance with that plan. This requirement should provide even greater flexibility to Non-leveraged Licensees. In accordance with current policies, the final rule would clarify that Non-leveraged Licensees must report any reductions in Regulatory Capital to SBA within 30 days on an updated Capital Certificate, which is Exhibit K in SBA form 2181.

(2) *Standard Debenture SBICs.* SBA recognizes that existing licensees and current applicants to the program expect to be able to distribute READ based on current regulations. Standard Debenture SBICs will remain under the current rules.

(3) *Accrual SBICs and Reinvestor SBICs.* SBA is requiring, in the regulations for these SBICs, a distribution waterfall that repays SBA the principal balance on outstanding Leverage on at least a pro rata basis with private investors. Accrual SBICs and Reinvestor SBICs must repay Leverage at its ten-year maturity and may prepay Leverage at any time. SBA is requiring the following waterfall:

a. Payment of Annual Charges and accrued interest associated with Leverage. (Interest will be paid to the bond holders based on the Leverage terms.)

b. Calculate SBA's share based on the ratio of SBA Total Intended Leverage Commitment and Total Private Capital Commitments, inclusive of Qualified Non-Private Funds, determined within 12 months of Licensure established as follows: SBA Share = Total Distributions × [Total Intended Leverage Commitment/(Total Intended Leverage Commitment + Total Private Capital Commitments)].

c. Repay SBA Leverage to bond holders in an amount no less than SBA's Share to the extent of outstanding Leverage. If SBA's share is more than the Outstanding Leverage held by the Licensee and the Licensee has unfunded Leverage Commitments, the Licensee must submit a Leverage Commitment cancellation equal to SBA's share minus SBA Leverage redemptions. The rationale for this cancellation requirement is to minimize the risk that the SBIC will distribute significant profits to its private investors, then issue additional SBA leverage that results in losses, leaving SBA with losses after the private investors made significant profits.

d. Distribute to private investors the remaining amount.

e. Report the distribution to SBA. You must report the distribution and calculations to SBA on your Form 468 submission(s).

If permitted under a Licensee's partnership agreement, a Licensee may choose to reserve capital or reinvest all or a portion of it instead of distributing to SBA and investors. In this circumstance, a Licensee would decrease the amount distributed to its investors so that the private investors receive no more on a pro rata basis as the repayment of SBA Leverage and interest due. SBA is only concerned that private investors bear at least the same risk for loss as SBA.

One commenter provided the following feedback: (a) tax distributions due to ordinary income must flow to limited partners for tax liabilities; (b) Debenture securities must be paid in full, which could limit SBIC ability to repay Debentures in full and provide sufficient distributions to limited partners to pay taxes; (c) potential unintended consequence of outcome of ''trapping'' cash in SBIC. SBA clarifies that Accrual SBICs are not prohibited from tax distributions in this final rule and encourages SBICs to consider smaller distributions that can be repaid in full. SBA underscores that the intent of the changes is to reduce the risk to the taxpayer by ensuring that debentures backed by an SBA guarantee are repaid.

One commenter concurred with SBICs being allowed to make distributions without prior SBA approval and with SBA proposing that future material adverse changes be taken into consideration for leveraged funds licensed before October 1, 2023. The same commenter raised that the proposed waterfall also does not differentiate between READ and return of capital proceeds, which would result in the repayment of leverage being misaligned with what may be laid out in a Licensee's wind down plan. As stated above, SBA has not included changes to the waterfall or READ requirements for Standard Debentures and is finalizing § 107.585 with the modified distribution requirements based on three categories of SBICs: (1) Non-leveraged Licensees; (2) Standard Debenture SBICs; and (3) Accrual SBICs and Reinvestor SBICs.

*M. Section 107.590 Licensee's Requirement To Maintain Active Operations*

This regulation identifies requirements for Licensees to maintain active operations and submit a Wind-up Plan when they decide they are no longer making any new investments. SBA proposed implementing regulations to change the name to ''Wind-down Plan'' as discussed under section II.A. of this rule.

SBA received no comments on this section. This final rule adopts the proposed § 107.590 without change.

*N. Section 107.620 Requirements To Obtain Information From Portfolio Concerns*

This regulation specifies the threshold of information requested by SBICs from Portfolio Concerns. In the proposed rulemaking, SBA proposed implementing regulations to amend specified information collections for Financings after the effective date of the rule to provide certain optional demographic information on Portfolio Concerns. The SBA is amending information collections to enhance reporting accuracy and consistency around the small business demographic impact of the SBIC program.

One commenter expressed concern that including voluntary reporting of demographic data could be viewed as mandatory by licensees and their portfolio companies and could be costly, while another commenter expressed concern that making this voluntary may discourage Licensees from providing it. SBA notes that voluntary reporting of demographic information balances flexibility for program participants with providing SBA and taxpayers with adequate transparency into the community impact of the SBIC program overall, in accordance with the President's Executive Order (''E.O.'') 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. Additionally, SBA notes that such information is collected post-licensing and is not a component of the SBIC licensing process. This final rule adopts the proposed § 107.620 without change.

*O. Section 107.630 Requirement for Licensees To File Financial Statements With SBA (Form 468)*

This regulation identifies requirements associated with Licensee's financial statements on Form 468. Paragraph (a) requires the annual Form 468 to be submitted on or before the last day of the third month following the end of the fiscal year, except for information in paragraph (e). This is not consistent with § 107.650 which requires that portfolio valuations be submitted on the Form 468 within 90 days following the end of the fiscal year. Current § 107.630 also does not have a paragraph (e). SBA believes the entire Form 468 should be due at the same time. Therefore, in the proposed rulemaking, SBA proposed implementing regulations to make the annual Form 468 due date consistent with § 107.650.

Paragraph (d) requires certain economic information regarding each Licensee's portfolio companies, so that SBA can assess the program's economic impact. SBA proposed implementing regulations adding information to help SBA determine net jobs created and total jobs created or retained, including identifying the number of jobs added due to a business acquisition versus growth in the business.

SBA also proposed to add fund management contact information and optional demographic information. SBA is seeking to collect management contact information in order to improve its customer relationship management and to better assess relationships between its Licensees. Demographic information regarding fund management is requested for reporting purposes only and on a voluntary basis.

Two commenters agreed with the proposal as written. One commentor asked whether the Form 468 could be filed on a Monday if the deadline falls on a weekend. Form 468 instructions will now provide the following procedural accommodation: when a deadline falls on a weekend the form can be filed on the next day which is not a Saturday, a Sunday, or a Federal holiday.

One commentor agreed that SBA can improve its oversight of SBICs through timely reporting requirements. SBA appreciates the support for timely reporting. This final rule adopts the proposed § 107.630 substantially without change.

*P. Section 107.640 Requirement To File Portfolio Financing Reports (SBA Form 1031)*

This regulation currently requires Licensees to submit a Portfolio Financing Report on SBA Form 1031 within 30 days of the closing date of the Financing. To reduce the burden on Licensees, SBA proposed to make this a quarterly submission in which the Licensee must report the financing within 30 calendar days of the calendar year quarter following the closing date of the Financing. For example, if a Licensee closes a financing on February 10, 2023, the Licensee will need to submit the related Form 1031 no later than April 30, 2023. If the Licensee is identified as meeting the Watchlist criteria, as finalized under § 107.1850, SBA may require more frequent reporting.

One commenter noted that new deadlines might have a negative impact on Bank limited partners with regard to federally required reporting and examination obligations and might elongate the time it takes SBIC licensees to report to SBA. Another commenter opposed quarterly submissions within 30 calendar days of quarter following closing or financing, noting generating a quarter's worth of Form 1031s would be burdensome. In response, SBA will allow for Form 1031s within 30 days of quarter end. To mitigate concerns around the burden of the reporting requirement when SBICs have a large number of 1031 filings due at one time, SBA permits Form 1031s for portfolio company financings to be disaggregated and submitted on a more frequent basis. The option to submit a single Form 1031 within 30 days of quarter end rather than within 30 days of financing is intended to reduce the administrative filing burden on SBICs. Bank limited partners are encouraged to establish reporting expectations with SBICs through their limited partnership agreements. SBA's intent is to provide additional regulatory flexibility, when and where possible, with respect to 1031 filings. SBA agrees with commenters who were supportive of changes that allow more time for SBICs to make timely submissions, and therefore SBA is issuing the final rule as set forth in 13 CFR 107.740.

*Q. Section 107.650 Requirement To Report Portfolio Valuations to SBA*

This regulation currently requires Licensees to report portfolio valuations within 90 days of the end of the Licensee's fiscal year and quarterly valuations 30 days following the close of each quarter. SBA proposed implementing regulations to clarify that only Leveraged Licensees are required to report for quarterly reporting periods. All Licensees must report at least annually. SBA proposed implementing regulations to expand the timeframe for quarterly valuations, including material adverse changes, to 45 calendar days following the close of each quarter. This is intended to give Licensees additional time to prepare reports.

One commenter stated they do not believe the benefits of reporting changes outweigh the costs unless SBA reports and publicly releases in a timely manner aggregate program data and analysis. As part of the final rule, SBA is modernizing data collection and reporting processes which will enable the timely reporting of existing program economic and operational performance measures and the introduction of new metrics related to the investment performance of the program. Quarterly reporting will be limited to a ''short form'' version of the Form 468 to reduce the reporting burden while enabling transparency into program investment performance and improved monitoring.

One commenter asked for clarification as to whether SBA will continue to allow data collections and metrics regarding net jobs created and total jobs created and retained to be provided on a quarter lag after year end, as the data may not be readily available within 90 days of an SBICs fiscal year end. SBA confirms that the 90-day lag is intended to represent a one quarter lag after fiscal year end. This final rule adopts the proposed § 107.650 without change.

*R. Section 107.660 Other Items Required To Be Filed by Licensee With SBA*

This regulation identifies other items required by the Licensee. Paragraph (a) requires the Licensee to provide to SBA a copy of any report it gives to its private investors. Although the Licensee is required under current regulations to provide to SBA report they provide to their private investors, SBA proposed implementing regulations to specify valuation data items to improve clarity. SBA also proposed implementing regulations to specify that Licensees should submit to SBA any report it gives to its private investors no later than 30 days after the date on which such SBIC sent any report to its private investors. This requirement is intended to keep SBA aware of any important communications regarding the licensee in a timely fashion.

Regarding submission of the reports provided to the private investors, one commenter noted it would be helpful for SBA to specify the types of reports they are looking for and their purpose. SBA specifies that quarterly and annual financial reports and fund investment performance reports are examples of reports frequently delivered to private investors with the intended purpose of providing transparency into portfolio holdings and investment returns. This final rule adopts the proposed § 107.660 without change.

*S. Section 107.692 Examination Fees*

This regulation identifies how SBA calculates examination fees. Currently under paragraph (b), SBA charges a Minimum Base Fee + .024% of assets at cost up, not to exceed a Maximum Base Fee. SBA adjusts the Minimum Base Fee and the Maximum Base Fee annually. Although current regulations give Non-leveraged Licensees a lower Maximum Base Fee, this formula does not fully address the risk and additional monitoring required for Leveraged Licensees. SBA proposed to change and streamline this formula to $10,000 + .035% of their Total Leverage Commitment established at Licensing (see section II.D. of this rule). By establishing the examination fee up front, SBA believes this will reduce uncertainty in cashflows. Because SBICs licensed prior to the proposed rule may not have a Total Leverage Commitment, SBA proposed that the formula for existing licensees be $10,000 + .035% of their outstanding Leverage plus SBA's undrawn commitment amount. Since the proposed formula would give all Non-leveraged licensees a flat rate of $10,000 and SBA incurs more costs based on the assets of the Licensee, SBA proposed that any Non-leveraged Licensee with over $50 million in assets at cost pay an additional $20,000. Although SBA recognizes that a Leveraged Licensee with over $50 million in assets at cost and $30 million in leverage commitments would only pay $20,500 in exam fees versus $30,000 for a Non-leveraged Licensee, SBA nevertheless proposed this additional fee for larger Non-leveraged Licensees with over $50 million in assets based on the infrequency of requests for less than one tier of leverage. Two commenters opposed the proposed fee changes. Regarding Licensees with multiple SBIC licensed funds or ''repeat licensees'', one commenter noted opposition to proposed higher fees for examinations for repeat licensees. One commenter requested that SBA annually publish the top-ten most common exam findings so SBICs can proactively remedy their own practices. SBA appreciates these comments and will not be moving forward with modifications to Examination fees.

One commentor encouraged SBA to consider enhancing its credit standard to require examinations within an 18-month time period for all SBICs with SBA-guaranteed leverage. SBA appreciates the comment and, as stated prior in response to broader comments regarding licensing and examination fees, SBA withdraws the proposed changes to § 107.692 and will not be moving forward with modifications to Examination frequency because it believes that the incremental risk mitigation would be minimal and would not warrant the additional resources required.

*T. Section 107.720 Small Businesses That May Be Ineligible for Financing*

This regulation identifies small businesses in which Licensees may not invest. Paragraph (a) restricts Licensees from making investments into relenders or reinvestors as defined under paragraph (a)(1). In the existing regulation, paragraph (a)(2) currently gives an exception for Venture Capital Financings to relenders or reinvestors that qualify as Disadvantaged Businesses unless the Disadvantaged Business is a bank or savings and loan not insured by agencies of the Federal Government or agricultural credit companies. In the proposed rule, SBA proposed modifying the exception to permit Licensees to make equity investments in certain underserved relenders or reinvestors that make financings solely to Small Business Concerns that a Licensee may directly finance under part 107. Based on the comments discussed below, SBA is now modifying this exception to permit reinvestors which are Accrual SBICs (*i.e.,* ''Reinvestor SBICs'') to make equity investments in certain underserved reinvestors that, in turn, make financings solely to Small Businesses which meet the Act size standards (set forth in 13 CFR 107.700 and 121.301(c)(2)) or the Small Business Act alternative size standards (set forth in 13 CFR 121.301(c)(1)) with at least 50 percent of employees in the United States, at the time of investment. SBA believes expanding this provision will significantly help expand the SBIC program's footprint in underserved communities. By more broadly defining ''underserved,'' SBA can maintain flexibility and agility to align with evolving market conditions by clarifying what constitutes ''underserved'' through policy notices in order to increase its economic impact to underserved communities. While Disadvantaged Business will continue to be considered underserved, rural and low-and-moderate-income areas may also be applicable to this group. To ensure that capital continues to be directed to SBA's mission, SBA also is implementing regulations to limit reinvestor financing to those that existing SBICs could generally finance. This limitation is designed to help SBA grow a national emerging fund manager pipeline focused on supporting the financing needs of U.S. small businesses.

Two commenters noted that the definition of ''underserved'' could be further clarified. However, another commenter was supportive of leaving ''underserved'' not fully defined and proposed including clear safe harbors for SBICs serving rural, low-income areas, and veteran-owned businesses. SBA notes that a broad interpretation of underserved, consistent with the text of Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities,'' and a requirement to provide a justification in the applicant's business plan as to how a particular geographic, industry or market segment is underserved and how the investment strategy and approach addresses this underserved part of the market. A safe harbor will not be required as SBA will approve the business plan prior to the licensee making investments. Investments are to be made in accordance with the approved business plan.

Two commenters recommended that SBA revise the language to ensure that SBICs are not precluded from making investments in Minority Depository Institutions (MDIs). SBA appreciates the suggested comment. SBA notes that Licensees are permitted to make investments in certain types of *relenders* and *reinvestors* which, for Section 301(d) Licensees, which may include Minority Depository Institutions that qualify as Disadvantaged Businesses. Section 301(c) Licensees are permitted to make investments in reinvestors under the Act.

One commenter suggested SBA define Fund-of-Funds as *Reinvestor SBICs* in regulations and standard operating procedures. SBA appreciates and agrees with the comment and will define *Reinvestor SBIC.* SBA will also clarify that there is no restriction on the type of capital that can be invested by a *Reinvestor SBIC.*

Two commenters suggested that the requirements limiting investments in re-investors to only those who have complied with SBA cost of money and conflict of interest regulations could mean that not many qualified fund-of-funds managers will be able to access the program. One commenter suggested SBA clarify which specific rules it intended to capture and that all restrictions on existing SBICs be applied to the ultimate recipients of the capital. One commenter believes it would be necessary to permit potential reinvestor SBIC funds-of-funds to invest all of their capital into underserved underlying funds. In addition, the underlying funds in which an SBIC is investing pursuant to the exception should not be controlled by the SBICs or the SBIC's management. They should also be allowed to provide capital to non-levered SBICs but not to SBICs with any type of leverage. Another commenter expressed concern around permitting Fund-of-Funds to invest only their Regulatory Capital into underlying re-lenders and re-investors.

SBA appreciates suggested revisions to permitted investments by the underlying funds of the *Reinvestor SBICs* and has revised this final rule to define and clarify that *Reinvestor SBICs* can make Equity Capital Investments in underserved non-SBA leveraged limited partnerships, SBIC or non-SBIC licensed, that finance businesses that meet SBA's small business size standards, are owned and controlled by U.S. citizens and/or entities headquartered in the United States, and have at least 50 percent of employees based in the United States at the time of investment.

In terms of ''cost of money'', SBA notes that § 107.855 defines ''Cost of Money'' to mean ''the interest and other consideration that you receive from a Small Business.'' Subject to lower ceilings prescribed by local law, the Cost of Money to the Small Business must not exceed the ceiling determined under § 107.855 introductory text and (a). In connection with this requirement, SBA notes that this section applies to all Loans and Debt Securities.

Regarding conflicts of interest, given the nature of private markets, SBA anticipates *Reinvestor SBICs* are likely to invest in the portfolio concerns of underlying funds. Consistent with the safe harbors to conflicts of interest being implemented in this rule, SBA's prior written approval is not required in connection with such co-investments if a third-party investor unaffiliated and unassociated with the *Reinvestor SBIC* and the underlying fund investor is contributing Equity Capital Investments to the portfolio concern alongside the *Reinvestor SBIC* investing directly into the portfolio concern held by the underlying fund. At least one substantial third-party investor unaffiliated and unassociated with the *Reinvestor SBIC* must be investing on the same terms as the *Reinvestor SBIC.*

One commenter noted a lack of clarity around monitoring and reporting of reinvestors. SBA clarifies that *Reinvestor SBICs* will be expected to submit reporting of all underlying portfolio concern holdings including information regarding the limited partnership investor in the portfolio concern, name of the concern, industry, size and type of investment, most recent valuation, tax identification number, industry, location and number of employees at time of initial investment. Such reporting will be provided as an exhibit to the Form 468 for *Reinvestor SBICs.*

One commenter expressed concern that expanding opportunities for reinvestors will confuse investors who consider the SBIC program. SBA appreciates the concern. With more diversification of asset classes and alternative investments strategies included in the SBIC Program, investors should consider each prospective SBIC fund investment's risks and benefits on a case-by-case basis before investing.

Finally, one commenter encouraged SBA to consult with Congressional Committees to clarify whether these changes require new authorities granted by Congress. SBA notes that section 310(c) states that each small business investment company shall be examined at least every two years in such detail so as to determine whether or not it has engaged in relending. Permitting *Reinvestor SBICs* as Section 301(c) Licensees is consistent with the Act and aligns with the stated policy set forth in the SBIC Act of stimulating and supplementing the flow or private equity capital and long-term loan funds which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, and which are not available in adequate supply.

SBA has included clarification around Reinvestor SBICs and is finalizing § 107.720 substantially as proposed.

*U. Section 107.730 Financings Which Constitute Conflicts of Interest*

Current § 107.730 prohibits Licensees from transactions that constitute conflicts of interest, as required by the Act. Paragraph (a) provides a general rule that Licensees may not self-deal to the prejudice of a Small Business, the Licensee, its shareholders or partners, or SBA, and must obtain prior written exemptions for transactions that may constitute a conflict of interest and specifies certain transactions in paragraphs (a)(1) through (5) that would constitute a conflict of interest. Paragraph (a)(1) identifies (as one specific prohibition) a Financing to a Licensee's Associate, as defined in § 107.50, unless the Small Business being financed is only an Associate because another the Licensee's Associate investment fund holds a ten percent or greater interest in the Small Business, the Associate investment fund previously invested in the Small Business at the same time and on the same terms and conditions, and the Associate investment fund is providing a follow-on financing to the Small Business at the same time and on the same terms and conditions as the Licensee.

Based on market feedback and an analysis of conflict-of-interest approval requests from Licensees, the current safe harbor provisions for follow-on financings to small business portfolio companies are resulting in delays providing capital to small businesses. This potentially hurts the small businesses and increases the burden on Licensees and SBA. SBA proposed implementing regulations to include a safe harbor for financing a portfolio concern by an Associate when an outside third-party participates in the equity financing of the Licensee's portfolio concern.

Paragraph (d) identifies Financings with Associates that also constitute conflicts of interest requiring SBA prior approval but provides exceptions under paragraph (d)(3). Paragraph (d)(3)(iii) identifies exceptions for SBICs with outstanding Participating Securities. Since no operating Licensees remain in SBA's portfolio, SBA is implementing regulations to remove this exception. Paragraph (d)(3)(iv) identifies exceptions involving Non-leveraged Licensees. SBA is implementing regulations to revise this exception to incorporate the new Non-leveraged Licensee term and simplify this regulation.

One commenter agreed with the regulation as proposed. This final rule adopts the proposed § 107.730 substantially as set forth in the proposed rule.

*V. Section 107.830 Minimum Duration/Term of Financing*

Paragraph (c)(2) discusses ''prepayments'' and states: ''You [Licensee] must permit voluntary prepayment of Loans and Debt Securities by the Small Business. You must obtain SBA's prior written approval of any restrictions on the ability of the Small Business to prepay other than the imposition of a reasonable prepayment penalty under paragraph (c)(3) of this section.''

SBA considered in the proposed rulemaking process whether it should make changes to § 107.830(c)(2) regarding prepayment restrictions for Loans and Debt Securities to remove the requirement for SBA's prior written approval regarding any restriction on the ability of a small business to prepay (other than the imposition of a reasonable prepayment penalty). SBA had become concerned that certain terms in unitranche or multi-lender transactions that require voluntary prepayments to be distributed on a pro rata basis to all lenders in a transaction could be considered a prepayment restriction. Generally, SBA does not view a financing term that requires a portfolio concern to make prepayment distributions on a pro rata basis to all lenders in a transaction to be a prepayment restriction.

One commenter supported the regulation as proposed with two suggestions: a) support a clarifying statement within § 107.830(c)(2) that ''[r]equirements to apply prepayments pro rata among a group of lenders that is pari passu in rights to payment will not be deemed to constitute a restriction on prepayments hereunder'' and b) adding to 13 CFR 107.830(c) a safe harbor for a reasonable restriction on the minimum increments in which partial prepayments can be made by small businesses. SBA supports the proposed suggestions and, in response, added in the final rule a clarifying statement within § 107.830(c)(2) that ''[r]equirements to apply prepayments pro rata among a group of lenders that is pari passu in rights to payment will not be deemed to constitute a restriction on prepayments hereunder'' and added to 13 CFR 107.830(c) a safe harbor for a reasonable restriction on the minimum increments in which partial prepayments can be made by small businesses.

One commenter indicated that small businesses should not be discouraged from making prepayments. SBA agrees that the small business must be the first consideration and does not seek to discourage prepayment for small businesses. However, in order to encourage funds to participate in the SBIC program and provide such capital, SBA must consider reasonable market terms for such securities that balances these objectives. SBA incorporated the proposed clarification into § 107.830(c)(2) and is finalizing the proposed § 107.830 substantially as proposed.

*W. Section 107.865 Control of a Small Business by a Licensee*

This regulation identifies limitations on the ability a Licensee to take ''Control'' as defined in § 107.50, over a Small Business. In general, the regulations permit Licensees to take Control for up to seven years. In the proposed rule, SBA proposed that Accrual SBICs should limit ownership at first Financing to less than 50 percent.

One commenter was concerned that the seven-year control provision is insufficient to enable SBICs to repay leverage in a timely manner. This provision has been in place for several years. As stated in 13 CFR 107.865(d), with SBA's prior written approval an SBIC Licensee may retain Control of a Small Business for such additional period as may be reasonably necessary to complete divestiture of Control or to ensure the financial stability of the portfolio company. SBA seeks to maintain alignment with SBIC licensees and welcomes discussing situations on a case-by-case basis.

In response to public comment, this final rule rescinds the proposed requirement that Accrual SBICs own less than 50 percent of small business concerns at initial financing in an effort to encourage the inclusion of long-term buy-and-build strategies. Proposed changes to § 107.865 are not adopted.

*X. Section 107.1000 Non-leveraged Licensees—Exceptions to this Part*

This regulation identifies exceptions to the regulations for Licensees without Leverage. SBA is implementing regulations to incorporate the term Non-leveraged Licensee as discussed in section II.A. of this rule. There were no comments on this section. This final rule adopts the proposed § 107.1000 without substantial change.

*Y. Section 107.1120 General Eligibility Requirements for Leverage*

This regulation identifies general requirements to be eligible for Leverage. Paragraph (c) references § 107.210 concerning minimum Private Capital requirements. SBA proposed to amend paragraph (c) to incorporate Pub. L. 115–133 by adding an exception to the

$5 million minimum Regulatory Capital requirement if the SBIC was licensed because they are headquartered in an Underlicensed State. As identified in § 107.1150, such Licensees will be limited to Leverage up to 100 percent of Regulatory Capital until they raise $5 million in Regulatory Capital.

One commenter believes benefits associated with Underlicensed States should be limited to those both headquartered in an Underlicensed State and deploying capital to portfolio concerns headquartered in that State. With respect to licensing priority, the Act defines an Underlicensed State as a State in which the number of licensees per capita is less than the median number of licensees per capita for all States—further, the Act provides first priority for SBIC applicants in Underlicensed States with below median financing. Additionally, Pub. L. 115–333 permits Licensees. Changing this language would be inconsistent with statute. This final rule adopts the proposed § 107.1120 without change.

*Z. Section 107.1130 Leverage Fees and Annual Charges*

This regulation identifies the fees and charges associated with SBA guaranteed Leverage. Currently the title identifies Annual Charges as ''additional charges''. SBA proposed changing the title to clarify that the additional charge refers to the Annal Charge as discussed in § 107.50.

Paragraph (d)(1) discusses the Annual Charge required for Debentures, noting that it only applies to Debentures issued on or after October 1, 1996, and that it does not apply to Leverage issued prior to that date. Since all Debentures outstanding were issued on or after October 1, 1996, SBA proposed implementing regulations to remove this language.

SBA further proposed implementing regulations to set the minimum Annual Charge to 0.4 percent or 40 basis points which would be achieved over a number of years. The fiscally responsible administration of the program requires a minimum Annual Charge on outstanding leverage be established to address the long-term variances in losses. The historical losses vary greatly as a result of national economic health and private equity and venture fund vintage year performance. As a consequence, SBA experiences many years in which there are zero or minimal SBIC transfers to liquidation status and a few years in which there are numerous failures with resulting losses to SBA.

The change will protect the government from significant losses, increase the prospects of preserving a zero or negative subsidy cost across program cohorts, enhance the long-term ability of SBA to provide guarantees to SBICs, license more applicants, and indirectly provide greater patient capital to qualifying small businesses.

Two commentors expressed concerns that the 50 basis points (bps) minimum annual charge poses a significant cost to licensees. The average annual charge over the last twenty years is 57 bps. SBA appreciates these concerns, and in response will reduce the minimum annual charge floor to 40 bps and phase in the floor over time for a smooth transition:

- FY24—10 bps
- FY25—20 bps
- FY26—25 bps
- FY27—30 bps
- FY28—35 bps
- FY 29—40 bps (capped floor)

One commenter recommends SBA use a different subsidy model to set Leverage fees and Annual Charges. The SBA appreciates the suggestion and will continue to work with the White House Office of Management and Budgets (OMB) to ensure the subsidy model remains robust and aligned to the requirements of the Federal Credit Reform Act of 1990. It is the objective of SBA to operate the SBIC program at a zero-subsidy rate while achieving the mission and intent of Congress in establishing the program in 1958. SBA has integrated the phased-in annual charge floor schedule into the final regulation and is finalizing § 107.1130.

*AA. Section 107.1150 Maximum Amount of Leverage*

Current § 107.1150 identifies the maximum amount of a Leverage for a Section 301(c) Licensee. SBA approves Leverage commitments for those Licensees that were licensed under the now repealed section 301(d) for Specialized SBICs. SBA proposed implementing regulations to correct the language to apply to all Leveraged Licensees.

Paragraph (a) sets forth the maximum Leverage for an ''Individual Licensee.'' SBA proposed implementing regulations to clarify that per the revised definition of ''Leverage,'' the maximum Leverage includes both the principal and accrued interest associated with the Accrual Debenture. SBA also proposed implementing regulations to add that if a Licensee is headquartered in an Underlicensed State and has less than $5 million in Regulatory Capital, it is limited to one tier of Leverage.

Paragraph (b) sets the maximum Leverage for multiple licensees under Common Control, as defined under § 107.50. SBA is implementing regulations to clarify that similar to the requirements for an ''Individual Licensee,'' the interest associated with the Accrual Debenture will be used to calculate the maximum Leverage across all Licensees under Common Control.

One commenter suggested increasing maximum leveraged capital provided. SBA notes that increasing the maximum amount of leverage available to Licensees is not within the authority of the rulemaking and will require an act of Congress. This final rule adopts the proposed § 107.1150 without change.

*BB. Section 107.1220 Requirement for Licensee To File Quarterly Financial Statements*

This regulation currently requires SBICs with outstanding Leverage commitments to submit quarterly Form 468s within 30 days after the close of each quarter. SBA proposed implementing regulations to clarify that this requirement pertains to all Leveraged Licensees and to allow 45 days after the close of each quarter, commensurate with portfolio valuation due dates as finalized under §§ 107.503 and 107.650. There were no comments on this section. This final rule adopts the proposed § 107.1220 without change.

*CC. Section 107.1830 Licensee's Capital Impairment—Definition and General Requirements*

This regulation currently requires Leveraged Licensees to calculate their capital impairment percentage (''CIP''), identifies the maximum CIP allowable, and requires them to report to SBA if they have a condition of capital impairment. Paragraph (a) currently identifies that this section only applies to leverage issued on or after April 25, 1994, and identifies alternate requirements for Leverage issued prior to that date. Since all Leverage currently held by operating SBICs was issued after April 25, 1994, SBA is removing obsolete language in this paragraph. Section 107.1850 applies to all Leveraged Licensees with outstanding Leverage.

Paragraph (e) requires Licensees to calculate their CIP and notify SBA if they have a condition of capital impairment. Paragraph (f) gives SBA the right to redetermine the CIP at any time. SBA proposed to change this requirement such that SBA will calculate the Licensee's CIP each quarter and notify the SBIC if they are capitally impaired. Since SBA is calculating the CIP, SBA also is implementing regulations to remove paragraph (f).

Two commenters suggested SBA considering public disclosure of Capital Impairment (CIP) results. SBA notes that the Form 468 updates include automatic calculations of both the CIP and leverage coverage ratios. SBA is concerned that public disclosure of CIP ratios (based on SBA's valuation policy which can result in significantly lower valuations than FASB GAAP) might cause unintended harm and violate statutory restrictions on disclosure of SBIC licensee data. SBA is updating theForm 468 which will enable transparency into the overall aggregated SBIC program portfolio investment performance and aggregated SBIC licensed funds' investment performance by strategy and vintage year for the public. SBA believes such industry standard metrics will provide value to the public and, in particular, current and prospective investors in SBIC licensed funds. This final rule adopts the proposed § 107.1830 without change.

*DD. Section 107.1840 Computation of Licensee's Capital Impairment Percentage*

This regulation defines how to compute a Licensee's CIP. Since SBA proposed to calculate the CIP and notify Licensees if they have a condition of Capital Impairment, SBA proposed implementing regulations to make related changes to this regulation.

One commenter concurred with the changes as written. This final rule adopts the proposed § 107.1840 without change.

*EE. Section 107.1845 Determination of Capital Impairment Percentage for Early Stage SBICs*

This regulation defines how to compute an Early Stage SBIC's CIP. Since SBA proposed to calculate the CIP and notify Licensees if they have a condition of Capital Impairment, SBA proposed implementing regulations to make related changes to this regulation.

SBA received no comments on the proposed regulation. This final rule adopts the proposed § 107.1845 without change.

*FF. Section 107.1850 Watchlist*

For more than twenty years, Licensee Leverage default rates have averaged less than 16 percent. While this is a relatively small percentage of Licensees, these Licensees introduce risk to the sustainability of the SBIC program and to SBA. In an effort to proactively identify and manage risk, SBA is implementing regulations to introduce a Watchlist (previously referred to as *Enhanced Monitoring* in the proposed rule). A Licensee can be added to the Watchlist for a series of actions, including but not limited to, bottom quartile performance relative to the Licensee's stated benchmark for more than four consecutive quarters, or reporting failures defined in SBIC program policies and procedures. While on the Watchlist, the Licensee will be required to file Form 1031 on a more frequent basis, and upon request, conduct portfolio review meetings with SBA. The Licensee will be notified when added to the Watchlist upon determination. Once the events that warranted Watchlist status are addressed to SBA's satisfaction, Licensees will be notified that they are removed from the Watchlist. A series of performance metrics will be reviewed collectively to assess a holistic picture of performance. Of those metrics, TVPI or DPI metrics in the bottom quartile for four consecutive quarters relative to the Licensee's primary benchmark for the applicable vintage year can result in a Licensee being added to the Watchlist.

Two commenters disagree with the proposed regulation and believes it should be withdrawn in favor of using existing oversight tools. One commentor also posed suggestions of how to limit watchlist status and suggested giving SBICs early warning and allow challenges in the event that SBA does decide to include watchlist status in the final rule. SBA responds that maintaining the Watchlist does not result in additional enforcement actions and the objective of the proposal is to formalize existing 'watchlist' practices which have existed in SBIC Program Standard Operating Procedures for several years. The goal of the Watchlist is to identify SBICs for which there is potential for concern prior to their reaching violation or default and then increase communication with the licensee to remain aligned on potential steps to ensure sound operations of the licensee to mitigate the risk of a potential default. In that respect, SBA believes that the concept of the Watchlist aligns with the commentor's expressed goal of providing SBICs with 'early warning'. To increase understanding and clarify as to what SBA is proposing in this section, SBA is renaming 'enhanced monitoring' to 'watchlist' consistent with industry best practices and longstanding SBA SBIC Program Standard Operating Procedure guidance.

One commenter disagreed with putting the bottom quartile of SBICs on the Watchlist. SBA clarifies multiple factors and considerations will be assessed as part of the Watchlist process and incorporated these factors and considerations into 13 CFR 107.1850. SBA also clarifies that the bottom quartile of SBICs will not be put on the Watchlist, rather the SBICs that fall in the bottom quartile of the applicable vintage year and investment strategy industry benchmarks, not bottom quartile among the universe of SBIC licensees, will be identified as part of the broader watchlist process.

One commenter requested clarification around the consequences of a fund being on Watchlist status for a prolonged period, and whether SBA is taking other factors into consideration when looking at the bottom quartile, such as capital impairment, operating plan, and the source of the performance issues. SBA clarifies that identification for watchlist does not result in enforcement action. The consequence of a licensee being identified for the Watchlist is increased communication with SBA to ensure alignment of objectives and mitigate the risk of potential future enforcement action.

One commenter suggested SBA should require examinations within an 18-month time period for leveraged Licensees. While SBA sets a goal to examine Leveraged Licensees within an 18-month period, the SBIC is not considered at fault if SBA needs to extend the examination date due to resource issues. SBA does prioritize exams based on credit risk among other factors. SBA updated the regulation to reflect the considerations raised by the commenter related to enforcement and SBAhas replaced ''enhanced monitoring'' with ''watchlist.'' The final rule adopts § 107.1850 substantially as proposed.

*GG. Section 121.103 Small Business Size Regulations: How Does SBA Determine Affiliation?*

In 13 CFR part 121, SBA sets forth size standards and defines a business's size to include the size of the affiliates of the business, subject to certain exceptions. One of these exceptions, § 121.103(b)(5)(vi), applies only to financial, management, and assistance under the Act and is intended to exclude Traditional Investment Companies which includes funds exempt from registration under the 1940 Act from affiliation coverage. As noted above, the term Traditional Investment Companies, generally includes non-profits, in the capacity as the management company of a for-profit fund, and issuers that would be ''investment companies,'' as defined under the Investment Company Act of 1940 (the ''1940 Act''). It also includes all 3(c)(1) and 3(c)(7) private funds not registered under the 1940 Act. This exception to SBA affiliation requirement was provided to allow SBIC Financings with other private equity, private credit, and venture capital funds since co-investment and syndication between such funds is typical and increases the amount of Private Capital available for small businesses. It should be noted that SBA's regulations and determinations are not determinative as to whether a licensed Traditional Investment Company must comply with the 1940 Act.

One commenter supports expanding the size standard exception to include ''qualified purchasers'' because it would conform to the SEC's definition of ''private fund'' that includes both 3(c)(1) and 3(c)(7) funds and offer material relief and clarity to SBICs in applying the SBA size standards when investing in sponsored transactions. The SBA appreciates this support for expanding the size standard exception.

One commenter questioned whether SBA would be able to determine affiliate relationship because 3(c)(7) funds do not have traditional SEC registration or disclosure requirements. SBA responds that these funds are similar to private funds under 3(c)(1) of the 1940 Act which are also exempt from registration except that (i) 3(c)(7) funds are not limited in beneficial owners and (ii) all investors in a 3(c)(7) fund must be qualified purchasers. SBA also notes that since 1996, the regulations have excepted from affiliation coverage 3(c)(1) funds (which are also exempt from registration) and this exception from affiliation coverage has never posed risk to the program. SBICs often invest with others, thereby increasing the amount of capital to these underserved businesses. SBA notes that removing such funds from the exceptions to affiliation coverage would greatly reduce the ability for SBICs to provided needed financings to Small Businesses, which is core to the mission of the program.

SBA received one comment seeking clarification as to the applicability of § 121.103(b), *Exceptions to affiliation coverage,* for Accrual SBICs. SBA confirms that the Agency has historically interpreted 13 CFR 121.103(b)(1) to mean that a Small Business that is owned, in whole or in substantial part, by a Licensee will remain unaffiliated from the Licensee, and confirms that the exception set forth in 13 CFR 121.103(b)(1) applies to Accrual SBICs. SBA is finalizing the proposed Section § 121.103 substantially as proposed.

*HH. Severability*

One comment recommended that SBA include in this rule an express provision addressing the effect of a judicial declaration of invalidity as to any section or portion of this rule or part 107. The question of severability addresses whether a judicial finding of a provision's invalidity should extend to other provisions or applications or whether it should be limited to the invalid provision or application, leaving in effect the remainder of the rule. Like the entirety of part 107, this rule seeks to implement, to the maximum extent possible, the stated congressional purpose of the Act itself—*i.e.,* ''to improve and stimulate the national economy in general and the small-business segment thereof in particular by establishing a program to stimulate and supplement the flow of private equity capital and long-term loan funds which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, and which are not available in adequate supply.'' *See* 15 U.S.C. 661. Although this rule includes numerous enhancements to the SBIC program, most of the individual sections added or modified in this rule, like those which remain in part 107 from prior rulemakings, may operate independently in service of the stated congressional purposes and the objectives set forth above for this rule.

Accordingly, in the event that any portion or application of the rule is declared invalid, SBA intends that the various other provisions and applications of part 107, including those added or modified in this rule, be severable from the unlawful portion, unless such declaration of invalidity renders another section or provision meaningless or deprives that other section or provision of its functionality. Moreover, such collateral invalidity is intended only to the extent required by logic or loss of functionality. Section 107.25 is therefore drafted to express and implement SBA's intent relative to severability within part 107. For example, if a court were to find unlawful this rule's establishment of the Accrual SBIC—a Section 301(c) Licensee which is authorized to issue Accrual Debentures—such finding would have no effect upon this rule's definition of unrelated terms (§ 107.50), its changes to the management-ownership diversification requirements (§ 107.150), its changes to licensee fees (§ 107.300), its provisions for expedited review of subsequent fund applicants (§ 107.305), or various other provisions which in no way are dependent upon the Accrual SBIC or the Accrual Debenture. Such finding would, however, deprive the ''Reinvestor SBIC'' concept of its functionality, since a Reinvestor SBIC is indeed a type of Accrual SBIC (*i.e.,* one which at the time of licensing is authorized to issue Accrual debentures in the execution of a specific investment strategy), and where such a related provision could not ''function sensibly without the stricken provision,'' the invalidity of that related provision would be required as well, *cf. Belmont Mun. Light Dep't* v. *FERC,* 38 F.4th 173, 187–88 (D.C. Cir. 2022), though only in such circumstances. The foregoing is merely an example and does not express an intent that any other provision be considered non-severable. SBA reiterates that where any provision of this part is declared invalid, any collateral invalidity is intended to the least extent necessary, in order to advance program objectives to the maximum extent possible.

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

*A. Executive Order 12866*

The Office of Management and Budget has determined that this rule constitutes a ''significant regulatory action'' under Executive Order 12866, as amended by Executive Order 14094. SBA has drafted a Regulatory Impact Analysis for the public's information below. Each section begins with a core question.

1. Regulatory Objective of the Proposal

Is there a need for this regulatory action?

This final rule is intended to reduce barriers to program participation for funds investing in (i) underserved communities and geographies, (ii) capital intensive investments, and (iii) technologies critical to national security and economic development. In this final rule, SBA is introducing additional types of SBICs (''Accrual'' SBICs and ''Reinvestor'' SBICs) to increase program investment diversification and patient capital financing for small businesses and modernize rules to lower financial barriers to program participation. The new Accrual Debenture allows more flexibility in financing to increase participation of SBICs capable of addressing identified capital access gaps and vulnerability in the U.S. small business segment. Additionally, this final rule introduces a ''Capital Call Line,'' a form of credit line that does not require SBA approval. The aforementioned benefits and attractiveness of the Accrual Debenture will also reduce some of the previously perceived disadvantages to being an SBIC, as opposed to the non-SBIC private market. The revisions to 13 CFR 107.720 should improve the SBIC program's investment diversification and create more program entry points for new fund managers. This final rule also reduces barriers by revising reporting requirements that may allow increased use of valuation policies that are consistent with GAAP. This rule will help SBA implement Executive Order (''E.O.'') 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,'' by reducing financial and time barriers to participate in the SBIC program and modernizing the program's license offerings to align with a more diversified set of funds investing in underserved small businesses. The final rule would also incorporate the statutory requirements under Pub. L. 115–333, titled ''Spurring Business in Communities Act of 2017'', enacted on December 19, 2018.

The Agency believes it is necessary to reduce barriers to participation and diversify its patient capital and long-term loan program for long-term program stability and mission effectiveness. This will simultaneously diversify the sources and types of financing available to underserved small businesses and small businesses manufacturing products and technologies critical to national security and U.S. economic competitiveness. The Agency also believes that to be effective in delivery, it needs to streamline and reduce regulatory burdens to facilitate robust participation in its patient capital and long-term loan program which are responsible for enabling access to capital for underserved U.S. small businesses across the country.

By offering an alternative to a semi-annual interest payment Debenture structure for all SBIC licensees investing in small businesses to help them grow and scale, SBA strives to increase equity and growth capital available to underserved small business owners and unlock equity and equity-like loan financing as sources of funding for many small business owners while still maintaining an expected zero subsidy cost in the program. This alternative structure accommodates a longer horizon for investments in small businesses that might require more patient capital. SBA has confidence this goal will be achieved while continuing to maintain a zero-subsidy based on extensive analysis of the performance of private funds over the last 20 years from Pitchbook and as supported by the *2021 Knight Diversity of Asset Manager Research Series* [1] which found that, ''diverse-owned firms have low levels of representation across each asset class; however, they exhibit returns that are not significantly different than non-diverse-owned firms.'' SBA is revising its Debenture and license regulations in response to continuing requests by SBA's participating SBIC licensees and the public. SBA believes that revising its Debenture and license regulations will result in expansion of access to capital for those who cannot obtain adequate patient capital from traditional sources of funding, while decreasing time and cost associated with applying for an SBIC license. Greater access to capital is bolstered by the revisions enabling SBA to offer a debenture with terms and regulations aligned to the cash flows of a broader base of private funds as well as a reduction in cost burden to apply for and participate in the SBIC Program.

2. Benefits and Costs of the Rule

What Are the Potential Benefits and Costs of this Regulatory Action?

SBA does not anticipate significant additional costs or impact on the subsidy to operate the SBIC program under these final regulations. Since SBA has existing authority to license and provide funding to equity-oriented and debt-oriented private funds, there is no request for additional funding.

Currently, SBICs distribute about $1.5 billion or more per year in profit distributions to Limited Partners. SBA's regulations permit SBICs to distribute profits to Limited Partners without any corresponding repayment of SBA Leverage. SBA is proposing that Accrual SBICs and Reinvestor SBICs pay all accrued interest and annual charges, then repay its Leverage on a pro rata basis (in step) with its Limited Partners. Based on analysis of average cash flows regarding private funds, SBA expects that this will improve the likelihood that SBA will be repaid on the same schedule as Limited Partners regardless of the investment strategy of the Accrual SBIC or Reinvestor SBIC fund.

Under these final regulations, SBA anticipates SBIC program administrative costs to decline over time due to streamlining of regulatory filing and reduction in duplicative data reporting across multiple filings. Furthermore, the final regulations include changes which reduce bureaucratic processes, such as approving the SBIC's Total Intended Leverage Commitment at licensing, reducing SBA approvals for certain conflicts of interest by creating additional safe harbors, and approving GAAP-compliant valuations for Non-leveraged licensees. SBA believes such changes will help SBA improve its response times and enable personnel to focus on customer relationships and monitoring its funds. In revising the SBIC Debenture offering into two categories of Debentures, ''Standard Debenture'' and ''Accrual Debenture,'' available to eligible SBIC licensees under 13 CFR 107.50, SBA anticipates de minimis impact on the subsidy for the SBIC program. Currently, as part of its licensing process, SBA reviews approximately 70 license requests annually and declines 10 to 15 percent (or 8 to 10 requests) due to poor performance, negative diligence and/or regulatory conflict issues. These 70 applications represent the total annual license applications for non-levered and Debenture SBICs combined. Two-thirds of these applications are submitted by entities with existing SBIC licensees requesting a license for a subsequent licensed SBIC fund. The approximate total number of licenses approved annually in the SBIC program is 25. Additionally, federally regulated private equity funds must comply with the requirements from relevant Federal regulating entities. Private equity funds must also abide by the terms of their investor agreements, such as a limited partnership agreement, and fulfill their fiduciary obligation to their investors. Because of these requirements, SBA anticipates these licensed SBIC funds will continue making investment decisions based on their fiduciary responsibility and terms of their investor agreements which limits risk to SBA. Regulated SBIC licensees must comply with the business plan and investor agreements approved by SBA while operating an SBIC license. Licensees will benefit by no longer being required to submit 1031 financing reports within 30-days of financing pursuant to § 107.640, instead filing at the end of each quarter, unless the licensee is subject to the Watchlist, as previously mentioned. This will reduce paperwork and the reporting burden on SBIC licensees. As a result of this revision, SBA expects a decrease in the time required for small businesses to access capital at critical moments, which will in turn help more small businesses grow and scale. Furthermore, these changes will decrease SBA's administrative costs.

[1] Knight Foundation, ''Diversity of Asset Managers Research Series: Industry,'' December 7, 2021.

SBA does not anticipate significant additional costs or impact on the subsidy to operate the SBIC program under the final regulations at 13 CFR 107.50 regarding the accrual license and Accrual Debenture. One Debenture structure limits accessibility to SBA's patient equity and long-term private loan program, with an outsized impact on underserved small business owners who may struggle to access traditional sources of capital. SBA anticipates that providing clear and streamlined regulatory guidance, regulatory fees aligned with the size and scale of SBIC applicants and licensees, and a second Debenture structure to capital access gaps will result in an increase in the number of and diversity of participating SBIC licensees and will result in more underserved small business owners obtaining access to patient equity capital or long-term loans.

3. Alternatives

What alternatives have been considered?

SBA considered eliminating additional regulatory burdens, such as shifting entirely to FASB GAAP-compliant valuation reports, and determined that this final rule strikes the appropriate balance between responsibly streamlining regulations without increasing the risk of waste, fraud, or abuse of the programs or otherwise threatening the integrity of the SBIC program or taxpayer dollars. Possible alternatives included eliminating more regulatory burdens, but such a course would require additional time for SBA to consider the impact of these eliminations. After considering feedback from stakeholders during the public comment period of the notice of proposed rulemaking, SBA qualitatively determined that benefits of a timely issuance of a rule with the included regulatory relief and measures to implement Executive Order 13985 outweighed the benefits of a delay to give the agency more time to consider further eliminations of regulatory burdens. Regarding Debenture instrument structure and license type, SBA has implemented several variations of its SBIC Debentures to increase program alignment and accessibility for new patient capital funds in the past as discussed above, and SBA has determined from these past experiences that the simplest rules finalized herein were the least burdensome.

*B. Executive Order 12988*

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have preemptive effect or retroactive effect.

*C. Executive Order 13132*

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

*D. Executive Order 13175*

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

*E. Executive Order 13563*

1. Did the agency use the best available techniques to quantify anticipated present and future costs when responding to E.O. 12866 (*e.g.,* identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes)?

A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, are included above in the Regulatory Impact Analysis under Executive Order 12866.

2. Public participation: Did the agency: (a) Afford the public a meaningful opportunity to comment through the internet on any proposed regulation, with a comment period that should generally consist of not less than 60 days; (b) provide for an ''open exchange'' of information among Government officials, experts, stakeholders, and the public; (c) provide timely online access to the rulemaking docket on *Regulations.gov;* and (d) seek the views of those who are likely to be affected by rulemaking, even before issuing a notice of final rulemaking?

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

SBA has determined that this final rule would impose additional reporting and recordkeeping requirements under the Paperwork Reduction Act. Generally, this rule is implementing regulations changes to two information collections used in the SBIC program: (1) SBA Form 468, ''SBIC Financial Reports,'' to include GAAP financial performance metrics, the number of jobs sustained and created, and voluntary demographic information at the SBIC management level; and, (2) SBA Form 1031, ''Portfolio Financing Report,'' to decrease the current frequency of reporting on a per-financing basis as-of the date of a financing's close to quarterly reporting of all SBIC financings within a given quarter, no less than 30 days after the calendar year quarter-end.

The title, summary description of the information collection, and the proposed changes to SBA Form 468 and SBA Form 1031 are discussed below with an estimate of the revised annual burden. Included in the estimates are time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

*Title:* Portfolio Financing Report, SBA Form 468 (OMB Control Number 3245–0063).

*Description of Respondents:* Small Business Investment Companies.

*Estimated Number of Respondents:* 406.

*Estimated Annual Responses:* 1,002.

*Estimated Annual Hour Burden:* 24,708.

*Summary:* To obtain the information needed to carry out its oversight responsibilities under the Small Business Investment Act of 1958 (the ''Act''), SBA requires SBICs to submit financial statements and supplementary information on SBA Form 468. SBA uses this information to monitor SBIC financial condition and regulatory compliance, for credit analysis when considering SBIC leverage applications, and to evaluate financial risk and economic impact for individual SBICs and the program as a whole.

Section 310(d)(1)(C)(i) of the Act requires SBICs to submit audited financial statements to SBA at least annually. SBA regulations at 13 CFR 107.630 requires the use of SBA Form 468 when submitting the financial statements and supporting documentation. The information collected is used to determine the creditworthiness of an SBIC when considering its leverage application and to monitor its financial condition after assistance is provided. The information is also used to evaluate an SBIC's compliance with certain regulations, such as the activity requirements in 13

CFR 107.590 and the portfolio diversification requirements in 13 CFR 107.740.

To date, SBA's Form 468 reporting requirements have been tailored to satisfy SBA's specific regulatory and credit risk analytical requirements using SBA's guidelines on accounting principles and valuations. Many SBIC investors request GAAP financial information from SBICs, and SBA understands that all or substantially all SBICs currently prepare data under GAAP principles in addition to under SBA's accounting and valuation guidelines applicable to the SBA Form 468. Therefore, SBA anticipates the addition of GAAP financials in general to have a de minimis impact on calculating burden, as this information would be readily available to SBICs as part of the normal course of business.

Specifically, SBA will be requesting from SBICs on SBA Form 468 the following metrics that SBICs already calculate using GAAP-audited financial data for reports to their private investors: (1) Net Total Value to Paid In Capital (TVPI)—the total distributions, including both cash and distributed securities (valued as of the distribution date) plus the net asset value of a private fund's portfolio net of carried interest and expenses, divided by the capital that has been paid in by investors; (2) Net Distributions to Paid In Capital (DPI)—total distributions, including both cash and distributed securities (valued as of distribution date), a private fund has returned to investors net of fund expenses and carried interest, divided by the amount of money investors have paid into the fund; (3) Multiple on Invested Capital (MOIC)—the total gross realized and unrealized value generated by a private fund's portfolio, divided by the total amount of capital invested into the portfolio concerns by the fund; and, (4) Net Internal Rate of Return (IRR)—the rate at which the private investor cashflows and the unrealized net asset value minus any fund expenses and carried interest are discounted so that the net present value of cashflows equals zero.

Similarly, under this final rule, SBA seeks to obtain GAAP financial data related to valuations in SBA Form 468 supplemental valuation reports, which are currently requested semiannually. Under this final rule, the reporting frequency would increase from semiannually to quarterly to supplement the valuations data SBICs must already report on SBA Form 468 Short Form for quarterly reporting. Many SBIC investors request portfolio company valuations from SBICs using GAAP principles, and SBA understands that all or substantially all SBICs currently prepare such data under GAAP principles in addition to under SBA's valuation guidelines applicable to the SBA Form 468. Therefore, SBA anticipates the addition of GAAP financials in general to have minimal impact on calculating increase to burden, as this information should already be available to SBICs as part of the normal course of business.

Additionally, this final rule would add three new reporting requirements to the SBA Form 468. First, SBA will request the number of jobs sustained and the number of new jobs created per each portfolio company. Currently SBA request the number of employees per financing on SBA Form 1031 with updates per follow-on financings. Under this final rule, SBA seeks to ask for the number of jobs at the time of initial financing (*i.e.,* jobs sustained) with annual updates of new jobs created (or lost) to obtain numbers of net new jobs created as a result of SBIC financings. Second, under this final rule, SBA seeks to request annual management contact and optional demographic information at the SBIC management level. SBA seeks the mandatory updates to management contact information in order to maintain and improve customer relationship between Licensees and SBA Operations Analysts. SBA seeks the voluntary information for reporting purposes to assess the current SBIC program as related to efforts undertaken in this final rule to promote reducing barriers to program participation for new funds and promoting the diversification of SBIC investments. In order to provide consistency on the distribution calculations, SBA seeks to collect the information in a new ''Distribution Schedule'' from Accrual SBICs. These new reporting requirements to the SBA Form 468 seek information that SBICs would have readily available under the normal course of business and therefore should have a de minimis impact on burden per SBIC.

The current annual burden for SBA Form 468 is estimated at 24,708 hours. Based on the current size of the SBIC program, SBA estimates the new reporting requirements to increase the annual hourly burden by 1,950 hours for a total estimated annual burden of 26,658 hours.

*Title:* Portfolio Financing Report, SBA Form 1031 (OMB Control Number 3245–0078).

*Description of Respondents:* Small Business Investment Companies.

*Estimated Number of Respondents:* 316.

*Estimated Annual Responses:* 2,695.

*Estimated Annual Hour Burden:* 728.

*Summary:* To obtain the information needed to carry out its program evaluation and oversight responsibilities, SBA requires SBICs to provide information on SBA Form 1031 each time financing is extended to a Small Business. SBA uses this information to evaluate how SBICs fill market financing gaps and contribute to economic growth and monitor the regulatory compliance of individual SBIC. Currently, SBA regulations require all SBICs to submit a Portfolio Financing Report using SBA Form 1031 for each financing that an SBIC provides to a Small Business within 30 days after closing an investment. Under this final rule, the reporting deadline for SBICs (except those subject to the Watchlist) would change to 30 days after the end of the calendar year quarter (March, June, September, and December) following the closing date of a financing that an SBIC provides to a Small Business, rather than 30 days after the date of each financing. Therefore, there would be no change to the annual burden estimated at 728 hours.

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

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small businesses, small organizations, and small governmental jurisdictions. According to the RFA, when an agency issues a rulemaking, it must prepare a regulatory flexibility analysis to address the impact of the rule on small entities. However, 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.

This final rule likely will not impact a substantial number of small entities relative to the population of existing private market funds and private market asset management companies. This rulemaking will affect only a limited population of existing and potential SBIC Licensees. Small entities affected by this final rule are a unique class comprised of SBIC Licensees. As of March 31, 2022, 294 SBIC Licensees were in operation.[2] SBA estimated that approximately 98 percent of these Licensees were small businesses based on North American Industry Classification System (NAICS) subsector

[2] Small Business Investment Company (SBIC) Program Overview Report for the Quarter Ending March 31, 2022 (*sba.gov*).

code 523 (Securities, Commodity Contracts, and Other Financial Investments and Related Activities) with annual receipts less than $41.5 million. Of these 294 SBICs, 57 were Non-leveraged Licensees. The final rule distinguishes between Leveraged and Non-leveraged Licensees in applicability of some of its changes and other changes apply to all SBICs.

The final rule applies to all SBICs, 98 percent of which SBA estimates are small businesses. SBA estimates that the final rule may affect all of these small businesses. If SBICs are considered as a separate category from the other entities operating in the private equity, credit, and venture funds sector, then the rule does affect a substantial number of small businesses. However, the estimated burden of this final rule, detailed below, of a maximum of approximately $823 per SBIC before consideration of the offsetting cost savings of this final rule, would likely not constitute a significant economic impact on these small businesses, even where the significance threshold is as low as one percent of revenue impacted.

The final rule increases the frequency of filing Form 468 from semiannually to quarterly and requests more information on Form 468. SBA does not expect that these changes related to Form 468 will impose a significant burden because much of the required information is kept in the normal course of business. SBA also notes that the changes related to Form 468 are offset by reductions in other recordkeeping and compliance costs. The first offset is the facilitation of non-leveraged SBICs' use of valuation policies that meet GAAP, which decreases costs of reporting, recordkeeping, and compliance. The final rule's second offset is the ''Capital Call Line'' that provides an exception from SBA's prior approval requirement for some lines of credit, thus reducing those SBICs' compliance costs.

Importantly, this final rule does not directly impact Small Businesses receiving investments, nor any investors or small banks participating in the SBIC Licensee. This final rule regulates the relevant SBIC Licensees. The courts have held that the RFA does not require a regulatory flexibility analysis for entities not directly regulated by the agency's final rulemaking. Thus, SBA is not required to conduct a reflexibility flexibility analysis on potential downstream benefits or costs to those entities.

Even so, this final rulemaking also does not have a significant economic impact on those small entities directly regulated under this final rule. SBA expects the changes in this final rule to increase program participation, access to capital, and diversity of investment strategies. The final rule does not impose significant new compliance requirements to SBIC program participants. The final rule introduces some measures to strengthen risk controls that may impose some reporting and compliance requirements to some program participants. However, these reporting and compliance requirements comprise nominal changes to frequency and content, particularly compared to existing industry standards apart from the SBIC program. The current annual burden for SBA Form 468 is estimated at 24,708 hours. Based on the current size of the SBIC program, SBA estimates the new reporting requirements to increase the annual hourly burden by 1,950 hours for a total estimated annual burden of 26,658 hours. The current annual burden for SBA Form 1031 is estimated at 728 hours per small entity SBIC and because the deadline for reporting would only change to the quarter after the date of financing, rather than 30 days after the date of each financing, there would be no change.

This final rule also defines a new class of Debentures, called Accrual Debentures, that align with cash flows of equity-focused strategies. SBA expects benefits to program participants from this ability to align cash flows but is not able to quantify these benefits.

While SBA is unable to quantify the economic impact on small entities from these various changes, it reasonably expects these changes to not have significant impacts to the small entities that are program participants due to Congress authorizing a $1,000,000,000 increase to the program commitment ceiling in FY2022.

Based on the foregoing, the Administrator of the SBA hereby certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. The SBA invites comments from the public on this certification.

**List of Subjects in 13 CFR Parts 107 and 121**

Investment companies, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

Accordingly, for the reasons stated in the preamble, SBA amends 13 CFR parts 107 and 121 as follows:

## PART 107—SMALL BUSINESS INVESTMENT COMPANIES

■ 1. The authority citation for part 107 is revised to read as follows:

**Authority:** 15 U.S.C. 662, 681–687, 687b–h, 687k–m.

■ 2. Add § 107.25 to read as follows:

**§ 107.25 Severability.**

Any provision of this part held to be invalid or unenforceable as applied to any person, entity, or circumstance shall be construed so as to continue to give the maximum effect to such provision as permitted by law, including as applied to persons or entities not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this part is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this part and shall not affect the remainder thereof.

■ 3. Amend § 107.50 by:
■ a. Adding in alphabetical order the definitions of ''Accrual Debenture,'' ''Accrual Small Business Investment Company (''Accrual SBIC''),'' and ''Annual Charge;''
■ b. Revising paragraph (2) of the definition of ''Associate;''
■ c. Adding in alphabetical order the definition of ''Capital Call Line;''
■ d. Revising the definition of ''Charge'' and paragraphs (3)(i) and (ii) of the definition of ''Control Person;''
■ e. Adding in alphabetical order the definitions of ''Final Licensing Fee,'' ''GAAP'', and ''Initial Licensing Fee;''
■ f. Revising the definition of ''Leverage;''
■ g. Adding in alphabetical order the definitions of ''Leveraged Licensee'' and ''Non-leveraged Licensee;''
■ h. Revising the definition of ''Regulatory Capital;''
■ i. Adding in alphabetical order the definition of ''Reinvestor SBIC;''
■ j. Revising the definition of ''Retained Earnings Available for Distribution;''
■ k. Adding in alphabetical order the definitions of ''Revenue-Based Financing and Revenue-Based Loan'', ''SBIC,'' ''SBIC website,'' ''State,'' ''Total Intended Leverage Commitment,'' ''Total Private Capital Commitment,'' ''Underlicensed State,'' ''Watchlist,'' and ''Wind-down Plan;'' and
■ l. Removing the definition of ''Wind-up Plan.''

The additions and revisions read as follows:

**§ 107.50 Definition of terms.**

*Accrual Debenture* means a Debenture issued at face value that accrues interest over its ten-year term, as to which instrument SBA guarantees both the principal and unpaid accrued interest.

*Accrual Small Business Investment Company (''Accrual SBIC'')* means a Section 301(c) Partnership Licensee, licensed under § 107.300 and approved by SBA to issue Accrual Debentures. Accrual SBICs shall be limited to a maximum of one and one quarter tiers of Leverage.

* * * * *

*Annual Charge* means an annual fee on Leverage which is payable to SBA by Licensees, subject to the terms and conditions set forth in §§ 107.585 and 107.1130(d).

* * * * *

*Associate* * * *

(2) Any Person who owns or controls, or who has entered into an agreement to own or control, directly or indirectly, at least 10 percent of any class of stock of a Corporate Licensee or a limited partner's interest of at least 10 percent of the partnership capital of a Partnership Licensee. However, an entity Institutional Investor, as a limited partner in a Partnership Licensee, is not considered an Associate solely because such Person's investment in the Partnership, including commitments, represents 10 percent or more but less than 50 percent of the Licensee's partnership capital, provided that such investment also represents no more than five percent of such Person's net worth and such limited partner also has no role in the management of the subject Licensee, with no right to control or approve any matter (other than such entity's vote as a limited partner) involving the Licensee.

* * * * *

*Capital Call Line* has the meaning set forth in § 107.550(c).

* * * * *

*Charge* has the same meaning as Annual Charge.

* * * * *

*Control Person* * * *

(3) * * *

(i) Controls or owns, directly or through an intervening entity, at least 30 percent of a Partnership Licensee or any entity described in paragraph (1) or (2) of this definition; and

(ii) Participates in the investment decisions of the general partner of such Partnership Licensee; *provided that,* if at least 30% of Regulatory Capital is unaffiliated and unassociated with management of the Licensee, the management company of the Licensee is a government sponsored non-profit entity, the general partners of the Licensee are bound by a fiduciary duty to the investors in the Licensee, and such members of the general partner may not be hired or removed directly or indirectly by such government sponsor, the management of the Licensee will be deemed to be free from any outside Control; and

* * * * *

*Final Licensing Fee* has the meaning set forth in § 107.300.

* * * * *

*GAAP* means Generally Accepted Accounting Principles as established by the Financial Accounting Standards Board (FASB) and refers to established financial accounting and reporting standards for public and private companies and not-for-profit organizations.

* * * * *

*Initial Licensing Fee* has the meaning set forth in § 107.300.

* * * * *

*Leverage* means financial assistance provided to a Licensee by SBA, either through the purchase or guaranty of a Licensee's Debentures, and any other SBA financial assistance evidenced by a security of the Licensee. For the Accrual Debenture, Leverage includes principal and accrued unpaid interest.

* * * * *

*Leveraged Licensee* means a Licensee which has outstanding Leverage, Leverage commitments, or intends to issue Leverage in the future.

* * * * *

*Non-leveraged Licensee* means a Licensee which has no outstanding Leverage or Leverage commitment, no earmarked assets, and certifies to SBA (in writing) that it will not seek Leverage in the future.

* * * * *

*Regulatory Capital* means:

(1) *General. Regulatory Capital* means Private Capital, excluding non-cash assets contributed to a Licensee or a license applicant and non-cash assets purchased by a license applicant, unless such assets have been converted to cash or have been approved by SBA for inclusion in Regulatory Capital. For purposes of this definition, sales of contributed non-cash assets with recourse or borrowing against such assets shall not constitute a conversion to cash. Regulatory Capital becomes Leverageable Capital when it is paid in.

(2) *Exclusion of questionable commitments.* An investor's commitment to a Licensee is excluded from Regulatory Capital if SBA determines that there is a lack of enforceable legal agreements under United States law or there is an issue of collectability for financial or any other reason, *provided, however,* that the unfunded commitment of an investor that has satisfied the applicable net worth test set forth in the definition of Institutional Investor will not be of questionable collectability (for financial reasons) if the Licensee's limited partnership agreement (or other governing agreement) contains sufficient provisions to ensure collectability.

*Reinvestor SBIC* has the meaning set forth in § 107.720(a)(2).

*Retained Earnings Available for Distribution (READ)* means Undistributed Net Realized Earnings less any Unrealized Depreciation on Loans and Investments (as reported on SBA Form 468) and represents the amount that a Licensee may distribute to investors (including SBA) in accordance with § 107.585 as a profit Distribution, or transfer to Private Capital.

*Revenue-Based Financing* and *Revenue-Based Loan* have the meaning set forth in § 107.810.

* * * * *

*SBIC* means Small Business Investment Company and has the same meaning as ''Licensee'' as set forth in this section.

*SBIC website* means the website maintained by SBA at *www.sba.gov/sbic,* which contains information on the SBIC program, including notices, policies, procedures, and forms pertaining to the program.

* * * * *

*State* means one of the United States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the United States Virgin Islands, the Northern Mariana Islands, and American Samoa.

* * * * *

*Total Intended Leverage Commitment* means the dollar amount or ratio of SBA Leverage commitments to Private Capital commitments. The final Total Intended Leverage Commitment dollar amount applied in the Accrual Debenture SBA Share calculation will be finalized no later than 12 months after licensure or upon the Licensee's final close, whichever occurs first.

*Total Private Capital Commitment* has the meaning set forth in § 107.300.

* * * * *

*Underlicensed State* means a State in which the number of operating licensees per capita is less than the median number of operating licensees per capita for all States, where the per capita per State is based on the most recent resident population published by the U.S. Census as of the date of the calculation. SBA publishes a notice with the current list of Underlicensed States on the SBIC website.

* * * * *

*Watchlist* has the meaning set forth in § 107.1850.

*Wind-down Plan* has the meaning set forth in § 107.590.

■ 4. Amend § 107.150 by:
■ a. Revising the section heading;
■ b. In paragraph (a), revising the heading and adding a parenthetical sentence at the beginning of the introductory text; and
■ c. Revising paragraphs (b)(1) and (2), the second sentence of paragraph (c)(1), and paragraph (c)(2).

The revisions and addition read as follows:

**§ 107.150 Management-ownership diversification requirement.**

(a) *Diversification requirement.* (Also referenced in this part as the ''diversity requirement.'') * * *

* * * * *

(b) * * *

(1) *General rule.* Except as provided in paragraph (b)(2) of this section, no Person or group of Persons who are Affiliates of one another may own, directly or indirectly, more than 70 percent of your Regulatory Capital or your Leverageable Capital.

(2) *Exception.* An investor that is a Traditional Investment Company, as determined by SBA, may own more than 70% of a Licensee's Regulatory Capital and Leverageable Capital. A Traditional Investment Company may also serve as the management company of an SBIC owning and control more than 70 percent of the Licensee's Regulatory Capital and Leverageable Capital. A non-profit entity which is a Traditional Investment Company may only serve as the management company of a Licensee and, unlike other Traditional Investment Companies, is limited to no more than 70% of the Licensee's Regulatory and Leverageable Capital. A Licensee must be a for-profit entity. In determining whether a firm is a Traditional Investment Company for purposes of this section, SBA will also consider:

(i) The degree to which the managers of the firm are unrelated to and unaffiliated with the investors in the firm or non-profit entity.

(ii) Whether the managers of the firm are authorized and motivated to make investments that, in their independent judgment, are likely to produce significant returns to all investors in the firm or non-profit entity.

(iii) Whether the firm or non-profit entity serving as the management company of a for-profit SBIC benefits from the use of the SBIC through the financial performance of the SBIC.

(iv) Other related factors.

(c) * * *

(1) * * * Such Persons must not be your Associates (except for their status as your shareholders, limited partners, or members). * * *

(2) *Look-through for Traditional Investment Company investors.* SBA, in its sole discretion, may consider the requirement in paragraph (c)(1) of this section to be satisfied if at least 30 percent of your Regulatory Capital and Leverageable Capital is owned and controlled indirectly, through a Traditional Investment Company, by Persons unaffiliated with your management.

* * * * *

■ 5. Amend § 107.210 by:
■ a. Removing the phrase ''Wind-Up Plan'' in paragraph (a) introductory text and adding in its place the phrase ''Wind-down Plan'';
■ b. Revising paragraph (a)(1) introductory text;
■ c. Removing paragraph (a)(2);
■ d. Redesignating paragraph (a)(3) as paragraph (a)(2).

The revision reads as follows:

**§ 107.210 Minimum capital requirements for Licensees.**

(a) * * *

(1) *Licensees other than Early Stage SBICs.* Except for Early Stage SBICs, a Licensee must have Regulatory Capital of at least $5,000,000. As an exception to the general rule in this paragraph (a)(1), SBA in its sole discretion and based on a showing of special circumstances and good cause, which includes applicants that are headquartered in an Underlicensed State, may license an applicant with Regulatory Capital of at least $3,000,000, but only if the applicant:

* * * * *

■ 6. Revise § 107.300 to read as follows:

**§ 107.300 License application form and fee.**

SBA evaluates license applicants, giving first priority to applicants headquartered in Underlicensed States with below median SBIC Financing dollars per State, as determined by SBA and published periodically in a notice on the SBIC website. Once priority is established, such applicants will continue to receive priority throughout the licensing process. SBA reviews and processes applications in two review phases (initial review and final licensing), as follows:

(a) *Initial review.* Except as provided in this paragraph (a), SBIC applicants must submit a Management Assessment Questionnaire (''MAQ'') c and the Initial Licensing Fee, as defined in paragraph (c) of this section. An applicant under Common Control with one or more Licensees must submit a written request to SBA, and the Initial Licensing Fee, to be considered for a license and is exempt from the requirement in this paragraph (a) to submit a MAQ, unless otherwise determined by SBA in SBA's discretion. Eligible ''Expedited Subsequent Funds'' as described in § 107.305(e) are permitted to submit a streamlined ''Short-Form'' Subsequent Fund MAQ.

(b) *Final licensing.* An applicant may proceed to the final licensing phase only if notified in writing by SBA that it may do so. Following receipt of such notice, in order to proceed to the final licensing phase, the applicant must submit a complete license application with all required appendices, within the timeframe identified by SBA and the Final Licensing Fee, as defined in paragraph (c) of this section. If you are seeking to be licensed as a Leveraged Licensee and SBA approves your License, SBA will also approve your Total Intended Leverage Commitment amount and ratio as defined in § 107.50 based on the target fund size stated in the MAQ, which means the total Leverage commitments available to you for the life of your SBIC, subject to the provisions of §§ 107.320 and 107.1150. A Licensee is permitted to hold multiple fund closings within and for up to 12 months of receiving a License to reach the target fund size. SBA will then determine the final Total Intended Leverage Commitment which is either the dollar amount or ratio to targeted Private Capital provided at the Green Light. SBA will determine the Total Private Capital Commitment (defined as the total Private Capital committed to a Licensee within 12 months after licensure or upon the Licensee's final closing, whichever occurs first) amount for the Accrual Debenture SBA Share calculation.

(c) *Licensing Fees.* SBIC Initial and Final Licensing Fees are non-refundable fees determined as set forth in paragraphs (c)(1) and (2) of this section.

(1) *Initial Licensing Fee.* The Initial Licensing Fee is based on the applicant's fund sequence, where the fund sequence means the order of succession of private equity or private credit funds for the same fund management team and same strategy. SBA will determine the applicant's fund sequence based on the management team's composition and experience as a team. The Initial Licensing Fees are as follows:

TABLE 1 TO PARAGRAPH (c)(1)

| Fund sequence | Initial licensing fee |
|---|---|
| Fund I | $5,000 |
| Fund II | 10,000 |

TABLE 1 TO PARAGRAPH (c)(1)—Continued

| Fund sequence | Initial licensing fee |
|---|---|
| Fund III | 15,000 |
| Fund IV+ | 20,000 |

*Example 1 to paragraph (c)(1):* If the management team members of applicant DEF I consists primarily of the same team members of fund ABC II and ABC II represented the second fund for those team members, SBA will consider the fund sequence of DEF I as a Fund III, regardless of the number in the applicant's name.

(2) *Final Licensing Fee.* The Final Licensing Fee is calculated as the Final Licensing Base Fee plus 1.25 basis points multiplied by the Leverage dollar amount requested by the applicant, where the Final Licensing Base Fee is based on the applicant's Fund Sequence as follows:

TABLE 2 TO PARAGRAPH (c)(2)

| Fund sequence | Final licensing base fee |
|---|---|
| Fund I | $10,000 |
| Fund II | 15,000 |
| Fund III | 25,000 |
| Fund IV+ | 30,000 |

(3) *Resubmission Penalty Fee.* The Resubmission Penalty Fee means a $10,000 penalty fee assessed to an applicant that has previously withdrawn or is otherwise not approved for a license that must be paid *in addition* to the Initial and Final Licensing Fees at the time the applicant resubmits its application.

(4) *Inflation Adjustments.* SBA annually adjusts the Initial Licensing Fee, Final Licensing Base Fee, and Resubmission Penalty Fee using the Inflation Adjustment and will publish notification prior to such adjustment in the **Federal Register** identifying the amount of the fees.

■ 7. Amend § 107.305 by:

■ a. Revising paragraphs (a), (b), and (c);

■ b. Adding a heading to paragraph (d); and

■ c. Adding paragraph (e).

The revisions and additions read as follows:

**§ 107.305 Evaluation of license applicants.**

* * * * *

(a) *Management qualifications.* Management qualifications, including demonstrated investment skills and experience as a principal investor, or a combination of investment skill and relevant industry operational experience; business reputation; adherence to legal and ethical standards; record of active involvement in making and monitoring investments and assisting portfolio companies; managing a regulated business, if applicable; successful history of working as a team; and experience in developing appropriate processes for evaluating investments and implementing best practices for investment firms.

(b) *Demonstrated investment acumen.* Performance of proposed investment team's prior relevant industry investments as well as any supporting operating experience, including investment returns measured both in percentage terms and in comparison to appropriate industry benchmarks; the extent to which investments have been realized as a result of sales, repayments, or other exit mechanisms; evidence of previous investment or operational experience contributing to U.S. domestic job creation and, when applicable, demonstrated past adherence to statutory and regulatory SBIC program requirements.

(c) *Strategy and fit.* Applicant's proposed investment strategy as presented in its business plan, including adherence to the Statement of Policy as stated in section 102 of the Act, clarity of objectives; strength of management's rationale for pursuing the selected strategy; compliance with this part and applicable provisions of part 121 of this chapter; fit with management's skills and experience; and the availability of sufficient resources to carry out the proposed strategy. As determined by SBA, a Licensee may not materially deviate from the proposed investment strategy after three years of Licensure.

(d) *Structure and economics.* * * *

(e) *Subsequent fund applicants.* (1) Applicants operating an active Licensee that meet the following eligibility criteria can apply under an ''Expediated Subsequent Fund'' evaluation process. Should an applicant fulfill and formally attest to meeting all of the following eligibility criteria, the applicant can apply for an ''Expediated Subsequent Fund'' evaluation process:

(i) *Consistent strategy and fund size.* Targeted Regulatory Capital to be raised is ≤133% the size of their most recent SBIC fund (inflation adjustments will be considered). Same asset class and investment strategy as most recent license.

(ii) *Clean regulatory history.* No major findings, significant ''other matters,'' or unresolved ''other matters'' related to licensees managed by the principals of applicant in the previous ten years.

(iii) *Consistent limited partnership (LP)-general partnership (GP) dynamics.* No new limited partner will represent ≥33% of the Private Capital of the licensee upon reaching final close at target fund size or hard cap. The two largest investors in terms of committed capital have verbally committed to invest in the new fund pending receipt of license. The most recent limited partnership agreement (LPA) of the active Licensee and all side letters will have no substantive changes for the applicant fund.

(iv) *Investment performance stability.* The most recent licensee net distributions to paid-in capital (DPI) and net total value to paid-in capital (TVPI) TVPI are at or above median vintage year and strategy performance benchmarks for the prior three quarters. The principals of the applicant are not managing a licensee in default or with high Capital Impairment (CIP).

(v) *Consistent or reduced leverage management.* The applicant is requesting a leverage to Private Capital ratio ≤ the current or most recent SBIC licensee at target fund size or hard cap.

(vi) *Firm stability.* Subject to SBA's determination, no material changes to the broader firm, to include resignations, terminations, or retirements by members of the general partnership, investment committee, broader investment team, or key finance and operations personnel, subject to paragraph (e)(1)(vii) of this section.

(vii) *Promotions from within.* Demonstration of promoting internal investment team talent from within the firm/organization sponsoring the license.

(viii) *Inclusive equity.* Demonstration of appropriate/increased sharing of carry and/or management company economics with promoted talent or distribution of equitable or increasingly equitable economics among the partnership.

(ix) *Federal Bureau of Investigation (FBI) criminal and Internal Revenue Service (IRS) background check no findings.* The sponsoring entity and all principals of the Licensee do not have an FBI criminal record and do not have IRS violations from the date of their most recent SBIC fund licensure.

(x) *No outstanding or unresolved material litigation matters.* No outstanding or unresolved litigation matters involving allegations of dishonesty, fraud, or breach of fiduciary duty or otherwise requiring a report under § 107.660(c) or (d) as to a prior Licensee, the prospective Applicant's general partner, or any other person who was required by SBA to complete a personal history statement in connection with the license application.

(xi) *No outstanding tax liens.* On the principals applying to manage the licensee, on the most recent or active licensee, and on the sponsoring entity of the licensee.

(2) Should an applicant fulfill and formally attest to meeting all of the eligibility criteria in paragraph (e)(1) of this section, the applicant can submit a streamlined ''Short-Form Subsequent Fund MAQ''.

■ 8. Revise § 107.320 to read as follows:

### § 107.320 Leverage portfolio diversification.

To minimize ''cost'' as defined in section 502(5)(A) of the Federal Credit Reform Act of 1990, SBA reserves the right to maintain broad diversification to mitigate concentration of investment risk in approving Leverage commitments for Leveraged Licensees with respect to:

(a) The year in which they commence operations;

(b) The geographic location (giving first priority to applicants from Underlicensed States with below median SBIC Financing dollars per State); and

(c) The asset class and investment strategy.

■ 9. Revise § 107.501 to read as follows:

### § 107.501 Identification.

(a) *Publication upon issuance.* SBA shall publish in the **Federal Register** the names of SBICs with date of licensure and Total Intended Leverage Commitments approved within 30 days of the end of the month of licensure.

(b) *Identification as a Licensee.* You must display your SBIC license in a prominent location. You must also have a listed telephone number. Before collecting an application fee or extending Financing to a Small Business, you must obtain a written statement from the concern acknowledging its awareness that you are ''a Federal licensee under the Small Business Investment Act of 1958, as amended.''

■ 10. Amend § 107.503 by:

■ a. Revising the last sentence of paragraph (a);

■ b. Adding a sentence at the end of paragraph (b)(2); and

■ c. Revising paragraphs (d)(1) and (4).

The revisions and addition read as follows:

### § 107.503 Licensee's adoption of an approved valuation policy.

(a) * * * These guidelines may be obtained from the SBIC website.

(b) * * *

(2) * * * If you are or applying to be a Non-leveraged Licensee, SBA will generally approve a valuation policy that meets GAAP.

* * * * *

(d) * * *

(1) If you are a Leveraged Licensee, you must value your Loans and Investments at the end of each quarter of your fiscal year, and at the end of your fiscal year.

* * * * *

(4) You must report material adverse changes in valuations at least quarterly, within forty-five days following the close of the quarter.

* * * * *

■ 11. Revise § 107.504 to read as follows:

### § 107.504 Equipment and office requirements.

(a) *Technology.* You must have access to technology to securely send and receive emails, scan documents, and prepare and submit electronic information and reports required by SBA.

(b) *Accessible office.* You must maintain an office that is open to the public during normal working hours.

■ 12. Revise § 107.550 to read as follows:

### § 107.550 Prior approval of secured third-party debt of Leveraged Licensees.

(a) *Definition.* In this section, *secured third-party debt* means any non-SBA debt secured by any of your assets, including secured guarantees and other contingent obligations that you voluntarily assume, and secured lines of credit.

(b) *General rule.* If you are a Leveraged Licensee, you must get SBA's written approval before you incur any secured third-party debt or refinance any debt with secured third-party debt, including any renewal of a secured line of credit, increase in the maximum amount available under a secured line of credit, or expansion of the scope of a security interest or lien. For purposes of this paragraph (b), ''expansion of the scope of a security interest or lien'' does not include the substitution of one asset or group of assets for another, provided the asset values (as reported on your most recent annual Form 468) are comparable.

(c) *Capital Call Line.* Without obtaining SBA's written approval, a Leveraged Licensee may obtain from a federally regulated financial institution, a line of credit (''Capital Call Line'') that meets all of the following conditions:

(1) The maximum amount available under the Capital Call Line is no more than your unfunded Regulatory Capital, as reflected on your most recent Capital Certificate;

(2) Your payment obligations under the Capital Call Line may be secured, but only by your unfunded Regulatory Capital;

(3) The lender under the Capital Call Line may have a right to debit your depository account(s) at the lender's institution, so long as such lender's right to debit is limited to circumstances involving a default of your obligation to pay principal, interest, or fees due (''Payment Default'') under the Capital Call Line and only to the amount of such Payment Default;

(4) Each borrowing under the Capital Call Line must be repaid, in full, within 120 days after it is drawn;

(5) The term of the Capital Call Line may not exceed 12 months, but may be renewable, provided that each renewal does not exceed 12 months and you remain in compliance with the conditions of this paragraph (c); and

(6) Consistent with § 107.410, the Capital Call Line contains no provision permitting the lender to dictate when capital calls are made or otherwise ceding to the lender any control of the Licensee or its operations; provided, however, that the Capital Call Line may include a provision authorizing the lender, in the event of a Payment Default, to endorse, on your behalf, checks and other forms of payment in the Lender's possession and to apply the proceeds of such instruments to such Payment Default, with unapplied and remaining proceeds promptly to be paid to you.

(d) *Conditions for SBA approval.* Excluding Capital Call Lines defined in paragraph (c) of this section, SBA approval is required for secured third-party debt. As a condition of granting such approval under this section, SBA may impose such restrictions or limitations as it deems appropriate, taking into account your historical performance, current financial position, proposed terms of the secured debt and amount of aggregate debt you will have outstanding (including Leverage). SBA will not favorably consider any requests for approval which include a blanket lien on all your assets, or a security interest in your investor commitments in excess of 125 percent of the proposed borrowing.

### § 107.570 [Removed and Reserved]

■ 13. Remove and reserve § 107.570.

■ 14. Revise the undesignated center heading directly preceding § 107.585 and § 107.585 to read as follows:

**Distributions and Reductions in Regulatory Capital**

**§ 107.585 Distributions and reductions in Regulatory Capital.**

(a) *Non-leveraged Licensees.* If you are a Non-leveraged Licensee, you may make distributions to your private investors without SBA prior approval. At all times, you must retain sufficient Regulatory Capital to meet the minimum capital requirements in the Act and in § 107.210, unless such amounts are in accordance with your SBA approved Wind-down Plan (see § 107.590). You must report any reductions of Regulatory Capital to SBA within 30 days via an updated Capital Certificate (see § 107.300).

(b) *Non-Accrual Leveraged Licensees.* If you are a Standard Debenture Leveraged Licensee that is also an Early Stage SBIC, you are subject to the distributions identified in § 107.1180. If you are a Standard Debenture Leveraged Licensee, you may distribute READ to your private investors without SBA approval only after considering any material adverse changes to your portfolio. You must obtain SBA's prior written approval to reduce your Regulatory Capital by more than two percent in any fiscal year. Such approved reduction amount may, for a period of five years after the reduction, be included in the sum determined under § 107.740(a). In seeking SBA's prior written approval, you must disclose any material adverse changes or certify that you have no material adverse changes and provide an updated Wind-down Plan. You must retain sufficient Regulatory Capital to meet the minimum capital requirements of § 107.210 and sufficient Leverageable Capital to avoid having excess Leverage in violation of section 303 of the Act and § 107.1150. You must report any reductions of Regulatory Capital to SBA within 30 days via an updated Capital Certificate (see § 107.300).

(c) *Accrual SBICs and Reinvestor SBICs.* If you are an Accrual SBIC or Reinvestor SBIC, unless you receive prior approval from SBA for the purposes of covering a tax distribution you may only distribute as follows:

(1) *Payment of Annual Charges and Accrued Interest.* Prior to any distributions to your private investors, you must pay to SBA any Annual Charges and all accrued interest on outstanding Leverage at the next available repayment window but no later than six months following a distribution to your private investors. Within six months of any non-tax distribution to your private investors, you must pay any Annual Charges owed to SBA and all accrued interest on your outstanding Leverage.

(2) *Calculate SBA's share of distribution.* Within six months of any non-tax distribution to your private investors, you must make payments to SBA on a pro rata basis with any distributions to your private investors based on your SBA Total Intended Leverage Commitment relative to your Total Private Capital Commitments, inclusive of Qualified Non-Private Funds, determined within 12 months of Licensure calculated as follows: SBA's Share = Total Distributions × [Total Intended Leverage Commitment/(Total Intended Leverage Commitment + Total Private Capital Commitments)] where:

(i) Total Distributions means the total amount of distributions (whether profit or return of capital) you intend to make after paying all accrued interest and Annual Charges plus any prior tax distributions.

(ii) Total Intended Leverage Commitment is as defined in § 107.300.

(iii) Total Private Capital Commitments is as defined in § 107.300.

(3) *Apply SBA Share.* You must repay SBA outstanding Leverage in an amount no less than SBA's Share to the extent of Outstanding Leverage and report the SBA calculation to SBA. If SBA's Share is greater than Outstanding Leverage and you have unfunded Leverage commitments, you must submit a Leverage commitment cancellation equal to SBA's Share minus the SBA Leverage redemption up to the unfunded Leverage commitments.

(4) *Distribute to private investors.* You must report SBA's Share calculation to SBA prior to distributing READ to your private investors without SBA approval and only after considering any adverse changes to your portfolio. You must pay Annual Charges to SBA prior to distributing READ. After repaying all accrued interest, Annual Charges, and outstanding Leverage calculated as SBA's Share, you may distribute READ to your private investors without SBA approval only after considering any adverse changes to your portfolio. You must obtain SBA's prior written approval to reduce your Regulatory Capital by more than two percent in any fiscal year. Such approved reduction amount may, for a period of five years after the reduction, be included in the sum determined under § 107.740(a). In seeking SBA's prior written approval, you must disclose any material adverse changes or certify that you have no material adverse changes and provide an updated Wind-down Plan. You must retain sufficient Regulatory Capital to meet the minimum capital requirements of § 107.210 and sufficient Leverageable Capital to avoid having excess Leverage in violation of section 303 of the Act and § 107.1150. You must report any reductions of Regulatory Capital to SBA within 30 days. Prior to any reduction in Regulatory Capital, if you have made a tax distribution, you must make a distribution to SBA pursuant to the formula set forth in paragraph (c)(2) of this section, as if you had made a non-tax distribution.

(5) *Report distribution to SBA.* You must report to SBA the distribution, the calculations, and the amounts distributed to each party as part of your annual and quarterly Form 468 (see §§ 107.630 and 107.1220).

*Example 1 to paragraph (c):* Your Total Intended Leverage Commitment is $50 million, and your Total Private Capital Commitments are $25 million. You currently have $25 million in Outstanding Leverage, $25 million in unfunded Leverage commitments, and $15 million in Leverageable Capital. You owe $1 million in accrued interest and Annual Charges. You have $61 million to distribute.

*Step 1:* Payment of Annual Charges and all accrued interest. You would first pay the $1 million in accrued interest and Annual Charges.

*Step 2:* Calculate SBA's Share of Distribution. SBA's share is calculated as: $60 million × [$50 million/($50 million + $25 million)] = $40 million.

*Step 3:* Apply SBA Share. You would repay $25 million in Outstanding Leverage and cancel $15 million of your unfunded Leverage commitments.

*Step 4:* Distribute to Private Investors. You would distribute $35 million to Private Investors.

*Step 5:* Report Distribution to SBA. You would then report the distribution to SBA, detailing the amounts and calculations from steps 1 through 4 of this example 1.

**§ 107.590 [Amended]**

■ 15. Amend § 107.590 in paragraph (c) introductory text by removing the phrase ''Wind-up Plan'' wherever it appears and adding in its place the phrase ''Wind-down Plan''.

■ 16. Amend § 107.620 by:

■ a. Redesignating paragraphs (b)(2) through (4) as paragraphs (b)(3) through (5), respectively; and

■ b. Adding a new paragraph (b)(2).

The addition reads as follows:

**§ 107.620 Requirements to obtain information from Portfolio Concerns.**

* * * * *

(b) * * *

(2) Demographic information on the Portfolio Concern's ownership is

requested for reporting purposes only and is on a voluntary basis.

* * * * *

■ 17. Amend § 107.630 by revising the last sentence of paragraph (a) introductory text and paragraph (d) and adding paragraph (e) to read as follows:

**§ 107.630 Requirement for Licensees to file financial statements with SBA (Form 468).**

(a) * * * You must file Annual Form 468 within 90 calendar days of the end of your fiscal year.

* * * * *

(d) *Reporting of economic impact information on Form 468.* Your annual filing of SBA Form 468 must include an assessment of the economic impact of each Financing, specifying the full-time equivalent net jobs created and total jobs created or retained, and the impact of the Financing on the revenues and profits of the business and on taxes paid by the business and its employees.

(e) *Fund management contact and optional demographic information.* The Licensee shall provide and update management contact information. Demographic information is requested for reporting purposes only and on a voluntary basis.

■ 18. Revise § 107.640 to read as follows:

**§ 107.640 Requirement to file Portfolio Financing Reports (SBA Form 1031).**

For each Financing of a Small Business (excluding guarantees), you must submit a Portfolio Financing Report on SBA Form 1031 within 30 calendar days of the end of the calendar year quarter (March, June, September, and December) following the closing date of the Financing. SBA also permits Form 1031s for portfolio company financings to be disaggregated and submitted individually for each portfolio company within 30 days of the closing of a Financing or otherwise submitted on a more frequent basis. If you are on the Watchlist, SBA may require more frequent reporting (see § 107.1850).

■ 19. Revise § 107.650 to read as follows:

**§ 107.650 Requirement to report portfolio valuations to SBA.**

You must determine the value of your Loans and Investments in accordance with § 107.503. You must report such valuations to SBA within 90 calendar days of the end of the fiscal year in the case of annual valuations, and if you are a Leveraged Licensee within 45 calendar days following the close of other reporting periods. You must report material adverse changes in valuations at least quarterly, within 45 calendar days following the close of the quarter.

■ 20. Amend § 107.660 by revising paragraph (a) to read as follows:

**§ 107.660 Other items required to be filed by Licensee with SBA.**

(a) *Reports to owners.* You must give SBA a copy of any report you furnish to your investors, including any prospectus, quarterly or annual valuation data, materials presented to investors during any meetings (including any annual meeting), fund management demographic information, letter, or other publication concerning your financial operations or those of any Portfolio Concern no later than 30 calendar days after you submit the report to your private investors.

* * * * *

■ 21. Amend § 107.720 by revising paragraphs (a)(2) and (i)(1) to read as follows:

**§ 107.720 Small Businesses that may be ineligible for financing.**

(a) * * *

(2) *Exceptions*—(i) *Reinvestor SBICs. Reinvestor SBIC* means a Section 301(c) Partnership licensed as a Reinvestor SBIC under § 107.300 and approved by SBA at the time of licensing to issue Accrual Debentures and shall provide a meaningful percentage of Equity Capital Investments to underserved Small Business reinvestors (except banks, savings and loans not insured by agencies of the Federal Government, and agricultural credit companies) that make direct financings solely to Small Businesses with at least 50% of employees in the United States, Small Businesses Concerns headquartered in the United States, owned and controlled by United States citizens and/or entities, and Small Businesses eligible for investment based on SBA size standards defined in § 121.301 of this chapter or SBIC alternative size standards defined in § 121.301(c) of this chapter at the time of initial investment. SBA may require that each Reinvestor SBIC obtain from each such Small Business reinvestor a written agreement that such Small Business reinvestor has only provided and will only provide financing in compliance with this paragraph (a)(2)(i) and will provide to such Reinvestor SBIC information reasonably necessary to verify compliance with this paragraph (a)(2)(i).

(ii) *Equity Capital Investments to Disadvantaged Businesses.* Licensees may provide Equity Capital Investments to Disadvantaged Businesses that are relenders or reinvestors (except banks or savings and loans not insured by agencies of the Federal Government, and agricultural credit companies).

* * * * *

(i) * * *

(1) To purchase stock in or provide capital to a Licensee, provided that a Reinvestor SBIC is permitted to make Equity Capital Investments in Non-leveraged Licensees.

* * * * *

■ 22. Amend § 107.730 by:

■ a. Revising paragraphs (a)(1) and (d)(3)(iii); and

■ b. Removing paragraph (d)(3)(iv).

The revisions read as follows:

**§ 107.730 Financings which constitute conflicts of interest.**

(a) * * *

(1) Provide Financing to any of your Associates, except for when the Small Business that receives the Financing is your Associate, pursuant to paragraph (8)(ii) of *Associate* as defined in § 107.50, only because an investment fund that is your Associate holds a 10% or greater equity interest in the Small Business and either of the following conditions is met:

(i) You and the Associate investment fund previously invested in the Small Business at the same time and on the same terms and conditions; and you and the Associate investment fund are providing follow-on financing to the Small Business at the same time, on the same terms and conditions, and in the same proportionate dollar amounts as your respective investments in the previous round(s) of financing.

*Example 1 to paragraph (a)(1)(i):* If you invested $2 million and your Associate invested $1 million in the previous round, your respective follow-on investments would be in the same 2:1 ratio.

(ii) An independent third party is investing in the Small Business at the same time as the Licensee and on the same terms and conditions as the Licensee and represents a significant portion of the Financing; provided, that if the Licensee has a prior Financing in such Small Business, a Licensee's position in such prior Financing may not be diminished or diluted to the benefit of an Associate.

* * * * *

(d) * * *

(3) * * *

(iii) You are a Non-leveraged Licensee, and your Associate either is not a Licensee or is a Non-leveraged Licensee.

* * * * *

■ 23. Revise § 107.810 to read as follows:

**§ 107.810 Financing in the form of Loans.**

You may make Loans to Small Businesses. A Loan means a transaction evidenced by a debt instrument with no provision for you to acquire Equity Securities. Loans may include Revenue-Based Financing or Revenue-Based Loans in which you provide financing to a Small Business in exchange for a percentage of the Small Business's anticipated future revenue which shall not exceed 19% of the Small Business's annual gross revenue.

■ 24. Amend § 107.830 by revising paragraph (c)(2) to read as follows:

**§ 107.830 Minimum duration/term of financing.**

* * * * *

(c) * * *

(2) *Prepayment.* You must permit voluntary prepayment of Loans and Debt Securities by the Small Business. You must obtain SBA's prior written approval of any restrictions on the ability of the Small Business to prepay other than the imposition of a reasonable prepayment penalty under paragraph (c)(3) of this section. For purposes of evaluating prepayment restrictions under this section, requirements to apply prepayments pro rata among a group of lenders participating in such Financing that is pari passu in rights to payment will not be deemed to constitute a restriction on prepayments.

* * * * *

■ 25. Amend § 107.1000 by revising the section heading and introductory text to read as follows:

**§ 107.1000 Non-leveraged Licensees—exceptions to this part.**

The regulatory exceptions in this section apply to Non-leveraged Licensees.

* * * * *

■ 26. Amend § 107.1120 by revising paragraph (c)(1) to read as follows:

**§ 107.1120 General eligibility requirements for Leverage.**

* * * * *

(c) * * *

(1) If you were licensed after September 30, 1996, under the exception in § 107.210(a)(1), you will not be eligible for Leverage until you have Regulatory Capital of at least $5,000,000, unless you were licensed because you are headquartered in an Underlicensed State.

* * * * *

■ 27. Amend § 107.1130 by revising the section heading and paragraph (d)(1) to read as follows:

**§ 107.1130 Leverage fees and Annual Charges.**

* * * * *

(d) * * *

(1) *Debentures.* You must pay to SBA an Annual Charge, not to exceed 1.38 percent per annum, on the outstanding amount of your Debentures, payable under the same terms and conditions as the interest on the Debentures. For Leverage issued pursuant to Leverage commitments approved on or after October 1, 2023, the Annual Charge, established and published, shall not be less than 0.10 percent per annum, subject to the following provisions:

(i) For Leverage issued pursuant to Leverage commitments approved on or after October 1, 2024, the Annual Charge, established and published, shall not be less than 0.20 percent per annum.

(ii) For Leverage issued pursuant to Leverage commitments approved on or after October 1, 2025, the Annual Charge, established and published, shall not be less than 0.25 percent per annum.

(iii) For Leverage issued pursuant to Leverage commitments approved on or after October 1, 2026, the Annual Charge, established and published, shall not be less than 0.30 percent per annum.

(iv) For Leverage issued pursuant to Leverage commitments approved on or after October 1, 2027, the Annual Charge, established and published annually, shall not be less than 0.35 percent per annum.

(v) For Leverage issued pursuant to Leverage commitments approved on or after October 1, 2028, the Annual Charge, established and published annually, shall not be less than 0.40 percent per annum.

* * * * *

■ 28. Amend § 107.1150 by:

■ a. Revising the section heading;

■ b. Removing the phrase ''Section 301(c) Licensee'' in the introductory text and adding in its place the phrase ''Leveraged Licensee''; and

■ c. Revising paragraphs (a) and (b).

The revisions read as follows:

**§ 107.1150 Maximum amount of Leverage.**

* * * * *

(a) *Individual Licensee.* Subject to SBA's credit policies, if you are a Leveraged Licensee and not an Accrual SBIC, the maximum amount of Leverage you may have outstanding at any time is the Individual Maximum. If you are an Accrual SBIC, the maximum amount of Leverage and accrued interest you may have outstanding at any time is the Individual Maximum. The *Individual Maximum* means the lesser of:

(1) 300 percent of your Leverageable Capital;

(2) 100 percent of your Leverageable Capital if you have less than $5 Million in Regulatory Capital and you were Licensed because you are headquartered in an Underlicensed State; or

(3) The maximum Leverage available to a single Licensee under section 303(b) of the Act.

(b) *Multiple Licensees under Common Control.* Subject to SBA's credit policies, two or more Licenses under Common Control may have maximum aggregate outstanding Leverage as permitted under the Act. For any Accrual SBIC or Reinvestor SBIC under Common Control, the aggregate accrued interest associated with Accrual Debentures will be included in determining whether this maximum has been exceeded. However, for any Leverage draw(s) by one or more such Licensees that would cause the aggregate outstanding Leverage to exceed the Individual Maximum, each of the Licensees under Common Control must certify that it does not have a condition of Capital Impairment. *See* also § 107.1120(d).

*Example 1 to paragraph (b):* If a fund manager has both a regular Leveraged Licensee with $250 million in outstanding Leverage and an Accrual SBIC with $50 million in Accrual Debentures that could accrue interest of $25 million at maturity, SBA will apply the principal from the regular Leverage plus the $50 million from the Accrual Debenture plus the $25 million in potential accrued interest for a combined total of $325 million.

* * * * *

■ 29. Revise § 107.1220 to read as follows:

**§ 107.1220 Requirement for Licensee to file quarterly financial statements.**

Leveraged Licensees must submit to SBA a Financial Statement on SBA Form 468 (Short Form) as of the close of each quarter of your fiscal year (other than the fourth quarter, which is covered by your annual filing of Form 468 under § 107.630(a)). You must file this form within 45 days after the close of the quarter. You will not be eligible for a draw if you are not in compliance with this section.

**§ 107.1540 [Amended]**

■ 30. Amend § 107.1540 by removing paragraphs (a) and (b).

■ 31. Revise the heading for subpart J to read as follows:

## Subpart J—Licensee's Noncompliance

■ 32. Amend § 107.1830 by revising paragraph (e) to read as follows:

**§ 107.1830 Licensee's Capital Impairment—definition and general requirements.**

* * * * *

(e) *Quarterly computation requirement and procedure.* SBA will determine whether you have a condition of Capital Impairment as of the end of each fiscal quarter. If SBA finds you capitally impaired, they will notify you.

* * * * *

■ 33. Amend § 107.1840 by revising paragraphs (a), (b) introductory text, (c) heading, (c)(1), and (d)(6) to read as follows:

**§ 107.1840 Computation of Licensee's Capital Impairment Percentage.**

(a) *General.* This section contains the procedures SBA will use to determine your Capital Impairment Percentage. SBA will compare your Capital Impairment Percentage to the maximum permitted under § 107.1830(c) to determine whether you have a condition of Capital Impairment.

(b) *Preliminary impairment test.* If you satisfy the preliminary impairment test, your Capital Impairment Percentage is zero and SBA will not have to perform any more procedures in this section. Otherwise, SBA will continue with paragraph (c) of this section. You satisfy the test if the following amounts are both zero or greater:

* * * * *

(c) *How to compute Capital Impairment Percentage.* (1) If you have an Unrealized Gain on Securities Held, SBA will compute your Adjusted Unrealized Gain using paragraph (d) of this section. If you have an Unrealized Loss on Securities Held, SBA will continue with paragraph (c)(2) of this section.

* * * * *

(d) * * *

(6) If any securities that are the source of either Class 1 or Class 2 Appreciation are pledged or encumbered in any way, SBA will reduce the Adjusted Unrealized Gain computed in paragraph (d)(5) of this section by the amount of the related borrowing or other obligation, up to the amount of the Unrealized Appreciation on the securities.

■ 34. Amend § 107.1845 by revising paragraph (a) introductory text to read as follows:

**§ 107.1845 Determination of Capital Impairment Percentage for Early Stage SBICs.**

* * * * *

(a) To determine your Class 2 Appreciation under § 107.1840(d)(3), SBA will use the following provisions instead of § 107.1840(d)(3)(iii):

* * * * *

■ 35. Revise § 107.1850 to read as follows:

**§ 107.1850 Watchlist.**

Under certain circumstances, SBA may place Licensees on a Watchlist as a process to increase proactive communication between SBA and the Licensee to help mitigate the potential for a future default or significant regulatory violation. Being on a Watchlist means that SBA has determined, based on certain triggers discussed in this section, a Licensee will provide a heightened level of reporting and communication with SBA.

(a) *Watchlist triggers.* SBA may place you on the Watchlist for any of the following:

(1) You perform an investment that is a direct violation of your fund's stated investment policy as identified in its limited partnership agreement (or other governing agreement) or as presented to SBA in its license application under § 107.300.

(2) The key person clause in your limited partnership agreement (or other governing agreement) is invoked due to a change in personnel of management team members identified as key persons.

(3) You or your General Partner has been named as a party in litigation proceedings brought by a Federal agency, involving felony charges, or allegations of dishonesty, fraud, or breach of fiduciary duty.

(4) You have violated a material provision in your limited partnership agreement (or other governing agreement) or any side letter agreement.

(5) You rank in the bottom quartile for the primary strategy benchmark, as identified by the Licensee at the time of licensure, by vintage year, defined as the year in which you were licensed as an SBIC, after three years based on the private investor's total value to paid-in capital (TVPI), where TVPI is calculated as (cumulative distributions to private investors plus net asset value minus expenses and carried interest)/ cumulative private investor paid in capital.

(6) Your leverage coverage ratio (LCR) falls below 1.25, where LCR is calculated as (unfunded Regulatory Capital commitments plus net asset value minus outstanding Leverage)/ outstanding Leverage or a Capital Impairment Percentage approaching your threshold set forth in § 107.1830.

(7) You default on your interest payment and fail to pay within 30 days of the date it is due. (*Note:* This event represents an event of default under § 107.1810(f) for which SBA maintains its rights under § 107.1810(g) if the Licensee does not cure to SBA's satisfaction.)

(8) Outstanding or unresolved regulatory matters.

(b) *Requirements for Licensees on the Watchlist.* If SBA places you on the Watchlist, you will be required to comply with any or all of the following:

(1) You must submit Portfolio Company Financing Reports (SBA Form 1031s), required under § 107.640, within 30 calendar days of the financing date.

(2) You must participate in monthly portfolio reviews with SBA.

(3) You must file quarterly valuation reports on specific or all of your portfolio company holdings, as requested by SBA.

(4) You must submit a letter formally requesting whether you may submit a request for a subsequent fund if you are currently on the Watchlist or have managed any Licensee on a Watchlist within the last 12 months. If you have already submitted a request or are otherwise in the Licensing process (see § 107.300), SBA may suspend processing your request until it is satisfied that SBA's concerns are resolved or otherwise disapprove your request for a subsequent fund. SBA maintains the right to deny approval of any request to submit a subsequent fund request or any subsequent fund request submitted under § 107.300.

(c) *Removal from the Watchlist.* SBA will remove you from the Watchlist if the event that triggered your addition to the Watchlist (see paragraph (a) in this section) is resolved to SBA's satisfaction. Accordingly, SBA may require any or all of the following resolutions:

(1) Successful completion of a portfolio review to confirm compliance of your adherence to your investment policy.

(2) SBA's written approval of your key person resolution.

(3) SBA's written acknowledgement of pending litigation.

(4) SBA's written consent to the resolution of the LPA or side letter violation.

(5) Two quarters of performance above a bottom quartile industry benchmark based on the TVPI by vintage year and strategy, as calculated under paragraph (a) of this section.

(6) Two quarters of consistent reporting of your LCR, as calculated under paragraph (a) of this section, exceeding 1.25.

(7) You are current on your Leverage interest payments.

(8) A completed regulatory examination acceptable to SBA.

(d) *Watchlist communications*—(1) *Notification to Licensee.* If you trigger any of the events under paragraph (a) of this section, SBA will notify you in writing that you have been placed on the Watchlist, identify the event(s) which triggered your placement on the Watchlist, the actions you must take as noted under paragraph (b) of this section, and the remedies as identified under paragraph (c) of this section.

(2) *Watchlist status disclosure.* SBA will not disclose your Watchlist status publicly.

(3) *Removal from Watchlist status notification.* SBA will provide you with written notice after SBA determines that you have resolved all matter identified in your notification letter and satisfied the applicable requirements set forth in paragraph (c) of this section.

## PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 36. The authority citation for part 121 is revised to read as follows:

**Authority:** 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, and 694a(9).

■ 37. Amend § 121.103 by revising paragraph (b)(5)(vi) to read as follows:

### § 121.103 How does SBA determine affiliation?

* * * * *

(b) * * *

(5) * * *

(vi) Entities determined by SBA to be Traditional Investment Companies under 13 CFR 107.150(b)(2) and private funds exempt from registration under section 3(c)(1) or 3(c)(7) of the 1940 Act.

* * * * *

**Isabella Casillas Guzman,**

*Administrator.*

[FR Doc. 2023–13981 Filed 7–13–23; 11:15 am]

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Part III

## Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 1005, 1006, and 1007

Milk in the Appalachian, Florida, and Southeast Marketing Areas; Recommended Decision on Proposed Amendments to Marketing Agreements and to Orders; Proposed Rule

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Parts 1005, 1006, and 1007**

**[Doc. No. AMS–DA–23–0003; 23–J–0019]**

## Milk in the Appalachian, Florida, and Southeast Marketing Areas; Recommended Decision on Proposed Amendments to Marketing Agreements and to Orders

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This decision proposes to amend the transportation credit balancing fund provisions for the Appalachian and Southeast Federal milk marketing orders, and establish distributing plant delivery credits in the Appalachian, Florida, and Southeast Federal milk marketing orders.

**DATES:** Written exceptions and comments to this proposed rule must be submitted on or before September 18, 2023.

**FOR FURTHER INFORMATION CONTACT:** Erin Taylor, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, STOP 0231—Room 2530, 1400 Independence Avenue SW, Washington, DC 20250–0231, (202) 720–7183, email address: *Erin.Taylor@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This recommended decision proposes amendments to the transportation credit balancing fund (TCBF) provisions in the Appalachian and Southeast Federal milk marketing orders (FMMOs) that would: (1) update the components of the mileage rate calculation; (2) revise the months of mandatory and discretionary payment; (3) revise the non-reimbursed mileage factor; and (4) increase the maximum assessment rate on Class I milk. This recommended decision also proposes establishing distributing plant delivery credit (DPDC) provisions in the Appalachian, Florida, and Southeast FMMOs that would make marketwide service payments to qualifying handlers and cooperatives for milk shipments to pool distributing plants from farms that are year-round, consistent suppliers.

This administrative action is governed by sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866, 13563, and 13175.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (AMAA), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the AMAA, any handler subject to an order may request modification or exemption from such order by filing a petition with the United States Department of Agriculture (USDA) stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The AMAA provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review USDA's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

### Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified this proposed rule will not have a significant economic impact on a substantial number of small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. A small dairy farm as defined by the Small Business Administration (SBA) (13 CFR 121.201) is one that has an annual gross revenue of $3.75 million or less, and a small dairy products manufacturer is one that has no more than the number of employees listed in the chart below:

| NAICS code | NAICS U.S. industry title | Size standards in number of employees |
|---|---|---|
| 311511 | Fluid Milk Manufacturing | 1,000 |
| 311512 | Creamery Butter Manufacturing | 750 |
| 311513 | Cheese Manufacturing | 1,250 |
| 311514 | Dry, Condensed, and Evaporated Dairy Product Manufacturing | 750 |

To determine which dairy farms are "small businesses," the $3.75 million per year income limit was used to establish a milk marketing threshold of 1,220,703 pounds per month. Although this threshold does not factor in additional monies that may be received by dairy producers, it should be an accurate standard for most "small" dairy farmers. To determine a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 750-employee limit for creamery butter or dry, condensed, and evaporated dairy product manufacturing, the 1,000-employee limit for fluid milk manufacturing, or the 1,250-employee limit for cheese manufacturing, the plant was considered a large business even if the local plant does not exceed the 750, 1,000, or 1,250-employee limit, respectively.

During January 2023, the milk of 2,522 dairy farms was pooled on the Appalachian (1,578), Florida (113), and Southeast (831) FMMOs. Of the total, 1,491 farms on the Appalachian FMMO (94 percent), 69 on the Florida FMMO (61 percent), and 787 on the Southeast FMMO (95 percent) were considered small businesses.

During January 2023, there were a total of 17 plants associated with the Appalachian FMMO (16 fully regulated plants and 1 partially regulated plant), 7 plants associated with the Florida FMMO (all fully regulated), and 16 plants associated with the Southeast FMMO (15 fully regulated plants and 1 partially regulated plant). The number of plants meeting the small business criteria under the Appalachian, Florida, and Southeast FMMOs were 2 (12 percent), 2 (29 percent), and 2 (13 percent), respectively.

Currently, the Appalachian and Southeast orders provide transportation credit balancing fund (TCBF) payments on supplemental shipments of milk for Class I use provided the milk was from producers located outside of the marketing areas who are not regular suppliers to the market. Producer milk received at a pool distributing plant eligible for a transportation credit under the orders is defined as bulk milk received directly from a dairy farmer who: (1) not more than 50 percent of the dairy farmer's milk production, in aggregate, is received as producer milk during the immediately preceding months of March through May of each order; and (2) produced milk on a farm not located within the specified marketing areas of either order. Milk deliveries from producers located outside the marketing area who are consistent suppliers to the market, or from producers located inside the marketing areas are not eligible to receive transportation credits.

This decision proposes to amend the Appalachian and Southeast TCBF provisions. Specifically, the proposed amendments would amend the non-reimbursed mileage level from 85 miles to 15 percent of total miles and update components of the mileage rate factor to reflect more current market transportation costs.

The proposed amendments also would increase the maximum TCBF assessment rates for the Appalachian and Southeast orders. Specifically, the maximum transportation credit assessment rate for the Appalachian and Southeast orders would increase to $0.30 and $0.60 per hundredweight (cwt), respectively. The increases are intended to minimize the proration and depletion of each Order's TCBF to provide more adequate TCBF payments. This decision finds these assessment levels necessary because of escalating transportation costs coupled with the continued decline in milk production in the southeastern region necessitating longer hauls to procure supplemental milk to meet the Class I needs of the region.

This decision also proposes to adopt DPDCs in the Appalachian, Florida, and Southeast FMMOs to provide transportation assistance to handlers and cooperatives procuring year-round, consistent milk supplies for the region. Currently, there are no provisions in any of the three southeastern FMMOs to provide transportation assistance to handlers and cooperatives for these types of milk deliveries.

The proposed DPDCs would operate similar to the TCBF program: (1) funded through an assessment on Class I producer milk; (2) payable to handlers and cooperatives for procuring year-round milk supplies as determined by location and delivery criteria; (3) payment provisions identical to TCBF payments; and (4) contain provisions designed to safeguard against excess assessment collections and prevent persistent and pervasive uneconomic milk movements for the purpose of receiving a DPDC payment.

The proposed TCBF and DPDC provisions would be applied identically to large and small handlers and cooperatives regulated by the Appalachian, Florida, and Southeast FMMOs. Since the proposed amendments would apply to all regulated cooperatives and handlers regardless of their size, the proposed amendments should not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these proposed amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed, and no additional reporting requirements would be necessary.

This notice does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, since the information is already provided, no new information collection requirements are needed, and the current information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

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

No other burdens are expected to fall on the dairy industry as a result of overlapping Federal rules. This rulemaking proceeding does not duplicate, overlap, or conflict with any existing Federal rules.

## Prior Documents in This Proceeding

*Notice of Hearing:* Published January 30, 2023 (88 FR 5800).

## Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the orders regulating the handling of milk in the Appalachian, Florida, and Southeast marketing areas. The hearing was held, pursuant to the provisions of the AMAA, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The proposed amendments set forth below are based on the record of a public hearing held in Franklin, TN, from February 28–March 2, 2023, pursuant to a notice of hearing published January 30, 2023 (88 FR 5800).

The material issues on the record of hearing relate to:

1. Transportation Credit Balancing Fund Provisions
2. Distributing Plant Delivery Credits

## Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

### *Summary of Testimony and Post-Hearing Briefs*

Several witnesses testified on behalf of the Dairy Cooperative Marketing Association (DCMA). DCMA is a common marketing agency operating in the southeast region of the United States (U.S.). Members of DCMA include Appalachian Dairy Farmers Cooperative; Cobblestone Milk Cooperative; Cooperative Milk Producers Association; Dairy Farmers of America, Inc.; Lanco-Pennland Milk Producers; Lone Star Milk Producers Association; Maryland & Virginia Milk Producers Association; Select Milk Producers, Inc.; and Southeast Milk, Inc. According to DCMA, its members market approximately 80 percent of the milk pooled in the three southeastern orders and process and distribute a substantial percentage of the region's Class I fluid milk products through cooperative-owned distributing plants.

Several witnesses testified in support of Proposals 1 and 2 to update the components of the TCBF and mileage rate factor (MRF) contained in the

Appalachian and Southeast FMMOs. A consultant witness for DCMA testified milk production in the southeastern region of the U.S. continues to decline as population increases. As a result, the witness stated, the Appalachian and Southeast marketing areas must continually seek supplemental supplies of milk from outside their normal milksheds. The witness stressed that DCMA members must travel farther distances to obtain supplemental milk while at the same time, diesel and non-fuel costs for shipping supplemental milk have risen sharply. The witness explained these marketing conditions result in milk suppliers absorbing a larger percentage of the transportation costs, diminishing the effectiveness of TCBF credits.

The DCMA witness presented a comparison of current and proposed MRF components: base fuel rates; average truck miles-per-gallon (MPG); base haul rates; and average tank sizes. From 2006 to 2020, the witness stated input costs/factors increased by the following: 59 percent for the base fuel rate, 13 percent for average MPG for transport equipment, 92 percent for the base haul rate (costs other than fuel), and 4 percent for the average tank load weight.

The DCMA witness testified that while both population and milk consumption in the region are increasing, dairy farm numbers are declining, necessitating milk traveling farther distances to serve the market. The DCMA witness testified that over the 5-year period 2017–2021, the USDA National Agricultural Statistics Service (NASS) total farm count in the southeast decreased by 719 farms (declining 38 percent, 45 percent, and 56 percent in the Appalachian, Florida, and Southeast FMMOs, respectively). Looking back from 2000 to 2022, DCMA noted in its post-hearing brief that the Appalachian order lost 77 percent of its farms (2,813 to 650 farms), the Florida order lost 75 percent (194 to 49 farms), and the Southeast order lost 86 percent (3,504 to 489 farms).

Regional milk production showed a similar decline of 12.8 percent from 2017 to 2021, according to the DCMA witness. The witness noted every state in the region experienced decreased production over the five-year period; only North Carolina and Georgia had an annual milk production increase from 2020 to 2021.

The DCMA witness used USDA data to describe sources of milk for each of the southeastern Orders. According to the DCMA witness, USDA data reveals in 2021, 46 percent of milk pooled on the Appalachian FMMO was sourced from outside the marketing area. The witness calculated that during the low production month of October, approximately 99 loads of supplemental milk per day, on average for 2019–2021, were needed to meet the pool distributing plant demand of the Appalachian FMMO. For the Southeast and Florida FMMOs, the witness stated that during that same time period, 56 and 18 percent, respectively, of pool distributing plant demand was met from farms outside the marketing area. The witness noted the supplemental milk meeting Florida demand primarily comes from farms located in Georgia.

The DCMA witness testified the closure of fluid milk distributing plants has increased marketing costs for the remaining dairy farms in the southeast region. Citing USDA data, the DCMA witness said the number of pool distributing plants regulated by the southeastern FMMOs was down significantly when comparing 2000 to 2022; a reduction of 39 percent (26 to 16 plants), 33 percent (12 to 8 plants), and 54 percent (32 to 15 plants) on the Appalachian, Florida, and Southeast FMMOs, respectively. The witness argued fewer plants mean longer distances and higher hauling costs to the dairy farms and cooperative handlers delivering milk to the region. DCMA asserted in its post-hearing brief the average miles to procure a load of supplemental milk in October 2020 was 774 miles; a 51 percent increase from 2003.

The DCMA witness presented data showing milk supply deficits in Class I and Class II use in December 2020 and May 2021. Only in one month (May 2021) did a southeastern order (Florida) have enough in-area production to meet Class I milk needs of pool distributing plants. In the other five monthly comparisons, in-area production ranged from 67 to 97 percent of demand. When DCMA accounted for Class II usage, the witness testified, the ability for in-area production to meet the additional demand was further diminished. The witness emphasized that when demand is greater than in-area supply, the southeastern orders must acquire milk from other FMMO areas to meet the demand.

Milk deficits, in addition to longer distances traveled, according to the witness, causes the TCBF to be depleted at a rate faster than the funds are replenished. The DCMA witness reviewed TCBF data on supplemental milk being delivered to Appalachian and Southeast pool distributing plants from 2020–2022. The witness said TCBF eligible loads increased from 5,374 in 2020 to 6,642 loads in 2022 on the Appalachian FMMO and from 15,869 loads in 2020 to 18,217 loads in 2022 for the Southeast FMMO. According to the witness, this import of large volumes of supplemental milk into the two marketing areas would not occur unless necessary to fill pool distributing plant demand.

In addition to longer hauling distances, explained the witness, the TCBF factors have not been updated since 2006, and consequently fall short of providing a reasonable partial reimbursement of current, actual transportation costs. The DCMA witness described four supply and demand scenarios, representative of actual arrangements, to demonstrate the gap between the existing TCBF provisions and those proposed by DCMA, using 2021 data. In the four scenarios outlined, the current TCBF payment accounted for 25 to 58 percent of the amount calculated using the DCMA proposed changes.

The DCMA witness presented recent data to support the proposed changes contained in Proposals 1 and 2. Regarding the base diesel fuel price, the witness stated DCMA supports continued use of the Energy Information Administration of the United States Department of Energy (EIA) data—specifically, the Lower Atlantic and Gulf Coast EIA regions. The witness reviewed EIA diesel fuel prices and found that May 4 through November 9, 2020, as a 28-week period of relatively stable diesel prices, averaged $2.262 per gallon. The current MRF calculation uses a base diesel price of $1.42 per gallon. According to the witness, the price difference illustrates the need to update the factors, and DCMA supports adopting $2.26 as the base diesel fuel price.

The DCMA witness next evaluated the MPG of combination trucks and supported using U.S. Department of Transportation MPG fuel efficiency data. The most recently published data (2019) showed an MPG rate of 6.0478. The DCMA witness estimated a calculation for 2022 using the five-year change in MPG from 2014–2019 of 0.0430 per year. The witness added this amount annually to the 2019 published rate of 6.0478, yielding a per gallon estimate of 6.1770 in 2022, which DCMA rounded to 6.2. The witness testified DCMA members supported a 6.2 MPG assumption as a reasonable fleet average across operations with varying transport tanks and varying ages of equipment. Additionally, the witness said a higher MPG assumption would lower a TCBF payment and therefore guard against handlers engaging in uneconomic milk shipments to qualify for higher TCBF payments.

The DCMA witness entered data substantiating their proposed base haul rate of $3.67 per loaded mile. According to the witness, DCMA surveyed member haul rates during September and October 2020, representing months of heavy supplemental milk purchases which are included in the May to November 2020 time period used to determine the proposed average diesel fuel price. The witness said the aggregated survey results represented 2,951 supplemental milk hauls from nine states considered traditional sources of supplemental milk to pool distributing plants geographically spread across the three southeastern FMMOs. According to the DCMA witness, the average rate per loaded mile was $3.67, representing an average distance of 818 miles, an average tanker load size of 49,700 pounds, and an average total haul bill of $3,003. The survey results, said the witness, support the DCMA-proposed base haul rate of $3.67 per loaded mile. The surveyed tank size of 49,700 pounds was used to justify increasing the reference load in the MRF calculation. DCMA noted in its post-hearing brief that costs have increased from its calculated 2020 rate, up to as much as $5.10 to $5.25 per loaded mile.

Using the proposed TCBF provisions, DCMA estimated TCBF payments from 2020 through 2022 using USDA data and compared the results with what TCBF payments would have been under current provisions, assuming all claims could have been paid in full. According to the witness, under those assumptions, current TCBF payments represent 59 percent, on average, of what payments would have been using DCMA's proposed updated factors. The witness emphasized the analysis demonstrates how current TCBF provisions are not representative of current transportation costs and should be updated.

Using actual TCBF pounds from 2020–2022, the witness offered an analysis to determine necessary assessment levels under the proposed TCBF provisions. To do so, the witness provided data of TCBF assessments and payments from 2020–2022, including proration. The witness used USDA data to show the impact of various scenarios on the levels of assessment and payments based on two alternative DCMA-proposed MRFs, in comparison to actual TCBF claims and payments. The analysis showed assessment rates needed to fully pay all claims in 2020 could be up to $0.18 and $0.88 per cwt in the Appalachian and Southeast FMMOs, respectively. Based on the analysis, the witness testified DCMA proposes to double the maximum assessment rate in each order, to $0.30 and $0.60 per cwt in the Appalachian and Southeast FMMOs, respectively. DCMA noted in its post-hearing brief a maximum rate of $0.30 per cwt in the Appalachian FMMO would cover full claims immediately and allow room for increases in claims without necessitating proration for some time. Also, according to the brief, a maximum of $0.60 per cwt in the Southeast FMMO will allow for most of the current supplemental milk transportation credits to be paid, with reduced occurrences of proration.

The DCMA witness also elaborated on the proposal to make February an optional, not mandatory, payment month. Since less supplemental milk is needed in February, the witness said it was appropriate for February to no longer be a mandatory payment month so those funds could instead be used in later months when supplemental milk needs are greater. The witness presented data to demonstrate the possible benefits of converting February from a mandatory to an optional payment month. The witness stated the impact of including February as a mandatory payment month is only apparent when payments are prorated, which is not projected to occur in the Appalachian order. For the Southeast FMMO, the witness entered data that showed more dollars would have been directed to the months it was needed in 2020 and 2021, resulting in fewer prorated payment months, had February been an optional payment month rather than a mandatory payment month. The witness reiterated that under DCMA's proposal, a handler could petition the Market Administrator to request February TCBF payments by providing supporting data and rationale.

Last, the DCMA witness explained the flat mileage deduction of 85 miles for loads delivered directly from farms to distributing plants should be changed to a percentage basis, initially set at 15 percent. DCMA argued the change would more equitably reimburse short and long hauls, thus reducing the potential disorderly incentive to import supplemental milk from greater distances. The witness noted the current 85-mile deduction represented 10.4 percent of the 818-mile average haul observed in the DCMA survey and concluded that a 15-percent deduction is an appropriate initial rate.

In its post-hearing brief, DCMA noted there was only nominal opposition from industry participants to its proposals to amend the transportation credit balancing funds. DCMA reiterated testimony by witnesses supporting its proposals: a decreased supply of milk, fewer plants to process local milk, increased distances to bring in milk, and an increased population in the region. Compounding market disruptions, DCMA argues in its brief, is the increase in the cost of moving milk since the TCBF reimbursement rates were implemented in 2006.

The post-hearing brief touched on changes in the movement of milk as a result of these factors, including movements that often lose value going ''against the grain,'' from south to west or south to north. These movements, the proponents argue, are prime examples of disorderly marketing since the Federal Order Class I price grid is intended to reflect lower prices at supply areas and higher prices at demand points. The region's loss of plants, the proponents argue, has caused the Federal order provisions to be out of sync with the marketplace.

The DCMA witness also offered testimony supporting adoption of Proposals 3, 4, and 5, to establish a distributing plant delivery credit (DPDC) in the Appalachian, Florida, and Southeast FMMOs for marketwide service payments to handlers acquiring consistent, year-round milk supplies for pool distributing plants. The DCMA witness reviewed data for each of the southeastern orders showing 54 percent, 82 percent, and 44 percent of Class I demand is met with in-area milk production from the Appalachian, Florida, and Southeast orders respectively. According to the witness, in-area milk supplies face the same cost factors as supplemental supplies. However, because there is no transportation compensation for obtaining in-area milk supplies, the cost burden falls on the handlers supplying Class I demand, primarily DCMA cooperatives and their members. The witness asserted that local milk production should be on equal footing for transportation assistance as supplemental milk supplies, as local deliveries promote transportation efficiency. The witness reiterated earlier market statistics showing declines of in-area milk production, farms, and pool distributing plants throughout the southeastern region as justification for adopting DPDC for year-round, consistent milk supplies.

The DCMA witness described the situation in the Florida order, which currently has no transportation credit assistance. According to the witness, a significant amount of milk production is located in central Florida, which is typically delivered to a plant in Miami over 200 miles away. Because Miami-

Dade County has the highest Class I differential zone in the country, the Class I differential provides some financial incentive to move milk in that direction. However, when demand at the Miami plant is met, the central Florida milk must move north to a lower Class I differential zone. While the distances may be similar, there is no transportation assistance provided through the differentials to cover the transportation cost. Therefore, the witness said, a DPDC in the Florida FMMO is warranted.

The witness explained the compounding transportation situation in the southeastern Orders by presenting a map of pool distributing plants in 2000 vs. 2022, which showed a decrease from 73 plants in January 2000 to 39 in 2022, a 47 percent reduction. The witness said the decline in farms and plants in the region will continue to lead to increased delivery miles and costs and will put availability of local milk supplies at risk.

The DCMA witness explained the DPDC funds would be separate from the producer settlement fund, be payable to handlers providing the marketwide service of meeting Class I demand with consistent, year-round milk supplies, and not impact the Federal order minimum announced producer blend prices. According to the witness, the proposed provisions establish maximum allowable assessments on Class I milk specific to each Order and guidelines for the Market Administrator on how to set or waive the rate and investigate misuse, for example, if a handler consistently moves milk uneconomically to collect payment.

The DCMA witness outlined proposed DPDC eligibility criteria. According to the witness, with fewer farms and pool distributing plants, milk regularly crosses state and Federal order borders of the three southeastern orders; therefore, milk from one Order should qualify for payments when delivered to another Order. For the Appalachian and Florida orders, the witness proposed producer milk originating in certain counties outside of the respective Federal order boundaries that are considered part of the milksheds be eligible for a DPDC payment. For the Appalachian order, DCMA included select unregulated counties in Virginia and West Virginia that provide milk to a fully regulated Appalachian order pool distributing plant in the same unregulated area. The counties are also, according to DCMA, the regular source of milk to Appalachian order pool distributing plants in North and South Carolina. Under these circumstances, DCMA argues, the counties are parts of the regular procurement area for the Appalachian order, and the handlers obtaining milk supplies from these counties should be entitled to receive DPDC for those shipments.

The provisions proposed by DCMA also permit milk from an order pool supply plant to qualify for DPDCs in all three orders. According to DCMA, a pool supply plant located in the Appalachian marketing area assembles milk delivered in farm pick-up trucks from smaller producers. The milk is then shipped in larger transports to Appalachian order pool distributing plants. Transporting via supply plant is a necessary method for these producers whose milk is a consistent supply to the market. According to DCMA's proposal, DPDCs would apply only on the mileage from the supply plant to the order's distributing plant.

The Georgia counties included in the DCMA Proposal 4, according to testimony by its witnesses, are a year-round integral part of the supply for the Florida order; therefore, DCMA believes handlers acquiring milk from those areas should be eligible for DPDCs.

According to the DCMA witness, its members, who supply a majority of the milk on the three Orders, face similar cost factors for both regular and supplemental supplies. Therefore, the witness said, it is appropriate for the DPDC payment provisions to be the same as the TCBF provisions.

The DCMA witness estimated the maximum assessment rates needed to fund DPDC payments in each of the three Orders. DCMA's analysis concluded maximum assessment rates of $0.60, $0.85, and $0.50 per cwt on Class I milk pooled on the Appalachian, Florida, and Southeast FMMOs, respectively, were warranted. The DCMA witness explained the assessment rates should initially be set $0.05 lower than the maximum rates to be initially conservative when implementing this new fund. The proposed provisions allow for the Market Administrator to review and adjust assessment rates in each FMMO, if necessary, after a year of operation.

The witness next discussed the impact changes to the TCBF provisions and establishment of DPDC could have on plant competitiveness in the region. Ultimately, the witness argued, an analysis shows the DCMA proposed assessment levels do not put in-area pool distributing plants at a competitive disadvantage compared to out-of-area plants.

The witness concluded by emphasizing the need for emergency hearing procedures, especially due to the current inflationary economic environment, the fact that transportation costs have not been updated for 15 years, and the changing market structure in the southeastern region. The consequence of not using emergency hearing procedures, the witness claimed, would be more farms going out of business.

A witness from Dairy Farmers of America (DFA), one of the nine cooperative members of DCMA, testified in support of DCMA Proposals 1 through 5. DFA's Southeast Council encompasses the Appalachian, Florida, and Southeast FMMOs, where they have 830 dairy farm members. The witness offered testimony regarding the impact adopting Proposals 1 through 5 could have on the competitiveness of packaged milk delivered into the southeastern marketing areas. The witness analyzed transportation rates for 60 routes both within the southeast FMMOs and the surrounding areas to determine how the cost of transporting packaged fluid milk into the marketing areas compared to the proposed TCBF and DCDP assessments contained in Proposals 1 through 5. According to the witness, the results indicate that even with the proposed assessments on Class I milk, packaged fluid milk moving into the marketing areas would not have a cost advantage over Class I products produced by plants regulated by the three FMMOs and subject to the proposed assessments.

Another witness appearing on behalf of DFA offered testimony on diesel fuel price volatility. To highlight diesel fuel price volatility, the DFA witness charted U.S. EIA monthly retail on-highway diesel fuel prices, both for the U.S. and states comprising the southeast region since 2006 alongside the projection for February 2023 to December 2025. According to the data, since January 2, 2006, diesel fuel prices in the southeast region have averaged $3.19 per gallon, ranging from $1.96 gallon (February 2016) to $5.73 per gallon (June 2022). The witness explained that record low U.S. oil supplies, reduced oil refining capacity, and geopolitical events are all factors driving diesel fuel price volatility and large price ranges. On the demand side, the witness said variability in fuel consumption, the overall health of the U.S. economy and China's rebound from COVID–19 have all contributed.

A witness appearing on behalf of Maryland and Virginia Milk Producers Cooperative (MDVA), a dairy cooperative with approximately 930 dairy farmer members located in 10 states and a member of DCMA, testified in support of Proposals 1 through 5, and specifically on the marketing conditions within the Appalachian marketing area. The witness testified their members' milk is marketed on the Appalachian, Southeast, Northeast, and Mideast orders. MDVA owns and operates two fluid processing facilities within the Appalachian order and supplies milk to several other processors in the region.

The witness testified milk production has sharply declined in the southeast region, down 32 percent over the last 15 years. MDVA therefore relies on supplemental milk from other regions to meet its year-round obligations. The witness testified that during peak demand in late summer and early fall, MDVA requires approximately 25 loads per day of supplemental milk to fulfill demand. The witness stated the MDVA average distance to the market for supplemental supplies from the northeast is 450 miles, and current transportation cost is $4.90 to $5.25 per loaded mile, which equates to roughly $4.43 per cwt of milk. The witness testified that roughly $2.93 per cwt of its cost to transport supplemental milk to the market is not covered by the gain in Class I differential between the supply and demand zones.

In recent years, according to the witness, equipment parts, oil, labor, insurance, and fuel costs have increased. Since TCBF factors have not been updated since 2006, the percentage of the transportation cost covered by the TCBF has decreased. As hauling bills must be paid, the witness said the cooperative relies on either deductions from dairy farmer milk checks or over-order premiums to cover the additional cost. The witness testified regarding MDVA's difficult experience in obtaining and maintaining over order premiums. The witness spoke to the concern of Class I handlers maintaining raw product cost equity with their competitors. The witness said Class I handlers are reluctant to pay over order premiums in the current market environment because they are not assured competitors are also incurring the same cost. In the witness's experience, Class I handlers are more willing to pay for additional transportation costs if it is announced by the FMMO and enforced uniformly on all Class I handlers.

The witness testified Proposals 1 and 2 would align MRF components with current freight rates and adopting those proposals is imperative to maintaining supplemental milk supplies needed to meet Class I demand. Without these updates, the witness stated, handlers will be less willing to provide supplemental milk supplies to the Appalachian order during periods of large deficits, which would negatively impact the region's processing capacity. The witness noted that since the early 2000s, 11 pool distributing plants have closed within MDVA's core area of the Appalachian order. The result is increased distances to the next closest plant, and with it, increased costs to balance Class I demand.

The MDVA witness testified raw milk loads are shuffled based on customer orders to ensure adequate available supplies without exceeding silo capacity. With fewer plants in the network, there are fewer opportunities to use the next plant's silo capacity; this makes the ability to ''stair step'' milk through the region to align supply with demand more difficult and more costly. The witness stated sometimes milk must travel north to find a balancing plant, typically a more costly option.

According to the witness, Class I differentials are not adequately compensating dairy farmers for milk movements within the Appalachian marketing area, which Proposal 3 would address. For example, the witness said, when producer milk is delivered to a plant 200 miles away in a 30 cent-higher differential zone, the change in Class I differential zone only covers about 15 percent of the cost of moving the milk within the market. The witness stated Proposal 3 provides additional compensation and incentives to move milk within the Order and offsets some of the deficiencies in the current Class I differentials.

The witness discussed the challenges of providing supplemental milk to the Appalachian order, such as filling the school milk pipeline and weather-related events such as a snowstorm, which stress already complicated milk marketing and transportation systems. The witness testified to MDVA's efforts last year in meeting increased school demand by assembling, reloading, and then transferring to Class I plants approximately 80 loads of milk from its pool supply plant in Strasburg, Virginia, at great expense to the cooperative. The witness testified that based on their knowledge the MDVA's plant in Strasburg, Virginia, is the only pool supply plant currently operating in this manner in the southeast for the Appalachian, Florida, and Southeast orders. The plant is sourced primarily by small farms in Maryland and Pennsylvania, and much of the milk collected at Strasburg is then reshipped to Appalachian and Southeast FMMO pool distributing plants. The witness opined these deliveries meet the region's Class I demand and should be eligible for DPDC.

The witness also testified in support of extending DPDC eligibility to include unregulated counties in Virginia that supply its plant in Newport News, Virginia, a year-round pool distributing plant on the Appalachian FMMO.

The witness testified that if a handler does not bring in enough supplemental milk, the plant will not have milk for consumers, and consumers will see empty shelves. Consequently, the region's processors face pressure because retailers could go outside of the Order to purchase packaged milk and handlers could lose customers.

The witness stressed that the proposals should be considered on an emergency basis so cooperatives and their dairy farmer-members supplying the region's Class I demand can begin to receive cost recovery that they have been unable to obtain on their own. Without this assistance, the witness opined, more producers in the region would exit the business, further reducing local milk supplies, and negatively impacting local Class I processors.

A witness appearing on behalf of Southeast Milk, Inc. (SMI), a member of DCMA, testified in support of Proposals 1 through 5, and their adoption on an emergency basis. SMI is a dairy cooperative with approximately 135 dairy farmer members pooled on all three southeastern orders.

The SMI witness testified specifically in support of Proposal 4 to adopt DPDCs for the Florida FMMO. Milk produced in and pooled on the Florida FMMO has steadily declined since 2016, according to the witness. The witness cited USDA data showing 87 percent of the Order's milk in 2019 was produced in Florida, compared to 76 percent in 2022. The witness noted that of 24 states in NASS's monthly milk production report, Florida had the largest year-over-year milk production decline in 2022, a decrease of 10.9 percent. In 2022, the state of Florida reported its lowest milk volume since 1984.

According to the witness, reasons for declining milk production in Florida include higher freight costs (a high percent of dairy feed, supplies, and fertilizer are imported into the state), environmental challenges, opportunity costs, urbanization, and lower margins. The witness argued the implementation of Proposal 4 would ease the transportation burden cooperatives face in supplying the Class I market and help slow the decline of Florida milk production.

The SMI witness stressed that less milk produced in Florida means more milk from outside the state is needed to supply the Order's fluid milk needs. The witness testified, based on SMI marketings and personal industry knowledge, a significant portion of milk sourced from outside the marketing area comes from the 49 South Georgia counties included in Proposal 4. While South Georgia historically served as the reserve milk supply for the Florida market, as production has declined in Florida and increased in Georgia, South Georgia is now a regular milk supplier to Florida pool distributing plants. The witness said that at a minimum, South Georgia milk must travel 225 miles from the Florida-Georgia border to the closest pool distributing plant. As these South Georgia counties now serve as a regular source of producer milk for the Florida order, the SMI witness testified, Proposal 4 is needed to provide some level of reimbursement of hauling expense for the distance the milk travels to Florida pool distributing plants.

Similar to other witnesses, the SMI witness discussed the common occurrence of milk moving against the Class I differential surface because there are fewer pool distributing plants. According to the witness, in January 2023 all of SMI's Appalachian order milk moved from a higher ($4.00) to a lower ($3.60) zone. Of the cooperative's milk pooled on the Southeast and Florida FMMOs, 44 percent and 14 percent, respectively, moved from higher to lower Class I differential zones, the witness said. The SMI witness concluded that implementation of Proposal 4 will assist the cooperative in recouping transportation costs for milk, especially for milk that receives no additional assistance through changes in Class I differential zones.

The SMI witness entered transportation costs it has experienced, as SMI owns and operates its own milk hauling fleet. Cost data included average annual diesel fuel prices (up 129 percent from 2020 to 2022), average annual milk hauler wages (up 38 percent from CY2018 to CY2023 YTD), and other increases to purchase new trucking equipment. The witness also spoke to other increases such as, but not limited to, employee benefits, insurance premiums, and equipment maintenance. For January 2023, the witness stated, SMI hauling costs are nearly double what would have been covered by the TCBF under the proposed provisions in Proposals 4, 5, and 6. SMI, the witness testified, attempts to improve efficiency of milk hauling and to control expenses, but those efforts only offset a portion of the higher milk hauling expenses. The cost to haul milk from SMI member farms to pool distributing plants greatly exceeds the proposed DPDC.

This witness also addressed the cooperative's efforts to recover some of the increased costs through over-order premiums. While SMI does collect some over-order premiums, the witness said they do not cover all the costs of servicing the fluid market. Buyers are concerned about competitors and seek to ensure equal raw product cost which, according to the witness, is the key to orderly milk marketing. The witness testified processors prefer to pay through the Federal order system because it provides assurance of equal footing with competitors.

The witness noted that Proposal 4 does not change diversion requirements. Diverted milk would not be eligible to receive the DPDC; only milk delivered to a pool distributing plant could receive the credit.

Finally, regarding the request to consider the proposals on an emergency basis, the SMI witness testified that adopting DPDCs would provide cooperatives, handlers, and subsequently their dairy farmer-members, with much needed cost assistance to continue serving the Florida market.

A third DFA witness testified regarding the marketing conditions in the Southeast FMMO. The witness said the volume of Class I milk pooled on the Southeast order has been declining, but at a slower pace than the in-area milk production decline. This results in increasing volumes of milk being delivered to Southeast order pool distributing plants from outside the marketing area at greater expense, a cost primarily borne by the farmers that supply the market.

The DFA witness stated the cost of milk hauling has increased over the last several years, and clearly has increased since Class I differentials were last updated. The witness said the location of supplemental milk sources varies based on the location of the plant and the distance to the plant. The witness testified there are currently 15 pool distributing plants regulated on the Southeast order, 13 of which likely receive substantial quantities of supplemental milk. According to the witness, the distance to move milk to most of these plants is considerable. The witness said the Southeast order plants in Georgia are generally most-practically served with supplemental milk supplies from the north, and occasionally with milk from the Central and Southwest marketing areas.

The witness testified that hauling costs for moving milk from the Southwest to Southeast order are between roughly $4.85 and $5.10 per loaded mile. In a sample milk haul, incorporating the Class I differential and location value impacts, a blend price gain moving milk into the Southeast order would cover about 45 percent of the cost of hauling. The witness concluded that the expected TCBF payment would cover approximately 16 percent of the real cost of hauling.

The witness emphasized that while the TCBF payment only covers a portion of the cost of hauling, handlers and cooperatives are guaranteed to receive it. Since over-order prices are rarely sufficient to cover the large differences in hauling costs, dairy farmers are left to pay the remainder, the witness stressed. The witness spoke of the difficulty in negotiating and maintaining over-order premiums with a Class I plant. Factors like the location of the receiving plant and the distance the plant is to a viable supplemental milk source, the plant's relative access to local supplies, and its net need for supplemental milk cause additional costs to vary by plant. The witness emphasized that unequal costs of milk is a recognized source of market disorder.

The witness also testified on hauling capacity challenges faced by supplemental suppliers. Challenges include supply chain shortages for trucks and trailers, lack of qualified and willing truck drivers, rules on allowable hours for trucks to run each day, and truck scheduling challenges. Hauling schedules are so tight, the witness noted, even the smallest variation in the daily delivery schedule can disrupt logistics for several days and create additional costs that are borne by the cooperative suppliers.

The DFA witness concluded that Proposals 1 and 2 would benefit consumers with an unimpeded and orderly flow of milk into the region and regulated Class I processors with a continued supply and orderly pricing of milk. Without a properly functioning transportation credit system, the witness argued, the region's milk supply would be threatened.

The third DFA witness also testified in support of Proposals 3, 4, and 5, specifically, why raw milk produced in the state of Georgia and transported throughout the southeastern orders should be eligible for the proposed DPDCs. The witness referenced a map comparing U.S. milk production in 2021 and 2022 showing that of the southeastern states, Georgia was the only state with significant milk production growth. Yet, the witness said, the growth of milk production in Georgia does not compensate for the decline in milk production in Florida alone. Meanwhile, Florida and Georgia are experiencing record population growth, according to the witness, which increases demand for fluid milk.

The DFA witness said the DFA milk supply in Georgia's southern counties delivers daily to Florida pool distributing plants, serving the market's Class I demand. In 2022, the witness testified, 31 percent of the DFA milk in the southern Georgia counties shipped to Florida pool distributing plants.

In addition to Florida, the DFA witness said, Georgia milk production regularly serves the Class I demand and reduces the need for additional milk to serve the region from longer distances and at higher costs. Unfortunately, the witness explained, many of these Georgia milk movements have no Class I differential value gain and cause the cooperative to incur substantial transportation costs. DPDCs, the witness testified, would provide much-needed relief to cooperatives and their local dairy farmer-members who provide consistent milk supplies. The witness noted Proposals 3, 4, and 5 would not change pooling provisions on any of the three FMMOs and would continue to allow diversions on pounds on which a DPDC is requested. The witness supported this provision because there are times during the week, month, and year when milk production is not delivered to pool distributing plants within the local milkshed. However, milk still needs to be marketed, and it is sometimes necessary to divert production to a non-pool plant, according to the witness, and those producers still expect to receive the FMMO blend price.

This DFA witness spoke to the difficulty in recovering transportation costs through over-order premiums as opposed to the FMMO system. The witness testified that for transparency and fairness, buyers prefer to have costs come through the FMMO system and FMMO price announcements.

Finally, the DFA witness testified to the urgency of a decision on the proposals to provide cost recovery to cooperatives handlers and their dairy farmer-members. According to the witness, dairy farmers are going out of business every day, even with higher milk prices in 2022. The witness expects there will be as many going out of business in 2023 as there were in 2022. Many farms are relying on the possibility of additional transportation assistance in the form of TCBF and DPDC payments to their cooperatives. The witness concluded that any delay would cause closure of more businesses, which would place more burden on the remaining local farms.

A Georgia DFA producer-member testified on current dairy market conditions in the region. The witnessed expressed support of updating the Appalachian and Southeast FMMOs' TCBF provisions and implementing a similar program (DPDCs) for locally produced milk in the Appalachian, Florida, and Southeast FMMOs.

The witness further elaborated on the rise in on-farm input costs that farms in the region face. According to the witness, the largest cost increases from 2021 to 2022 included nitrogen fertilizer (289 percent), diesel fuel (89 percent), corn (93 percent), interest (80 percent), and medicine and supplies (70 percent). The dairy farmer witness went on to explain that not only have the dairy farm's input costs risen, but so have the cost to haul milk. The witness explained the two plants closest to their dairy farm closed and now the milk must travel nearly 6 times as far, 292 miles, to a plant in Orlando, FL. The witness said that the cost to haul milk went from $1.32 per cwt in 2021 to between $2.37 and $2.45 per cwt in 2022. The witness claimed these cost increases have tightened margins and impeded the dairy farm's ability to grow.

The witness said the southeastern U.S. has the most significant milk deficit in the country, and it is exacerbated with the simultaneous rise in population and decline in dairy farm and milk production numbers. The witness testified the financial costs of importing supplemental milk and increasing hauls to fluid milk plants (due to plant closures) are primarily the burden of the region's dairy farmers, through their cooperatives, to ensure the market's Class I demand is met. According to the witness, adoption of Proposals 1 through 5 would help correct this imbalance by providing transportation assistance reflective of current market conditions.

Finally, the witness closed by urging USDA to implement updates to the transportation credit programs expediently. The witness cited weakening projected price relative to rising input costs as the primary driver for expediting the process.

A Missouri DFA dairy farmer member testified in support of Proposals 1 through 5. The witness said because their farm is located within the Southeast FMMO marketing area, it is not eligible for TCBF payments. The witness explained that dairy farmers (mostly small businesses) in the state have struggled in recent years. The witness shared data showing how milk production in Missouri declined nearly 50 percent, and the number of dairy herds decreased nearly 70 percent from 2006 to 2022.

The witness claims that with fewer dairy farms, there is a bigger burden on those still in business to supply the market. As a result of plant closings, the witness said their milk must travel further to find a market. The witness testified their annual hauling costs increased, on average, $9,000 in the most recent two-year period. With input costs rising across the board—feed, fuel, fertilizer, crop inputs, and labor—the witness testified to a financial strain faced on their farm and other similar operations in the region. The witness opined the proposals should be considered on an expedited basis, as this issue is of immediate importance.

A North Carolina dairy farmer representing MDVA testified in support of Proposals 1 through 5. The witness said their hauling costs have increased roughly 50 percent in the past decade and their local market has shifted farther away from Charleston, South Carolina, to Asheville, North Carolina.

The witness explained there are times their milk and other MDVA members' milk is not delivered to its closet plant because the cooperative is managing the milk movements of both the members' local supply and the supplemental supply it procures to ensure the region's Class I demand is met. In these instances, the extra hauling cost is borne by all cooperative members through a hauling subsidy paid for by all members. The witness asserted that adoption of the DPDC would provide financial help to the cooperatives and their members.

The witness claimed that the current Class I differentials and current TCBF provisions do not generate enough dollars to cover the true cost of moving milk. According to the witness, dairy farmers in the southeastern region, many of whom are not eligible for a TCBF payment, are doubly burdened. Members not only pay the higher transportation costs to ship their milk to a plant, said the witness, but they also share the transportation costs of procuring needed supplemental milk. The witness urged the rulemaking be conducted on an emergency basis to provide much needed cost relief to the region's cooperative handlers and their dairy farmer members.

A Tennessee dairy farmer-member representing the Appalachian Dairy Farmers Cooperative (ADFC), a member of DCMA, testified in support of Proposals 3, 4, and 5. The witness testified 97 percent of the 71 dairy farmer-members of ADFC producers are small dairies, as are nearly all other dairies in the area. The witness said the area has lost 80 percent of its dairies in the past 20 years, including 70 members of ADFC in the past 5 years.

The witness stated that, while not only having to pay to transport their own milk, ADFC dairy farmer-members also bear the transportation cost of bringing in supplemental milk to ensure Class I demand is met. These costs have significantly increased in part, the witness said, because it is difficult to find haulers. The witness estimated the cost to produce milk represents about 80 percent of their milk check, and hauling costs (which have doubled in the last five years) account for an additional 8 percent.

The witness testified USDA should treat the issues before it is urgent, and use expedited emergency hearing procedures.

In its post hearing brief, DCMA summarized its arguments supporting Proposals 3, 4, and 5 implementing DPDCs in the Appalachian, Florida, and Southeast orders, to reimburse handlers for a portion of the cost of delivering in-area and nearby milk. DCMA reiterated in its post-hearing brief that, for the Appalachian and Southeast orders, the respective marketing areas are considered in-area sources of milk. DCMA argued in its brief that those sources are not eligible for TCBF but should be eligible for DPDC.

In its post hearing brief, DCMA argued it is not possible to obtain transportation relief in the southeast area without adoption of the proposed DPDC. DCMA synthesized points made in its and other witness' testimonies that cooperatives are unable to obtain reimbursement from the market. According to the brief, the main alternative, over-order premiums, are difficult to maintain and challenging to increase. On the other hand, DCMA argued, incorporating a program for transportation costs within FMMO provisions would treat all suppliers and buyers equitably. Their brief indicated cooperatives and handlers are generally more able to pass through Class I costs to buyers that are specifically outlined on FMMO price announcements as would be the case under their proposals.

DCMA concluded in its brief that adoption of DPDCs would provide their customers with the price transparency they prefer through rates published on FMMO price announcements, assuring them of uniform raw milk costs with competing Class I handlers while enabling cooperatives that provide the market with Class I milk to receive transportation cost reimbursement reflective of current market conditions.

In its post-hearing brief, Select Milk Producers, Inc. (Select), a DCMA member cooperative, emphasized support for the FMMO system and its role in promoting efficient milk movements, producer operations, and milk procurement. The brief reiterated support of the transportation credit system in the Southeast due to unique conditions and that program provisions should be updated. Select indicated support for considering the regulatory changes on an emergency basis, and therefore omitting a recommended decision, as transportation credit regulations do not directly impact milk prices. While Proposals 3, 4, and 5 would include additions to their respective Orders, they are operationally and methodologically similar to existing transportation credit provisions and therefore have little economic and regulatory impact, according to the brief.

The dairy farmer proponent of Proposal 11 submitted a post-hearing brief opposing Proposals 1 through 5. In the brief, the farmer opined that doing nothing would lead to a better outcome than adopting the proposals. The dairy farmer argued the distance milk travels should not be treated as a performance standard and receive special treatment. If changes are to be made, however, the farmer insisted on the uniform treatment of all milk.

A witness from Prairie Farms testified in opposition to the proposed DPDC because payments would only apply to out-of-area milk from a select list of counties, instead of all out-of-area counties that regularly deliver to pool distributing plants. The witness claimed giving privilege to a few counties in Georgia, Virginia, and West Virginia, as written in Proposals 3 through 5, is not fair and equitable, especially when year-round deliveries of out-of-area milk is necessary to meet the fluid milk needs of the southeastern FMMOs.

In its post-hearing brief, Prairie Farms summarized its opposition to Proposals 3, 4, and 5 and maintained the record contains abundant evidence showing a growing milk deficit persisting in the southeastern U.S. The record demonstrates that pool distributing plants in the southeastern FMMOs need out-of-area milk on a year-round basis, but Proposals 3, 4, and 5 do not offer any assistance in obtaining year-round transportation assistance on out-of-area milk. They believe qualifying some out-of-area counties to participate in DPDC, but not others, even if they consistently supply milk to pool distributing plants in the region, is discriminatory.

A Prairie Farms witness testified in support of Proposals 6 through 10. According to the witness, Prairie Farms is a Capper-Volstead cooperative with 682 dairy farmer members in Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, and Wisconsin, and also markets milk for non-cooperative members in Texas. Prairie Farms operates Class I, II and III plants throughout the central U.S., including nine plants regulated on the Appalachian and Southeast FMMOs.

The witness asserted the milk supply in the southeast region has been declining for many years, while population has increased, resulting in milk being imported from outside the region to meet demand. The witness explained this region was historically short in certain seasons, but now faces a year-round shortfall. Describing the lack of flexibility of the current TCBF program, the witness emphasized the importance of simplicity to allow the system to better adjust to future supply and demand changes.

The witness cited USDA data on milk production in the southeastern states in 1997 and 2021, showing that production has declined in greater proportion compared to the decline in consumption. The witness concluded that the data shows the 11 Southeastern states currently produce 73.3 percent of their fluid milk needs, down significantly from 1997.

The witness continued by showing the shortfall of milk in the region that currently exists in the spring flush months of March, April, and May. However, as the current system exists, the witness said, if a handler pools too much of a producer's milk on the Appalachian and Southeast orders in the spring, they are not eligible to claim a TCBF payment on that producer's milk in the fall, despite the market's need for the milk in the spring. The witness supported eliminating the location and delivery criteria in the current TCBF provisions, as contained in Proposals 6 and 7, that currently prevent handlers from qualifying for a fall TCBF payment for producers whose milk is pooled in the spring. The change proposed by Prairie Farms would allow handlers to receive a TCBF payment on milk shipments from these producers.

The witness provided examples of origin to destination locations milk travels as incentivized (or disincentivized) by the existing transportation credit system. One example showed a delivery traveling 21 miles further than necessary, to receive approximately $300 more in a TCBF payment. A second example showed milk traveling 21 miles farther increased the TCBF payment by nearly $700. The witness contended that without the current pool qualification provisions, there would not be financial incentive for these inefficient movements to occur.

According to the witness, removing the current TCBF location qualification provisions would allow producer milk located in the marketing area to be eligible for TCBF payments using the same calculations as milk from outside the marketing area. The witness testified transportation credits available only on milk produced outside the Appalachian and Southeast FMMOS does not incentivize efficient in-area milk movements. Rather, the witness said it would be more equitable and incentivize efficient milk movements for all milk delivered to pool distributing plants, regardless of where it originated, to be eligible for TCBF payments. This, the witness stated, is especially true as the milk supply shrinks in the Southeast and the population increases.

Regarding Proposals 8, 9, and 10, the Prairie Farms witness explained the proposed Assembly Performance Credits (APC) would compensate handlers for assembly, dispatch, and delivery costs incurred on all producer milk received at pool distributing plants. According to the witness, the proposed $0.50 APC assessment is based on the proponents' internal data on the costs of supplying milk to the Appalachian, Southeast, and Central FMMO pool distributing plants, and could be adjusted at the discretion of the Market Administrator. According to the witness, the APC is fair and equitable for both handlers and producers since a uniform assessment rate is applied for the Class I milk, and a uniform credit is received on the producer milk delivered to the distributing plants, regardless of origin.

The witness explained how the APC would offset some milk dispatch costs, which include day-to-day variations in storage capacity and demand on the plant side. As APC payments would not change depending on mileage, the witness said there would not be an incentive to maximize distance.

The witness also addressed the impact of rising costs on Prairie Farms' members. According to the witness, Prairie Farms pays it members FMMO blend prices; therefore, rising costs that are decoupled from FMMO pricing ultimately reduce the cooperative earnings and, consequently, the patronage to their member producers and other cooperative members that supply Prairie Farms plants. The witness spoke to the difficulty in recouping these additional costs through the marketplace, largely because customers claim a lack of visibility and confidence in over-order premiums.

In closing, the witness testified that the combination of the year-round uniformly applied APCs and seasonal TCBF payments applied to all in-area and out-of-area milk will promote efficient producer milk deliveries. The Prairie Farms witness said the APC should be viewed as a marketwide benefit because it would increase returns to cooperatives and their members, which will assist in maintaining and growing the local milk supply, thus resulting in less reliance on supplemental milk supplies to meet Class I demand.

The witness stated that Prairie Farms' preference is for USDA to adopt APCs instead of DPDCs. However, the witness testified that an acceptable alternative would be expanding the list of out-of-area counties eligible for DPDCs to address their concern for handlers acquiring out-of-area milk on a year-round basis to supply the Class I market. In testimony, the witness supported including the same restrictions on diversions for in-area milk as those contained in the TCBF provisions, or removing diversion restrictions in both programs. Prairie Farms requested the rulemaking be conducted on an expedited basis as the milk supply issues of the southeastern FMMOs are critical.

In its post-hearing brief, DCMA argued in opposition to Proposals 6 through 10, stating the proposals would not address the marketing challenges in the Southeastern FMMOs and are not supported by a substantial number of producers in the Southeastern marketing areas. DCMA argued the record does not contain cost justification or analysis supporting any of the changes contained in Proposals 6 through 10. DCMA stated that if location and delivery eligibility provisions were eliminated, as contained in Proposals 6 and 7, TCBF payments would be drastically reduced due to lack of funds. According to DCMA, adoption of Proposals 6 and 7 would double the volume of eligible pounds and would likely result in a payment of less than 10 percent of actual costs. DCMA continued in its brief that even if Proposals 6 and 7 incorporated the new assessment rate and updated the MRF as proposed, the pro rata percentage would result in a very low payment. DCMA argued the proponent of Proposals 6 and 7 had not analyzed the impact of the proposals, and, as a result, the record lacks support for their adoption.

DCMA's post-hearing brief similarly opposed Proposals 8 through 10, arguing the proponent provided no substantial cost-justification for the proposed $0.50 assessment rate. DCMA wrote that the proponent's testimony regarding wide variances in assembly, dispatch, and delivery costs was not supported by any detailed costs. Further, DCMA wrote the record lacks analysis and justification for the proposed assessment and APC payment calculation credit. DCMA argued that by directing new revenues to all producer milk irrespective of its location, the APC proposals continue the disparate treatment of in-area versus out-of-area milk supplies, and do not recognize the unique costs and challenges of in-area milk deliveries. DCMA argued a substantial proportion of the new revenues generated by the APC credit would be allocated to out-of-area producers and not toward supporting the delivery of local in-area producer milk.

A Tennessee dairy farmer testified in support of Proposal 11 which would prohibit milk diverted from a pool distributing plant from receiving any form of transportation credit. The witness discussed milk diversions as milk associated with a pool plant, but not received at a pool distributing plant on a particular day. According to the witness, in the deficit market of the Southeast, diversions are another revenue-source for the cost of moving milk, similar to transportation credits. The witness opined a handler's ability to divert milk should be as limited as possible.

The witness testified changes should be made to the Southeast order to make the value of milk at the plant more transparent and reflective of the true cost. To achieve this, the witness proposed an aggregated, audited publication of the price plants pay for milk in the region. The witness advocated for publication of over-order premiums so dairy farmers could use that information when negotiating with handlers.

According to the witness, when transportation credits were adopted in 1996, they were intended to be used for supplemental milk; however, now they are used to regularly supply the market. The witness said that while a handler can collect transportation credits to haul milk, payments do not reflect the full cost of the haul. The remainder of the cost, according to the witness, is deducted from the local producer's milk check which ultimately leads to less local milk production and greater reliance on more costly supplemental milk deliveries.

A witness representing the Milk Innovation Group (MIG), a group consisting of fluid processors and producers (Anderson Erickson Dairy, Aurora Organic Dairy, Danone North America, Fairlife, HP Hood, Organic Valley/CROPP Cooperative, and Shamrock Foods), testified regarding the proposed APCs. The witness said MIG members support allocating more Class I dollars to producers that are supplying the Class I plants to keep a local milk supply for their plants.

The MIG witness expressed concern over efforts to increase minimum regulated Class I prices through any transportation cost-related assessment on Class I milk as fluid milk sales continue to rapidly decline. While the witness opposed the APC $0.50 per cwt assessment on Class I milk, they were supportive of the APC concept which they believe would better align the Class I supply chain since it is funded out of the pool, not an additional payment on top of the pool that would artificially raise Class I prices. The witness cited current Upper Midwest FMMO assembly credit provisions as a possible alternative.

MIG's post-hearing brief reiterated its opposition to Proposals 6, 7, and 8 due to the price-enhancing nature of the provisions while fluid milk sales continue to decline. MIG maintained FMMOs do not and cannot serve to enhance producer prices, but rather operate to set the minimum price necessary to avoid disorderly marketing and ensure a sufficient supply of fluid milk. MIG concluded that proponents of Proposals 6 through 8 fail to consider consumers when they seek to increase Class I prices without justification, especially during a time of rapid inflation.

In its post-hearing brief, DCMA rejected MIG's argument to fund a transportation assistance program out of existing marketwide pool revenues. DCMA argued that type of funding mechanism would not support the costs to produce milk for or move milk to the region's pool distributing plants. According to DCMA, re-shuffling existing pool revenues would have no effect and provide no actual cost assistance. DCMA concluded that new revenues are needed to target to the cost of delivering milk to the demand points in the marketing areas, as offered in DCMA's proposals.

*Discussion and Findings*

The purpose of this proceeding is consideration of changes to the transportation credit provisions of the Appalachian and Southeast FMMOs for supplemental milk, and adoption of distributing plant delivery credits (DPDC) or assembly performance credits (APCs) for milk deliveries to pool distributing plants in the Appalachian, Florida, and Southeast FMMOs.

The Appalachian and Southeast FMMOs currently contain transportation credit provisions for supplemental Class I milk deliveries. The provisions were first adopted through a 1996 proceeding (62 FR 39738) to address the need for supplemental milk to meet the Class I needs of the two FMMOs. These transportation credit provisions provide payments to handlers to cover a portion of the cost of hauling supplemental milk supplies into the Appalachian and Southeast marketing areas during months when these deliveries are most needed to ensure Class I demand is met (January, February, and July through December). The provisions were amended in 2006 (71 FR 62377) and 2008 (73 FR 14153) to, among other things, adopt a mileage rate factor. The MRF is adjusted monthly by changes in the price of diesel fuel to ensure current fuels costs are reflected in payments on eligible shipments, amend the qualification requirements for supplemental milk and increase the maximum TCBF assessment rates. The Florida FMMO currently has no transportation credit provisions.

The current transportation credit provisions are tailored to distinguish between producers who regularly supply the market and those primarily delivering milk when the market is most at deficit (considered supplemental suppliers). Under the current provisions, only milk from producers who are located outside of the marketing areas and are not regular suppliers to the market are eligible to receive transportation credits. Producer milk received at a pool distributing plant eligible for a transportation credit under the orders is defined as bulk milk received directly from a dairy farmer who: (1) not more than 50 percent of the dairy farmer's milk production, in aggregate, is received as producer milk during the immediately preceding months of March through May of each order; and (2) produced milk on a farm not located within the specified marketing areas of either order. Milk deliveries from producers located outside the marketing area who are consistent suppliers to the market or from producers located inside the marketing areas are not eligible to receive transportation credits.

The policy objective of the AMAA is ''. . . to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce . . . '' (7 U.S.C. 602(1)). The AMAA further instructs the Secretary to maintain ''. . . an orderly flow of the supply thereof to market throughout its normal marketing season to avoid unreasonable fluctuations in supplies and prices.'' (7 U.S.C. 602(4)). In the Appalachian and Southeast FMMOs, this policy objective is achieved, in part, through transportation credit provisions that ensure an adequate fluid (Class I) milk supply.

The record reveals that all three orders (Appalachian, Florida, and Southeast) lack in-area milk production to meet the region's Class I demand. Record evidence illustrates this long-standing regional issue which the current transportation credits aim to address through economic incentives for supplemental milk deliveries to the region's pool distributing plants when most needed. While the current transportation credit provisions have been successful in ensuring Class I demand is met, the record reveals the reimbursement levels do not reflect the current transportation cost environment. As a result, handlers and cooperatives who provide the marketwide service of delivering milk to the Class I market incur transportation costs that they cannot recover.

The 2006 Final Decision (79 FR 12985) details the region's milk deficit at that time and recommended changes to existing transportation credit provisions to account for reasonable transportation cost reimbursement for supplemental milk deliveries to Class I plants in the region. Record evidence from the current proceeding reveals the region's milk deficit has continued to worsen. According to the record, the number of licensed dairy farms located within the Appalachian, Florida and Southeast FMMOs have declined approximately 38, 50, and 57 percent, respectively, from 2017 to 2022. Data shows 2021 in-area milk production in the Appalachian, Florida, and Southeast FMMOs represented 54, 82, and 44 percent of their respective milksheds. Put another way, in 2021, 54 percent of the milk pooled on the Appalachian FMMO was produced within the geographic boundaries of the order. Consequently, a significant volume, 46 percent, of the Order's needs had to be met from milk produced outside the marketing area.

An objective of the FMMO system is meeting Class I demand, and the record reveals a consistent lack of in-area milk production to meet demand. In the Appalachian FMMO, from 2019 to 2021, the average daily in-area milk production deficit ranged from 3.3 to 4.9 million pounds below pool distributing plant demand. In other words, on an average day, pool distributing plants needed anywhere from 3.3 to 4.9 million pounds of milk (67 to 99 tanker loads) from outside the marketing area to meet pool distributing plant demand. The same daily deficit in the Florida FMMO ranged from 100,000 pounds to 1.4 million pounds (2 to 28 tankerloads), and 3.8 to 6.5 million pounds (77 to 131 tankerloads) in the Southeast FMMO.[1]

The record also reveals that while handlers and cooperatives are delivering supplemental milk to meet pool distributing plant demand, they are not able to recoup a significant portion of the transportation costs incurred. Cooperative witnesses testified they perform this service despite the financial loss because the consequences of not fulfilling the market's Class I needs outweigh the loss from transportation costs. They spoke of the importance of meeting pool distributing plant demand to ensure these plants remain an open and available market outlet for local producers.

Cooperative handler witnesses testified that their efforts to ensure Class I market needs are met come at a cost to the cooperative and its members. The inability to recover the additional transportation costs through negotiations with milk buyers was a common theme of the testimony. The record shows that not only are local producers paying directly for the increased transportation costs of their milk, but the cooperative often charges a hauling fee to offset the additional cost of bringing in supplemental supplies, which is not covered by either the current transportation credit provisions nor the differences in Class I differential zones between the supply and demand counties.

The record reveals a significant reduction in the number of Class I plants in each of the Southeastern orders and an increase in the distance milk travels to a Class I plant. According to record data, in January 2000, there were 73 Class I plants located in the 3 marketing areas (pool distributing plants and partially regulated distributing plants). By December 2022, the record reveals only 39 plants, a reduction of 46 percent. Consequently, as testified to by several cooperatives and in-area producer witnesses, the average miles traveled and transportation costs for both in-area and supplemental milk movements have increased.

As highlighted above, the record evidence clearly demonstrates the continued milk deficit problem in the three Southeastern orders and its impact on producers, cooperatives, and handlers serving the markets. The overarching issue in this proceeding, which all the proposals seek to tackle, is how to best address the chronic milk deficit problem. Under consideration in this proceeding are two different approaches. The first, offered by DCMA, would amend the current TCBF provisions of the Appalachian and Southeast FMMOs for supplemental milk to reflect current cost factors (Proposals 1 and 2) and simultaneously adopt DPDCs in all three Southeastern orders to aid in moving year-round, consistent milk supplies located within and nearby the marketing areas to meet Class I demand (Proposals 3 through 5). Taken together, these proposals would offer partial transportation cost reimbursement for most milk deliveries to pool distributing plants in the region.

The second approach, offered by Prairie Farms, Inc., would adopt new year-round APCs in all three southeastern orders (Proposals 6 through 8) for all milk deliveries to pool distributing plants in the region, while also making changes to the current TCBF provisions to remove location and delivery eligibility criteria (Proposals 9 and 10). In practice, this would make the same milk deliveries eligible for both APC and TCBF payments.

As explained in the summary of testimony, all milk deliveries to a pool distributing plant would be eligible to receive an APC. The payment rate would be determined by the assessments collected on all Class I milk pooled during the month (proposed to be $0.50 per cwt), divided by all milk deliveries to pool distributing plants. The resulting per cwt payment would not be tied to mileage but would offer partial reimbursement to handlers and cooperatives for the assembly, dispatch, and delivery costs of moving milk to meet Class I demand.

Proponents argued the APC is a better method of cost reimbursement compared to DPDC because it would not encourage inefficient milk movements that could occur with mileage-based cost reimbursement. They also likened the proposed APCs to assembly credits currently in the Upper Midwest (UMW) FMMO, which they contended are sufficient to attract milk away from pool supply plants to pool distributing plants.

The record of this proceeding does not contain adequate evidence to support adoption of an APC. The hearing evidence does not contain data demonstrating how the $0.50 per cwt proposed assessment rate is representative of any of the costs (assembly, dispatch, and delivery) the APC is purported to offset. Furthermore, while proponents referenced use of an assembly credit in the UMW order, marketing conditions in the three southeastern orders are vastly different. The UMW order has abundant milk supplies locally to meet Class I demand, with a 2022 average Class I utilization rate of 7 percent.[2] In contrast, the average 2022 Class I utilization rates of producer milk were 70 percent, 83 percent, and 72 percent, in the Appalachian, Florida, and Southeast orders, respectively. While the UMW assembly credit provisions offer financial incentives for milk movements from pool supply plants to pool distributing plants, the abundance of milk produced, and relatively low percentage of Class I use in the marketing area, does not necessitate long hauls like those regularly occurring in the three orders at issue in this proceeding.

As documented in this hearing record, the market conditions in the southeastern region are vastly different than other regions of the country. Local milk supplies cannot meet Class I demand, necessitating the procurement of significant supplemental supplies from outside the marketing areas. While proponents assert the APC would provide full cost reimbursement for the first 50–60 miles traveled, the proposal does not address the reality that supplemental milk supplies travel over 700 miles, on average, to meet Class I demand. The record does not indicate that a non-mileage-based reimbursement mechanism, such as proposed through the APC, would ensure Class I demand would be met. Accordingly, Proposals 6, 7 and 8 are not recommended for adoption.

Regarding the current TCBF provisions, it is appropriate from time to time to evaluate whether the provisions continue to meet their purpose, and if so, reflect the current transportation cost environment. The TCBF provisions have existed for over 25 years to assist with moving milk to pool distributing plants in the milk deficit Southeastern FMMOs. This decision finds the milk supply/demand imbalance in the Appalachian and Southeast orders continues to persist and the TCBF provisions of those two orders continue to provide necessary transportation cost assistance to ensure Class I needs are met.

Witnesses from multiple DCMA member cooperatives testified that while TCBF payments help offset some of the cost to procure supplemental milk supplies, they have been unable to recoup the remaining transportation cost from the market and are therefore incurring significant financial losses. Hearing evidence indicates current transportation credits cover approximately 58 percent of actual costs, assuming assessments collected

[1] Assuming 49,700-pound tanker.

[2] Upper Midwest Federal Milk Marketing Order Statistics.

do not necessitate prorating claims. However, in the Southeast FMMO where payments are often prorated, hearing evidence suggests costs covered were as low as 40 percent in 2021. The cooperative witnesses questioned their ability to continue to provide adequate supplemental milk supplies in the future without some financial relief in the form of updated provisions to better reflect actual costs.

Ensuring Class I demand is met is essential to the FMMO system in meeting its objective of maintaining orderly marketing conditions. The record reveals a significant decrease in the number of pool-distributing plants operating in the region that provide market access to local producers. Provisions that do not encourage sufficient milk supplies to meet Class I needs may hasten more plant closures, jeopardizing the delicate balance of orderly marketing in the region.

Therefore, given the continued demonstrated need for supplemental supplies in the Appalachian and Southeast orders, this decision finds it appropriate for handlers providing the marketwide service of obtaining supplemental milk to receive adequate transportation cost reimbursement, reflective of current market conditions. Accordingly, this decision proposes to amend the TCBF provisions to reflect current transportation cost factors and increase the assessment rates charged in order to generate funds needed, as described in Proposals 1 and 2.

TCBF provisions using a MRF with a fuel cost adjustor were adopted in 2006 and have not been updated since their adoption. Hearing evidence shows that in the 16 subsequent years, transportation costs have increased and are no longer adequately reflected in the provisions. The three main components that determine a transportation credit payment are: mileage rate factor, reimbursable miles, and eligible milk. This decision proposes changes to the mileage rate and reimbursable miles components, as well as the mandatory payment months and maximum assessment rates.

*Mileage Rate Factor*

The MRF contains five components, four of which this decision recommends be amended: reference diesel fuel price, reference haul cost, reference truck fuel use, and reference load size. The average diesel fuel cost factor was not proposed to be amended in this proceeding and will remain the simple average for the most recent four weeks of diesel prices for the Lower Atlantic and Gulf Coast Districts, as announced by the U.S. Department of Energy, Energy Information Administration.

*Reference Diesel Fuel Price*

The current transportation credit provisions contain a reference diesel fuel price of $1.42 per gallon, which was adopted in 2006 and represented relatively stable EIA-announced regional diesel fuel prices between October and November 2003 (79 FR 12995). Since that time, the record indicates diesel fuel prices have increased. In the three most recent years (2020–2022), the annual average price of diesel in the Lower Atlantic region was $2.480, $3.174, and $4.920 per gallon.[3] Similar cost increases were also seen in the Gulf Coast region. Proponents advanced a reference diesel fuel price of $2.26 per gallon, representing the EIA average of the two regions during May through early November 2020. EIA-announced diesel fuel prices were relatively stable during this time and corresponds to the DCMA-surveyed supplemental hauling costs entered into evidence and used to justify the proposed base haul rate.

This decision proposes a reference diesel fuel price of $2.26 per gallon. As the milage rate calculation accounts for current fuel costs through the average fuel cost calculation, it is appropriate to update the reference diesel fuel price to reflect more current marketing conditions. Moreover, as will be discussed, this time period corresponds to the non-fuel related costs that would be reimbursed through the proposed base haul rate.

*Reference Haul Cost*

Evidence reveals non-fuel costs, such as, but not limited to, purchasing and maintaining equipment, labor, benefits, and overhead, which are represented in the reference haul cost (currently $1.91 per loaded mile), have increased substantially. While monthly variability in diesel fuel prices is captured in the mileage rate factor, changes in non-fuel related costs are not captured and have not been updated since 2006, which was based on 2003 data (79 FR 12995). The proponents propose increasing the base haul rate to $3.67 per loaded mile. DCMA member costs were entered into the record based on a survey of costs for 2,951 supplemental loads that were charged to its cooperative members from September through October 2020. During that time, the survey average base haul rate per loaded mile was $3.67, representing an average distance of 818 miles and an average load size was 49,700. Several witnesses testified to the increases in transportation costs, a large portion being non-fuel related costs.

Based on record evidence this decision proposes to adopt a base haul rate of $3.67 per loaded mile. This rate more accurately reflects current costs incurred to deliver supplemental milk to the southeastern region. Ensuring adequate transportation cost relief is appropriate to ensure Class I demand of the region continues to be met.

*Reference Truck Fuel Use*

The reference truck fuel use assumption (adopted in 2006), which represents the average number of miles traveled per gallon of fuel use in transporting milk, is currently 5.5. Record evidence indicates truck fuel economy has improved. Evidence indicates the most current published Department of Transportation combination truck fuel economy data (2019) shows an average MPG fuel use of 6.0478. Proponents entered additional information on fuel economy gains through 2022 to estimate a current fuel economy rate of 6.1770 MPG and proposed a rate of 6.2 MPG. This decision proposes to adopt a 6.2 MPG fuel consumption rate. This slightly higher rate would result in a lower TCBF payment, promoting efficiencies and discouraging uneconomic movements of milk.

*Reference Load Size*

The current TCBF reference load size is 48,000 pounds. However, data entered into the record indicates tanker load sizes have increased. DCMA survey data indicate an average load size on supplemental milk supplies was 49,700 pounds. This decision finds 49,700 pounds a reasonable reference load size. Slightly higher reference truck fuel use (6.2 MPG) and reference load size (49,700 pounds) assumptions would serve as precautionary measures to decrease the likelihood TCBF payments would be in excess of actual costs incurred.

*Reimbursable Miles*

Also under consideration in this proceeding is amending the miles eligible to receive a TCBF payment. Currently, the first 85 miles of a supplemental milk shipment is not eligible for a TCBF payment. Proponents seek to change the ineligibility to a percentage basis, 15 percent of the miles shipped, making 85 percent of miles eligible for a TCBF payment. DCMA survey data indicate an average haul on its supplemental milk shipments of 818 miles. Under current TCBF provisions,

[3] Official Notice *https://www.eia.gov/petroleum/gasdiesel/*.

the first 85 miles did not receive a TCBF payment, meaning those average supplemental loads received payment on 733 miles, or 89.6 percent of miles traveled. A closer haul, for example 409 miles, would receive payment on 324 miles (79 percent of miles traveled). Under the proposed changes, both scenarios would receive payment on 85 percent of miles traveled.

The analysis indicates a flat 85-mile exemption penalizes shorter milk hauls, which should instead be encouraged as the more efficient movement. Moving to a percentage exemption would establish more equitable treatment of long and short hauls, and consequently encourage more efficient supplemental milk deliveries. Therefore, this decision proposes to adopt a 15 percent mileage exemption, which could be adjusted by the market administrator if requested and found appropriate after an investigation.

Below is an example of the TCBF MRF calculation given the recommended provisions discussed above:

BILLING CODE P

**EIA Weekly Retail On-Highway Diesel Fuel Prices** [2]

| | Lower Atlantic | Gulf Coast |
|---|---|---|
| **3/27/2023** | 4.087 | 3.882 |
| **4/3/2023** | 4.078 | 3.887 |
| **4/10/2023** | 4.055 | 3.883 |
| **4/17/2023** | 4.056 | 3.876 |

| | | | |
|---|---|---|---|
| **Monthly average diesel fuel price** [3]**:** | | **$ 3.976** | **per gallon** |
| Reference diesel fuel price: | - | $ 2.260 | per gallon |
| Fuel price difference [4]: | | $ 1.716 | per gallon |
| Reference truck fuel use: | ÷ | 6.2 | miles per gallon |
| Fuel cost adjustment factor [5]: | | $ 0.277 | per loaded mile |
| Reference haul cost: | + | $ 3.670 | per loaded mile |
| Fuel-adjusted haul cost [6]: | | $ 3.947 | per loaded mile |
| Reference load size: | ÷ | 497 | cwt |
| **May 2023 Mileage Rate Factor** [7]**:** | | **$ 0.00794** | **dollars per cwt per mile** |

1 As announced on April 19, 2023, with the Announcement of Advanced Class Prices.

2 Dollars per gallon. Reported every Monday by the Energy Information Administration of the U.S. Department of Energy.

3 Calculated by rounding down to three decimal places the average of the four most recent weeks of retail on-highway diesel fuel prices for the Lower Atlantic and Gulf Coast EIA regions combined prior to the Advanced Class Price announcement.

4 Calculated by subtracting the reference diesel fuel price of $2.26 per gallon from the calculated average diesel fuel price for the month.

5 Calculated by dividing the fuel price difference by 6.2 miles per gallon fuel use and rounding down to three decimal places.

6 Calculated by adding fuel cost adjustment factor for the month to the reference haul cost of $3.67 per loaded mile.

7 Calculated by dividing the fuel-adjusted haul cost by the number of hundredweights (cwt's) on the reference load size (49,700 pounds = 497 cwt's) and rounding down to five decimal places.

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*Payment Months*

Testimony was received regarding a proposal to change February from a mandatory to a discretionary TCBF payment month. Under current provisions, TCBF payments are mandatory for the months of January, February, and July through December. Payments may be made for the month of June, if requested by stakeholders and found appropriate by the market administrator to ensure an adequate supply of milk for fluid use. Proponents contend making February a discretionary payment month would allow TCBF monies to be used when supplemental milk supplies are most needed. Data entered into the record demonstrate how payments from the TCBF in the Southeast FMMO often exceed assessments, resulting in payment proration for a significant number of payment months. This decision proposes to change February to a discretionary payment month to allow funds that would have been paid during the month to instead be available to pay in later months, thus lowering the frequency and/or degree of prorated payments. Stakeholders would have the ability to petition the market administrator to make February a payment month if determined TCBF monies were needed to ensure an adequate Class I supply.

*TCBF Assessment Rates*

If there are often insufficient funds to pay TCBF claims, the provisions fall short of providing for more orderly milk supplies to meet Class I needs. The maximum allowable TCBF assessment rates in the Appalachian and Southeast FMMOs are $0.15 and $0.30 per cwt, respectively. The assessments are collected every month on Class I pooled milk. Both FMMOs use the same formulas for determining payments.

The record reveals under the current TCBF provisions, the assessments collected in the Southeast FMMO are routinely prorated because of the larger volumes and greater distances supplemental milk travels to supply its Class I demand. The lowest proration in the past 14 years was in October 2022, when Southeast FMMO TCBF payments were prorated to 25.9 percent of claims because of lack of funds, despite the assessment level being set at its maximum, $0.30 per cwt.

Conversely, in the Appalachian FMMO, where in-area production supplies a higher percentage of Class I demand and less supplemental milk is needed, the current assessment level is $0.07 per cwt, which is less than the maximum allowable rate of $0.15 per cwt. This rate has been adequate to make full payment on eligible milk shipments in recent years.

Analysis of the proposed provisions indicate adoption would result in higher payments from the TCBF. The record indicates the assessment levels needed to pay claims based on the proposed TCBF provisions could be as high as $0.18 per cwt and $0.88 per cwt in the Appalachian and Southeast FMMOs, respectively. Therefore, this decision proposes to increase the maximum allowable TCBF assessment rates to ensure adequate funds and reduce the need to prorate payments. Specifically, this decision proposes to adopt maximum TCBF assessment rates of $0.30 per cwt and $0.60 per cwt in the Appalachian and Southeast FMMOs, respectively. The rates should ensure adequate funds to make full payments on eligible shipments, or lessen the instances of prorated payments, particularly in the regularly short Southeast. There was no opposition at the hearing to the proposed assessments rates; further data supports these maximum rates as reasonable starting points. The market administrator maintains the authority to evaluate collections and lower assessment rates if warranted.

*Distributing Plant Delivery Credits*

Promoting efficient, orderly milk movements to make certain Class I demand is met is an objective of the FMMO program. The hearing record details the unique marketing conditions of the southeastern region and the difficulty in obtaining supplies to meet Class I demand. As detailed above, the situation is not new; the region has used transportation assistance provisions for supplemental milk supplies to ensure Class I demand is met for decades. Just as handlers delivering supplemental milk to meet Class I demand provide a marketwide service, the same is true of handlers ensuring regular milk supplies are delivered to Class I plants in the milk deficit southeastern region.

Currently, no provisions within the Appalachian, Florida or Southeast FMMOs provide transportation assistance for the region's regular supply, even though this supply is a vital piece of meeting Class I demand. As discussed in detail previously, plant closures, the reduction of in-area milk production, and higher transportation costs which have impacted the region's supplemental milk supplies have also impacted its regular milk supplies. Without some transportation cost assistance, the record indicates the milk supply deficit in the region will continue, most likely at an accelerated rate, putting more pressure on supplemental supplies to meet Class I demand. This is not only costly but puts increased pressure and strain on local dairy farmers, as revealed in the hearing record. Finding available supplemental supplies depends on many factors, such as the availability of milk in other markets, driver and truck availability for longer, supplemental hauls, and transportation costs.

Cooperative handler witnesses testified regarding the difficulty of obtaining and maintaining over-order premiums to recoup increased transportation costs. Consequently, as described in the hearing record, cooperative producer-members whose milk is a regular supply to the market are bearing the cost burden of the marketwide service provided by their cooperative through an additional deduction on their milk check.

Both cooperative handlers and independent Class I handlers testified the most efficient deliveries to meet Class I demand are from more local milk supplies. As the FMMOs seek to provide for efficient milk movements, such deliveries should be encouraged. The entire market benefits from ensuring Class I demand is met and the responsibility for bearing the cost should not fall solely to the handlers, primarily cooperative handlers, who provide this marketwide service.

The hearing record clearly demonstrates the unique supply/demand imbalance in the southeast region. Similar market conditions do not exist in the eight FMMOs outside the region. Consequently, the marketing conditions of the southeastern region warrant unique provisions to ensure Class I demand is met.

The record reveals that milk from both within and nearby the marketing areas is considered part of the region's consistent, regular supply. Accordingly, this decision recommends transportation assistance for milk that serves the region's Class I demand year-round basis on the Appalachian, Florida and Southeast FMMOs. Therefore, this decision proposes to adopt Proposals 3 and 5, with slight modification, and Proposal 4.

There are four main components of the proposed DPDC provisions, which will be addressed below: eligibility, payment rates, assessment levels, and allowance for market administrator discretion. Taken together, these provisions should assist in efficient, more orderly deliveries of year-round Class I milk supplies of the marketing areas.

Proposals 3, 4 and 5, as proposed by DCMA, would allow DPDC payments on milk deliveries from counties where DCMA members procure year-round milk supplies. For the Appalachian FMMO, this would be counties comprising the marketing areas of the Appalachian and Southeast FMMOs, plus specified counties in Virginia and West Virginia. For the Florida FMMO, DPDC eligible milk shipments could come from the counties comprising the Florida FMMO and specified counties in Georgia. In the Southeast FMMO, DPDC eligible milk shipments could come from the counties comprising the Southeast and Appalachian marketing areas.

As raised by Prairie Farms in testimony and post-hearing brief, there are additional nearby counties from which the cooperative procures year-round Class I milk supplies for the Southeast FMMO that would not be eligible for DPDC payments under the DCMA proposals. While Prairie Farms offered APCs as an alternative, they indicated the DPDC provisions would be acceptable if they were modified to include deliveries from adjacent states.

The record of this proceeding supports extending eligibility to some additional counties to provide equitable transportation cost assistance for milk shipments that are part of the year-round supply. However, the need for equitable treatment must be balanced with preventing milk further from the marketing area from becoming eligible for DPDC payments as it would undermine the transportation assistance the provisions are attempting to provide for local, more efficient milk deliveries.

While this decision recommends elimination of the TCBF 85-mile exemption and moving to a percentage deduction, the record indicates 85 miles has been accepted by the industry as representing the local haul that is the producer's responsibility. Based on evidence in the record, this decision finds it reasonable that milk deliveries serving the Class I needs of the Appalachian and Southeast FMMOs from counties within 85 miles of the respective marketing area boundaries be eligible for DPDC payments. The additional counties eligible under this expanded mileage range should increase the producer milk receipts eligible to receive a DPDC payment to include a majority of the year-round milk supplies of the two marketing areas, address the concern raised by Prairie Farms, and promote more orderly, efficient marketing of those deliveries.

Under the DPDC provisions originally proposed by DCMA, an analysis indicates approximately 76, 99, and 44 percent of the producer milk receipts delivered to pool plants would be eligible to receive DPDCs in the Appalachian, Florida and Southeast FMMOs. The DPDC provisions recommended in this decision, including the additional counties for the Appalachian and Southeast FMMOs, would increase the eligible producer milk receipts to 86 and 56 percent, respectively.

Specifically, for the Appalachian FMMO, milk from counties within the Appalachian and Southeast marketing areas, plus specified counties generally within 85 miles of the marketing area boundary would be eligible to receive a DPDC. Therefore, this decision recommends a modified Proposal 3 to extend eligibility to milk shipments originating from the following counties and cities:

*Illinois:* Alexander, Bond, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Macon, Marion, Massac, Monroe, Montgomery, Moultrie, Perry, Piatt, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Shelby, Union, Vermilion, Wabash, Washington, Wayne, White, and Williamson.

*Indiana:* Bartholomew, Boone, Brown, Clay, Clinton, Dearborn, Decatur, Delaware, Fayette, Fountain, Franklin, Hamilton, Hancock, Hendricks, Henry, Jackson, Jefferson, Jennings, Johnson, Lawrence, Madison, Marion, Monroe, Montgomery, Morgan, Ohio, Owen, Parke, Putnam, Randolph, Ripley, Rush, Shelby, Switzerland, Tippecanoe, Tipton, Union, Vermillion, Vigo, Warren, and Wayne.

*Kentucky:* Boone, Boyd, Bracken, Campbell, Floyd, Grant, Greenup, Harrison, Johnson, Kenton, Lawrence, Lewis, Magoffin, Martin, Mason, Pendleton, Pike, and Robertson.

*Maryland:* Allegany, Frederick, Garrett, Montgomery, and Washington.

*Ohio:* Adams, Athens, Brown, Butler, Clark, Clermont, Clinton, Darke, Fairfield, Fayette, Franklin, Gallia, Greene, Hamilton, Highland, Hocking, Jackson, Lawrence, Madison, Meigs, Miami, Montgomery, Morgan, Perry, Pickaway, Pike, Preble, Ross, Scioto, Vinton, Warren, and Washington.

*Pennsylvania:* Bedford, Fayette, Franklin, Fulton, Greene, and Somerset.

*Virginia counties:* Albemarle, Amelia, Appomattox, Arlington, Brunswick, Buckingham, Caroline, Charles City, Charlotte, Chesterfield, Clarke, Culpeper, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Fluvanna, Frederick, Gloucester, Goochland, Greene, Greensville, Halifax, Hanover, Henrico, Isle Of Wight, James City, King And Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Nelson, New Kent, Northumberland, Nottoway, Orange, Page, Powhatan, Prince Edward, Prince George, Prince William, Rappahannock, Richmond, Shenandoah, Southampton, Spotsylvania, Stafford, Surry, Sussex, Warren, Westmoreland, and York.

*Virginia cities:* Alexandria City, Charlottesville City, Chesapeake City, Colonial Heights City, Emporia City, Fairfax City, Falls Church City, Franklin City, Fredericksburg City, Hampton City, Hopewell City, Manassas City, Manassas Park City, Newport News City, Norfolk City, Petersburg City, Poquoson City, Portsmouth City, Richmond City, Suffolk City, Virginia Beach City, Williamsburg City, and Winchester City.

*West Virginia:* Barbour, Berkeley, Boone, Braxton, Cabell, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jackson, Jefferson, Kanawha, Lewis, Lincoln, Logan, Marion, Mason, Mineral, Mingo, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Wayne, Webster, Wetzel, Wirt, Wood, and Wyoming

For the Southeast FMMO, milk from counties within the Southeast and Appalachian marketing areas, plus specified counties generally within 85 miles of the marketing area boundary would be eligible to receive a DPDC. Therefore, this decision recommends a modified Proposal 5 to extend eligibility to milk shipments originating from the following counties and cities:

*Illinois:* Alexander, Bond, Clay, Clinton, Crawford, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Marion, Massac, Monroe, Montgomery, Perry, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Union, Washington, Wayne, White, Williamson, Calhoun, Greene, Jersey, Macoupin, Madison, and Wabash.

*Kansas:* Allen, Anderson, Bourbon, Chautauqua, Cherokee, Coffey, Crawford, Douglas, Elk, Franklin, Greenwood, Jefferson, Johnson, Labette, Leavenworth, Linn, Lyon, Miami, Montgomery, Neosho, Osage, Shawnee, Wabaunsee, Wilson, Woodson, and Wyandotte.

*Missouri:* Audrain, Bates, Benton, Boone, Callaway, Camden, Cass, Clay, Cole, Cooper, Franklin, Gasconade, Henry, Hickory, Howard, Jackson, Jefferson, Johnson, Lafayette, Lincoln, Maries, Miller, Moniteau, Montgomery, Morgan, Osage, Pettis, Phelps, Pike, Platte, Pulaski, Ray, St Charles, St Clair, Ste Genevieve, St Louis, St. Louis City, Saline, and Warren.

*Oklahoma:* Adair, Atoka, Bryan, Cherokee, Choctaw, Coal, Craig, Creek, Delaware, Haskell, Hughes, Latimer, Le Flore, McCurtain, Mcintosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Pushmataha, Rogers, Sequoyah, Tulsa, Wagoner, and Washington.

*Texas:* Anderson, Angelina, Bowie, Camp, Cass, Chambers, Cherokee, Delta, Fannin, Franklin, Galveston, Gregg, Hardin, Harris, Harrison, Henderson, Hopkins, Houston, Hunt, Jasper, Jefferson, Kaufman, Lamar, Liberty, Marion, Montgomery, Morris, Nacogdoches, Newton, Orange, Panola, Polk, Rains, Red River, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Trinity, Tyler, Upshur, Van Zandt, Walker, and Wood.

The record does not reflect there are additional counties that supply year-round Class I milk to the Florida marketing area, other than the Georgia counties DCMA proposed be included. Therefore, this decision proposes to adopt Proposal 4 without modification.

This decision also recommends that handlers and cooperatives sourcing year-round milk supplies to meet Class I needs from additional counties in the states listed above could request eligibility for DPDC. If the market administrator finds those counties provide milk to the Class I market on a year-round basis, they would be eligible to receive a DPDC. Accounting for the eligibility expansion to the counties listed above and providing flexibility for additional counties within those states to be eligible, if requested and approved, should address the objections presented by Prairie Farms.

DCMA witnesses testified that it was not the intention of its proposals to allow the milk outside the marketing area that is eligible for the DPDC to also receive payment from the TCBF. This decision recommends limitations in the eligibility requirements for the TCBF so producer milk originating from the counties listed above that are outside of the Appalachian and Southeast FMMO are only eligible to receive either a DPDC or TCBF payment.

Proposals 3, 4 and 5 also contain a provision allowing milk shipments from pool supply plants to pool distributing plants to be eligible for DPDC payments. The record reflects that a pool supply plant on the Appalachian order assembles milk from smaller farms at the plant and then ships the assembled larger tanker load of milk to pool distributing plants regulated by the order. This supply plant provides milk shipments to meet the demands of the Appalachian order's pool distributing plants and should be eligible for a DPDC for the transportation cost incurred between the two plants. While testimony was only offered regarding a pool supply plant on the Appalachian FMMO, the DCMA proposals contain the same provision for the Southeast and Florida FMMOs. As this decision seeks to provide transportation assistance to handlers providing the marketwide service of meeting Class I demand in all three FMMOs, it is appropriate to allow these deliveries from pool supply plants to pool distributing plants to be eligible for DPDC payments.

Not unlike the recommended TCBF provisions, this decision recommends DPDCs provide reimbursement on 85 percent of the delivery mileage. The proposed regulations would allow the market administrator to adjust the mileage range to between 75 and 95 percent if requested by stakeholders and warranted by market conditions. Such an adjustment could be warranted, for example, if the combination of Class I differential adjustments and DPDC payments were found to be reimbursing in excess of transportation costs. Granting the market administrator authority to adjust the mileage rate would provide a safeguard against payments in excess of costs.

This decision proposes to adopt DPDC payment rates identical to the TCBF, which have been detailed above. The record indicates the similarity in transportation cost factors between supplemental and year-round supplies. Therefore, this decision finds it appropriate to recommend identical payment provisions.

The record contains information regarding the funding needed to make DPDC payments on eligible year-round milk supplies. Establishing maximum assessment rates and allowing the market administrator flexibility to lower those rates is an efficient way to administer the provisions, as has been demonstrated in the administration of the current Appalachian TCBF. As such, this decision proposes to adopt DPDC maximum assessments of $0.60, $0.85, and $0.50 per cwt, in the Appalachian, Florida, and Southeast FMMOs, respectively. Proponents provided data on the record for initial assessment levels. Should the DPDC be adopted, the market administrator will evaluate market data to determine an adequate initial assessment rate which would be announced on or before the 23rd of the month preceding implementation.

Finally, this decision proposes to include DPDC provisions to authorize the market administrator to monitor milk movements and DPDC claims to disqualify shipments from eligibility if, after an investigation, it was determined the shipments indicate persistent and pervasive uneconomic milk movements. Uneconomic milk movements run counter to the program's objectives to provide for more orderly marketing and encourage efficient milk movements. Such movements should be discouraged and should not receive the benefit of transportation cost assistance offered through DPDCs. Therefore, this decision recommends the proposed oversight provisions.

In summary, the chronic milk supply problem in the Appalachian, Florida, and Southeast orders is well documented and this decision recommends adoption of a series of amendments and new provisions to provide transportation assistance to handlers who provide the marketwide service of meeting the markets' Class I demand. Through these recommendations, most milk delivered to a pool distributing plant (both supplemental and year-round supplies) would be eligible for one type of transportation payment. This decision does not support adoption of Proposal 9 and 10 that would remove the location and delivery eligibility requirements of the current TCBF provisions, thus making milk eligible to receive both credits. Accordingly, Proposals 9 and 10 are not recommended for adoption.

This decision does not recommend adoption of Proposal 11 which would prohibit diversions on milk receiving any form of transportation assistance from the Appalachian, Florida, and Southeast FMMOs. The Appalachian and Southeast FMMOs already contain this prohibition on milk receiving TCBF payments. This rulemaking is considering whether to extend the prohibition to milk receiving DPDCs.

The record indicates that while a vast majority of the milk regulated by the three Southeastern FMMOs is delivered to pool plants, there are instances, even given the region's chronic milk shortage, when milk is not needed by pool distributing plants and is instead delivered to nonpool plants. Witnesses for cooperatives who would be eligible to receive DPDC payments testified that the ability to pool diversions provides for the orderly disposition of year-round milk supplies regulated by the Orders.

The record reveals that pool distributing plants' demand fluctuates on a weekly, monthly, and annual basis for many reasons, such as weekends, holidays, or the closing of schools for the summer. Previous FMMO rulemakings that have amended or established diversion limits discuss the appropriateness of allowing for the milk of producers who are consistent and reliable suppliers serving the Class I needs of the market to be pooled and priced even when that milk is not immediately needed for Class I use. FMMOs allow milk diverted to nonpool plants to be pooled and priced by the Order, to ensure its orderly and efficient disposition.

By design, the recommended DPDC provisions establish criteria for identifying consistent, year-round milk supplies eligible to receive a payment. This decision has discussed at length the need for transportation assistance in the region to ensure an adequate supply of Class I milk. Diversion limits are one feature that provides for the orderly disposition of this consistent supply of Class I milk. Prohibiting the diversion of milk receiving a DPDC would not provide for more orderly marketing and would interfere with the orderly disposition of the region's consistent Class I milk supplies. Accordingly, this decision does not recommend adoption of Proposal 11.

This decision does not find that adoption of Proposals 1, 2, 3, 4 and 5 would have a negative competitive impact on pool distributing plant handlers in the three Southeastern Orders. If adopted, the proposed maximum assessment rates for the TCBF and DPDC combined would be $0.90, $1.10, and $0.85 per cwt, in the Appalachian, Florida and Southeast FMMOs, respectively. Evidence shows packaged milk coming into the region from common supply points would incur costs—a combination of applicable Class I differentials and transportation costs—in excess of the combined TCBF and DPDC assessments on Class I milk. Thus, adoption of the maximum assessment rates would not impact competitive relationships among handlers who supply the region with fluid milk products.

To compare how the proposed assessments could impact the wholesale price of milk used in Class I products, the proposed change in assessment levels was analyzed. The difference in current assessment levels and the maximum assessment levels proposed in this decision is $0.83, $1.10, and $0.55 per cwt, in the Appalachian, Florida and Southeast FMMOs, respectively. The differences per cwt converted to gallons are $0.071, $0.095, and $0.047 per cwt, in the Appalachian, Florida and Southeast FMMOs, respectively. The extent to which the increased Class I assessments would pass through to retail milk prices is unknown. Compared to average regional retail prices for conventional whole milk in 2022, retail prices would increase by 1 to 3 percent if the total increase were fully passed through.

Some witness testimony and post-hearing briefs argued that because of declining fluid milk sales, FMMOs should not be amended in a way that would raise consumer prices. While impact on consumers is important to consider, it must be balanced with the reality that supplying the southeastern U.S. with milk to meet consumer Class I demand is costly. This record details how transportation costs have increased and handlers and cooperatives supplying the Class I market have been unable to recoup those costs in the marketplace. FMMOs are not providing for orderly marketing if supplies of the Class I market—in this case cooperatives who supply more than 80 percent of the region's milk—are asked to continue to serve the Class I market without any practical way to cover costs of moving milk to service the Class I market. Such a chronic situation, as documented by this hearing record, does not serve producers or consumers, if in the long run cooperative producers no longer service the Class I market and consumers are ultimately faced with increased costs due to the necessity of out-of-area milk being hauled longer distances to supply fluid milk in the grocery store.

*Emergency Procedures*

DCMA requested this rulemaking be conducted on an emergency basis, warranting omission of a recommended decision. Numerous witnesses testified regarding why the unique marketing conditions of the southeastern region, necessitating supplemental milk supplies from further distances in order to fill the gap between the region's increasing Class I demand and declining in-area milk production, are cause for emergency rulemaking measures. As discussed previously this decision, the record indicates transportation costs for Class I milk deliveries in the southeastern region of the U.S. have risen significantly and are being borne primarily by the cooperatives that supply the market.

The overarching issue in this proceeding is determining what combination of current and possibly new transportation assistance provisions would best address the chronic milk deficit problem in the region. In doing so, this decision recommends modifications to the current TCBF provisions of the Appalachian and Southeast FMMOs to reflect the current transportation cost conditions for supplemental Class I milk deliveries into the marketing areas. This decision also finds it appropriate to establish new DPDCs in the Appalachian, Florida, and Southeast FMMOs to provide transportation cost assistance for milk deliveries within and nearby the marketing areas. In making this recommendation, the decision recommends modifications to what was originally proposed by DCMA. The decision also denies adoption of four alternative proposals submitted by industry stakeholders. As such, it is appropriate to issue a recommended decision and allow public comments on the recommended amendments before a producer vote on the proposed amended orders.

**Rulings on Proposed Findings and Conclusions**

Briefs, proposed findings, and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings, conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the claims to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

**General Findings**

The findings and determinations hereinafter set forth supplement those that were made when the Appalachian, Florida, and Southeast orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the aforenamed marketing agreements and orders:

a. The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

b. The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable with respect to the price of feeds, available supplies of feeds, and other economic conditions that affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreements and the orders are such prices as will reflect the aforesaid factors, ensure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

c. The proposed marketing agreements and the orders will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreements upon which a hearing have been held.

d. All milk and milk products handled by handlers, as defined in the marketing agreements and the orders as hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

**Recommended Marketing Agreements and Orders**

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following orders regulating the handling of milk in Appalachian, Florida, and Southeast marketing areas are recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

**List of Subjects in 7 CFR Parts 1005, 1006, and 1007**

Milk marketing orders.

## PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

■ 1. The authority citation for part 1005 continues to read as follows:

**Authority:** 7 U.S.C. 601–674, and 7253.

■ 2. Amend § 1005.30 by:

■ a. Redesignating paragraphs (a)(5) through (9) as paragraphs (a)(7) through (11);

■ b. Adding new paragraphs (a)(5) and (6);

■ c. Redesignating paragraph (c)(3) as (c)(4) and revising it; and

■ d. Adding new paragraph (c)(3).

The additions and revision read as follows:

**§ 1005.30 Reports of receipts and utilization.**

(a) * * *

(5) Receipts of producer milk described in § 1005.84(e), including the identity of the individual producers whose milk is eligible for the distributing plant delivery credit pursuant to that paragraph and the date that such milk was received;

(6) For handlers submitting distributing plant delivery credit requests, transfers of bulk unconcentrated milk to nonpool plants, including the dates that such milk was transferred;

* * * * *

(c) * * *

(3) With respect to milk for which a cooperative association is requesting a distributing plant delivery credit pursuant to § 1005.84, all of the information required in paragraphs (a)(5) and (6) of this section.

(4) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1005.82, all of the information required in paragraphs (a)(7) through (9) of this section.

* * * * *

■ 3. Amend § 1005.32 by revising paragraph (a) to read as follows:

**§ 1005.32 Other reports.**

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9(a) and (c) of this chapter shall report to the market administrator any adjustments to distributing plant delivery credit requests as reported pursuant to § 1005.30(a)(5) and (6), and any adjustments to transportation credit requests as reported pursuant to § 1005.30(a)(7) through (9).

* * * * *

■ 4. Amend § 1005.81 by revising the first sentence of paragraph (a) to read as follows:

**§ 1005.81 Payments to the transportation credit balancing fund.**

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by $0.30 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–February period. * * *

* * * * *

■ 5. Amend § 1005.82 by:

■ a. Revising the first sentence of paragraph (a)(1), the first sentence of paragraph (b), and paragraph (d)(3)(iii); and

■ b. Adding paragraph (d)(3)(viii).

The revisions and addition read as follows:

**§ 1005.82 Payments from the transportation credit balancing fund.**

(a) * * *

(1) On or before the 13th day (except as provided in § 1000.90 of this chapter) after the end of each of the months of January and July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1005.30(a)(7), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1005.30(a)(8), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. * * *

* * * * *

(b) The market administrator may extend the period during which transportation credits are in effect (*i.e.,* the transportation credit period) to the month of February or June if a written request to do so is received fifteen (15) days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. * * *

* * * * *

(d) * * *

(3) * * *

(iii) Subtract 15 percent (15%) of the miles from the mileage so determined;

* * * * *

(viii) The market administrator may revise the factor described in paragraph (d)(3)(iii) of this section (the mileage adjustment factor) if a written request to do so is received fifteen (15) days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such revision is necessary to assure orderly marketing, efficient handling of milk in the marketing area, and an adequate supply of milk for fluid use. The market administrator may increase the mileage adjustment factor by as much as ten percentage points, up to twenty-five percent (25%) or decrease it by as much as ten percentage points, to a minimum of five percent (5%). Before making such a finding, the market administrator shall notify all handlers in the market that a revision is being considered and invite written data, comments, and arguments. Any decision to revise the mileage rate factor must be issued in writing prior to the first day of the month for which the revision is to be effective.

■ 6. Amend § 1005.83 by revising paragraphs (a)(2) through (5) to read as follows:

**§ 1005.83 Mileage rate for the transportation credit balancing fund.**

(a) * * *

(2) From the result in paragraph (a)(1) in this section subtract $2.26 per gallon;

(3) Divide the result in paragraph (a)(2) of this section by 6.2, and round down to three decimal places to compute the fuel cost adjustment factor;

(4) Add the result in paragraph (a)(3) of this section to $3.67;

(5) Divide the result in paragraph (a)(4) of this section by 497;

* * * * *

■ 7. Add § 1005.84 before the undesignated center heading ''Administrative Assessment and Marketing Service Deduction'' to read as follows:

**§ 1005.84 Distributing plant delivery credits.**

(a) *Distributing Plant Delivery Credit Fund.* The market administrator shall maintain a separate fund known as the Distributing Plant Delivery Credit Fund into which shall be deposited the payments made by handlers pursuant to paragraph (b) of this section and out of which shall be made the payments due handlers pursuant to paragraph (d) of this section. Payments due a handler shall be offset against payments due from the handler.

(b) *Payments to the distributing plant delivery credit fund.* On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator a distributing plant delivery credit fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by a per hundredweight assessment rate of $0.55 and thereafter not greater than $0.60 or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total distributing plant delivery credit disbursed during the prior calendar year. If the distributing plant delivery credit fund is in an overfunded position, the market administrator may completely waive the distributing plant delivery credit assessment for one or more months. In determining the distributing plant delivery credit assessment rate, in the event that during any month of that previous calendar year the fund balance was insufficient to cover the amount of credits that were due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(c) *Assessment rate announcement.* The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter), the assessment rate per hundredweight pursuant to paragraph (b) of this section for the following month.

(d) *Payments from the distributing plant delivery credit fund.* Payments from the distributing plant delivery credit fund to handlers and cooperative associations requesting distributing plant delivery credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90 of this chapter) after the end of each month, the market administrator shall pay to each handler that received, and reported pursuant to § 1005.30(a)(5), bulk unconcentrated milk directly from producers' farms, or receipts of bulk unconcentrated milk by transfer from a pool supply plant as defined in § 1005.7(c) or (d), a preliminary amount determined pursuant to paragraph (f) of this section to the extent that funds are available in the distributing plant delivery credit fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the distributing plant delivery credit fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (d)(3) of this section.

(2) The market administrator shall accept adjusted requests for distributing plant delivery credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1005.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of distributing plant delivery credit payments for the preceding month pursuant to the process provided in paragraph (d)(1) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the distributing plant delivery credit fund will be made on or before the next payment date for the following month.

(3) Distributing plant delivery credits paid pursuant to paragraphs (d)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77 of this chapter. Adjusted payments to or from the distributing plant delivery credit fund will remain subject to the final proration established pursuant to paragraph (d)(2) of this section.

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1005.30(c)(3) prior to the date payment is due, the distributing plant delivery credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(5) The Market Administrator shall provide monthly, to producers who are not members of a qualified cooperative association, a statement of the amount per hundredweight of distributing plant delivery credit which the distributing plant handler receiving their milk is entitled to claim.

(e) *Eligible milk.* Distributing plant delivery credits shall apply to the following milk:

(1) Bulk unconcentrated fluid milk received directly from dairy farms at a pool distributing plant as producer milk subject to the following conditions:

(i) The farm on which the milk was produced is located within the specified marketing areas of the order in this part or the marketing area of Federal Order 1007 (7 CFR part 1007).

(ii) The farm on which the milk was produced is located in the following counties:

(A) *Illinois:* Alexander, Bond, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Macon, Marion, Massac, Monroe, Montgomery, Moultrie, Perry, Piatt, Pope, Pulaski, Randolph, Richland, St Clair, Saline, Shelby, Union, Vermilion, Wabash, Washington, Wayne, White, and Williamson.

(B) *Indiana:* Bartholomew, Boone, Brown, Clay, Clinton, Dearborn, Decatur, Delaware, Fayette, Fountain, Franklin, Hamilton, Hancock, Hendricks, Henry, Jackson, Jefferson, Jennings, Johnson, Lawrence, Madison, Marion, Monroe, Montgomery, Morgan, Ohio, Owen, Parke, Putnam, Randolph, Ripley, Rush, Shelby, Switzerland, Tippecanoe, Tipton, Union, Vermillion, Vigo, Warren, and Wayne.

(C) *Kentucky:* Boone, Boyd, Bracken, Campbell, Floyd, Grant, Greenup, Harrison, Johnson, Kenton, Lawrence, Lewis, Magoffin, Martin, Mason, Pendleton, Pike, and Robertson.

(D) *Maryland:* Allegany, Frederick, Garrett, Montgomery, and Washington.

(E) *Ohio:* Adams, Athens, Brown, Butler, Clark, Clermont, Clinton, Darke, Fairfield, Fayette, Franklin, Gallia, Greene, Hamilton, Highland, Hocking, Jackson, Lawrence, Madison, Meigs, Miami, Montgomery, Morgan, Perry, Pickaway, Pike, Preble, Ross, Scioto, Vinton, Warren, Washington.

(F) *Pennsylvania:* Bedford, Fayette, Franklin, Fulton, Greene, and Somerset.

(G) *Virginia counties:* Albemarle, Amelia, Appomattox, Arlington, Brunswick, Buckingham, Caroline, Charles City, Charlotte, Chesterfield, Clarke, Culpeper, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Fluvanna, Frederick, Gloucester, Goochland, Greene, Greensville, Halifax, Hanover, Henrico, Isle Of Wight, James City, King And Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Nelson, New Kent, Northumberland, Nottoway, Orange, Page, Powhatan, Prince Edward, Prince George, Prince William, Rappahannock, Richmond, Shenandoah, Southampton, Spotsylvania, Stafford, Surry, Sussex, Warren, Westmoreland, York.

(H) *Virginia cities:* Alexandria City, Charlottesville City, Chesapeake City, Colonial Heights City, Emporia City, Fairfax City, Falls Church City, Franklin City, Fredericksburg City, Hampton City, Hopewell City, Manassas City, Manassas Park City, Newport News City, Norfolk City, Petersburg City, Poquoson City, Portsmouth City, Richmond City, Suffolk City, Virginia Beach City, Williamsburg City, and Winchester City.

(I) *West Virginia:* Barbour, Berkeley, Boone, Braxton, Cabell, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jackson, Jefferson, Kanawha, Lewis, Lincoln, Logan, Marion, Mason, Mineral, Mingo, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Wayne, Webster, Wetzel, Wirt, Wood, and Wyoming.

(iii) The Market Administrator may include additional counties from the states listed in paragraph (e)(1)(ii) of this section upon the request of a pool handler and provision of satisfactory proof that the county is a source of regular supply of milk to order distributing plants.

(iv) Producer milk eligible for a payment under this section cannot be eligible for payment from the transportation credit balancing fund as specified in § 1005.82(c)(2).

(v) The quantity of milk described herein shall be reduced by the quantity of any bulk unconcentrated fluid milk products transferred from a pool distributing plant to a nonpool plant or transferred to a pool supply plant on the same calendar day as producer milk was received at such plant for which a distributing plant delivery credit is requested.

(2) Bulk unconcentrated fluid milk transferred from a pool plant regulated pursuant to § 1005.7(c) or (d) to a pool distributing plant regulated pursuant to § 1005.7(a) or (b). The quantity of milk described herein shall be reduced by the quantity of any bulk unconcentrated fluid milk products transferred from a pool distributing plant to a nonpool plant or transferred to a pool supply plant on the same calendar day as milk was received by transfer from a pool supply plant at such pool distributing plant for which a distributing plant delivery credit is requested.

(f) *Credit computation.* Distributing plant delivery credits shall be computed as follows:

(1) With respect to milk delivered directly from the farm to a distributing plant:

(i) Determine the shortest hard-surface highway distance between the shipping farm and the receiving plant and multiply the miles by an adjustment rate of not greater than ninety-five percent (95%) and not less than seventy-five percent (75%);

(ii) Subtract the Class I price specified in § 1000.50(a) of this chapter for the county in which the shipping farm is located from the Class I price applicable for the county in which the receiving pool distributing plant is located;

(iii) Multiply the adjusted miles so computed in paragraph (f)(1)(i) of this section by the monthly mileage rate factor for the month computed pursuant to paragraph (h) of this section;

(iv) Subtract any positive difference in Class I prices computed in paragraph (f)(1)(ii) from the rate determined in paragraph (f)(1)(iii) of this section;

(v) Multiply the remainder computed in paragraph (f)(1)(iv) of this section by the hundredweight of milk described in paragraph (e)(1) of this section.

(2) With respect to milk delivered from a pool supply plant to a distributing plant:

(i) Determine the shortest hard-surface highway distance between the transferring pool plant and the receiving plant, and multiply the miles by an adjustment rate not greater than ninety-five percent (95%) and not less than seventy-five percent (75%);

(ii) Subtract the Class I price specified in § 1000.50(a) of this chapter for the transferring pool plant from the Class I price applicable for the county in which the receiving pool distributing plant is located;

(iii) Multiply the adjusted miles so computed in subpart (i) of this sub-paragraph by the mileage rate factor for the month computed pursuant to paragraph (h) of this section;

(iv) Subtract any positive difference in Class I prices computed in paragraph (f)(2)(ii) of this sub-paragraph from the rate determined in paragraph (f)(2)(iii) of this section;

(v) Multiply the remainder computed in paragraph (f)(2)(iv) of this section by the hundredweight of milk described in paragraph (e)(2) of this section.

(g) *Mileage percentage rate adjustment.* The monthly percentage rate adjustment within the range of permissible percentage adjustments provided in paragraphs (f)(1)(i) and (f)(2)(i) of this section shall be determined by the market administrator, and publicly announced prior to the month for which effective. In determining the percentage adjustment to the actual mileages of milk delivered from farms and milk transferred from pool plants the market administrator shall evaluate the general supply and demand for milk in the marketing area, any previous occurrences of sustained uneconomic movements of milk, and the balances in the distributing plant delivery credit fund. The adjustment percentage pursuant to paragraphs (f)(1)(i) and (f)(2)(i) of this section to the actual miles used for computing distributing plant delivery credits and announced by the market administrator shall always be the same percentage.

(h) *Mileage rate for the distributing plant delivery credit fund.* The mileage rate for the distributing plant delivery credit fund shall be the mileage rate computed by the market administrator pursuant to § 1005.83.

(i) *Oversight of milk movements.* The market administrator shall regularly monitor and evaluate the requests for distributing plant delivery credits to determine that such credits are not encouraging uneconomic movements of milk, and that the credits continue to assure orderly marketing and efficient handling of milk in the marketing area. In making such determinations, the market administrator will include in the evaluation the general supply and demand for milk. If the market administrator finds that uneconomic movements are occurring, and such movements are persistent and pervasive, or are not being made in a way that assures orderly marketing and efficient handling of milk in the marketing area, after good cause shown, the market administrator may disallow the payments of distributing plant delivery credit on such milk. Before making such a finding, the market administrator shall give the handler of such milk sufficient notice that an investigation is being considered and shall provide notice that the handler has the opportunity to explain why such movements were necessary, or the opportunity to correct such movements prior to the disallowance of any distributing plant delivery credits. Any disallowance of distributing plant delivery credit pursuant to this provision shall remain confidential between the market administrator and the handler.

## PART 1006—MILK IN THE FLORIDA MARKETING AREA

■ 8. The authority citation for part 1006 continues to read as follows:

**Authority:** 7 U.S.C. 601–674, and 7253.

■ 9. Amend § 1006.30 by:

■ a. Redesignating paragraphs (a)(5) and (6) as (a)(7) and (8);

■ b. Adding new paragraphs (a)(5) and (6); and

■ c. Adding paragraph (c)(3).

The additions read as follows:

### § 1006.30 Reports of receipts and utilization.

(a) * * *

(5) Receipts of producer milk described in § 1006.84(e), including the identity of the individual producers whose milk is eligible for the distributing plant delivery credit pursuant to that paragraph and the date that such milk was received;

(6) For handlers submitting distributing plant delivery credit requests, transfers of bulk unconcentrated milk to nonpool plants, including the dates that such milk was transferred.

* * * * *

(c) * * *

(3) With respect to milk for which a cooperative association is requesting a distributing plant delivery credit pursuant to § 1006.84, all of the information required in paragraphs (a)(5) and (6) of this section.

* * * * *

■ 10. Revise § 1006.32 to read as follows:

### § 1006.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9(a) and (c) of this chapter shall report to the market administrator any adjustments to distributing plant delivery credit requests as reported pursuant to § 1006.30(a)(5) and (6).

(b) In addition to the reports required pursuant to §§ 1006.30 and 1006.31 and paragraph (a) of this section, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

■ 11. Add § 1006.84 before the undesignated center heading ''Administrative Assessment and Marketing Service Deduction'' to read as follows:

### § 1006.84 Distributing plant delivery credits.

(a) *Distributing Plant Delivery Credit Fund.* The market administrator shall maintain a separate fund known as the Distributing Plant Delivery Credit Fund into which shall be deposited the payments made by handlers pursuant to paragraph (b) of this section and out of which shall be made the payments due handlers pursuant to § 1005.84(b) of this chapter. Payments due a handler shall be offset against payments due from the handler.

(b) *Payments to the distributing plant delivery credit fund.* On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator a distributing plant delivery credit fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1006.44 by a per hundredweight assessment rate of $0.80 and thereafter not greater than $0.85 or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total distributing plant delivery credit disbursed during the prior calendar year. If the distributing plant delivery credit fund is in an overfunded position, the market administrator may completely waive the distributing plant delivery credit assessment for one or more months. In determining the distributing plant delivery credit assessment rate, in the event that during any month of that previous calendar year the fund balance was insufficient to cover the amount of credits that were due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(c) *Assessment rate announcement.* The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter) the assessment rate per hundredweight pursuant to paragraph (b) of this section for the following month.

(d) *Payments from the distributing plant delivery credit fund.* Payments from the distributing plant delivery credit fund to handlers and cooperative associations requesting distributing plant delivery credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90 of this chapter) after the end of each month, the market administrator shall pay to each handler that received, and reported pursuant to § 1006.30(a)(5), bulk unconcentrated milk directly from producers' farms, or receipts of bulk unconcentrated milk by transfer from a pool supply plant as defined in § 1006.7(c) or (d), a preliminary amount determined pursuant to paragraph (f) of this section to the extent that funds are available in the distributing plant delivery credit fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the distributing plant delivery credit fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (d)(3) of this section.

(2) The market administrator shall accept adjusted requests for distributing plant delivery credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1006.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of distributing plant delivery credit payments for the preceding month pursuant to the process provided in paragraph (d)(1) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the distributing plant delivery credit fund will be made on or before the next payment date for the following month.

(3) Distributing plant delivery credits paid pursuant to paragraphs (d)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77 of this chapter. Adjusted payments to or from the distributing plant delivery credit fund will remain subject to the final proration established pursuant to paragraph (d)(2) of this section.

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1006.30(c)(3) prior to the date payment is due, the distributing plant delivery credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(5) The Market Administrator shall provide monthly, to producers who are not members of a qualified cooperative association, a statement of the amount per hundredweight of distributing plant delivery credit which the distributing plant handler receiving their milk is entitled to claim.

(e) *Eligible milk.* Distributing plant delivery credits shall apply to the following milk:

(1) Bulk unconcentrated fluid milk received at a pool distributing plant as producer milk directly from dairy farms located within the marketing area; or located within the Georgia counties of Appling, Atkinson, Bacon, Baker, Ben Hill, Berrien, Brooks, Calhoun, Charlton, Chattahoochee, Clay, Clinch, Coffee, Cook, Colquitt, Crisp, Decatur, Dodge, Dooley, Dougherty, Early, Echols, Grady, Irwin, Lanier, Lee, Lowndes, Jeff Davis, Macon, Marion, Miller, Mitchell, Pierce, Pulaski, Quitman, Randolph, Schley, Seminole, Stewart, Sumter, Telfair, Terrel, Thomas, Tift, Turner, Ware, Webster, Wilcox, and Worth, and received at pool distributing plants. The quantity of milk described herein shall be reduced by the quantity of any bulk unconcentrated fluid milk products transferred from a pool distributing plant to a nonpool plant or transferred to a pool supply plant on the same calendar day as producer milk was received at such plant for which a distributing plant delivery credit is requested.

(2) Bulk unconcentrated fluid milk transferred from a pool plant regulated pursuant to § 1006.7(c) or (d) to a pool distributing plant regulated pursuant to § 1006.7(a) or (b). The quantity of milk described herein shall be reduced by the quantity of any bulk unconcentrated fluid milk products transferred from a pool distributing plant to a nonpool plant or transferred to a pool supply plant on the same calendar day as milk was received by transfer from a pool supply plant at such pool distributing plant for which a distributing plant delivery credit is requested.

(f) *Credit computation.* Distributing plant delivery credits shall be computed as follows:

(1) With respect to milk delivered directly from the farm to a distributing plant:

(i) Determine the shortest hard-surface highway distance between the shipping farm and the receiving plant and multiply the miles by an adjustment rate of not greater than ninety-five percent (95%) and not less than seventy-five percent (75%);

(ii) Subtract the Class I price specified in § 1000.50(a) of this chapter for the county in which the shipping farm is located from the Class I price applicable for the county in which the receiving pool distributing plant is located;

(iii) Multiply the adjusted miles so computed in (f)(1)(i) of this section by the monthly mileage rate factor for the month computed pursuant to paragraph (h) of this section;

(iv) Subtract the difference in Class I prices computed in paragraph (f)(1)(ii) of this section from the rate determined in paragraph (f)(1)(iii) of this section;

(v) Multiply the remainder computed in paragraph (f)(1(iv) of this section by the hundredweight of milk described in paragraph (e)(1) of this section;

(2) With respect to milk delivered from a pool supply plant to a distributing plant:

(i) Determine the shortest hard-surface highway distance between the transferring pool plant and the receiving plant, and multiply the miles by an adjustment rate of not greater than ninety-five percent (95%) and not less than seventy-five percent (75%);

(ii) Subtract the Class I price specified in § 1000.50(a) of this chapter for the transferring pool plant from the Class I price applicable for the county in which the receiving pool distributing plant is located;

(iii) Multiply the adjusted miles so computed in paragraph (f)(2)(i) of this section by the mileage rate factor for the month computed pursuant to paragraph (h) of this section;

(iv) Subtract any positive difference in Class I prices computed in paragraph (f)(2)(ii) from the rate determined in paragraph (f)(2)(iii) of this section;

(v) Multiply the remainder computed in paragraph (f)(2)(iv) of this section by the hundredweight of milk described in paragraph (e)(2) of this section.

(g) *Mileage percentage rate adjustment.* The monthly percentage rate adjustment within the range of permissible percentage adjustments provided in paragraphs (f)(1)(i) and (f)(2)(i) of this section shall be determined by the market administrator, and publicly announced prior to the month for which effective. In determining the percentage adjustment to the actual mileages of milk delivered from farms and milk transferred from pool plants the market administrator shall evaluate the general supply and demand for milk in the marketing area, any previous occurrences of sustained uneconomic movements of milk, and the balances in the distributing plant delivery credit fund. The adjustment percentage pursuant to paragraphs (f)(1)(i) and (f)(2)(i) to of this section the actual miles used for computing distributing plant credits and announced by the market administrator shall always be the same percentage.

(h) *Mileage rate for the distributing plant delivery credit fund.* The market administrator shall compute a mileage rate factor each month as follows:

(1) Compute the simple average rounded down to three decimal places for the most recent four (4) weeks of the Diesel Price per Gallon as reported by the Energy Information Administration of the United States Department of Energy for the Lower Atlantic and Gulf Coast Districts combined;

(2) From the result in paragraph (h)(1) of this section subtract $2.26 per gallon;

(3) Divide the result in paragraph (h)(2) of this section by 6.2, and round down to three decimal places to compute the fuel cost adjustment factor;

(4) Add the result in paragraph (h)(3) of this section to $3.67;

(5) Divide the result in paragraph (h)(4) of this section by 497;

(6) Round the result in paragraph (h)(5) of this section down to five decimal places to compute the mileage rate.

(i) *Oversight of milk movements.* The market administrator shall regularly monitor and evaluate the requests for distributing plant delivery credits to determine that such credits are not encouraging uneconomic movements of milk, and the credits continue to assure orderly marketing and efficient handling of milk in the marketing area. In making such determinations the market administrator will include in the evaluation the general supply and demands for milk. If the market administrator finds that uneconomic movements are occurring, and such movements are persistent and pervasive, or are not being made in a way that assures orderly marketing and efficient handling of milk in the marketing area, after good cause shown, the market administrator may disallow the payments of distributing plant delivery credit on such milk. Before making such a finding, the market administrator shall give the handler on such milk sufficient notice that an investigation is being considered and shall provide notice that the handler has the opportunity to explain why such movements were necessary, or the opportunity to correct such movements prior to the disallowance of any distributing plant delivery credits. Any disallowance of distributing plant delivery credit pursuant to this provision shall remain confidential between the market administrator and the handler.

## PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

■ 12. The authority citation for part 1007 continues to read as follows:

**Authority:** 7 U.S.C. 601–674, and 7253.

■ 13. Amend § 1007.30 by:

■ a. Redesignating paragraphs (a)(5) through (9) as paragraphs (a)(7) through (11);

■ b. Adding new paragraphs (a)(5) and (6);

■ c. Redesignating paragraph (c)(3) as (c)(4) and revising it; and

■ d. Adding new paragraph (c)(3).

The revisions and additions read as follows:

### § 1007.30 Reports of receipts and utilization.

(a) * * *

(5) Receipts of producer milk described in § 1007.84(e), including the identity of the individual producers whose milk is eligible for the distributing plant delivery credit pursuant to that paragraph and the date that such milk was received;

(6) For handlers submitting distributing plant delivery credit requests, transfers of bulk unconcentrated milk to nonpool plants, including the dates that such milk was transferred;

* * * * *

(c) * * *

(3) With respect to milk for which a cooperative association is requesting a distributing plant delivery credit pursuant to § 1007.84, all of the information required in paragraphs (a)(5) and (6) of this section.

(4) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1007.82, all of the information required in paragraphs (a)(7) through (9) of this section.

* * * * *

■ 14. Amend § 1007.32 by revising paragraph (a) to read as follows:

### § 1007.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9(a) and (c) of this chapter shall report to the market administrator any adjustments to distributing plant delivery credit requests as reported pursuant to § 1007.30(a)(5) and (6) and any adjustments to transportation credit requests as reported pursuant to § 1007.30(a)(7) through (9) of this section.

* * * * *

■ 15. Amend § 1007.81 by revising the first sentence of paragraph (a) to read as follows:

### § 1007.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1007.44 by $0.60 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June through February period to reflect any changes in the current mileage rate versus the mileage rate(s) in effect during the prior June through February period. * * *

* * * * *

■ 16. Amend § 1007.82 by:

■ a. Revising the first sentence of paragraph (a)(1), the first sentence of paragraph (b), and paragraph (d)(3)(iii); and

■ b. Adding paragraph (d)(3)(viii).

The revisions and addition read as follows:

### § 1007.82 Payments from the transportation credit balancing fund.

(a) * * *

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each of the months of January, and July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1007.30(a)(7), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1007.30(a)(8), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. * * *

(b) The market administrator may extend the period during which transportation credits are in effect (*i.e.,* the transportation credit period) to the month of February or June if a written request to do so is received fifteen (15) days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. * * *

* * * * *

(d) * * *

(3) * * *

(iii) Subtract 15 percent (15%) of the miles from the mileage so determined;

* * * * *

(viii) The market administrator may revise the factor described in (3)(iii) of this section (the mileage adjustment factor) if a written request to do so is received fifteen (15) days prior to the beginning of the month for which the request is made and, (15) days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such revision is necessary to assure orderly marketing, efficient handling of milk in the marketing area, and an adequate supply of milk for fluid use. The market administrator may increase the mileage adjustment factor by as much as ten percentage points (10%) up to twenty-five percent (25%) or decrease it by as much as ten percentage points (10%), to a minimum of five percent (5%). Before making such a finding, the market administrator shall notify all handlers in the market that a revision is being considered and invite written data, comments, and arguments. Any decision to revise the mileage rate factor must be issued in writing prior to the first day of the month for which the revision is to be effective.

■ 17. Amend § 1007.83 by revising paragraphs (a)(2) through (5) to read as follows:

### § 1007.83 Mileage rate for the transportation credit balancing fund.

(a) * * *

(2) From the result in paragraph (a)(1) of this section subtract $2.26 per gallon;

(3) Divide the result in paragraph (a)(2) of this section by 6.2, and round down to three decimal places to compute the fuel cost adjustment factor;

(4) Add the result in paragraph (a)(3) of this section to $3.67;

(5) Divide the result in paragraph (a)(4) of this section by 497;

* * * * *

■ 18. Add § 1007.84 before the undesignated center heading "Administrative Assessment and

Marketing Service Deduction'' to read as follows:

**§ 1007.84 Distributing plant delivery credits.**

(a) *Distributing Plant Delivery Credit Fund.* The market administrator shall maintain a separate fund known as the Distributing Plant Delivery Credit Fund into which shall be deposited the payments made by handlers pursuant to paragraph (b) of this section and out of which shall be made the payments due handlers pursuant to paragraph (d) of this section. Payments due a handler shall be offset against payments due from the handler.

(b) *Payments to the distributing plant delivery credit fund.* On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator a distributing plant delivery credit fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1007.44 by a per hundredweight assessment rate of $0.45 and thereafter not greater than $0.50 or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total distributing plant delivery credit disbursed during the prior calendar year. If the distributing plant delivery credit fund is in an overfunded position, the market administrator may completely waive the distributing plant delivery credit assessment for one or more months. In determining the distributing plant delivery credit assessment rate, in the event that during any month of that previous calendar year the fund balance was insufficient to cover the amount of credits that were due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(c) *Assessment rate announcement.* The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter), the assessment rate per hundredweight pursuant to paragraph (b) of this section for the following month.

(d) *Payments from the distributing plant delivery credit fund.* Payments from the distributing plant delivery credit fund to handlers and cooperative associations requesting distributing plant delivery credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90 of this chapter) after the end of each month, the market administrator shall pay to each handler that received, and reported pursuant to § 1007.30(a)(5), bulk unconcentrated milk directly from producers' farms, or receipts of bulk unconcentrated milk by transfer from a pool supply plant as defined in § 1007.7(c) or (d), a preliminary amount determined pursuant to paragraph (f) of this section to the extent that funds are available in the distributing plant delivery credit fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the distributing plant delivery credit fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (d)(3) of this section.

(2) The market administrator shall accept adjusted requests for distributing plant delivery credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1007.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of distributing plant delivery credit payments for the preceding month pursuant to the process provided in paragraph (d)(1) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the distributing plant delivery credit fund will be made on or before the next payment date for the following month.

(3) Distributing plant delivery credits paid pursuant to paragraphs (d)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77 of this chapter. Adjusted payments to or from the distributing plant delivery credit fund will remain subject to the final proration established pursuant to paragraph (d)(2) of this section.

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1007.30(c)(3) prior to the date payment is due, the distributing plant delivery credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(5) The Market Administrator shall provide monthly to producers who are not members of a qualified cooperative association a statement of the amount per hundredweight of distributing plant delivery credit which the distributing plant handler receiving their milk is entitled to claim.

(e) *Eligible milk.* Distributing plant delivery credits shall apply to the following milk:

(1) Bulk unconcentrated fluid milk received directly from dairy farms at a pool distributing plant as producer milk subject to the following conditions:

(i) The farm on which the milk was produced is located within the specified marketing areas of the order in this part or the marketing area of Federal Order 1005 (7 CFR part 1005).

(ii) The farm on which the milk was produced is located in the following counties in the State of:

(A) *Illinois:* Alexander, Bond, Clay, Clinton, Crawford, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Marion, Massac, Monroe, Montgomery, Perry, Pope, Pulaski, Randolph, Richland, St Clair, Saline, Union, Washington, Wayne, White, Williamson, Calhoun, Greene, Jersey, Macoupin, Madison, and Wabash.

(B) *Kansas:* Allen, Anderson, Bourbon, Chautauqua, Cherokee, Coffey, Crawford, Douglas, Elk, Franklin, Greenwood, Jefferson, Johnson, Labette, Leavenworth, Linn, Lyon, Miami, Montgomery, Neosho, Osage, Shawnee, Wabaunsee, Wilson, Woodson, and Wyandotte

(C) *Missouri:* Audrain, Bates, Benton, Boone, Callaway, Camden, Cass, Clay, Cole, Cooper, Franklin, Gasconade, Henry, Hickory, Howard, Jackson, Jefferson, Johnson, Lafayette, Lincoln, Maries, Miller, Moniteau, Montgomery, Morgan, Osage, Pettis, Phelps, Pike, Platte, Pulaski, Ray, St Charles, St Clair, Ste Genevieve, St Louis, St. Louis City, Saline, and Warren

(D) *Oklahoma*: Adair, Atoka, Bryan, Cherokee, Choctaw, Coal, Craig, Creek, Delaware, Haskell, Hughes, Latimer, Le Flore, McCurtain, Mcintosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Pushmataha, Rogers, Sequoyah, Tulsa, Wagoner, and Washington

(E) *Texas:* Anderson, Angelina, Bowie, Camp, Cass, Chambers, Cherokee, Delta, Fannin, Franklin, Galveston, Gregg, Hardin, Harris, Harrison, Henderson, Hopkins, Houston, Hunt, Jasper, Jefferson, Kaufman, Lamar, Liberty, Marion, Montgomery, Morris, Nacogdoches, Newton, Orange, Panola, Polk, Rains, Red River, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Trinity, Tyler, Upshur, Van Zandt, Walker, and Wood.

(iii) The Market Administrator may include additional counties from the states listed in paragraph (e)(1)(ii) of this section upon the request of a pool handler and provision of satisfactory proof that the county is a source of regular supply of milk to order distributing plants.

(iv) Producer milk eligible for a payment under this section cannot be eligible for payment from the transportation credit balancing fund as specified in § 1007.82(c)(2).

(v) The quantity of milk described herein shall be reduced by the quantity of any bulk unconcentrated fluid milk products transferred from a pool distributing plant to a nonpool plant or transferred to a pool supply plant on the same calendar day as producer milk was received at such plant for which a distributing plant delivery credit is requested.

(2) Bulk unconcentrated fluid milk transferred from a pool supply plant regulated pursuant to § 1007.7(c) or (d) to a pool distributing plant regulated pursuant to § 1007.7(a) or (b). The quantity of milk described herein shall be reduced by the quantity of any bulk unconcentrated fluid milk products transferred from a pool distributing plant to a nonpool plant or transferred to a pool supply plant on the same calendar day as milk was received by transfer from a pool supply plant at such pool distributing plant for which a distributing plant delivery credit is requested.

(f) *Credit computation.* Distributing plant delivery credits shall be computed as follows:

(1) With respect to milk delivered directly from the farm to a distributing plant:

(i) Determine the shortest hard-surface highway distance between the shipping farm and the receiving plant, and multiply the miles by an adjustment rate of not greater than ninety-five percent (95%) and not less than seventy-five percent (75%);

(ii) Subtract the Class I price specified in § 1000.50(a) of this chapter for the county in which the shipping farm is located from the Class I price applicable for the county in which the receiving pool distributing plant is located;

(iii) Multiply the adjusted miles so computed in (f)(1)(i) of this section by the monthly mileage rate factor for the month computed pursuant to paragraph (h) of this section;

(iv) Subtract any positive difference in Class I prices computed in paragraph (f)(1)(ii) of this section from the rate determined in paragraph (f)(1)(iii) of this section;

(v) Multiply the remainder computed in paragraph (f)(1)(iv) of this section by the hundredweight of milk described in paragraph (e)(1) of this section;

(2) With respect to milk delivered from a pool supply plant to a distributing plant:

(i) Determine the shortest hard-surface highway distance between the transferring pool plant and the receiving plant, and multiply the miles by an adjustment rate of not greater than ninety-five (95%) percent and not less than seventy-five (75%) percent;

(ii) Subtract the Class I price specified in § 1000.50(a) of this chapter for the transferring pool plant from the Class I price applicable for the county in which the receiving pool distributing plant is located;

(iii) Multiply the adjusted miles so computed in paragraph (f)(2)(i) of this section by the mileage rate factor for the month computed pursuant to paragraph (h) of this section;

(iv) Subtract any positive difference in Class I prices computed in paragraph (f)(2)(ii) of this section from the rate determined in paragraph (f)(2)(iii) of this section;

(v) Multiply the remainder computed in paragraph (f)(2)(iv) of this section by the hundredweight of milk described in paragraph (e)(2) of this section;

(g) *Mileage percentage rate adjustment.* The monthly percentage rate adjustment within the range of permissible percentage adjustments provided in paragraphs (f)(1)(i) and (f)(2)(i) of this section shall be determined by the market administrator, and publicly announced prior to the month for which effective. In determining the percentage adjustment to the actual mileages of milk delivered from farms and milk transferred from pool plants the market administrator shall evaluate the general supply and demand for milk in the marketing area, any previous occurrences of sustained uneconomic movements of milk, and the balances in the distributing plant delivery credit fund. The adjustment percentage pursuant to paragraphs (f)(1) and (2) of this section to the actual miles used for computing distributing plant delivery credits and announced by the market administrator shall always be the same percentage.

(h) *Mileage rate for the distributing plant delivery credit fund.* The mileage rate for the distributing plant delivery credit fund shall be the mileage rate computed by the market administrator pursuant to § 1007.83.

(i) *Oversight of milk movements.* The market administrator shall regularly monitor and evaluate the requests for distributing plant delivery credits to determine that such credits are not encouraging uneconomic movements of milk, and the credits continue to assure orderly marketing and efficient handling of milk in the marketing area. In making such determinations the market administrator will include in the evaluation the general supply and demand for milk. If the market administrator finds that uneconomic movements are occurring, and such movements are persistent and pervasive, or are not being made in a way that assures orderly marketing and efficient handling of milk in the marketing area, after good cause shown, the market administrator may disallow the payments of distributing plant delivery credit on such milk. Before making such a finding, the market administrator shall give the handler on such milk sufficient notice that an investigation is being considered and shall provide notice that the handler has the opportunity to explain why such movements were necessary, or the opportunity to correct such movements prior to the disallowance of any distributing plant delivery credits. Any disallowance of distributing plant delivery credit pursuant to this provision shall remain confidential between the market administrator and the handler.

**Erin Morris,**

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