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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3565

[Docket No. RHS–23–MFH–0006]

RIN 0575–AD31

Section 538 Guaranteed Rural Rental Housing Program Change in Priority Projects Criteria

AGENCY: Rural Housing Service, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is amending the current regulation for the Multifamily Family Housing (MFH) Section 538 Guaranteed Rural Rental Housing Program (GRRHP). This final rule will align the current criteria of priority projects with the Housing Act of 1949 while improving the customer experience with more timely and proactive responses to housing market demands and Administration priorities.

DATES: *Effective date:* This final rule is effective April 18, 2024.

FOR FURTHER INFORMATION CONTACT: Tammy Daniels, Finance and Loan Analyst, Multi-Family Housing Production and Preservation Division, Rural Housing Service, United States Department of Agriculture, STOP 0781, 1400 Independence Avenue SW, Washington, DC 20250–0781, Telephone: (202) 720–0021 (this is not a toll-free number); email: *tammy.daniels@usda.gov.*

SUPPLEMENTARY INFORMATION:

I. 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, childcare centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, and housing for farm laborers. RHS also provides technical assistance loans and grants in partnership with non-profit organizations, Indian tribes, state and Federal government agencies, and local communities.

RHS administers the Section 538 Guaranteed Rural Rental Housing Program (GRRHP) under the authority of the Housing Act of 1949, as amended (42 U.S.C. 1490p–2). Under the GRRHP, RHS guarantees loans for the development of housing and related facilities in rural areas. And, as mandated by Title V of the Housing Act of 1949, the Agency must give priority to rural areas in which borrowers can best use and need guaranteed loans. 42 U.S.C. 1490p–2(l)(2). 7 CFR 3565.5(b) currently defines ''priority projects'' as those in smaller rural communities, in the neediest communities having the highest percentage of leveraging, having the lowest interest rate, having the highest ratio of 3-to-5-bedroom units to total units, or on tribal lands. Some of these specific priorities are no longer relevant.

II. Discussion of the Final Rule

RHS published a proposed rule on January 31, 2023 (88 FR 6209) to align 7 CFR 3565 current priority criteria points with the Housing Act of 1949 to increase the supply of affordable rural rental housing by using loan guarantees to encourage partnerships between the RHS, private lenders, and public agencies. The Agency received public comments which are discussed in the section III. Discussion of Public Comments of this notice.

The GRRHP uses priority points to rank and score applications based on criteria that frequently evolve and change depending on the housing market demands, as well as current and future Administrations' priorities. Currently, 7 CFR 3565.5(b) is not aligned with the Housing Act of 1949 criteria and does not afford the flexibility the Agency requires in its decision making to fully address these evolving priorities without a regulatory change to the priority-points scoring criteria. This final rule will change the current regulation [7 CFR 3565.5(b)] and provide the flexibility required in the Agency's decision-making to fully address evolving priorities in the housing market demands in a more timely and proactive manner, as needed, by current and future Administrations. The Agency will also be in a stronger position to meet the current and future demands of the housing market which ultimately will allow the Agency to be more responsive to the needs of the program's rural stakeholders.

III. Discussion of Public Comments

The RHS received eight comments from six respondents. One of the comments was not applicable to the contents of the rule and two other respondents submitted their comments twice. One respondent works for a non-profit agency, three respondents are students, of which one of these students submitted their comment to the Agency twice. The last respondent is a member of the public, who also submitted their comment to the Agency twice. All comments were supportive of the rule.

The following is a summary of the relevant comments:

Public Comments

Two respondents replied that they were in favor of the proposed rule indicating that the change will not cause any adverse action to the low to moderate income populations and will grow and strengthen rural areas.

Agency's Response

The Agency appreciates that support and has determined that no action is required.

Public Comments

Three respondents who indicated that they were students who were responding to a class assignment replied in favor of the proposed rule. They all agreed that housing in rural areas is important.

Agency's Response

The Agency appreciates the support and has determined that no action is required.

IV. Summary of Changes

The final rule will amend 7 CFR 3565.5(b) to offer the Agency decision making process flexibility by aligning the current criteria of priority projects with 42 U.S.C. 1490p–2(l)(2) to be more timely and responsive to developing demands in the rural housing market, as

well as evolving priorities with current and future Administrations, while improving its customers' experience with the program. The Agency will also be in a stronger position to meet the current and future demands of the housing market, which ultimately would allow the Agency to be more responsive to the needs of the program's rural stakeholders.

V. Regulatory Information

Statutory Authority

The RHS administers the 538 Guaranteed Rural Rental Housing Program (GRRHP) loans under the authority of the Housing Act of 1949, as amended (42 U.S.C. 1490p–2(l)(2)); implemented under 7 CFR part 3565. Section 510(k) of Title V the Housing Act of 1949 (42 U.S.C. 1480(k)), as amended, authorizes the Secretary of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title.

Executive Order 12372, Intergovernmental Review of Federal Programs

These loans are subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. RHS conducts intergovernmental consultations for each loan in accordance with 2 CFR part 415, subpart C.

Executive Order 12866, Regulatory Planning and Review

This final rule has been determined to be non-significant and, therefore, was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988. In accordance with this rule: (1) Unless otherwise specifically provided, all State and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of USDA (7 CFR part 11) must be exhausted before suing in court that challenges action taken under this final rule.

Executive Order 13132, Federalism

The policies contained in this final rule do not have any substantial direct effect on 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. This final rule does not impose substantial direct compliance costs on State and local Governments; therefore, consultation with States is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the final rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RHS on this rule, they are encouraged to contact USDA's Office of Tribal Relations or RD's Native American Coordinator at: *AIAN@usda.gov* to request such a consultation.

National Environmental Policy Act

This document has been reviewed in accordance with 7 CFR part 1970, subpart A, ''Environmental Policies.'' RHS determined that this action does not constitute a major Federal action significantly affecting the quality of the environment. In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This final rule has been reviewed with regards to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature on this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Unfunded Mandates Reform Act (UMRA)

Title II of the UMRA, Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal Governments and on the private sector. Under section 202 of the UMRA, Federal Agencies generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal Governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires a Federal Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal Governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575–0189. This final rule contains no new reporting and recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

E-Government Act Compliance

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

Civil Rights Impact Analysis

RD has reviewed this final rule in accordance with USDA Regulation 4300–4, Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, disability, gender identity (including gender expression), genetic information, political beliefs, sexual orientation, marital status, familial status, parental status, veteran status, religion, reprisal and/or resulting from all or a part of an individual's income being derived from any public assistance program. This Final rule is within a Guarantee-based program. Guarantees are not covered under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title IX of the Education Amendments Act of 1972, as amended, when the Federal assistance does not include insurance or interest credit loans. Lenders must comply with other applicable Federal laws, including Equal Employment Opportunities, the

Equal Credit Opportunity Act, the Fair Housing Act, and the Civil Rights Act of 1964. Guaranteed loans that involve the construction of or addition to facilities that accommodate the public must comply with the Architectural Barriers Act Accessibility Standard. The borrower and lender are responsible for ensuring compliance with these requirements.

Assistance Listing

The program affected by this regulation is listed in the Catalog of Federal Domestic Assistance under numbers 10.438—Rural Rental Housing Guaranteed Loans (Section 538).

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, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at 711.

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

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

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

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

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List of Subjects in 7 CFR Part 3565

Conflict of interest, Credit, Fair housing, Loan programs-housing and community development, Low and moderate-income housing, Manufactured homes, Mortgages, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

For the reasons discussed in the preamble, the Agency amends 7 CFR part 3565 as follows:

PART 3565—GUARANTEED RURAL RENTAL HOUSING PROGRAM

■ 1. The authority citation for part 3565 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C 1989; 42 U.S.C. 1480.

Subpart A—General Provisions

■ 2. Amend § 3565.5 by revising paragraph (b) to read as follows:

§ 3565.5 Ranking and selection criteria

* * * * *

(b) *Priority projects.* Priority will be given to projects in rural areas in which borrowers can best utilize and where loan guarantees are needed the most, as determined by the Agency based on information the Secretary considers appropriate. In addition, the Agency may, at its sole discretion, set aside assistance for or rank projects that meet important program goals. Assistance will include both loan guarantees and interest credits. Priority projects must compete for set-aside funds. The Agency will announce the priority criteria in an announcement in the **Federal Register**.

Yvonne Hsu,

Acting Administrator, Rural Housing Service.

[FR Doc. 2024–05756 Filed 3–18–24; 8:45 am]

BILLING CODE 3410–XV–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 70

[NRC–2024–0051]

Regulatory Guide: Standard Format and Content of Safety Analysis Reports for Uranium Enrichment Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing Regulatory Guide (RG) 3.25, Revision 1, ''Standard Format and Content of Safety Analysis Reports for Uranium Enrichment Facilities.'' This RG Revision is being withdrawn because it only refers to NUREG–1520, ''Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility,'' which provides guidance on the subject matter to applicants and NRC staff reviewers.

DATES: The effective date of the withdrawal of RG 3.25, Revision 1, is March 19, 2024.

ADDRESSES: Please refer to Docket ID NRC–2024–0051 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

Federal Rulemaking Website: Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0051. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

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a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Stephen Poy, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–3175, email: *Stephen.Poy@nrc.gov;* or Harriet Karagiannis, Office of Nuclear Regulatory Research, telephone: 301–415–2493, email: *Harriet.Karagiannis@nrc.gov*. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Discussion

The NRC is withdrawing RG 3.25, Revision 1, ''Standard Format and Content of Safety Analysis Reports for Uranium Enrichment Facilities.'' RG 3.25, Revision 1, provided guidance on the standard format and content of a safety analysis report (SAR) for uranium enrichment facilities and related documents submitted as part of an application to construct or modify and operate a nuclear fuel cycle facility. This RG revision endorsed the standard format and content for SARs and integrated safety analysis (ISA) summaries described in NUREG–1520, ''Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility,'' as a process that the NRC staff found acceptable for meeting the regulatory requirements. Applicants use NUREG–1520 while developing fuel cycle facility applications, and NRC staff use NUREG–1520 while reviewing these applications.

NUREG–1520 provides current guidance to applicants and NRC staff reviewers on the acceptable content and format of SARs and ISA summaries. Therefore, the NRC determined that RG 3.25, Revision 1 is no longer needed to simply refer to NUREG–1520 and is being withdrawn. Revision 0 of RG 3.25 is also still available but is not the most recent acceptable guidance for developing and reviewing these license applications.

The withdrawal of RG 3.25, Revision 1, does not alter any prior or existing NRC licensing approval or the acceptability of licensee commitments to RG 3.25, Revision1. Although RG 3.25, Revision 1 is withdrawn, current licensees may continue to use it and withdrawal does not affect any existing licenses or agreements. However, RG 3.25, Revision 1 should not be used in future requests or applications for NRC licensing actions. The NRC is considering the withdrawal of RG 3.25, Revision 0.

Additional Information

As noted in the **Federal Register** on December 9, 2022 (87 FR 75671), this document is being published in the ''Rules'' section of the **Federal Register** to comply with publication requirements under chapter I of title 1 of the Code of Federal Regulations.

Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html*. Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: March 14, 2024.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2024–05786 Filed 3–18–24; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 436

RIN 1901–AB63

Energy Savings Performance Contract Procedures and Methods Technical Amendment

AGENCY: Federal Energy Management Program, Department of Energy.

ACTION: Final rule; technical amendment.

SUMMARY: The U.S. Department of Energy (DOE) is publishing this technical amendment to remove a regulatory provision specifying that the energy savings performance contract (ESPC) regulations apply only to ESPCs awarded on or before September 30, 2003. DOE's technical amendment to remove the regulatory sunset date will make the regulations consistent with the statutory authority.

DATES: The effective date of this technical amendment is March 19, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Ira Birnbaum, U.S. Department of Energy, Office of Infrastructure, Federal Energy Management Program (FEMP–1), 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 304–4940. *Ira.Birnbaum@hq.doe.gov.*

Ms. Ani Esenyan, U.S. Department of Energy, Office of the General Counsel, Forrestal Building (GC–33), 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (240) 961–7713. Email: *ani.esenyan@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 155(a) of the Energy Policy Act of 1992 (EPAct 1992, Pub. L. 102–486) directed DOE, with the concurrence of the Federal Acquisition Regulatory Council, to ''establish procedures and methods for use by Federal agencies to select, monitor, and terminate contracts with energy service contractors.'' On April 10, 1995, DOE published a final rule implementing the current ESPC regulations (the 1995 Final Rule) (60 FR 18326), which included the sunset date originally in section 155 of the Energy Policy Act of 1992 (Pub. L. 102–486). Specifically, section 155(c)(1) of EPAct 1992 provided, ''The authority to enter into new contracts under this section shall cease to be effective five years after the date procedures and methods are established. . .''. The statutory sunset date was subsequently extended several times [1] until the ESPC statutory authority was permanently reauthorized by section 514 of the Energy Independence and Security Act of 2007 (Pub. L. 110–140), which removed the sunset language from 42 U.S.C. 8287.

In this rule, DOE is removing from 10 CFR 436.30(a) the provision specifying that subpart B applies only to ESPCs awarded on or before September 30, 2003. DOE's removal of the regulatory sunset date will make the regulations consistent with the statutory authority.

II. Need for Correction

Currently, 10 CFR 436.30(a) specifies that subpart B applies only to ESPCs awarded on or before September 30, 2003. This provision is not consistent with current ESPC statutory authority, which was permanently reauthorized by EISA section 514. The regulatory amendment in this final rule makes the regulations consistent with statutory authority and therefore is technical in nature. DOE has historically updated the sunset language in the regulations to mirror the statutory language. (65 FR 39784; June 28, 2000). This final rule similarly updates the regulatory language to be consistent with statutory authority.

[1] Energy Conservation Reauthorization Act of 1998 (Pub. L. 105–388); Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375); Energy Policy Act of 2005 (Pub. L. 109–58).

III. Procedural Issues and Regulatory Review

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), DOE finds that there is good cause not to issue a separate notice to solicit public comment on the change made by this rule. Issuing a separate notice to solicit public comment is unnecessary. This rule makes a non-substantive change to the regulations and simply provides consistency between the regulation and statutory authority. Providing prior notice and an opportunity for public comment on such a change serves no useful purpose.

As such, this rule is not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d) otherwise applicable to rules that make substantive changes.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule; technical amendment.

List of Subjects in 10 CFR Part 436

Energy conservation; Energy Savings Performance Contracts, Federal buildings and facilities, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on March 13, 2024, by Mary Sotos, Director of the Federal Energy Management Program, 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 March 14, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons set forth in the preamble, DOE amends part 436 of chapter II, of title 10 of the Code of Federal Regulations, as set forth below:

PART 436—FEDERAL ENERGY MANAGEMENT AND PLANNING PROGRAMS

The authority citation for part 436 is revised to read as follows:

Authority: 42 U.S.C. 7101 *et seq.;* 42 U.S.C. 8254; 42 U.S.C. 8258; 42 U.S.C. 8259b; 42 U.S.C. 8287, *et seq.*

■ 2. Amend § 436.30 by revising paragraph (a) to read as follows:

§ 436.30 Purpose and scope.

(a) *General.* This subpart provides procedures and methods which apply to Federal agencies with regard to the award and administration of energy savings performance contracts. This subpart applies in addition to the Federal Acquisition Regulation at Title 48 of the CFR and related Federal agency regulations. The provisions of this subpart are controlling with regard to energy savings performance contracts notwithstanding any conflicting provisions of the Federal Acquisition Regulation and related Federal agency regulations.

* * * * *

[FR Doc. 2024–05762 Filed 3–18–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0598; Project Identifier AD–2021–01322–T; Amendment 39–22688; AD 2024–04–09]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777–200, 777–200LR, 777–300, 777–300ER, and 777F series airplanes. This AD was prompted by reports of wing anti-ice (WAI) valve failure that can result in undetected structural damage to leading edge (LE) slat assemblies, and separately a failure of the autothrottle (A/T) to disconnect after the pilot manually advanced the throttle levers, which caused a low-speed condition during a go-around. This AD was also prompted by a determination that insufficient low-speed protection exists in the 777 fleet and a determination that the flightcrew may not recognize and properly respond to a multi-channel unreliable airspeed event. This AD requires installing certain new software and doing a software configuration check. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 23, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 23, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0598; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2022–0598.

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

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 777–200, 777–200LR, 777–300, 777–300ER, and 777F series airplanes. The NPRM published in the **Federal Register** on June 22, 2022 (87 FR 37249). The NPRM was prompted by reports of WAI valve failure that can result in undetected structural damage to LE slat assemblies, and separately a failure of the A/T to disconnect after the pilot manually advanced the throttle levers, which caused a low-speed condition

during a go-around. The NPRM was also prompted by a determination that insufficient low-speed protection exists in the 777 fleet and a determination that the flightcrew may not recognize and properly respond to a multi-channel unreliable airspeed event. In the NPRM, the FAA proposed to require installing certain new software and doing a software configuration check. The FAA is issuing this AD to prevent undetected failure of the WAI system and consequent high temperature bleed air flowing into the LE slat assemblies, which could result in reduced structural integrity of the slat and prevent continued safe flight and landing of the airplane. The FAA is also issuing this AD to prevent failure of the A/T to disconnect after manually advancing the throttle levers, or insufficient low energy protection, which could result in controlled flight into terrain, or a multi-channel unreliable airspeed event could result in loss of control of the airplane.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from the Air Line Pilots Association, International (ALPA) and an individual who supported the NPRM without change. Air Peace Limited (Air Peace) supported the NPRM, and had additional comments detailed below.

The FAA received additional comments from four commenters, including Boeing, American Airlines, United Airlines (United), and Alis Cargo. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Remove Certain Information From What Prompted the Proposed AD

Boeing requested that the proposed AD be revised to remove all wording stating that the proposed AD ''was also prompted by a determination that insufficient low speed protection exists in the 777 fleet and a determination that the flight crew may not recognize and properly respond to a multi-channel unreliable airspeed event.'' Boeing stated that the change that the AIMS Version 17C resolves is unrelated to unreliable airspeed indication, and that the Fault Tolerant air data inertial reference system (ADIRS) provides reliable airspeed data.

The FAA agrees to clarify. The changes associated with AIMS–2 Version 17C are not directly related to the issue of unreliable airspeed indication, and are intended to address the WAI issue and the A/T issue. However, the FAA disagrees with removing reference to the insufficient low-speed protection and unreliable airspeed because some of the changes associated with AIMS–2 Version 17C were to fix an unsafe condition (A/T issue) introduced by the previous AIMS–2 update (Version 17B). The FAA acknowledges previous versions of AIMS software addressed unreliable airspeed (Version 17.1) and insufficient low airspeed protection (Version 17B) and that Version 17C has had these updates previously incorporated. However, neither of these earlier software updates were mandated by AD action. Therefore, this AD is addressing unreliable airspeed and insufficient low airspeed protection through requiring the software update that addresses all of the changes related to the identified unsafe condition. The FAA has not changed this AD regarding this issue.

Request To Move Certain Information

Boeing requested that two sentences related to a requirement to install earlier BP versions of AIMS–2 BP software prior to installing AIMS–2 BP Version 17C software be moved from the Background to the Related Service Information Under 1 CFR part 51 section of the NPRM.

The FAA acknowledges the commenter's request. However, the information in those sentences does not directly relate to the actions specified in the service information specified in the Related Service Information Under 1 CFR part 51 section of this final rule. Therefore, the FAA has determined that moving the information is not appropriate. Additionally, that portion of the Background section does not get carried over to the final rule. The FAA has not changed this AD regarding this issue.

Request To Revise Sentence Related to Earlier Software Update

Boeing requested that the FAA revise a sentence in the Background section of the NPRM to specify that ''AIMS–2 BP V17B'' rather than ''One earlier software update'' was prompted by an accident at San Francisco International Airport. Boeing stated that this would clarify that AIMS Version 17B is for the AIMS–2 platform.

The FAA disagrees with the commenter's request. Within the context of the Background section of the NPRM, the FAA clearly identified ''AIMS–2 BP Version 17B'' and that it was developed as a result of the accident investigation. Additionally, that portion of the Background section does not get carried over to the final rule. The FAA has not changed this AD regarding this issue.

Request To Correct Typographical Errors and Add Service Information Reference

Boeing requested that the FAA correct several typographical errors in the Costs of Compliance section of the NPRM. Boeing noted that ''AIMS 2'' should be ''AIMS–2;'' ''SB 777–21–0322'' should be ''SB 777–31–0332;'' and that the action to install AIMS–2 BP Version 17C should specify bulletin ''777–31A0342.''

The FAA agrees to correct these typographical errors and add the reference to the service information. The FAA has revised the Costs of Compliance section of this final rule accordingly.

Request To Revise Explanation of AIMS–2 BP Version 17C Software

Boeing requested that the FAA revise the third paragraph of the Background portion of the NPRM to clarify why Boeing developed AIMS–2 BP Version 17C software. Boeing provided suggested wording.

The FAA agrees that Boeing's suggested wording would provide a more detailed description of why AIMS–2 BP Version 17C software was developed. However, that wording is not necessary to explain the requirements of and reasons for this AD. Additionally, that section of the Background portion does not get carried over to the final rule. Therefore, no change to this AD is necessary regarding this issue.

Request To Extend Compliance Time

Air Peace Limited and United requested that, for operators that will require an upgrade of AIMS–1 to AIMS–2, the compliance time be extended to 48 months. Air Peace noted that the upgrade has a high cost and that there is a lead time for acquiring parts.

The FAA disagrees with the commenters' request. In developing an appropriate compliance time for this action, the FAA considered the recommendations of the manufacturer, the urgency associated with the subject unsafe condition, and the availability of required parts. In consideration of these items, the FAA has determined that a 36 month compliance time will ensure an acceptable level of safety. However, under the provisions of paragraph (i) of this AD, the FAA will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety. The FAA has not changed this AD in this regard.

Request To Allow Later-Approved Software

American Airlines requested that paragraph (g) of the proposed AD be revised to specify that later-approved versions of the Block Point (BP) software are allowed for compliance. The commenter noted that this would minimize the need for alternative methods of compliance (AMOCs).

The FAA agrees to clarify. Boeing Alert Requirements Bulletin 777–31A0342 RB, dated July 19, 2021, which is incorporated by reference, already allows the installation of the specified software ''or later approved software part numbers'' and specifies in the General Information paragraph what constitutes ''later approved'' software. Therefore, no change to this AD is necessary.

Request To Remove Certain Airplanes From the Applicability

Alis Cargo noted that its fleet has a current configuration of AIMS–1 BP Version 16, so is part of Group 5 as specified in Boeing Alert Requirements Bulletin 777–31A0342 RB, dated July 19, 2021. Alis Cargo added that no concurrent requirements are specified for Group 5 airplanes in Boeing Alert Requirements Bulletin 777–31A0342 RB, dated July 19, 2021, making it unclear that a large and costly hardware upgrade from AIMS–1 to AIMS–2 is required. The commenter noted that the manufacturer said AIMS–1 hardware is limited and obsolete, so no dedicated software release is available for AIMS–1. The commenter stated that no known safety issues are related to AIMS–1 hardware, so operators should not be forced to upgrade the hardware to fix a software issue.

The FAA infers that the commenter is requesting to remove airplanes equipped with AIMS–1 hardware from the applicability of this AD. The FAA acknowledges the high cost of converting from AIMS–1 to AIMS–2 hardware and has updated the footnote in the Costs of Compliance section to estimate the parts cost for this action. The FAA has determined this action is necessary to address the unsafe condition. The unsafe condition is not AIMS–1 or AIMS–2 dependent, but rather is connected to the related BP software. Changes to the existing AIMS–1 software (*i.e.,* a more complex software code requiring more memory and computing capability) would exceed the capabilities of AIMS–1 hardware. Since the software running on AIMS–1 hardware is unsafe and cannot be upgraded on the AIMS–1 platform, affected airplanes must be converted to AIMS–2 hardware so that new software that addresses the unsafe conditions can be installed. The FAA has not changed this AD in this regard.

Request To Allow Using Certain Service Information

United requested that the proposed AD be revised to include certain AIMS retrofit service bulletins, which include steps for replacing AIMS–1 with AIMS–2. United noted that Boeing provided several bulletins, which United used to accomplish the retrofit on a portion of its fleet that was equipped with AIMS–1. United concluded that specifying the service information would reduce the number of AMOC submittals.

The FAA acknowledges the commenter's concerns. However, listing additional service information is not practical in this case because the bulletins that United mentioned may not be the only bulletins used to upgrade to AIMS–2, and some may be specific to a certain operator or certain airplane configuration. However, the FAA concurs that, if an airplane was upgraded to AIMS–2 prior to the effective date of this AD, obtaining an AMOC for the upgrade is no longer necessary. In addition, the FAA has determined that clarification of the definition of Group 5 airplanes is necessary, since an airplane that was upgraded to AIMS–2 after the service information was released might no longer fit into the group definitions in the service information. For an airplane on which AIMS–1 was upgraded to AIMS–2 prior to the effective date of this AD, obtaining an AMOC is not required. However, installing the AIMS–2 BP Version 17C software part numbers and doing a software configuration check are still required, along with any applicable concurrent actions. The FAA has added paragraph (h)(6) of this AD to clarify the group definition and requirements for airplanes that were upgraded to AIMS–2.

Request To Revise Costs of Compliance

United requested that the Costs of Compliance section of the proposed AD be revised to account for higher hardware costs and more work-hours. United stated that Boeing Alert Requirements Bulletin 777–31A0342 RB, dated July 19, 2021, implements ATN [Aeronautical Telecommunications Network] Controller Pilot Data Link Communications (CPDLC) for AIMS–2 airplanes. United added that AIMS–1 configured airplanes do not use the VDLMD2 radios required for CPDLC software that is part of the required BP17C software, so those airplanes also require a retrofit of VHF radios and OPC software, as well as replacement of the Tuning panel. The commenter also noted that the hardware cost for the AIMS retrofit is higher than that estimated in the proposed AD and provided suggested revised costs for installing AIMS–2 and BP17B/C.

The FAA acknowledges the commenter's concerns and that upgrading from AIMS–1 to AIMS–2 may require additional modifications not accounted for in this AD. However, this AD does not require using specific service information to upgrade from AIMS–1 to AIMS–2, but instead requires obtaining an AMOC, as specified in paragraph (h)(2) of this AD. The FAA has no way of knowing the specific configuration of each airplane equipped with AIMS–1 and cannot account for all possible incidental costs that may be required in upgrading a particular airplane to AIMS–2. The cost information specified in this AD describes only the direct costs of the specific actions required by this AD. Based on the best data available, the manufacturer provided the estimated number of work hours and parts costs necessary to do the required actions. This number represents the time necessary to perform only the actions actually required by this AD. The FAA recognizes that, in doing the actions required by an AD, operators might incur incidental costs in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs such as the time necessitated by other administrative actions or incorporating other associated technologies. Those incidental costs might vary significantly among operators. Therefore, the FAA has not changed this AD regarding this issue.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 777–31A0342 RB, dated July 19, 2021. This service information specifies procedures for installing new AIMS–2 BP Version 17C

software, and doing a software configuration check. For Groups 1, 2, and 3: this service information also specifies concurrent actions (installation of AIMS–2 BP Version 17B software; installation of AIMS–2 and PlaneNet-2 systems; or installation of AIMS–2 and software; depending on configuration). This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 353 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS *

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Install AIMS–2 BP Version 17C and do software check (777–31A0342 RB).	3 work-hours × $85 per hour = $255	Up to $13,140	Up to $13,395	Up to $4,728,435.
Install AIMS–2 BP Version 17B (SB777-31-0294).	3 work-hours × $85 per hour = $255	Up to $13,140	Up to $13,395	Up to $4,728,435.
Install AIMS–2 and PlaneNet-2 (SB 777-31-0331).	Up to 101 work-hours × $85 per hour = Up to $8,585.	Up to $13,140	Up to $21,725	Up to $7,668,925.
Install AIMS–2 and software (SB 777–31–0322).	Up to 106 works-hours × $85 per hour = Up to $9,010.	Up to $13,140	Up to $22,150	Up to $7,818,950.

* This software parts cost is estimated to be the same for the concurrent actions as for the primary actions. The FAA does not have any definitive data on which to base the additional parts cost associated with installing AIMS–2, but estimates the cost could be up to $762,500, depending on airplane configuration. Additionally, the FAA estimates that 100 airplanes of U.S. registry may require installing AIMS–2.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–04–09 The Boeing Company: Amendment 39–22688; Docket No. FAA–2022–0598; Project Identifier AD–2021–01322–T.

(a) Effective Date

This airworthiness directive (AD) is effective April 23, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200, 777–200LR, 777–300, 777–300ER, and 777F series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 777–31A0342 RB, dated July 19, 2021.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of wing anti-ice (WAI) valve failure that can result in undetected structural damage to leading edge (LE) slat assemblies, and separately a failure of the autothrottle (A/T) to disconnect after the pilot manually advanced the throttle levers disconnect after the pilot manually advanced the throttle levers, which caused a low-speed condition during a go-around. This AD was also prompted by a determination that insufficient low-speed protection exists in the 777 fleet and a determination that the flightcrew may not recognize and properly respond to a multi-channel unreliable airspeed event. The FAA is issuing this AD to prevent undetected failure of the WAI system and consequent high temperature bleed air flowing into the LE slat assemblies, which could result in reduced structural integrity of the slat and prevent continued safe flight and landing of the airplane. The FAA is also issuing this AD to prevent failure of the A/T to disconnect after manually advancing the throttle levers, or insufficient low energy protection, which could result in controlled flight into terrain, or a multi-channel unreliable airspeed event could result in loss of control of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 777–31A0342 RB, dated July 19, 2021, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 777–31A0342 RB, dated July 19, 2021.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 777–31A0342, dated July 19, 2021, which is referred to in Boeing Alert Requirements Bulletin 777–31A0342 RB, dated July 19, 2021.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 777–31A0342 RB, dated July 19, 2021, use the phrase ''the original issue date of Requirements Bulletin 777–31A0342 RB,'' this AD requires using the effective date of this AD.

(2) Where Boeing Alert Requirements Bulletin 777–31A0342 RB, dated July 19, 2021, specifies contacting Boeing for instructions for upgrading certain software: This AD requires doing the upgrade using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(3) Where the description in the Effectivity section of Boeing Alert Requirements Bulletin 777–31A0342 RB, dated July 19, 2021, defines Group 1 airplanes as ''Airplanes with Airplane Information Management System (AIMS)–2 with service bulletin 777–31–0294 incorporated,'' this AD requires using ''Airplanes with Airplane Information Management System (AIMS)–2 with a requirement to incorporate service bulletin 777–31–0294.''

(4) Where the description in the Effectivity section of Boeing Alert Requirements Bulletin 777–31A0342 RB, dated July 19, 2021, defines Group 2 airplanes as ''Airplanes with AIMS–2 with service bulletin 777–31–0331 incorporated,'' this AD requires using ''Airplanes with AIMS–2 with a requirement to incorporate service bulletin 777–31–0331.''

(5) Where the description in the Effectivity section of Boeing Alert Requirements Bulletin 777–31A0342 RB, dated July 19, 2021, defines Group 3 airplanes as ''Airplanes with AIMS–2 with service bulletin 777–31–0332 incorporated,'' this AD requires using ''Airplanes with AIMS–2 with a requirement to incorporate service bulletin 777–31–0332.''

(6) Where the description in the Effectivity section of Boeing Alert Requirements Bulletin 777–31A0342 RB, dated July 19, 2021, defines Group 5 airplanes as ''Airplanes with Airplane Information Management System (AIMS)–,'' this AD requires using ''Airplanes with Airplane Information Management System (AIMS)–1 and airplanes equipped with AIMS–2 that are not in Group 1, 2, 3, or 4.'' (That is, there are two subsets of Group 5 airplanes with different required actions.) For airplanes, that, as of the effective date of this AD, are equipped with AIMS–2 and are not in Group 1, 2, 3 or 4, this AD does not require Action 1 of Table 3 of the Accomplishment Instructions of Boeing Alert Requirements Bulletin 777–31A0342 RB, dated July 19, 2021.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR–520, Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

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

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

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 777–31A0342 RB, dated July 19, 2021.

(ii) [Reserved]

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

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

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

Issued on February 21, 2024.

Victor Wicklund,

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

[FR Doc. 2024–05497 Filed 3–18–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2146; Project Identifier MCAI–2023–00646–T; Amendment 39–22687; AD 2024–04–08]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. This AD was prompted by a report of possible chafing of a power harness at fuselage frame (FR) 65. This AD requires rerouting the power harness, as specified in a Transport Canada AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 23, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 23, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–2146; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room

W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

• For material identified in this final rule, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca;* website *tc.canada.ca/en/aviation.*

• You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2023–2146.

FOR FURTHER INFORMATION CONTACT: William Reisenauer, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7301; email: *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. The NPRM published in the **Federal Register** on November 6, 2023 (88 FR 76144). The NPRM was prompted by AD CF–2023–27, dated May 4, 2023, issued by Transport Canada, which is the aviation authority for Canada (Transport Canada AD CF–2023–27) (also referred to as the MCAI). The MCAI states that during production, a possibility of chafing between a power harness and the left side window shade at fuselage FR 65 was detected. Damage to the power harness can result in an emergency equipment failure, including the partial loss of the public address system and the inability to deploy half the passenger oxygen masks when required.

In the NPRM, the FAA proposed to require rerouting the power harness, as specified in Transport Canada AD CF–2023–27. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–2146.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from the Air Line Pilots Association, International (ALPA) who supported the NPRM without change.

The FAA received an additional comment from Delta Air Lines (Delta). The following presents the comment received on the NPRM and the FAA's response to the comment.

Request To Confirm Intent To Allow Usage of Later Service Bulletin Revisions

Delta requested confirmation that a later service bulletin revision could be used to comply with paragraph (g) of the proposed AD. Delta noted that, per Transport Canada AD CF–2023–27 Corrective Actions, a later revision of the service bulletin can be used to comply with the required corrective actions and added that Airbus A220 Service Bulletin BD500–352004 Issue 02, dated June 6, 2023, was recently issued.

The FAA confirms that it intends to allow the use of applicable later-approved service information to comply with the requirements of this AD. This AD refers to Transport Canada AD CF–2023–27 as the appropriate source of service information for accomplishing the required actions. Transport Canada AD CF–2023–27 includes a Corrective Actions section, which accepts the use of later approved revisions of the referenced service information for compliance. Therefore, applicable later approved service information revisions are acceptable. The FAA has not changed this AD in this regard.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

Transport Canada AD CF–2023–27 specifies procedures for rerouting the power harness, which requires the modification of an insulation blanket and the installation of a standoff and a clamp on the left side stringer 11 between fuselage FR 65 and FR 67 to prevent damage to the harness. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 29 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × $85 per hour = $340	$10	$350	$10,150

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a

substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–04–08 Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Amendment 39–22687; Docket No. FAA–2023–2146; Project Identifier MCAI–2023–00646–T.

(a) Effective Date

This airworthiness directive (AD) is effective April 23, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Canada Limited Partnership (Type Certificate previously held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Model BD–500–1A10 and BD–500–1A11 airplanes, certificated in any category, as identified in Transport Canada AD CF–2023–27, dated May 4, 2023 (Transport Canada AD CF–2023–27).

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical power.

(e) Unsafe Condition

This AD was prompted by a report of possible chafing of a power harness at fuselage frame (FR) 65. The FAA is issuing this AD to address chafing of the power harness. The potential unsafe condition, if not addressed, could result in an emergency equipment failure, including the partial loss of the public address system and the inability to deploy half the passenger oxygen masks when required.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Transport Canada AD CF–2023–27.

(h) Exceptions to Transport Canada AD CF–2023–27

(1) Where Transport Canada AD CF–2023–27 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where Transport Canada AD CF–2023–27 refers to hours air time, this AD requires using flight hours.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, mail it to the attention of the person identified in paragraph (j) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov.* If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(j) Additional Information

For more information about this AD, contact William Reisenauer, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7301; email: *9-avs-nyaco-cos@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Transport Canada AD CF–2023–27, dated May 4, 2023.

(ii) [Reserved]

(3) For Transport Canada AD CF–2023–27, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca;* website *tc.canada.ca/en/aviation.*

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

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

Issued on February 21, 2024.

Victor Wicklund,

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

[FR Doc. 2024–05498 Filed 3–18–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2431; Airspace Docket No. 23–AEA–26]

RIN 2120–AA66

Amendment of Class E Airspace; Ebensburg, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a typographic error in the final rule published in the **Federal Register** on March 7, 2024, amending the Class E airspace at Ebensburg, PA.

DATES: Effective 0901 UTC, May 16, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** (89 FR 16447; March 7, 2024), amending the Class E airspace at Ebensburg, PA. Subsequent to publication, the FAA identified that the final rule was published with the incorrect agency docket number. This action corrects this error by replacing the incorrect agency docket number, FAA–2023–2341, with the correct one, FAA–2023–2431.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, Amendment of Class E Airspace; Ebensburg, PA, published in the **Federal Register** on March 7, 2024 (89 FR 16447), is corrected as follows:

In FR Doc. 2024–04826, on page 16447, in the first column, in the document headings, amend the agency docket number to read, ''[Docket No. FAA–2023–2431; Airspace Docket No. 23–AEA–26]''.

Issued in Fort Worth, Texas, on March 11, 2024.

Steven T. Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center

[FR Doc. 2024–05423 Filed 3–18–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2027; Airspace Docket No. 23–ANM–15]

RIN 2120–AA66

Establishment of Class E Airspace; Antone Ranch Airport, Mitchell, OR (64OG)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at Antone Ranch Airport, Mitchell, OR, in support of the airport's transition from visual flight rules (VFR) to instrument flight rules (IFR) operations.

DATES: Effective date 0901 UTC, May 16, 2024. Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Drasin, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2248.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a Notice of Proposed Rulemaking for Docket No. FAA–2023–2027 in the **Federal Register** (88 FR 72407; October 20, 2023), proposing to establish Class E airspace at Antone Ranch Airport, Mitchell, OR. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Differences From the NPRM

Subsequent to the NPRM publication, the FAA identified typographical errors within the airspace docket number and proposed legal description. Within line three of the legal description text header, the longitudinal coordinate reads 119°50′38″ W, but it should read 119°50′39″ W instead. Within the legal description body, the word ''airport'' was used twice without the appropriate punctuation to show possession. Lastly, the airspace docket number reads, in part, AMN, but it should read ANM instead. These changes are reflected within the final rule.

Incorporation by Reference

The Class E5 airspace designation is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Antone Ranch Airport, Mitchell, OR, in support of the airport's transition from VFR to IFR operations.

The airspace extends 8.4 miles east and 10.4 miles west and northwest of the airport reference point to contain departing and missed approach IFR operations until reaching 1,200 feet above the surface on the Runway (RWY) 7 and RWY 25 RIFTE ONE (OBSTACLE) Area Navigation (RNAV) departures, and the RNAV (Global Positioning System [GPS]) M RWY 25 missed approach. Additionally, this airspace contains arriving IFR operations below 1,500 feet above the surface on the RNAV (GPS) M RWY 25 approach.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM WA E5 Mitchell, OR [New]

Antone Ranch Airport, OR
(Lat. 44°29′34″ N, long. 119°50′39″ W)

That airspace extending upward from 700 feet above the surface within 2.2 miles either side of the 098° bearing extending to the airport's 8.4-mile radius, and within 2.2 miles either side of the 278° bearing extending to the airport's 10.4-mile radius, and within an area bounded by a line beginning at the 290° bearing at 10.4 miles, then clockwise along the airport's 10.4-mile radius to the 317° bearing, to the 327° bearing at 7.1 miles, to the 310° bearing at 4.1 miles, thence to the point of beginning.

* * * * *

Issued in Des Moines, Washington, on March 6, 2024.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2024–05669 Filed 3–18–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2175; Airspace Docket No. 23–ANM–16]

RIN 2120–AA66

Establishment of Class E Airspace; Green River Municipal Airport, Green River, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at Green River Municipal Airport, Green River, UT, in support of the airport's transition from visual flight rules (VFR) to instrument flight rules (IFR) operations.

DATES: Effective date 0901 UTC, May 16, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Keith T. Adams, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone: (206) 231–2428.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2023–2175 in the **Federal Register** (88 FR 85523; December 8, 2023), proposing to establish Class E airspace at Green River Municipal Airport, Green River, UT. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Differences From the NPRM

The final rule adds language excluding R–6413 special use airspace from the airport's legal description when active. That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the airport, from the 145° bearing clockwise to the 278° bearing within 6.8 miles southwest of the airport, and from the 278° bearing clockwise to the 337 ° bearing within 8.5 miles northwest of the airport excluding R–6413 when active. This exclusionary language was inadvertently omitted from the proposed rule.

Incorporation by Reference

Class E5 airspace area is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES**

section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Green River Municipal Airport.

The Class E airspace area provides a controlled airspace environment for IFR arrival operations below 1,500 feet above the surface for the Area Navigation (RNAV) (Global Positioning System [GPS]) Runway (RWY) 13 and RNAV (GPS) RWY 31 approaches. Additionally, the airspace contains IFR departure operations until reaching 1,200 feet above the surface on the GREEN RIVER ONE DEPARTURE (OBSTACLE) procedure.

Additionally, the southeast portion of the airspace will revert to special use airspace (SUA) when active—that SUA overlaps the Green River Airport's Class E airspace and is designated as restricted area R–6413.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM UT E5 Green River, UT [New]

Green River Municipal Airport, UT
(Lat. 38°57′42″ N, long. 110°13′38″ W)

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the airport, from the 145° bearing clockwise to the 278° bearing within 6.8 miles southwest of the airport, and from the 278° bearing clockwise to the 337 ° bearing within 8.5 miles northwest of the airport excluding R–6413 when active.

* * * * *

Issued in Des Moines, Washington, on March 12, 2024.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2024–05705 Filed 3–18–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2039; Airspace Docket No. 23–ANM–14]

RIN 2120–AA66

Establishment of Class E Airspace; Flying Joseph Ranch Airport, May, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at Flying Joseph Ranch Airport, May, ID, in support of the airport's transition from visual flight rules (VFR) to instrument flight rules (IFR) operations.

DATES: Effective date 0901 UTC, May 16, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Drasin, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2248.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published an NPRM for Docket No. FAA–2023–2039 in the **Federal Register** (88 FR 75241; November 2, 2023), proposing to

establish Class E airspace at Flying Joseph Ranch Airport, May, ID. 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

The Class E5 airspace designation is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Flying Joseph Ranch Airport, May, ID, in support of the airport's transition from VFR to IFR operations.

The airspace extends 11.3 miles northwest and 4.5 miles southeast of the airport reference point to contain departing and missed approach IFR operations until reaching 1,200 feet above the surface on the Runway (RWY) 11 YOYYU ONE DEPARTURE (OBSTACLE) (Area Navigation [RNAV]), RWY 29 ZAROD ONE DEPARTURE (RNAV), and RNAV (Global Positioning System [GPS]) M RWY 11 missed approach. Additionally, this airspace contains arriving IFR operations below 1,500 feet above the surface on the RNAV (GPS) M RWY 11 approach. This action will support the safety and management of IFR operations at the airport.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM ID E5 May, ID [New]

Flying Joseph Ranch Airport, ID
(Lat. 44°26′38″ N, long. 113°46′30″ W)

That airspace extending upward from 700 feet above the surface within a 4-mile radius of the airport, and within 2.6 miles southwest and 2.2 miles northeast of the 311° bearing extending from the 4-mile arc to 11.3 miles northwest, and within 1.9 miles either side of the 129° bearing extending from the 4-mile arc to 4.5 miles southeast.

* * * * *

Issued in Des Moines, Washington, on March 13, 2024.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2024–05749 Filed 3–18–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 240312–0079]

RIN 0648–BG26

Endangered and Threatened Species; Designation of Critical Habitat for Threatened Caribbean Corals; Correcting Amendment

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

ACTION: Final rule; correcting amendment.

SUMMARY: NMFS corrects an error in the final rule designating critical habitat for threatened Caribbean corals that published in the **Federal Register** on August 9, 2023. The final rule incorrectly identified the northern geographic extent of critical habitat designated for *Orbicella franksi* as St. Lucie Inlet, Martin County, Florida in the ''Table of the Locations of the Critical Habitat Units for *Orbicella franksi, O. annularis, O. faveolata, Dendrogyra cylindrus,* and *Mycetophyllia ferox,*'' codified at 50 CFR 266.230(b) and in Table 4 of the Critical Habitat Unit Descriptions in the preamble of the rule. This correcting amendment fixes that error by revising the description of the geographic extent of the OFRA–1 Unit to refer to Lake Worth Inlet, Palm Beach County, Florida.

DATES: This rule is effective on March 19, 2024.

ADDRESSES: Information regarding this final rule correction can be found on the NMFS website at: *https://www.fisheries.noaa.gov/action/final-rule-designate-critical-habitat-threatened-caribbean-corals.*

FOR FURTHER INFORMATION CONTACT: Jennifer Moore, NMFS, SERO, 727–824–5312, *Jennifer.Moore@noaa.gov;* Heather Austin, NMFS, Office of Protected Resources, 301–427–8422, *Heather.Austin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Need for Correction

In the final rule designating critical habitat for the threatened Caribbean corals (88 FR 54026, August 9, 2023), NMFS inaccurately identified the northern geographic extent of *Orbicella franksi* as St. Lucie Inlet, Martin County, Florida in Table 2 of 50 CFR 226.230(b) and in Table 4 of the Critical Habitat Unit Descriptions in the preamble of the rule. The species has never occurred north of Lake Worth Inlet, Palm Beach County, Florida. The reference to St. Lucie Inlet, Martin County, Florida was an accidental conflation (*i.e.,* copy/paste error) with its sister species, *Orbicella faveolata*. The correct geographic extent of the OFRA–1 Unit is Lake Worth Inlet, Palm Beach County, Florida, as stated in Figure 13 of 50 CFR 226.230(f) (*i.e.,* the map of the OFRA–1 Unit). The correct geographic extent is also stated in Table 1 of 50 CFR 226.230(a) as extending only to Palm Beach County.

As directed by 50 CFR 424.12(c), each critical habitat area will be shown on a map, with more-detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register**. Textual information may be included for purposes of clarifying or refining the location and boundaries of each area or to explain the exclusion of sites (*e.g.,* paved roads, buildings) within the mapped area. Each area will be referenced to the State(s), county(ies), or other local government units within which all or part of the critical habitat is located. Unless otherwise indicated within the critical habitat descriptions, the names of the State(s) and county(ies) are provided for informational purposes only and do not constitute the boundaries of the area. As noted above, the map of this unit at 50 CFR 226.230(f), which is the regulatory designation, correctly identifies the northern extent of the species. The references to the State (Florida) and county (Palm Beach) are also correct in Table 1 of 50 CFR 226.230(a). Thus, NMFS corrects the information in Table 2 that identifies the geographic extent of *O. franksi* to refer to Lake Worth Inlet instead of St. Lucie Inlet.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive prior notice and opportunity for additional public comment because it would be unnecessary and contrary to the public interest. This correcting amendment corrects the identification of the geographic extent of one of the units of critical habitat for *O. franksi*. The public was provided prior notice and comment on the proposed designation, which correctly identified the boundary of the critical habitat unit for *O. franksi* in Table 1 of the preamble, in Table 1 at 50 CFR 266.230(a), and in the map of the unit (Figure 13 of 50 CFR 226.230(f)), which is the regulatory designation. No comments were received about this boundary. Therefore, providing prior notice and opportunity for public comment on this correction to Table 2 at 50 CFR 226.230(b) is unnecessary and contrary to the public interest because this is a non-substantive change and retaining the inconsistent and incorrect information may cause confusion.

For the reasons stated above, the Assistant Administrator also finds good cause, pursuant to 5 U.S.C. 553(d), to waive the 30-day delay in effective date for this correction amendment (*i.e.,* it is unnecessary and contrary to the public interest since it is a non-substantive change, the public was provided prior notice and comment on the proposed designation which correctly identified the boundary of the critical habitat unit for *O. franksi* in Table 1 of the preamble, in Table 1 at 50 CFR 266.230(a), and in the map of the unit (Figure 13 of 50 CFR 226.230(f)), which is the regulatory designation, and no comments were received about this boundary).

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are inapplicable. Accordingly, no Regulatory Flexibility Analysis is required and none has been prepared.

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: March 14, 2024.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 226 as follows:

PART 226—DESIGNATED CRITICAL HABITAT

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

■ 2. In § 226.230 (b), under the subheading ''*Orbicella franksi*'', revise the table entry for OFRA–1 to read as follows:

§ 226.230 Critical habitat for the Caribbean Boulder Star Coral (Orbicella franksi), Lobed Star Coral (O. annularis), Mountainous Star Coral (O. faveolata), Pillar Coral (Dendrogyra cylindrus), and Rough Cactus Coral (Mycetophyllia ferox).

* * * * *

(b) * * *

TABLE 2 TO PARAGRAPH (b)—TABLE OF THE LOCATIONS OF THE CRITICAL HABITAT UNITS FOR ORBICELLA FRANKSI, O. ANNULARIS, O. FAVEOLATA, DENDROGYRA CYLINDRUS, AND MYCETOPHYLLIA FEROX

Species	Critical habitat unit name	Location	Geographic extent	Water depth range
Orbicella franksi	OFRA–1	Florida	Lake Worth Inlet, Palm Beach County to Government Cut, Miami-Dade County.	2–40 m (6.5–131 ft).
		Florida	Government Cut, Miami-Dade County to Dry Tortugas	0.5–40 m (1.6–131 ft).
*	*	*	*	* * *

* * * * *

[FR Doc. 2024–05795 Filed 3–18–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 230914–0219; RTID 0648–XD744]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2024 Recreational Accountability Measure and Closure for Gag in the South Atlantic

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure for the recreational harvest of gag in South Atlantic Federal waters. NMFS projects that recreational landings of gag will reach the recreational annual catch limit (ACL) for the 2024 fishing year by June 15, 2024. Accordingly, NMFS announces the closure date for the recreational harvest of gag in South Atlantic Federal waters to protect the gag resource.

DATES: This temporary rule is effective from June 15, 2024, through December 31, 2024.

FOR FURTHER INFORMATION CONTACT: Frank Helies, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *frank.helies@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes gag and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and NMFS, and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All weights in this temporary rule are in gutted weight.

Regulations at 50 CFR 622.193(c)(2) specify the 2024 recreational ACL for gag of 133,075 pounds (60,362 kilograms), and the recreational AMs. One of the recreational AMs state that if recreational landings of gag exceed its ACL, NMFS will reduce the length of the next recreational fishing season to prevent recreational landings from again exceeding the recreational ACL [50 CFR 622.193(c)(2)(ii)]. On October 23, 2023, the effective date of the final rule to implement Amendment 53 to the FMP, NMFS closed the recreational sector for the remainder of the year because recreational landings had exceeded the new 2023 recreational ACL (88 FR 68497, October 4, 2023). Therefore, given the overage of the recreational ACL in 2023, NMFS is reducing the length of the 2024 recreational season to prevent the recreational ACL from being exceeded.

The recreational season for gag will start on May 1, 2024. Data from the NMFS Southeast Fisheries Science Center have informed NMFS' projection that recreational landings will reach the recreational ACL for 2024 after June 14. Therefore, NMFS announces that the recreational season for gag in South Atlantic Federal waters will be closed on June 15, 2024, and continue through December 31, 2024. During the recreational closure, the bag and possession limits for gag in or from South Atlantic Federal waters are zero. The next recreational fishing season for gag begins on May 1, 2025.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.193(c)(2)(ii), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule that established the recreational AMs for gag has already been subject to notice and comment, and all that remains is to notify the public of the end date of the recreational season. Prior notice and opportunity for public comment on this action is contrary to the public interest because of the need to protect the South Atlantic gag resource. Additionally, providing as much advance notice to the public of this shortened fishing season and closure allows recreational fishermen, including charter vessel and headboat businesses, to prepare for the change to the recreational season for gag and to schedule or reschedule their trips.

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

Dated: March 14, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–05766 Filed 3–18–24; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 89, No. 54
Tuesday, March 19, 2024

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–0562; Airspace Docket No. 23–ANM–24]

RIN 2120–AA66

Establishment of Class E Airspace; Lincoln Airport, Lincoln, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace area extending upward from 700 feet or more above the surface of the earth at Lincoln Airport, Lincoln, MT. This action would support the airport's operations transition from visual flight rules (VFR) to instrument flight rules (IFR).

DATES: Comments must be received on or before May 3, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2024–0562 and Airspace Docket No. 23–ANM–24 using any of the following methods:

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

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Keith T. Adams, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2428.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

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

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

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

Availability of Rulemaking Documents

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

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

Incorporation by Reference

Class E5 airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order

JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to establish Class E airspace extending upward from 700 feet or more from the surface of the earth at Lincoln Airport, Lincoln, MT.

The airport is transitioning from VFR to IFR operations. Class E airspace should be established within a 2.6-mile radius of the airport, within 1.1 miles on either side of the airport's 056° bearing extending 9.2 miles northeast of the airport, and within 2.6 miles on either side of the airport's 251° bearing extending 9 miles southwest of the airport. This airspace would contain arriving IFR aircraft descending below 1,500 feet above the surface and departing aircraft until it reaches 1,200 feet above the surface.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM MT E5 Lincoln, MT [New]

Lincoln Airport, MT
(Lat. 46°57′17″ N, long. 112°39′01″ W)

That airspace extending upward from 700 feet above the surface within a 2.6-mile radius of the airport, within 1.1 miles on either side of the airport's 056° bearing extending 9.2 miles northeast of the airport, and within 2.6 miles on either side of the airport's 251° bearing extending 9 miles southwest of the airport.

* * * * *

Issued in Des Moines, Washington, on March 12, 2024.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2024–05711 Filed 3–18–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–0298; Airspace Docket No. 24–ASO–05]

RIN 2120–AA66

Establishment of Class E Airspace; Valkaria, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface for Valkaria Airport, Valkaria, FL, to accommodate new area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures serving the airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Comments must be received on or before May 3, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2024–0298 and Airspace Docket No. 24–ASO–05 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 7400.11H Airspace Designations and Reporting Points and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., 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 establish Class E airspace extending upward from 700 feet above the surface at Valkaria Airport, Valkaria, FL, to support standard instrument approach procedures for IFR operations at this airport.

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 proposal's overall regulatory, aeronautical, economic, environmental, and energy-related aspects. 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 E airspace designations are published in Paragraphs 6005 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 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates will be published in the next FAA Order JO 7400.11 update. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to establish Class E airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Valkaria Airport, Valkaria, FL, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for IFR operations at the airport. 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 would 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.

Lists 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 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

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

* * * * *

ASO FL E5 Valkaria, FL [New]

Valkaria Airport, FL
(Lat. 27°57′39″ N, long. 80°33′30″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Valkaria Airport.

* * * * *

Issued in College Park, Georgia, on March 12, 2024.

Andreese C. Davis,

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

[FR Doc. 2024–05709 Filed 3–18–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–0319; Airspace Docket No. 24–ASO–6]

RIN 2120–AA66

Establishment of Class E Airspace; Reidsville, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface for Rockingham County NC Shiloh Airport, Reidsville, NC, to accommodate new area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures serving the airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Comments must be received on or before May 3, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2024–0319 and Airspace Docket No. 24–ASO–06 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 7400.11H Airspace Designations and Reporting Points and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., 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 establish Class E airspace extending upward from 700 feet above the surface at Rockingham County NC Shiloh Airport, Reidsville, NC, to support standard instrument approach procedures for IFR operations at this airport.

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 proposal's overall regulatory, aeronautical, economic, environmental, and energy-related aspects. 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 anda 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 edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can 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 E airspace designations are published in Paragraphs 6005 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 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates will be published in the next FAA Order JO 7400.11 update. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to establish Class E airspace extending upward from 700 feet above the surface within a 9.1-mile radius of Rockingham County, NC Shiloh Airport, Reidsville, NC, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for IFR operations at the airport. 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 would be subject to an environmental analysis per FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' before any FAA final regulatory action.

Lists 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 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

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

* * * * *

ASO NC E5 Reidsville, NC [New]

Rockingham County, NC Shiloh Airport, NC

(Lat. 36°26′14″ N, long. 79°51′04″ W)

That airspace extending upward from 700 feet above the surface within a 9.1-mile radius of Rockingham County, NC Shiloh Airport.

* * * * *

Issued in College Park, Georgia, on March 13, 2024.

Andreese C. Davis,

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

[FR Doc. 2024–05755 Filed 3–18–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–117631–23]

RIN 1545–BQ97

Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election To Treat Clean Hydrogen Production Facilities as Energy Property; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of hearing.

SUMMARY: This document provides a notice of public hearing on proposed regulations relating to the credit for production of clean hydrogen and the election to treat clean hydrogen production facilities as energy property.

DATES: The public hearing on these proposed regulations has been scheduled for Monday, March 25, 2024, at 10 a.m. ET, Tuesday, March 26, 2024, at 10 a.m. ET, and Wednesday, March 27, 2024, at 10 a.m. ET.

ADDRESSES: Monday, March 25, 2024, the public hearing is being held in the Auditorium, at the Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC. Due to security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present a valid photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

On Tuesday, March 26, and Wednesday, March 27, 2024, the public hearing will be held by telephone only.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, the Office of Associate Chief Counsel (Passthroughs and Special Industries), (202) 317–6853 (not a toll-free number); concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the public hearing, call Vivian Hayes (202–317–6901) (not a toll-free number) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–117631–23) that was published in the **Federal Register** on Tuesday, December 26, 2023 (FR 88 89220). To accommodate all persons who wished to present oral comments at the public hearing, the hearing Monday, March 25, 2024, has been extended to Tuesday, March 26, and Wednesday, March 27, 2024. The additional days, March 26 and March 27, 2024, are reserved for oral comments by telephone only.

Persons who wished to present oral comments at the public hearing were required to submit written and electronic comments and an outline of the topics to be discussed as well as the time to be devoted to each topic by March 4, 2024. This due date for requests to testify has not been extended. Persons who made timely requests to testify will receive the telephone number and access codes for the public hearing.

An agenda showing the scheduling of the speakers will be available free of charge at the hearing, and via the Federal eRulemaking Portal (*www.Regulations.gov*) under the title of Supporting & Related Material.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–117631–23 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG–117631–23. Requests to attend the public hearing must be received by 5 p.m. ET by March 18, 2024.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–117631–23, and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for

REG–117631–23. Requests to attend the public hearing must be received by 5 p.m. ET by March 18, 2024.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–6901 (not a toll-free number) by 5 p.m. ET on March 18, 2024.

Any questions regarding speaking at or attending a public hearing may also be emailed to *publichearings@irs.gov.*

Oluwafunmilayo A. Taylor,

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

[FR Doc. 2024–05745 Filed 3–18–24; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2022–0369; FRL–11761–01–R5]

Air Plan Approval; Wisconsin; Milwaukee Second 10-Year 2006 24-Hour $PM_{2.5}$ Limited Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve, under the Clean Air Act (CAA), the limited maintenance plan (LMP) submitted on April 8, 2022, by the Wisconsin Department of Natural Resources (WDNR) for the Milwaukee-Racine maintenance area including Milwaukee, Waukesha, and Racine counties. The plan addresses the second 10-year maintenance period for particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$). EPA is proposing to approve Wisconsin's LMP submission for Milwaukee-Racine because it provides for the maintenance of the 2006 $PM_{2.5}$ national ambient air quality standard (NAAQS) through the end of the second 10-year portion of the maintenance period. In addition, EPA is initiating the process to find the Milwaukee-Racine $PM_{2.5}$ LMP adequate for transportation conformity purposes.

DATES: Comments must be received on or before April 18, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2022–0369 at *https://www.regulations.gov,* or via email to *arra.sarah@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Cecilia Magos, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7336, *magos.cecilia@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background

A. The $PM_{2.5}$ NAAQS

$PM_{2.5}$ is one of the criteria pollutants for which a NAAQS is established to protect human health and the environment. In 1997, EPA established the first $PM_{2.5}$ standards based on significant scientific evidence and health studies demonstrating the serious health effects associated with exposure to $PM_{2.5}$. EPA set an annual standard of 15.0 micrograms per cubic meter (μg/m^3) and a 24-hour (or daily) standard of 65 μg/m^3. In 2006, EPA strengthened the 24-hour $PM_{2.5}$ NAAQS by revising it to 35 μg/m^3 and retained the level of the annual $PM_{2.5}$ standard at 15.0 μg/m^3. Subsequently, in 2012, EPA established an annual primary $PM_{2.5}$ NAAQS at 12 μg/m^3 and retained the 2006 24-hour $PM_{2.5}$ NAAQS at 35 μg/m^3. In 2024, EPA revised the annual primary $PM_{2.5}$ NAAQS to 9.0 μg/m^3 and retained the level of the 2006 24-hour $PM_{2.5}$ NAAQS at 35 μg/m^3.

B. Regulatory Actions in Milwaukee-Racine

On November 13, 2009 (74 FR 58688), EPA designated the Milwaukee-Racine area as a $PM_{2.5}$ nonattainment area due to measured violations of the 2006 $PM_{2.5}$ NAAQS. On June 8, 2012, supplemented on May 30, 2013, WDNR submitted to EPA a request to redesignate the Milwaukee-Racine nonattainment area, to attainment of the 2006 $PM_{2.5}$ NAAQS. The submission included a plan to provide for maintenance of the 2006 $PM_{2.5}$ NAAQS in the area for 10 years. EPA redesignated the Milwaukee-Racine area on April 22, 2014 (79 FR 22415),and approved the associated maintenance plan into the Wisconsin State Implementation Plan (SIP). The purpose of WDNR'S April 8, 2022, LMP submission is to fulfill the second 10-year planning requirement of CAA section 175A(b) to ensure $PM_{2.5}$ NAAQS compliance through 2034.

II. The LMP Option

A. Demonstration of Maintenance Using the LMP Option

Section 175A of the CAA sets forth the elements of a maintenance plan. Under section 175A, a state must submit a revision to the SIP that provides for maintenance of the applicable NAAQS for at least 10 years after an area is redesignated to attainment. Section 175A also requires that eight years into the first maintenance period, the state must submit a second maintenance plan demonstrating that the area will continue to attain for the following 10-year period.

EPA has published long-standing guidance for states on developing maintenance plans.[1] The Calcagni memo provides that states may generally demonstrate maintenance by

[1] Calcagni, John, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' September 4, 1992 (Calcagni memo).

either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (*i.e.,* attainment year inventory). EPA clarified in subsequent guidance memos that certain nonattainment areas could meet the CAA section 175A requirement to provide for maintenance by demonstrating that the area's design value was well below the NAAQS and that the historical stability of the area's air quality levels showed that the area was unlikely to violate the NAAQS in the future.[2]

Most recently, in October 2022, EPA released guidance extending this streamlined option for demonstrating maintenance under CAA section 175A to certain $PM_{2.5}$ areas, titled ''Guidance on Limited Maintenance Plan Option for Moderate $PM_{2.5}$ Nonattainment Areas and $PM_{2.5}$ Maintenance Areas'' ($PM_{2.5}$ LMP Guidance).[3]

EPA refers to this streamlined demonstration of maintenance as an LMP. EPA has interpreted CAA section 175A as permitting this option because CAA section 175A defines few specific content requirements for maintenance plans and, in EPA's experience implementing the various NAAQS, areas that qualify for an LMP or have approved LMPs have rarely, if ever, experienced subsequent violations of the NAAQS. As noted in the $PM_{2.5}$ LMP guidance, states seeking an LMP should still submit the other maintenance plan elements outlined in the Calcagni memo, including: an attainment emissions inventory, provisions for the continued operation of the ambient air quality monitoring network, verification of continued attainment, and a contingency plan in the event of a future violation of the NAAQS. Moreover, states seeking an LMP must still submit their section 175A maintenance plan as a revision to their state implementation plan, with all attendant notice and comment procedures.

The $PM_{2.5}$ LMP Guidance, which contains requirements similar to those for an LMP under the PM_{10} LMP Guidance, allows states to demonstrate that areas qualify for an LMP by showing that, based on their recent measured air quality, they are unlikely to violate the NAAQS in the future.

Specifically, the $PM_{2.5}$ LMP Guidance relies on the critical design value (CDV) concept. The Guidance directs states to calculate a site-specific CDV for the monitoring site with the highest design value in the area, and also for all other active monitoring sites in the area with complete data. The Guidance states that areas should show that the average design value (ADV) for each monitoring site in the area, *i.e.,* the average of at least the most recent consecutive five years of $PM_{2.5}$ design values, does not exceed the associated CDV for each site.[4] The CDV calculation for a monitoring site involves parameters including: (1) the level of the relevant NAAQS; (2) the co-efficient of variation of recent design values measured at that site; and (3) a statistical parameter corresponding to a 10 percent probability of exceedance, such that sites with historically high variability in DVs result in a lower (or more stringent) CDV. Evaluating if the ADV for each monitoring site in the area is below the CDV demonstrates that the probability of a future exceedance, based on the area's historical air quality and variability, is less than 10 percent. Per EPA's transportation conformity regulations, areas with LMPs must also ''demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth for a NAAQS violation to occur.'' [5]

B. Transportation Conformity Under the LMP Option

Transportation conformity is required by section 176(c) of the CAA. Under that provision, conformity to a SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any required interim emission reductions or other milestones in any area. *See* CAA 176(c)(1)(A) and (B). EPA's transportation conformity rule at 40 CFR part 93, subpart A, establishes the criteria and procedures to determine whether metropolitan transportation plans, transportation improvement programs, and federally supported highway and transit projects conform to the purpose of the SIP. Transportation conformity applies for transportation-related criteria pollutants in nonattainment areas and redesignated attainment areas with a CAA section 175A maintenance plan (*i.e.,* maintenance areas).[6]

While qualification for the LMP option does not exempt an area from the need to determine conformity, in an area with an LMP, conformity may be demonstrated without a regional emissions analysis for the relevant NAAQS and pollutant (40 CFR 93.109(e)). An LMP must demonstrate that it is unreasonable to expect that the area would experience so much growth in on-road emissions during the maintenance period that a violation of the relevant NAAQS would occur. *See* 40 CFR 93.109(e). Hence, because no such impact is expected, areas with LMPs are not required to do a regional emissions analysis as part of a transportation conformity determination. *See* 40 CFR 93.109(e).

While areas with maintenance plans approved or found adequate under the LMP option are not required to do a regional emissions analysis (and are not subject to the budget test in 40 CFR 93.118), the areas remain subject to the other transportation conformity requirements of 40 CFR part 93, subpart A, including fulfilling project-level conformity requirements and consultation requirements.

The $PM_{2.5}$ LMP Guidance notes that an LMP may be particularly appropriate for a second maintenance plan, as the area will have demonstrated attainment of the $PM_{2.5}$ NAAQS for at least 8 years. To demonstrate that it would be unreasonable to expect that the area would experience enough motor vehicle growth for a NAAQS violation to occur, the guidance states that an LMP submission for an area's second maintenance plan should address the area's $PM_{2.5}$ air quality trends and the historical and projected vehicle miles traveled (VMT). Further, if re-entrained road dust has been found to be significant for $PM_{2.5}$ transportation

[2] *See* ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas'' from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph Paisie, OAQPS, dated October 6, 1995; and ''Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas'' (PM_{10} LMP Guidance) from Lydia Wegman, OAQPS, dated August 9, 2001. Copies of these guidance memoranda can be found in the docket for this proposed rulemaking.

[3] The guidance document developed by the Office of Air Quality Planning and Standards and the Office of Transportation and Air Quality, within the Office of Air and Radiation, titled ''Guidance on the Limited Maintenance Plan Option for Moderate $PM_{2.5}$ Nonattainment Areas and $PM_{2.5}$ Maintenance Areas'' can be found at *https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1015UL4.pdf.*

[4] EPA recommends that the ADV be calculated using at least five years of design values, each representing a three-year period, because this approach would rely on a more robust data set. However, we acknowledge that an alternative interpretation may be acceptable where these variables could be calculated using three years of design values, collectively representing five years of air quality data.

[5] 40 CFR 93.109(e).

[6] In addition to $PM_{2.5}$, the criteria pollutants for which transportation conformity applies include ozone, carbon monoxide, particulate matter with an aerodynamic diameter less than or equal to 10 micrometers, and nitrogen dioxide. *See* 40 CFR 93.102(b).

conformity purposes under 40 CFR 93.102(b)(3), the plan should include an on-road $PM_{2.5}$ emissions analysis consistent with the methodology provided in Attachment B of the PM_{10} LMP Guidance, included in the appendix for the $PM_{2.5}$ LMP Guidance, along with the discussion in the $PM_{2.5}$ LMP Guidance itself. If the on-road $PM_{2.5}$ emissions analysis is necessary, it would include a demonstration that for each monitoring site in the area, the ADV plus the expected on-road emissions growth estimate does not exceed the CDV.

In addition to the proposed action, EPA is notifying the public that the Agency is initiating the adequacy process for the Milwaukee-Racine LMP. *See* 40 CFR 93.118(e)(4). In the case of an LMP, EPA's adequacy review is to assess whether the demonstration required by 40 CFR 93.109(e) is met. Any comments on the adequacy of the submitted LMP for the Milwaukee-Racine area should be submitted to the docket established for this rulemaking. If EPA approves the second 10-year maintenance plan as an LMP or finds the submission adequate, the Milwaukee-Racine maintenance area will not be required to perform regional emissions analyses after 2025 for the 2006 $PM_{2.5}$ NAAQS. Note that the Milwaukee area has approved motor vehicle emission budgets for nitrogen oxides (NO_X), direct $PM_{2.5,}$ sulfur dioxide (SO_2) and volatile organic compounds (VOCs) for the year 2025 from the first maintenance plan that must continue to be met in any transportation conformity determination made through the year 2025.[7] In addition, project-level conformity requirements as well as the other transportation conformity criteria continue to apply with respect to the 2006 $PM_{2.5}$ NAAQS for conformity determinations that occur through the maintenance period, *i.e.,* through 2034.[8]

We will complete the adequacy determination process either in the final action on this proposal or by notifying the state in writing, publishing a notice in the **Federal Register** and by posting the finding on EPA's adequacy web page. *See* 40 CFR 93.118(f).

C. General Conformity Under LMP Option

EPA's general conformity program requirements do not distinguish between maintenance areas with an approved LMP and those with an approved ''full maintenance plan,'' which is developed and approved using the long-standing methods that demonstrate the area will maintain the NAAQS. Thus, maintenance areas with an approved LMP are subject to the same general conformity requirements under 40 CFR part 93, subpart B, as those with a ''full maintenance plan.'' Both a ''full maintenance plan'' and an LMP must be developed and approved per the requirements of CAA section 175A.

III. EPA's Analysis of the State's Submittal

A. Demonstration of Qualification for the LMP Option

EPA redesignated the Milwaukee-Racine area from nonattainment to attainment of the NAAQS on April 22, 2014 (79 FR 22415). This LMP was developed as part of an interagency consultation process which includes Federal, state, and local agencies. Table 1 below shows the historical design values for the area since the area was redesignated in 2014.[9] The 2006 $PM_{2.5}$ NAAQS is attained when the 3-year average of the 98th percentile of 24-hour $PM_{2.5}$ concentrations is equal to or less than 35 $\mu g/m^3$. As shown in table 1, the area has been measuring air quality well below the 2006 $PM_{2.5}$ NAAQS with decreasing $PM_{2.5}$ concentrations over time. The design values at the individual monitoring sites in the area also measure air quality well below the 2006 $PM_{2.5}$ NAAQS as shown in table 2.

TABLE 1—DESIGN VALUES (DV) ($\mu G/m^3$) FOR THE 2006 $PM_{2.5}$ NAAQS IN THE MILWAUKEE-RACINE AREA SINCE REDESIGNATION TO ATTAINMENT

[2013–2022]

Design value period	Milwaukee-Racine $PM_{2.5}$ design value
2011–2013	27
2012–2014	27
2013–2015	25
2014–2016	24
2015–2017	22
2016–2018	21
2017–2019	22
2018–2020	22
2019–2021	23
2020–2022	24

TABLE 2—DESIGN VALUES (DV) ($\mu G/m^3$) FOR THE 2006 $PM_{2.5}$ NAAQS AT MONITORING SITES IN THE MILWAUKEE-RACINE AREA

[2014–2022]

AQS site ID	Site name	County	2014–2016	2015–2017	2016–2018	2017–2019	2018–2020	2019–2021	2020–2022
550790010	16th St. Health Center	Milwaukee	24	22	20	21	21	23	24
550790026	Milw SER[c]	Milwaukee	20	19	20	21	21	.....	.....
550790056	College Ave NR	Milwaukee	.....	.....	.....	22	21	22	22
550790058	College Ave P&R[b]	Milwaukee	23	20	19	*19	.....	.....	.....
550790099	Milw Fire Dept[a]	Milwaukee	*23	*23	.....	.....	.....	.....	.....

[7] *See* 81 FR 8656 and 79 FR 22415.

[8] *See* 40 CFR 93.102(b)(4) and Transportation Conformity Guidance for Areas Reaching the End of the Maintenance Period (October 2014, EPA–420–B–14–093).

[9] *See https://www.epa.gov/air-trends/air-quality-design-values#map.*

TABLE 2—DESIGN VALUES (DV) (μG/m³) FOR THE 2006 $PM_{2.5}$ NAAQS AT MONITORING SITES IN THE MILWAUKEE-RACINE AREA—Continued

[2014–2022]

AQS site ID	Site name	County	2014–2016	2015–2017	2016–2018	2017–2019	2018–2020	2019–2021	2020–2022
551330027	Cleveland Ave	Waukesha	22	21	21	22	22	23	23

* 24-hr data did not meet completeness criteria. Associated DV's are thus invalid.
[a] Milwaukee-Fire Dept. (550790099) shut down in 2017 and was replaced by Milwaukee-College Ave NR (550790056).
[b] Milwaukee-College Ave P&R (550790058) was shut down in October 2019.
[c] Milwaukee SER (550790026) was shut down in April 2021.

We propose to find that the Milwaukee-Racine area meets the critical design value demonstration for a LMP. As noted above, the parameters of the CDV calculation, outlined in the $PM_{2.5}$ LMP Guidance, include the level of the relevant NAAQS, the co-efficient of variation of recent design values, and a statistical parameter corresponding to a 10 percent probability of future violation. The CDV demonstration is designed such that if a site's ADV is lower than the site's CDV, the probability of a future violation of the NAAQS is less than 10 percent.[10] The eligibility calculation equations for the CDV demonstration are shown in Table 3. Table 4 below contains the CDV and ADV for each monitor in the Milwaukee-Racine area, including the College Ave NR (monitor ID 550790056). EPA reviewed the data and methodology provided by the state and finds that each monitor's 5-year average design value is well below the corresponding site-specific CDV.[11]

TABLE 3—ELIGIBILITY CALCULATION EQUATIONS

Critical Design Value	$CDV = NAAQS/(1+(t_C \times CV))$.
Coefficient of Variation	$CV = \sigma/ADV$.

NAAQS = applicable standard ($PM_{2.5}$ is 35 μg/m³).
t_C = critical t-value.
σ = standard deviation of design values.

TABLE 4—QUALIFICATION OF MONITORS FOR LMP IN THE MILWAUKEE-RACINE MAINTENANCE AREA IN μG/m³

[2016–2020]

Site name	Monitor	ADV (2016–2020)	CDV (2016–2020)	Qualify for LMP?
16th St. Health Center	550790010	21.6	31.6	Yes.
Milw SER	550790026	20.2	32.9	Yes.
College Ave NR	[1] 550790056	21.75	33.8	Yes.
Cleveland Ave	551330027	21.6	33.7	Yes.

[1] The ADV and CDV for this monitor were calculated using valid DV data from 2019 through 2022 due to monitor installation occurring in 2017 for the 2019 DV period. The monitor was installed to replace the Milwaukee-Fire Dept. monitor (Monitor ID 550790099) that was shut down in 2017 after two design value periods that did not meet data completeness criteria.

We also propose to find that Wisconsin has adequately demonstrated that it is unlikely there will be an increase in motor vehicle emissions growth sufficient to cause a NAAQS violation in the Milwaukee-Racine maintenance area. In the 2022 $PM_{2.5}$ LMP Guidance, which was released after Wisconsin submitted its SIP revisions, EPA clarified that an area submitting the second 10-year maintenance plan may be eligible for the LMP option as long as monitored air quality data and VMT trends support the LMP option. The state included both air quality data and VMT trend data of the maintenance area to satisfy transportation conformity regulations under an LMP option. The VMT projections considered by Wisconsin were based on transportation models provided by both the Wisconsin Department of Transportation (WDOT) and Southeastern Wisconsin Regional Planning Commission (SEWRPC). WDOT maintains a statewide travel demand model that projects average weekday VMT for each of the 72 counties in Wisconsin. WDOT provided modeled VMT for the years 2017 and 2050 for the Milwaukee-Racine area. WDNR linearly interpolated VMT results between the 2017 and 2050 values to obtain values for 2034, resulting in a 10.4 percent VMT growth percentage for 2017 to 2034. SEWRPC also has their own travel demand model that covers their seven-county region, which includes the Milwaukee-Racine maintenance area. Wisconsin also included in their submission the SEWRPC modeled projections under a high economic growth scenario from 2017 to 2035, showing a 13.6 percent VMT growth percentage. Ultimately, Wisconsin relied upon the highest VMT growth calculated from the different transportation models, at a VMT growth of 13.6 percent. A LMP would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth for a NAAQS violation to occur. *See* 40 CFR 93.109(e).

[10] *See* the ''*Example Site Calculation*'', page 7 of the October 2022 $PM_{2.5}$ LMP guidance (*https://www.epa.gov/system/files/documents/2022-10/420b22044.pdf*).

[11] Two monitors in the Milwaukee-Racine maintenance area were not included in the analysis below. One of these monitors (Monitor ID 550790099) had invalid DV's in 2016 and 2017 before being shut down, and one was shut down in 2019 (Monitor ID 550790058) and has valid DV's only through 2018.

EPA is proposing to conclude that the higher VMT growth rate of 13.6 percent between 2017 and 2035 would not cause an exceedance of the CDV at the monitors listed in table 4 and therefore, that the Milwaukee-Racine maintenance area would qualify for the LMP option.[12] Wisconsin's submission included an on-road $PM_{2.5}$ emissions analysis consistent with the methodology provided in the 2001 PM_{10} LMP Guidance, because at the time of the state's submission, the $PM_{2.5}$ LMP Guidance had not yet been issued by EPA. This specific on-road $PM_{2.5}$ analysis is most critical for areas where re-entrained road dust has been identified as a significant contributor to $PM_{2.5}$ concentrations. Re-entrained road dust was not determined to be a significant contributor to $PM_{2.5}$ concentrations in the Milwaukee-Racine area. EPA evaluated the state's analysis as part of its consideration of whether increases in VMT will lead to future exceedances of the 2006 $PM_{2.5}$ NAAQS. Based on that evaluation, EPA is proposing to conclude that the results of the analysis provide further evidence that they will not. EPA is proposing to approve the LMP for the Milwaukee-Racine area. Per 40 CFR 93.109(e) an area is not required to satisfy the regional emissions analysis for § 93.118 and/or § 93.119 for a given pollutant and NAAQS, in this instance the 2006 $PM_{2.5}$ NAAQS. However, the first 10-year maintenance plan included motor vehicle emissions budgets for 2025. Therefore, if 2025 is within the timeframe of any transportation plan or transportation improvement program (TIP) and transportation conformity is determined for that plan or TIP, a regional emissions analysis is required for 2025.

In addition to the VMT trends, the air quality trends in the area provided in the state's submission (Table 1) also support the LMP option. From the time the area started attaining the NAAQS (2014) through 2020, ambient $PM_{2.5}$ concentrations have decreased substantially. There has been a 19.5 percent decrease in the annual 98th percentile $PM_{2.5}$ concentrations in the Milwaukee-Racine area during this time period.[13] Air quality trends from 2021 and 2022 in table 1 also show ambient $PM_{2.5}$ concentrations well below the 2006 $PM_{2.5}$ NAAQS.

The $PM_{2.5}$ LMP guidance further notes that, to the extent that the air agency is submitting a second 10-year maintenance plan for $PM_{2.5}$, a record showing that the area design value is lower than the CDV, coupled with air quality data demonstrating the area has already been maintaining the NAAQS for at least 8 years, provides EPA with further confidence that the area will continue to maintain the relevant $PM_{2.5}$ standard. Given the current $PM_{2.5}$ design values in the area and the demonstrated downward trend in $PM_{2.5}$ concentrations over the last ten years, and the state's analysis of VMT trends discussed above, we propose to find that the state has adequately demonstrated that, consistent with 40 CFR 93.109(e) and the $PM_{2.5}$ LMP Guidance, it would be unreasonable to expect that the area will experience a growth in motor vehicle emissions sufficient to cause a violation of the 2006 $PM_{2.5}$ NAAQS. EPA therefore proposes to find that the Milwaukee-Racine 2006 $PM_{2.5}$ maintenance area meets the qualification criteria set forth in the $PM_{2.5}$ LMP Guidance.

The following is a summary of EPA's interpretation of the section 175A requirements and EPA's evaluation of how each requirement is met. Under the LMP option, the state will be expected to determine on a regular basis that the criteria are still being met. If the state determines that the LMP criteria are not being met, it must take action to reduce $PM_{2.5}$ concentrations enough to requalify. One possible approach the state could take is to implement the contingency measures contained in its maintenance plan. *See* Section 6 of the state's submittal, placed in the docket for this action, for a description of the contingency measures. If the attempt to reduce $PM_{2.5}$ concentrations fails, or if it succeeds but in future years it becomes necessary again to address increasing $PM_{2.5}$ concentrations in an area, the area will no longer qualify for the LMP option.

B. Attainment Inventory

As noted above, states that qualify for an LMP must still meet the other elements of a maintenance plan, as articulated in the Calcagni Memo. This includes an attainment year emissions inventory.

WDNR's Milwaukee-Racine $PM_{2.5}$ LMP submission includes an emissions inventory, with a base year of 2017. This inventory was prepared as part of the 2017 National Emissions Inventory (NEI),[14] Version 2, under EPA's Air Emissions Reporting Rule (73 FR 76539, December 17, 2008). The 2017 base year represents the most recent emissions inventory data available when the state prepared the submissions, is representative of the level of emissions during the time that the area shows monitored attainment of the NAAQS and is consistent with the data used to determine applicability of the LMP option (*i.e.,* having no violations of the NAAQS during the 5-year period used to calculate the design value). Table 5 shows the 2017 emissions of the Milwaukee-Racine maintenance area in tons per day included in the state's submission. EPA also considered emissions from the 2020 NEI as shown in table 6, as more recent emissions data was subsequently available since Wisconsin's submission. The 2017 NEI emissions from table 5 show slightly overall higher emissions of certain pollutants compared to the 2020 NEI emissions from table 6 in the Milwaukee-Racine maintenance area. Some of the differences may be attributed to changes and improvements in the process and methods used for estimating emissions while creating the 2020 NEI compared to 2017 methods. Key process changes for the 2020 cycle includes changes in pollutant, source classification codes, and North American Industry Classification System codes, refined quality assurance checks and features.[15] In summary, the 2020 NEI updated emission methods pertain to nonpoint solvent utilization, nonpoint agricultural silage, nonpoint asphalt paving, improved VOC and $PM_{2.5}$ speciation models, improvements to residential wood combustion emission factors and speciation, and biogenic model updates.

[12] *See* ''EPA_analysis_Milwaukee $PM_{2.5}$_LMP.xlsx'' provided in the docket of this rulemaking.

[13] Where available, 2020 and 2014 monitor data was used at each monitoring site to compare the percent decrease, averaged across the area. Where 2020 data was not available, the closest year prior to 2020 with available data was used, and no earlier than 2018. *See* ''EPA_analysis_Milwaukee $PM_{2.5}$_LMP.xlsx'' provided in the docket of this rulemaking.

[14] *See https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data.*

[15] *See* 2020 National Emissions Inventory Technical Support Document: Overview (March 2023).

TABLE 5—2017 EMISSIONS (TONS PER DAY) FOR THE MILWAUKEE-RACINE MAINTENANCE AREA

Sector	$PM_{2.5}$	SO_2	NO_X	VOC	NH_3	Total emissions
Milwaukee County Total	6.92	2.86	42.84	43.75	3.36	99.73
Point	0.73	2.30	14.30	4.11	1.74	23.18
Nonpoint	5.22	0.47	10.98	27.62	1.10	45.39
Onroad	0.60	0.09	14.24	8.39	0.52	23.84
Nonroad	0.36	0.01	3.31	3.63	0.01	7.32
Event	0.00	0.00	0.00	0.00	0.00	0.00
Waukesha County Total	7.35	0.43	19.85	32.37	1.51	61.51
Point	0.09	0.00	0.26	2.14	0.01	2.50
Nonpoint	6.50	0.37	8.03	21.83	1.19	37.92
Onroad	0.32	0.05	8.13	4.80	0.29	13.59
Nonroad	0.38	0.01	3.42	3.45	0.01	7.27
Event	0.06	0.01	0.02	0.15	0.01	0.25
Racine County Total	3.52	0.64	9.03	13.74	0.98	27.91
Point	0.31	0.49	0.85	1.31	0.00	2.96
Nonpoint	2.97	0.13	3.59	9.57	0.86	17.12
Onroad	0.13	0.02	3.31	1.97	0.12	5.55
Nonroad	0.11	0.00	1.28	0.88	0.00	2.27
Event	0.00	0.00	0.00	0.00	0.00	0.00
Milwaukee-Racine Maintenance Area Total	17.79	3.94	71.72	89.86	5.85	189.16

TABLE 6—2020 NEI EMISSIONS (TONS PER DAY) FOR THE MILWAUKEE-RACINE MAINTENANCE AREA

Sector	$PM_{2.5}$	SO_2	NO_X	VOC	NH_3	Total emissions
Milwaukee County Total	8.52	2.20	34.29	44.89	2.20	92.09
Point	0.92	1.89	12.21	3.63	0.09	18.74
Nonpoint	6.89	0.26	9.16	32.53	1.66	50.50
Onroad	0.39	0.05	10.08	5.23	0.44	16.19
Nonroad	0.32	0.00	2.84	3.49	0.01	6.67
Waukesha County Total	8.73	0.37	15.10	34.41	2.34	60.95
Point	0.12	0.04	0.48	1.85	0.01	2.50
Nonpoint	8.08	0.29	6.36	26.51	2.07	43.32
Onroad	0.20	0.03	5.38	2.76	0.26	8.63
Nonroad	0.33	0.00	2.88	3.29	0.01	6.51
Racine County Total	4.07	0.60	7.21	17.48	1.31	30.67
Point	0.38	0.48	0.91	1.08	0.00	2.85
Nonpoint	3.52	0.11	2.91	14.37	1.20	22.10
Onroad	0.09	0.01	2.34	1.22	0.11	3.77
Nonroad	0.09	0.00	1.05	0.81	0.00	1.96
Milwaukee-Racine Maintenance Area Total	21.32	3.17	56.59	96.78	5.86	183.71

C. Air Quality Monitoring Network

Once an area is redesignated, the state must continue to operate an appropriate air monitoring network in accordance with 40 CFR part 58 to verify the attainment status of the area. WDNR continues to operate a $PM_{2.5}$ monitoring network sited and maintained in accordance with Federal siting and design criteria in 40 CFR part 58, and in consultation with EPA Region 5. WDNR submitted the 2022–2023 Annual Monitoring Network Plan,[16] which EPA approved on November 7, 2022.[17]

In its submission, WDNR details the four existing EPA-approved $PM_{2.5}$ monitoring sites in the Milwaukee-Racine maintenance area. Consistent with the EPA-approved WDNR annual network plan, in order to meet the EPA requirements at appendix D of 40 CFR part 58, WDNR is required to maintain a minimum of two monitors in the Milwaukee Metropolitan Statistical Area, including Milwaukee, Waukesha, and West Allis counties based on population criteria. EPA proposed to find that the WDNR annual Air Monitoring Network Plan is adequate to verify the continued attainment of the 2006 $PM_{2.5}$ NAAQS in the Milwaukee-Racine area.

D. Verification of Continued Attainment

The level of the 2006 $PM_{2.5}$ NAAQS is 35 $\mu g/m^3$. The NAAQS is attained when the 3-year average of the 98th percentile of 24-hour $PM_{2.5}$ concentrations is equal to or less than 35 $\mu g/m^3$ (40 CFR 50.6). As stated previously, WDNR commits to continue to operate a monitoring network in accordance with 40 CFR part 58. In addition, WDNR commits to verifying continued attainment of the $PM_{2.5}$ standard through the maintenance plan period with the operation of an appropriate $PM_{2.5}$ monitoring network. In developing the second 10-year maintenance plan, WDNR evaluated the most recent three years of complete, quality-assured data for the Milwaukee-Racine maintenance area at the time the submissions were made (2018 through 2020) to verify continued attainment of the standard. Air quality data from 2021, and air quality data from 2022 confirm continued attainment of the standard as described in Table 1.

[16] *See* WDNR's Air Monitoring website containing the annual network plans at *https://dnr.wisconsin.gov/topic/AirQuality/Monitor.html.*

[17] *See* EPA'S Approval Letter for WDNR'S 2022–2023 Annual Network Monitoring Plan in the docket of this rulemaking.

E. Contingency Provisions

CAA section 175A(d) states that a maintenance plan must include contingency provisions, as necessary, to ensure prompt correction of any violation of the relevant NAAQS which may occur after redesignation of the area to attainment. As explained in the Calcagni Memo, these contingency provisions are an enforceable part of the federally approved SIP. The maintenance plan should clearly identify the events that would ''trigger'' the adoption and implementation of a contingency provision, the contingency provision(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the provision(s). The Calcagni Memo states that EPA will determine the adequacy of a contingency plan on a case-by-case basis. At a minimum, the plan must require that the state implement all measures contained in the CAA part D nonattainment plan for the area prior to redesignation.

In the Milwaukee-Racine $PM_{2.5}$ LMP submission, WDNR included maintenance plan contingency provisions to ensure the area will continue to meet the 2006 $PM_{2.5}$ NAAQS. The submission describes a process and a timeline to identify, evaluate, and select the appropriate contingency measure(s) from a list of measures in the event of a violation of the $PM_{2.5}$ NAAQS. Wisconsin commits to two levels of contingency response that may be implemented to reduce emissions, a ''warning level response'' and an ''action level response'' that are initially prompted if the 98th percentile 24-hour $PM_{2.5}$ concentration at any monitoring site in the Milwaukee-Racine maintenance area shows a renewed exceedance or violation, respectively above the 2006 $PM_{2.5}$ NAAQS. A warning level response will initiate a study no later than 6 months following data certification to assess whether actual emissions have deviated significantly from the emission projections in the maintenance plan, evaluate the sectors responsible for any increases in precursor emissions, evaluate the sectors and states responsible for any increases in precursor emissions transported to the maintenance area, and determine if unusual meteorological conditions or exceptional events during the period led to high $PM_{2.5}$ concentrations. In the event an action level response is prompted, a study will be initiated no later than 6 months following data certification with the following factors: level, distribution, and severity of ambient $PM_{2.5}$ concentrations; weather patterns contributing to $PM_{2.5}$ levels; potential contributing emissions sources; geographic applicability of possible contingency measures; emissions trends including impact of existing and forthcoming control measures not yet implemented; current and recently identified control technologies; and air quality contributions from outside the maintenance area. *See* Section 6 of the state's LMP submission in the docket for this action for further description of the contingent response to triggering events. The submission describes the consultation from interested and affected parties in the area that would occur after a violation in order to determine the control measures necessary to assure attainment of the NAAQS that can be implemented within 18 months from the close of the calendar year that prompted the violation. EPA proposes to find that the contingency provisions in the $PM_{2.5}$ LMP for the Milwaukee-Racine 2006 $PM_{2.5}$ maintenance area meet the requirements of section 175A(d) of the CAA.

IV. What action is EPA taking?

EPA is proposing to approve the second 10-year $PM_{2.5}$ LMP for the Milwaukee-Racine 2006 $PM_{2.5}$ maintenance area submitted by WDNR. EPA's review of the air quality data for the maintenance area indicates that the area continues to show attainment well below the level of the 2006 $PM_{2.5}$ NAAQS and meets all the LMP qualifying criteria as described in this action. If finalized, EPA's approval of this LMP will satisfy the CAA section 175A requirements for the second 10-year period for the Milwaukee-Racine 2006 $PM_{2.5}$ maintenance area. EPA is also initiating the process to determine if the LMP is adequate for transportation conformity purposes. As discussed in section II.B, EPA may complete that process either in its final action on the LMP or through a separate process provided for in the transportation conformity regulations. *See* 40 CFR 93.118(f).

V. Environmental Justice Considerations

To identify environmental burdens and potentially susceptible populations in the Milwaukee-Racine maintenance area, EPA performed a screening-level analysis using EPA's environmental justice (EJ) screening and mapping tool (EJSCREEN).[18] The results of EPA's screening analysis are being provided for informational and transparency purposes, and EPA did not rely on these findings in its action on Wisconsin's submissions. EPA utilized the EJSCREEN tool to evaluate environmental and demographic indicators within each county contained in the Milwaukee-Racine maintenance area including Milwaukee, Racine, and Waukesha counties. Each of the tool output reports are contained in the docket for this action. EPA's screening-level analysis indicates that communities affected by this action score below the national average for the EJSCREEN ''Demographic Index'', which is the average of an area's percent minority and percent low-income populations, *i.e.,* the two demographic indicators explicitly named in Executive Order 12898 in Waukesha and Racine counties, and the demographic index is nine percent higher than the national average. Additionally, the results indicate that Racine and Waukesha counties score below the 80th percentile (in comparison to the Nation as a whole) in the twelve EJ Indices established by EPA, which include a combination of environmental and demographic information. Milwaukee county is above the 80th percentile for the Traffic Proximity, Lead Paint, and Hazardous Waste Proximity EJ indices.[19]

This proposed action would approve the 2nd 10-year maintenance plan as an LMP submitted by Wisconsin for the Milwaukee-Racine area. We expect that this action, which would, among other things, find that the state has adequately provided for maintenance of the NAAQS and approve the state's contingency plan to address any potential violations of the NAAQS in the future, will be generally neutral or have a positive contribution to reduced environmental and health impacts on all populations in the Milwaukee-Racine area, including people of color and low-income populations. At a minimum, this action would not worsen any existing air quality and is expected to ensure the area is meeting requirements to maintain the air quality standards. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

[18] *See https://www.epa.gov/ejscreen.*

[19] *See EPA's EJSCREEN Technical Documentation, available at https://gaftp.epa.gov/EJSCREEN/2015/EJSCREEN_Technical_Document_20150505.pdf* for more information on these select indices.

VI. Statutory and Executive Orders Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

WDNR did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an environmental justice analysis, as is described above in section V. titled, ''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 13, 2024.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2024–05783 Filed 3–18–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2023–0102; FXES1111090FEDR–245–FF09E21000]

RIN 1018–BF72

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Bushy Whitlow-Wort and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the bushy whitlow-wort (*Paronychia congesta*), a perennial herbaceous plant species from northwestern Jim Hogg County in south Texas, as an endangered species under the Endangered Species Act of 1973, as amended (Act). This determination also serves as our 12-month finding on a petition to list the bushy whitlow-wort. After a review of the best available scientific and commercial information, we find that listing the species is warranted. We also propose to designate critical habitat for the bushy whitlow-wort under the Act. In total, approximately 41.96 acres (16.98 hectares) in Jim Hogg County, Texas, fall within the boundaries of the proposed critical habitat designation. We announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for bushy whitlow-wort. If we finalize this rule as proposed, it would extend the Act's protections to the species and its designated critical habitat.

DATES: We will accept comments received or postmarked on or before May 20, 2024. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by May 3, 2024.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R2–ES–2023–0102, which is the docket number for this rulemaking. 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.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R2–ES–2023–0102, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: Supporting materials, such as the species status assessment report, are available at *https://www.regulations.gov* at Docket No. FWS–R2–ES–2023–0102. For the proposed critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file for this critical habitat designation and are available at *https://www.regulations.gov* at Docket No. FWS–R2–ES–2023–0102.

FOR FURTHER INFORMATION CONTACT: Chuck Ardizzone, Field Supervisor, Texas Coastal Ecological Services Field Office, 17629 El Camino Real, Suite 211, Houston, TX 77058; telephone 281–286–8282. 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. In compliance with the Providing Accountability Through Transparency Act of 2023, please see Docket No. FWS–R2–ES–2023–0102 on *https://www.regulations.gov* for a document that summarizes this proposed rule.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act (16 U.S.C. 1531 *et seq.*), a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that the bushy whitlow-wort meets the Act's definition of an endangered species; therefore, we are proposing to list it as such and proposing a designation of its critical habitat. Both listing a species as an endangered or threatened species and making a critical habitat designation can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. We propose to list the bushy whitlow-wort as an endangered species under the Act, and we propose the designation of critical habitat for the species.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the bushy whitlow-wort is endangered due to threats from wind energy development (Factor A) and the demographic and genetic consequences of low population redundancy and small population sizes (Factor E).

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary), to the maximum extent prudent and determinable, to designate critical habitat concurrent with listing. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for nutrition, reproduction, or pollination;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns and the locations of any additional populations of this species;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Threats and conservation actions affecting the species, including:

(a) Factors that may be affecting the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors;

(b) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species; and

(c) Existing regulations or conservation actions that may be addressing threats to this species.

(3) Additional information concerning the historical and current status of this species.

(4) Specific information on:

(a) The amount and distribution of bushy whitlow-wort habitat;

(b) Any additional areas that should be included in the critical habitat designation because they (i) are occupied at the time of listing and contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection, or (ii) are unoccupied at the time of listing and are essential for the conservation of the species;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) Whether occupied areas are adequate for the conservation of the

species. We seek this information to help us evaluate the potential to include areas not occupied at the time of listing in the critical habitat designation. Please provide specific information regarding whether or not unoccupied areas would, with reasonable certainty, contribute to the conservation of the species and contain at least one physical or biological feature essential to the conservation of the species. We also seek comments or information regarding whether areas not occupied at the time of listing qualify as habitat for the species.

(5) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(6) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.

(7) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts and any additional information regarding probable economic impacts that we should consider.

(8) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act. If you think we should exclude any additional areas, please provide information supporting a benefit of exclusion.

(9) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available, and section 4(b)(2) of the Act directs that the Secretary shall designate critical habitat on the basis of the best scientific data available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Our final determinations may differ from this proposal because we will consider all comments we receive during the comment period as well as any information that may become available after this proposal. Based on the new information we receive (and, if relevant, any comments on that new information), we may conclude that the species is threatened instead of endangered, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. For critical habitat, our final designation may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, or may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion and exclusion will not result in the extinction of the species. In our final rule, we will clearly explain our rationale and the basis for our final decisions, including why we made changes, if any, that differ from this proposal.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

We recognized the bushy whitlow-wort as a candidate for listing under the Act in 1975 (40 FR 27824; July 1, 1975) and 1985 (50 FR 39526; September 27, 1985). The species was removed from the candidate list twice, in 1980 (45 FR 82480; December 15, 1980) and 2006 (71 FR 53756; September 12, 2006), due to insufficient information about its biological vulnerability and threats.

In 2007, we received a petition to list 475 species, including bushy whitlow-wort, in the southwestern United States as endangered or threatened under the Act. In 2009, in response to this petition, we published a 90-day finding that the petitioned action may be warranted (74 FR 66866; December 16, 2009). Therefore, we initiated review of the status of the species to determine if the petitioned action is warranted.

Peer Review

A species status assessment (SSA) team prepared an SSA report for the bushy whitlow-wort. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we solicited independent scientific review of the information contained in the bushy whitlow-wort SSA report. We sent the SSA report to eight independent peer reviewers and received no responses. We did, however, receive one review from Texas Parks and Wildlife Department, which provided information on wind turbines near bushy whitlow-wort populations. This information prompted us to reevaluate the immediacy of the threat of wind development, as further discussed below.

I. Proposed Listing Determination

Background

The SSA report (USFWS 2023, pp. 1–7) presents a thorough review of the taxonomy, life history, and ecology of bushy whitlow-wort (*Paronychia congesta*).

Bushy whitlow-wort is a perennial herbaceous plant in the carnation family (*Caryophyllaceae*) that has only been found in a very small area of northwestern Jim Hogg County in south Texas. The Texas Parks and Wildlife Department's (TPWD's) Natural Diversity Database (TXNDD) maintains geographic and population data of bushy whitlow-wort and other plant and animal species of conservation concern in Texas. These data are organized by standard geographical units for populations and habitats called ''element occurrences'' (EOs). Only two small EOs of bushy whitlow-wort have been found, and they are referred to as E.O. 1 and E.O. 2. The two EOs cover a total area of 41.96 acres (ac) (16.98 hectares (ha)) and are only 1.3 miles (mi) (2.1 kilometers (km)) apart; when the disturbed areas of the Farm to Market (FM) 649 right-of-way (ROW), unpaved ranch roads, and cleared pipeline ROWs are removed, the occupied area is 41.96 acres (16.98 hectares). There are only 12 documented observations of the two EOs from 1963 through 2020. The maximum numbers of individuals observed at the two EOs are about 2,000 individuals at E.O. 1 in 1987, and 1,904 individuals at E.O. 2 in 1994 (TXNDD 2017, unpaginated). At other times, surveyors recorded from 0 to 633 individuals (TXNDD 2017, unpaginated). This variation may have been due, in part, to the withering of the diminutive plant's stems during drought, making them undetectable; at most, the tufted mounds of foliage stand less than 10 inches (in) (25 centimeters (cm)) tall.

The few recorded observations of bushy whitlow-wort have yielded some, but limited, information about its life history. The species flowers from spring to late summer, in response to rainfall, and produces tiny, one-seeded fruits. We know nothing about the pollinators, pollination biology, seed dispersal, seed dormancy, seed germination, rates of recruitment, mortality, demographic trends, reproductive age, or lifespan of bushy whitlow-wort. However, the woody rootstocks reveal that the species is clearly perennial, and possibly long-lived. Therefore, it is possible that, if bushy whitlow-wort does have low or sporadic recruitment, this may be compensated by long average lifespans.

The two documented populations of bushy whitlow-wort occupy nearly barren, exposed, sloping outcrops of calcareous rock and/or indurated caliche along the boundary of the Goliad and Catahoula geological formations. ''Caliche'' is a word of Spanish origin that generally refers to soils or minerals of whitish appearance. However, the term has a specific geological meaning, referring to soil strata of calcium carbonate that precipitated as water evaporated from the soil. In contrast, limestone consists of calcium carbonate deposits that formed in ocean sediments. Caliche strata often form in arid regions; those of the Goliad formation formed in an arc parallel to the present Gulf of Mexico (Baskin and Hulbert 2008, pp. 93, 96–97).

This geological transition zone from the Goliad to Catahoula formations is known locally as the Bordas Escarpment. In the vicinity of the bushy whitlow-wort populations, elevations drop about 151 feet (ft) (46 meters (m)) from northeast to southwest; these slopes occur along the uppermost reaches of the Arroyo Veleño watershed, a seasonal watercourse that flows into the Rio Grande at Zapata, Texas. The Goliad formation contains deposits of clay, sandstone, marl, caliche, limestone, and conglomerate. The older Catahoula formation contains deposits of clay, mudstone, volcanic tuff (*i.e.* rock formed from volcanic ash), volcanic conglomerate, sandstone, and sand, with some gypsum and calcareous concretions. In some places, outcrops of Goliad caliche overlie deep beds of Catahoula tuff. These tuff deposits are often calichified (Galloway et al. 1977, p. 37). Bushy whitlow-wort is likely to be a geo-endemic species that is restricted to exposed outcrops of Goliad formation caliche or calcareous rock; alternatively, it may be even more highly restricted to exposed calcareous tuff that occurs in specific places along the Goliad–Catahoula boundary. The species is likely to be a geo-endemic that is uniquely adapted to the soil or geological features that occur there.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). On the same day, the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019). Our analysis for this decision applied the regulations that are currently in effect, which include the 2019 revisions. However, we proposed further revisions to these regulations on June 22, 2023 (88 FR 40764). In case those revisions are finalized before we make a final status determination for this species, we have also undertaken an analysis of whether the decision would be different if we were to apply those proposed revisions. We concluded that the decision would have been the same if we had applied the proposed 2023 regulations. The analyses under both the regulations currently in effect and the regulations after incorporating the June 22, 2023, proposed revisions are included in our decision file.

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define the foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess bushy whitlow-wort's viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time which we then used to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R2–ES–2023–0102 on *https://www.regulations.gov* and at *https://ecos.fws.gov/ecp/species/6441.*

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

Species Needs

Our knowledge of the requirements of bushy whitlow-wort individuals is limited because the species has been observed on very few occasions and in only two places. We know nothing about the breeding system, pollinators, pollination biology, seed dispersal, seed dormancy, seed germination, rates of recruitment, mortality, demographic trends, reproductive age, or lifespan. Although we have no data on the reproductive age or average lifespans of individuals, the woody rootstocks are evidence that individuals are perennial and possibly long-lived.

Individuals flower as early as April or as late as August in response to rainfall; the timing and amount of rainfall are likely to be important. Although we have no data to quantify these requirements, the average annual precipitation in the area where bushy whitlow-wort occurs is 23.8 in (60.4 cm), with the greatest amounts from May to July and September to October (NCDC 2020, entire). The average daily maximum temperature exceeds 95 degrees Fahrenheit (°F) (35 degrees Celsius (°C)) from June through August, and the average frost-free period is from February 8 to December 11 (307 days) (Texas Almanac 2020, p. 2).

Bushy whitlow-wort is adapted to the hot, semi-arid, subtropical climate of the Tamaulipan shrublands of south Texas, where the dominant vegetation consists of dense, spiny shrubs reaching 4 to 6 ft (1.2 to 1.8 m) in height. However, within this shrubland ecosystem, the species has only been found in nearly barren rocky outcrops, along slopes of the Bordas Escarpment. These outcrops consist of calcified volcanic tuff formed

along the exposed contact of the Goliad and Catahoula geological formations. The sites are mostly barren because it is difficult for roots to penetrate the calcified tuff, and the nearly white rocks reflect and intensify sunlight. Since the species has not been found elsewhere, it appears to require this type of substrate. Since not found elsewhere, the species may be more specifically restricted to outcrops of exposed calichified volcanic tuff in discrete locations along the boundary of the Goliad and Catahoula geological formations. The occupied sites occur in areas classified as Zapata soils and Cuevitas-Randado association; these soil types, or soils with very similar descriptions, occur in at least six other south Texas counties.

We developed a potential habitat model based on the distribution of the geological, soil, and slope features because the bushy whitlow-wort is likely a geo-endemic that is uniquely adapted to such features. The model is based on only two population sites, and is a hypothesis based on the very limited available data on the species' habitat and distribution. This model indicates that a range of thousands to tens of thousands of hectares of potential habitat exist in south Texas; the largest clusters of potential habitat are in Webb, Jim Hogg, Zapata, and Starr Counties. Based on available botanical surveys, we estimate that less than 1 percent of this potential habitat has been surveyed by botanists qualified to identify the species. Nevertheless, extensive plant surveys have been conducted where caliche outcrops occur on tracts of the Lower Rio Grande Valley National Wildlife Refuge in southern Starr and southwestern Hidalgo Counties, and bushy whitlow-wort has never been reported there.

Accordingly, while the model indicates a large potential range, the fact that the species has been found in very limited portions of this range, even when surveyed, indicates that the potential range is smaller than the model would suggest. A reason for such limitation may be that the calcification of volcanic tuff deposits is a phenomenon that occurs sporadically along the boundary of the Goliad and Catahoula formations, and if we assume that bushy whitlow-wort is more specifically restricted to outcrops of calcareous tuff, its potential habitats would be only a small portion of the estimated potential habitat. This model could be improved if this species had been documented at more sites or by using additional geographic layers that explain the species' distribution. However, we are not aware of a data layer that specifically delineates areas of exposed calcareous tuff or any other geographic data layers that explain the distribution of bushy whitlow-wort. While this potential habitat model helps us determine where the species may be found and helps guide future surveys, the best available information indicates that the species is unlikely to occur throughout the areas predicted by the model.

In order to characterize the viability of bushy whitlow-wort, we evaluated population needs for resiliency, redundancy, and representation. For habitat and demographic factors influencing resiliency, we assessed the habitat condition, the number of mature individuals, and the demographic trends of the populations.

For habitat condition, we consider high-quality habitats to be those that have undisturbed soil and geologic profiles and intact native vegetation. Prior soil or geological disturbance and less than 20 percent invasive plant cover characterize populations with moderate habitat quality, while recent or extensive soil or geological disturbance and greater than 20 percent invasive plant cover is considered characteristic of populations with low-quality habitat.

A bushy whitlow-wort population with high resiliency would be large enough to have a high probability of surviving a prescribed period of time. The minimum viable population (MVP) is defined as a population that would have greater than 90 percent probability of persistence over 100 years (Mace and Lande 1991, p. 151). Using a method for estimating plant MVPs (Pavlik 1996, p. 137) that incorporates our knowledge of various life-history factors, we estimate that the MVP for bushy whitlow-wort is approximately 1,300 reproductively mature individuals (USFWS 2023, p. 20). Based on this information, we estimate that a high condition population would have more than 1,300 individuals, a moderate condition population would range from 650 to 1,300 individuals, and a low condition population would have fewer than 650 individuals.

Stable or increasing demographic trends over time are indicative of populations in good condition. This means that recruitment of new individuals is at least as great as mortality. Population resiliency also relies on sufficient numbers of individuals that are not too closely related or too widely dispersed for effective pollination, outcrossing, and seed production. Thus, high condition populations have greater net recruitment than net mortality over a 10-year period, while low resiliency populations have lower net recruitment than net mortality. If such demographic trends are unknown, we considered this to be indicative of moderate condition.

Determination of population sizes and numbers requires a method for delineating populations. However, we currently have no data to estimate the extent of gene flow for bushy whitlow-wort through pollination and seed dispersal. We adopted a provisional minimum separation distance of 0.6 mi (1.0 km) to delineate populations of bushy whitlow-wort, based on standards applied by TXNDD and NatureServe when the limits of gene flow are unknown (NatureServe 2002, p. 26).

Redundancy indicates the number of populations and their distribution over the species' range. Species that have more populations distributed over a broader geographic range have a greater chance of surviving catastrophic events. Greater redundancy increases the probability that at least some populations will survive catastrophic events, such as extended drought. These populations should be distributed over the species' known range. For bushy whitlow-wort, we know of only two populations located 1.3 mi (2.1 km) apart.

Representation refers to the breadth of genetic diversity and environmental adaptation necessary to conserve long-term adaptive capability. Populations must have enough genetic diversity to be able to adapt and survive when threatened by new pathogens, competitors, or changing environmental conditions. Furthermore, inbreeding increases within populations that lack genetic diversity; if the species is susceptible to inbreeding depression, this would lead to a loss of individual fitness, reduced reproductive output, higher mortality, and population decline. If the breeding system requires outcrossing, seed production and recruitment would decline within populations that lack genetic diversity. We do not know of any differentiation in representation in the two bushy whitlow-wort populations.

Threats

The development of new oil and gas wells and infrastructure is a source of threats to the known populations of bushy whitlow-wort that is of low immediacy, but potentially high severity and large extent. Wind energy development is a severe source of threats throughout the species' range. These sources of threats can cause long-term impacts to the natural landscape, including the loss of native vegetative cover and soil compaction, and may include contamination of sites with

petroleum or chemical wastes used in drilling operations. In addition, the proliferation of roads supporting this development accelerates the spread of invasive plants, such as buffelgrass (*Pennisetum ciliare*). These threats, their sources, and their effects to bushy whitlow-wort are summarized below.

We also considered other threats to the species. Urban and residential development and cattle grazing are not significant sources of threats to the species. Climate changes will likely affect bushy whitlow-wort in complex ways, but we cannot currently project the net effect of positive and negative interactions.

Loss of Native Vegetative Cover and Soil Compaction

The development of new oil and gas wells, wind turbine sites, and associated access roads, pipelines, and power lines requires the complete removal of existing vegetation and the restructuring of the soil profile with bulldozers, road graders, and steam rollers. Even after well sites are abandoned, the compaction caused by the operation of heavy machinery and tractor-trailers impedes plant growth for many years. Plants do not establish or grow well in compacted soils because their roots cannot penetrate far into compacted material. Soil compaction also impedes the infiltration of water into the soil, leading to increased runoff and the formation of gully erosion, which may remove soil and uproot vegetation well beyond the original construction sites.

Invasive Species

Nonnative, invasive grass species displace native plants by competing for water, nutrients, and light, and their dense root systems prevent germination of native plant seeds (Texas Invasives 2019, unpaginated). Buffelgrass is a perennial bunchgrass introduced from Africa in 1946 that has been widely planted in south Texas for livestock forage. It is now one of the most abundant introduced grasses in south Texas. Buffelgrass rapidly colonizes disturbed soils, such as along roadways, and the wind-borne seeds allow it to spread further into intact habitats; it often creates homogeneous monocultures by out-competing native plants for essential resources (Best 2009, p. 310; Lyons et al. 2013, p. 8), and it produces phytotoxins in the soil that inhibit the growth of neighboring native plants (Vo 2013, unpaginated).

Both EO 1 and EO 2 are close to FM 649 and are vulnerable to buffelgrass colonization. EO 2 is bisected by highway FM 649, which converted about 1.6 ha (4.0 ac) of habitat to pavement and graded right-of-way. In 2014, no bushy whitlow-wort individuals were observed during a survey of the public ROW of FM 649 where it transects EO 2 (Strong and Williamson 2015, p. 126; TXNDD 2017, unpaginated). However, this ROW had recently been graded and was partially colonized by buffelgrass. Bushy whitlow-wort may have been eradicated from the ROW by disturbance and buffelgrass competition.

Oil and Gas Development

Bushy whitlow-wort habitat occurs within areas of extensive oil and gas exploration and extraction. An area of intensive energy development in northern Zapata County is about 13 mi (21 km) west of the bushy whitlow-wort populations. Occupied and potential bushy whitlow-wort habitats are also about 18.6–31.0 mi (30–50 km) southeast of the Eagle Ford shale area of oil and natural gas production. Large reserves of oil and natural gas remain in the Eagle Ford shale, and fluctuation in petroleum markets may lead to new well production there, and perhaps also in the vicinity of bushy whitlow-wort habitats. We cannot project the likelihood of if or when this will occur. Petroleum and gas development in the Eagle Ford shale is not likely to have a direct effect on bushy whitlow-wort habitats, since they are physically separated, but renewed development of petroleum reserves that may underlie these habitats could cause their destruction and degradation. Oil and gas well development includes road building and ROW maintenance, and it increases the risk of contamination of these habitats. As a result, there are long-term impacts to the natural landscape, including the loss of native vegetative cover and soil compaction, as well as the potential contamination of sites with petroleum or chemical wastes used in drilling operations. In addition, the proliferation of roads supporting this development accelerates the spread of invasive plants, such as buffelgrass.

Contaminants

Petroleum or chemical wastes used in drilling operations can contaminate sites either through direct impacts to existing plants, or indirectly through soil contamination. Soil contamination may lead to absorption of toxic materials, which may result in death of individual plants or may impact a plant's uptake of nutrients that are necessary for its growth and overall health.

Wind Energy Development

The occupied and potential habitats of bushy whitlow-wort are closely aligned with areas of the highest average wind speed in South Texas; consequently, they have high potential for wind energy development. Wind power generation continues to grow in south Texas, including major new proposed wind farms in Jim Hogg and Zapata Counties (Contreras 2019, entire; Bordas Renewable Energy 2020, unpaginated; Corso 2020, entire). Wind farm development entails land clearing for arrays of wind turbines, access roads, and power lines. Since 2015, more than 1,000 wind turbines (Hoen et al. 2018, entire) have been constructed in the seven-county area of south Texas where we identified potential habitat, and new construction continues at a very rapid pace. Twenty-one turbines are located from 0.5 to 2.6 mi (0.8 to 4.2 km) from the known EOs of bushy whitlow-wort, and about 20 new turbines have been proposed, but not yet permitted, within this immediate area. In other regions of the United States, only about 19 percent of proposed wind projects are completed (DOE 2021, p. 3); nevertheless, Texas has installed more wind capacity than any other U.S. State in recent years (DOE 2022, p. 6), and the Electric Reliability Council of Texas, Inc. (ERCOT) projects total wind generation capacity additions ranging from 13,700 megawatts (MW) to 27,100 MW, the equivalent of 4,500 to 9,000 turbines, over the next 15 years in their long-term system assessment (ERCOT 2022, p. 7). The development of new wind farms and the concomitant land disturbance is an immediate threat to the known populations of bushy whitlow-wort, and a single development project could easily destroy a large portion of the species' known resources.

Grazing and Other Agricultural Uses

The two known occupied habitats of bushy whitlow-wort have been used for livestock grazing for many years. Given that cattle are not attracted to the barren rock outcrops where the species occurs, the impact of trampling should be negligible, and we conclude that cattle grazing is not a significant threat to the species' survival. The very shallow soils of occupied populations are underlaid by indurated caliche along steep slopes and are not suitable for row crops or other agricultural uses. Thus, we do not anticipate habitat losses due to a change in agricultural use.

Urban Development

One of the two EOs was bisected by highway FM 649 in 1954; we estimate that the highway construction and ROW destroyed about 4.03 ac (1.63 ha) of habitat. We are not aware of planned highway construction that would affect the occupied habitats. Due to the low population density in rural Jim Hogg County and the distance to population centers, currently there are no projected habitat losses to urban and residential development.

Climate Changes

To evaluate how the climate of bushy whitlow-wort habitats may change, we used the National Climate Change Viewer (U.S. Geological Survey 2020, unpaginated) to compare past and projected future climate parameters of annual mean maximum temperature, annual mean precipitation, and annual evaporative deficit for Jim Hogg County, Texas. The magnitude of projected changes varies widely, depending on which scenario of future greenhouse gas emissions is used.

We do not know how these projected climate changes, forecast by the range of models and emissions scenarios, will affect the interactions of bushy whitlow-wort with its habitat and associated plant and animal community. Higher temperatures and increasing evaporative deficit could reduce the species' growth, reproduction, and survival. Alternatively, these changes could increase the areas of nearly barren, exposed outcrops, thus increasing the amount of available habitat. Warmer winters might extend the growing season to the species' benefit. Climate changes might affect bushy whitlow-wort differently from species it competes with, such as the introduced, invasive buffelgrass. Thus, although it is likely that the projected climate changes will affect the viability of bushy whitlow-wort, we cannot confidently project what the net result of beneficial and detrimental effects will be.

Current Conditions

To assess resiliency, we considered habitat quality, the number of mature individuals, and the demographic trends of the two populations. Habitats have been moderately disturbed in the past by gravel roads and petroleum infrastructure (EO 1) and a highway ROW (EO 2) but are otherwise intact. Additionally, habitats have been minimally disturbed by invasive plant cover due to their isolated location and rocky nature. Given this level of disturbance and minimal invasive plant cover, we consider current habitat to be in the moderate-quality condition category.

Surveyors estimated about 2,000 individuals at EO 1 in 1987 and extrapolated 1,904 individuals at EO 2 in 1994. The only recent census, in 2014, detected 633 individuals in a very small portion of one EO, representing less than 5 percent of the total area of the EOs. Although we do not know the current size of either population, since the habitats are relatively intact, the best available information indicates that both exceed the MVP level of 1,300 individuals, resulting in a high-condition category for this demographic factor (USFWS 2023, p. 31).

We have no information on demographic trends. However, given continued presumed presence of the bushy whitlow-wort at the two EOs, we assumed that net recruitment is approximately equal to net mortality resulting in a moderate-condition category for this demographic factor (USFWS 2023, p. 31). Combining the current conditions of these habitat and demographic factors (*i.e.* moderate condition for habitat quality, high condition for number of mature individuals, and moderate condition for demographic trends) we conclude that bushy whitlow-wort has two moderately resilient populations.

Bushy whitlow-wort has low redundancy with only two known moderately resilient populations located 1.3 mi (2.1 km) apart. The degree of representation remains unknown, and we do not know of any differentiation in representation in the two populations. Additionally, small, isolated populations are more vulnerable to catastrophic losses caused by random fluctuations in recruitment (demographic stochasticity) or variations in rainfall or other environmental factors (environmental stochasticity) (USFWS 2016, p. 20). Small, reproductively isolated populations are susceptible to the loss of genetic diversity, to genetic drift, and to inbreeding (Barrett and Kohn 1991, pp. 3–30). There may not have been any recent gene flow between the two known populations of bushy whitlow-wort, and they may already suffer from genetic bottlenecks, genetic drift, inbreeding, and loss of allelic diversity (USFWS 2023, p. 25).

Future Scenarios

As part of the SSA, we also developed three future scenarios to capture the range of uncertainties regarding future threats and the projected responses by bushy whitlow-wort. Our scenarios assumed energy development and climate change would have either limited or no impacts on the species or extensive adverse impacts in the future. Because we determined that the current condition of the bushy whitlow-wort is consistent with an endangered species (see Determination of Bushy Whitlow-Wort's Status, below), we are not presenting the results of the future scenarios in this proposed rule. Please refer to the SSA report (USFWS 2023, pp. 32–35) for the full analysis of future scenarios.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have analyzed the cumulative effects of identified threats and conservation actions on the species. To assess the current and future condition of the species, we evaluate the effects of all the relevant factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Determination of Bushy Whitlow-Wort's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we found that there are only two known EOs of bushy whitlow-wort with a combined occupied area of

41.96 ac (16.98 ha) (the area we consider occupied does not include the FM 649 ROW, the beds of unpaved ranch roads, or cleared pipeline ROWs). With only two moderately resilient populations and the small area of occurrence, the species is extremely vulnerable to both natural and anthropogenic impacts. Since the two EOs are only 1.3 mi (2.1 km) apart, this vulnerability is exacerbated by their close proximity.

Bushy whitlow-wort currently has low population redundancy, as only two EOs of bushy whitlow-wort have been documented. The demographic and genetic consequences of small population sizes (Factor E) put the species at a higher risk of extinction due to the threats described above. A single event, such as prolonged drought, or a single development project could easily destroy a large portion of the species' known remaining resources. The close proximity of the two EOs increases this vulnerability.

In particular, the occupied habitats of bushy whitlow-wort are closely aligned with areas of high potential for wind energy development (Factor A), and major proposed wind farms in Jim Hogg and Zapata Counties will entail land clearing for arrays of wind turbines, access roads, and power lines, thereby reducing available habitat for bushy whitlow-wort. The development of new wind farms and the concomitant clearing of habitat is an immediate, severe threat to the known populations of bushy whitlow-wort and potential habitat throughout the species' range. We used the best scientific and commercial data available to analyze the bushy whitlow-wort's current conditions. Based on this information we have concluded that the species is in danger of extinction throughout all of its range due to the severity, extent, and immediacy of threats currently impacting the species. We find that a threatened species status is not appropriate because bushy whitlow-wort has an extremely limited geographic range, the species' populations are very small, those populations are currently at risk of losing habitat from ongoing wind energy development. The threats to the species are currently ongoing and occurring across the entire range of the species. Due to the limited number of populations and the immediate threats to those populations, the species is in danger of extinction currently. Thus, after assessing the best available information, we determine that the bushy whitlow-wort is in danger of extinction throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. We have determined that the bushy whitlow-wort is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because the bushy whitlow-wort warrants listing as endangered throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020), which vacated the provision of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37578; July 1, 2014) providing that if the Service determines that a species is threatened throughout all of its range, the Service will not analyze whether the species is endangered in a significant portion of its range.

Determination of Status

Our review of the best available scientific and commercial information indicates that the bushy whitlow-wort meets the Act's definition of an endangered species. Therefore, we propose to list the bushy whitlow-wort as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies, including the Service, and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

The recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions while a recovery plan is being developed. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) may be established to develop and implement recovery plans. The recovery planning process involves the identification of actions that are necessary to halt and reverse the species' decline by addressing the threats to its survival and recovery. The recovery plan identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery outline, draft recovery plan, final recovery plan, and any revisions will be available on our website as they are completed (*https://www.fws.gov/program/endangered-species*), or from our Texas Coastal Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Texas would be eligible for Federal funds to implement management actions that promote the protection or recovery of the bushy whitlow-wort. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance*.

Although the bushy whitlow-wort is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7 of the Act is titled Interagency Cooperation and mandates all Federal action agencies to use their existing authorities to further the conservation purposes of the Act and to ensure that their actions are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat. Regulations implementing section 7 are codified at 50 CFR part 402.

Section 7(a)(2) states that each Federal action agency shall, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Each Federal agency shall review its action at the earliest possible time to determine whether it may affect listed species or critical habitat. If a determination is made that the action may affect listed species or critical habitat, formal consultation is required (50 CFR 402.14(a)), unless the Service concurs in writing that the action is not likely to adversely affect listed species or critical habitat. At the end of a formal consultation, the Service issues a biological opinion, containing its determination of whether the Federal action is likely to result in jeopardy or adverse modification.

In contrast, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. Although the conference procedures are required only when an action is likely to result in jeopardy or adverse modification, action agencies may voluntarily confer with the Service on actions that may affect species proposed for listing or critical habitat proposed to be designated. In the event that the subject species is listed, or the relevant critical habitat is designated, a conference opinion may be adopted as a biological opinion and serve as compliance with section 7(a)(2) of the Act.

Examples of discretionary actions for the bushy whitlow-wort that may be subject to conference and consultation procedures under section 7 are land management or other landscape-altering activities on Federal lands administered by the Texas Department of Transportation (TxDOT), including maintenance of the ROW of Highway FM 649 or other highway maintenance activities, within the vicinity of the known bushy whitlow-wort populations, as well as actions on State, Tribal, local, or private lands within the vicinity of the known bushy whitlow-wort populations that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation. Federal agencies should coordinate with the local Service Field Office (see **FOR FURTHER INFORMATION CONTACT**) with any specific questions on section 7 consultation and conference requirements.

II. Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that each Federal action agency ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Rather, designation requires that, where a landowner requests Federal agency funding or authorization for an action that may affect an area designated as critical habitat, the Federal agency consult with the Service under section 7(a)(2) of the Act. If the action may affect the listed species itself (such as for occupied critical habitat), the Federal agency would have already been required to consult with the Service

even absent the designation because of the requirement to ensure that the action is not likely to jeopardize the continued existence of the species. Even if the Service were to conclude after consultation that the proposed activity is likely to result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species, and which may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or absence of a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Surface Geology

The two documented populations of bushy whitlow-wort occupy exposed slopes of calcareous rock and/or indurated caliche along the boundary of the Goliad geological formation and the Catahoula and Frio Clay (undivided) geological formation (Turner 1983, p. 5;

Damude and Poole 1990, pp. 9, 10, 12; Poole et al. 2007, p. 333).

Soils

Soils in the vicinity of the known bushy whitlow-wort populations are classified as Zapata soils (Soil Conservation Service 1974, p. 17; Natural Resources Conservation Service (NRCS) 2020, unpaginated). The representative Zapata soil profile consists of grayish-brown fine sandy loam at and near the surface (0 to 2 in (0 to 5 cm) deep); brown sandy clay loam below that (2 to 8 in (5 to 20 cm) deep); and indurated, laminar, pinkish-white caliche below that (more than 8 in (20 cm) deep). The occupied sites are also very near or overlay areas of Cuevitas-Randado Association soils. A representative profile has brown and reddish-brown fine sandy loam near the surface (from 1 to 9 in (2.5 to 23 cm) deep), and indurated, laminar, white caliche below that (more than 9 in (23 cm) deep). Clearly, Zapata and Cuevitas-Randado Association soils are very similar. Although the immediate area of occupied sites has very little soil, such areas of exposed rock are included within these soil map unit polygons.

Plant Community

The plant community associated with bushy whitlow-wort is an open shrubland with the tallest plants reaching 4 to 6 ft (1.2 to 1.8 m) in height (Damude and Poole 1990, pp. 12, 13). Within this shrubland community, bushy whitlow-wort occurs primarily in nearly barren openings on exposed limestone, caliche, or calcareous tuff, where the nearly white rocks reflect and intensify sunlight.

Nonnative, invasive grass species displace native plants by competing for water, nutrients, and light, and their dense root systems prevent germination of native plant seeds (Texas Invasives 2019, unpaginated). Buffelgrass is widely planted in south Texas for livestock forage and frequently displaces native grasses and herbaceous plants (Best 2009, pp. 310–311).

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of bushy whitlow-wort from studies of the species' habitat, ecology, and life history as described below. Additional information can be found in the SSA report (USFWS 2023, entire; available on *https://www.regulations.gov* under Docket No. FWS–R2–ES–2023–0102). We have determined that the following physical or biological features are essential to the conservation of bushy whitlow-wort:

(1) Exposed outcrops of calcified tuff,

(2) Undisturbed or minimally disturbed soil horizons, and

(3) Openings within shrubland communities that do not contain or have low levels of buffelgrass.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: Nonnative, invasive grass; ROW construction and maintenance from energy development; and road and utility construction. Habitats have been moderately disturbed in the past by gravel roads, petroleum infrastructure, and a highway ROW, but they are otherwise intact. Management activities that could ameliorate these threats include, but are not limited to: Nonnative, invasive grass control; protection from activities that disturb the soil; and propagation and reintroduction of plants in restorable areas. These management activities would protect the physical or biological features for the species by reducing soil disturbance, limiting the impacts of competition with buffelgrass, and potentially increasing population sizes.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are not currently proposing to designate any areas outside the geographical area occupied by the species because we have not identified any unoccupied areas that meet the Act's definition of critical habitat. Bushy whitlow-wort needs additional populations to reduce the likelihood of extinction, but there are no public lands in the area and we have limited access to privately owned lands and little information regarding lands that would be good candidates for introductions in the species' range. Therefore, we are not able to identify additional locations that contain at least one of the physical or biological features essential to the conservation of the species and that may have a reasonable certainty of contributing to conservation at this time.

In summary, for areas within the geographical area occupied by the species at the time of listing, we delineated critical habitat unit boundaries using the E.O. boundaries established by the TXNDD; however, we did not include areas of disturbed soils (the ROW of FM 649, roadbeds of unpaved ranch roads, and cleared pipeline ROWs) that no longer contain the physical and biological features and that, due to repeated disturbance, are unlikely to be restored in the future.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for bushy whitlow-wort. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We propose to designate as critical habitat lands that we have determined are occupied at the time of listing (*i.e.,* currently occupied) and that contain one or more of the physical or biological features that are essential to support the life-history processes of the species.

Units are proposed for designation based on one or more of the physical or biological features being present to support bushy whitlow-wort's life-history processes. Both proposed units contain all of the identified physical or biological features and support multiple life-history processes.

The proposed critical habitat designation is defined by the map, as modified by any accompanying regulatory text, presented at the end of

this document under Proposed Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *https://www.regulations.gov* at Docket No. FWS–R2–ES–2023–0102.

Proposed Critical Habitat Designation

We are proposing two units as critical habitat for bushy whitlow-wort. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for bushy whitlow-wort. The two areas we propose as critical habitat are TXNDD EOs in Jim Hogg County. The table below shows the proposed critical habitat units and the approximate area of each unit. All units are occupied.

TABLE OF PROPOSED CRITICAL HABITAT UNITS FOR BUSHY WHITLOW-WORT

[Area estimates reflect all land within critical habitat unit boundaries.]

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)	Occupied?
1. EO 1	Private	35.38 (14.32)	Yes.
2. EO 2	Private	6.57 (2.66)	Yes.
Total		41.96 (16.98)	

Note: Area sizes may not sum due to rounding.

We present brief descriptions of the two proposed units, and reasons why they meet the definition of critical habitat for bushy whitlow-wort, below.

Unit 1: E.O. 1

Unit 1 consists of 35.38 ac (14.32 ha) in a geographic cluster of three polygons on private land within the boundaries of E.O. 1 in northwest Jim Hogg County. In this proposed unit, we do not include the FM 649 ROW or unvegetated roadbeds that are frequently driven on or are maintained by road grading, as these areas no longer contain the essential physical and biological features and they are unlikely to be restored in the future. Unit 1 was delineated through observation of recent orthographically corrected aerial photographs (USDA–FPAC–BC–APFO Aerial Photography Field Office 2018, unpaginated). The unit is occupied by the species and contains all of the physical or biological features essential to the conservation of bushy whitlow-wort. Areas adjacent to this unit contain a public ROW that is affected by invasive, nonnative buffelgrass. Therefore, special management may be required to reduce invasion of nonnative species.

Unit 2: E.O. 2

Unit 2 consists of 6.57 ac (2.66 ha) in a geographic cluster of 10 polygons on private land within the boundaries of E.O. 2 in northwest Jim Hogg County. In this proposed unit, we do not include unvegetated roadbeds that are frequently driven on or are maintained by road grading, as these areas no longer contain the essential physical and biological features and they are unlikely to be restored in the future. Unit 2 was delineated through observation of recent orthographically corrected aerial photographs (USDA–FPAC–BC–APFO Aerial Photography Field Office 2018, unpaginated). The unit is occupied by the species and contains all of the physical or biological features essential to the conservation of bushy whitlow-wort. This unit has been moderately disturbed in the past by gravel roads and petroleum infrastructure. Therefore, special management may be required to reduce invasion of nonnative species.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

Compliance with the requirements of section 7(a)(2) of the Act is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during formal consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate consultation if any of the following four conditions occur: (1) the amount or extent of taking specified in the incidental take statement is exceeded; (2) new information reveals effects of the action that may affect

listed species or critical habitat in a manner or to an extent not previously considered; (3) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion or written concurrence; or (4) a new species is listed or critical habitat designated that may be affected by the identified action. The reinitiation requirement applies only to actions that remain subject to some discretionary Federal involvement or control. As provided in 50 CFR 402.16, the requirement to reinitiate consultations for new species listings or critical habitat designation does not apply to certain agency actions (*e.g.,* land management plans issued by the Bureau of Land Management) in certain circumstances.

Destruction or Adverse Modification of Critical Habitat

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that we may, during a consultation under section 7(a)(2) of the Act, consider likely to destroy or adversely modify critical habitat include, but are not limited to, actions that would degrade or destroy native plant communities. Such activities could include, but are not limited to, the construction of: roadways; wind, oil, and gas production sites; powerlines; pipelines; or other infrastructure developments. These activities could disturb the soil or could introduce or increase buffelgrass and other invasive grasses in the vicinity of bushy whitlow-wort individuals.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act Improvement Act of 1997 (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. No DoD lands with a completed INRMP are within the proposed critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (hereafter, the ''2016 Policy''; 81 FR 7226, February 11, 2016), both of which were developed jointly with the National Marine Fisheries Service (NMFS). We also refer to a 2008 Department of the Interior Solicitor's opinion entitled, ''The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act'' (M–37016).

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. In our final rules, we explain any decision to exclude areas, as well as all decisions not to exclude, to make clear the rational basis for our decision. We describe below the process that we use for taking into consideration each category of impacts and any initial analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.''

The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, land managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). Therefore, the baseline represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O.

regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. Section 3(f) of E.O. 12866, as amended by E.O. 14094, identifies four criteria when a regulation is considered a ''significant regulatory action,'' and requires additional analysis, review, and approval if met. The criterion relevant here is whether the designation of critical habitat may have an economic effect of $200 million or more in any given year (section 3(f)(1)). Therefore, our consideration of economic impacts uses a screening analysis to assess whether a designation of critical habitat for bushy whitlow-wort is likely to exceed the economically significant threshold.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the bushy whitlow-wort (Industrial Economics, Inc. (IEc) 2023, entire.). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographical areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes any probable incremental economic impacts where land and water use may already be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species.

Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The presence of the listed species in occupied areas of critical habitat means that any destruction or adverse modification of those areas is also likely to jeopardize the continued existence of the species. Therefore, designating occupied areas as critical habitat typically causes little if any incremental impacts above and beyond the impacts of listing the species. As a result, we generally focus the screening analysis on areas of unoccupied critical habitat (unoccupied units or unoccupied areas within occupied units). Overall, the screening analysis assesses whether designation of critical habitat is likely to result in any additional management or conservation efforts that may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM constitute what we consider to be our draft economic analysis (DEA) of the proposed critical habitat designation for the bushy whitlow-wort; our DEA is summarized in the narrative below.

As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the bushy whitlow-wort, first we identified, in the IEM dated August 2, 2022, probable incremental economic impacts associated with the following categories of activities: (1) Highway construction or maintenance; and (2) wind energy development. We considered each industry or category individually. Additionally, we considered whether the activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If we list the species, in areas where the bushy whitlow-wort is present, Federal agencies would be required to consult with the Service under section 7 of the Act on activities they authorize, fund, or carry out that may affect the species. If we list the species, and at that time also finalize this proposed critical habitat designation, Federal agencies would be required to consider the effects of their actions on the designated habitat, and if the Federal action may affect critical habitat, our consultations would include an evaluation of measures to avoid the destruction or adverse modification of critical habitat.

In our IEM, we attempted to clarify the distinction between the effects that would result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the bushy whitlow-wort's critical habitat. Because the designation of critical habitat for bushy whitlow-wort is being proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which would result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would likely adversely affect the essential physical or biological features of occupied critical habitat are also likely to adversely affect the species itself. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for the bushy whitlow-wort includes two units totaling 41.96 ac (16.98 ha). Both units are considered occupied by the bushy whitlow-wort and contain the physical and biological features essential to the conservation of the species. We are not proposing to designate any units of unoccupied habitat. Both units of the proposed designation are entirely on private land. In these areas, any actions that may affect the species or its habitat would also affect designated critical habitat, and it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the bushy whitlow-wort. Therefore, the potential effects of the critical habitat designation are expected to be limited to administrative costs.

While this additional analysis will require time and resources by both the Federal action agency and the Service, it is believed that, in most circumstances, these costs would predominantly be administrative in nature and would not be significant. Total incremental costs of critical habitat designation for the bushy whitlow-wort are anticipated to be less than $1,900 per year for the next 10 years. In total, fewer than one informal consultation and fewer than one technical assistance effort are

anticipated to occur annually across both proposed critical habitat units. The designation of critical habitat is not expected to trigger additional requirements under State or local regulations, and incremental perception-related impacts appear unlikely. Thus, the annual administrative burden is unlikely to reach $200 million.

We are soliciting data and comments from the public on the DEA discussed above. During the development of a final designation, we will consider the information presented in the DEA and any additional information on economic impacts we receive during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under the authority of section 4(b)(2) of the Act, our implementing regulations at 50 CFR 424.19, and the 2016 Policy. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Consideration of National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (*e.g.,* a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under the Act's section 4(a)(3)(B)(i), then national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of ''critical habitat.'' However, the Service must still consider impacts on national security, including homeland security, on those lands or areas not covered by section 4(a)(3)(B)(i) because section 4(b)(2) requires the Service to consider those impacts whenever it designates critical habitat. Accordingly, if DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, we must conduct an exclusion analysis if the Federal requester provides information, including a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If we conduct an exclusion analysis because the agency provides a reasonably specific justification or because we decide to exercise the discretion to conduct an exclusion analysis, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for bushy whitlow-wort are not owned or managed by the DoD or DHS, and, therefore, we anticipate no impact on national security or homeland security.

Consideration of Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security discussed above. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area—such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances—or whether there are non-permitted conservation agreements and partnerships that may be impaired by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, social, or other impacts that might occur because of the designation.

Summary of Exclusions Considered under Section 4(b)(2) of the Act

In preparing this proposal, we have determined that no HCPs or other management plans for bushy whitlow-wort currently exist, and the proposed designation does not include any Tribal lands or trust resources or any lands for which designation would have any economic or national-security impacts. Therefore, we anticipate no impact on Tribal lands, partnerships, or HCPs from this proposed critical habitat designation and thus, as described above, we are not considering excluding any particular areas on the basis of the presence of conservation agreements or impacts to trust resources.

However, if through the public comment period we receive information that we determine indicates that there are potential economic, national security, or other relevant impacts from designating particular areas as critical habitat, then as part of developing the final designation of critical habitat, we will evaluate that information and may conduct a discretionary exclusion analysis to determine whether to exclude those areas under the authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19. If we receive a request for exclusion of a particular area and after evaluation of supporting information we do not exclude, we will fully describe our decision in the final rule for this action.

Required Determinations

Clarity of the Rule

We are required by E.O.s 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To

better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Regulatory Planning and Review (Executive Orders 12866, 13563, and 14094)

Executive Order (E.O.) 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated if we adopt the proposed critical habitat designation. The RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare statements of energy effects to the extent permitted by law when undertaking actions identified as significant energy actions (66 FR 28355; May 22, 2001). E.O. 13211 defines a ''significant energy action'' as an action that (i) is a significant regulatory action under E.O. 12866 or any successor order (including, most recently, E.O. 14094 (88 FR 21879; April 11, 2023)); and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule is not a significant regulatory action under E.O. 12866 or E.O. 14094. Therefore, this action is not a significant energy action, and there is no requirement to prepare a statement of energy effects for this action.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following finding:

(1) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under

entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions are not likely to destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater (adjusted annually for inflation) in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments and, as such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for bushy whitlow-wort in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the proposed designation of critical habitat for bushy whitlow-wort, and it concludes that, if adopted, this designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the States, or on the relationship between the Federal government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the physical or biological features essential to the conservation of the species. The proposed areas of critical habitat are presented on a map, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This

includes listing, delisting, and reclassification rules, as well as critical habitat designations. In a line of cases starting with *Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), the courts have upheld this position.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), E.O. 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. In accordance with Secretary's Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribal lands fall within the boundaries of the proposed critical habitat designation for the bushy whitlow-wort, so no Tribal lands would be affected by the proposed designation.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Texas Coastal Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Texas Coastal Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.12, amend the table in paragraph (h) by adding an entry for ''*Paronychia congesta*'' in alphabetical order under FLOWERING PLANTS to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
Flowering Plants				
*	*	*	*	* * *
Paronychia congesta.	Bushy whitlow-wort.	Wherever found ..	E	[**Federal Register** citation when published as a final rule]; 50 CFR 17.96(a).[CH]
*	*	*	*	* * *

■ 3. In § 17.96, amend paragraph (a) by adding an entry for ''Family Caryophyllaceae: *Paronychia congesta* (bushy whitlow-wort)'' after the entry for ''Family Caryophyllaceae: *Arenaria ursina* (Bear Valley sandwort)'' to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Caryophyllaceae: *Paronychia congesta* (bushy whitlow-wort)

(1) Critical habitat units are depicted for Jim Hogg County, Texas, on the map in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of bushy whitlow-wort consist of the following components:

(i) Exposed outcrops of calcified tuff;

(ii) Undisturbed or minimally disturbed soil horizons; and

(iii) Openings within shrubland communities that do not contain or have low levels of buffelgrass (*Pennisetum ciliare*).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of the final rule.

(4) Data layers defining map units were created on a base of U.S. Geological Survey digital ortho-photo quarter-quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) Zone 15N coordinates. The map in this entry, as modified by any accompanying regulatory text, establishes the boundaries of the critical habitat designation. The coordinates or plot points or both on which the map is based are available to the public at *https://www.regulations.gov* at Docket No. FWS–R2–ES–2023–0102, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

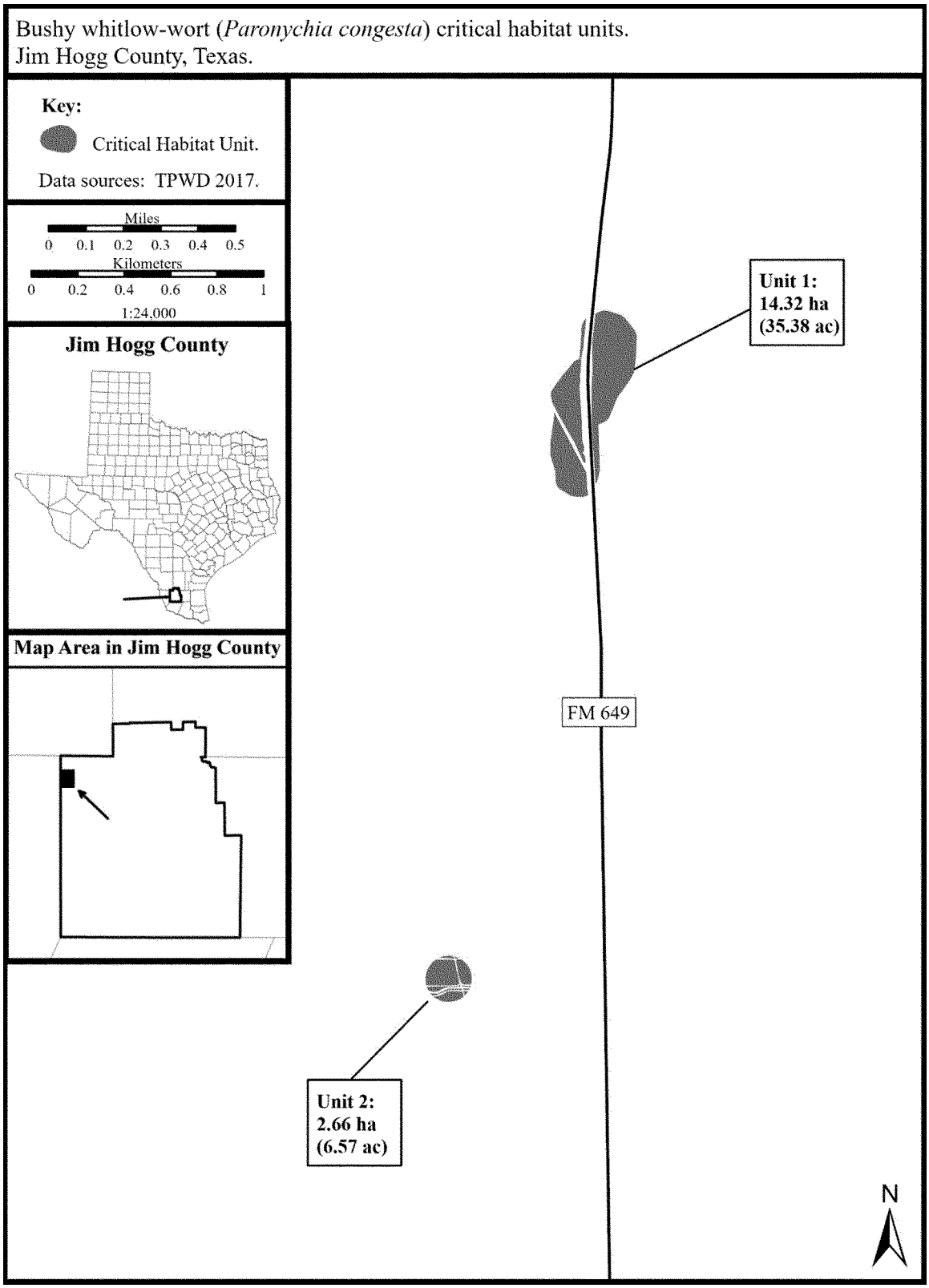
(5) Unit 1: E.O. 1; Jim Hogg County, Texas.

(i) Unit 1 consists of 35.38 ac (14.32 ha) in a geographic cluster of three polygons in northwest Jim Hogg County and is composed of lands in private ownership.

(ii) Map of Units 1 and 2 follows:

Figure 1 to Family Caryophyllaceae: *Paronychia congesta* (bushy whitlow-wort) paragraph (5)(ii)

BILLING CODE 4333–15–P


Bushy whitlow-wort (*Paronychia congesta*) critical habitat units.
Jim Hogg County, Texas.
Key:
Critical Habitat Unit.
Data sources: TPWD 2017.
Miles
0 0.1 0.2 0.3 0.4 0.5
Kilometers
0 0.2 0.4 0.6 0.8 1
1:24,000
Jim Hogg County
Map Area in Jim Hogg County
Unit 1:
14.32 ha
(35.38 ac)
FM 649
Unit 2:
2.66 ha
(6.57 ac)
N

(6) Unit 2: E.O. 2; Jim Hogg County, Texas.

(i) Unit 2 consists of 6.57 ac (2.66 ha) in a geographic cluster of 10 polygons in northwest Jim Hogg County and is composed of lands in private ownership.

(ii) Map of Unit 2 is provided at paragraph (5)(ii) of this entry.

* * * * *

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2024–05700 Filed 3–18–24; 8:45 am]

BILLING CODE 4333–15–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2023–0114; FF09E22000 FXES1113090FEDR 245]

RIN 1018–BH01

Endangered and Threatened Wildlife and Plants; Removal of the North Park Phacelia From the List of Endangered and Threatened Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of draft post-delisting monitoring plan.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove the North Park phacelia (*Phacelia formosula*) from the Federal List of Endangered and Threatened Plants due to recovery. The best available scientific information indicates that threats to North Park phacelia identified at the time of listing in 1982 are not as significant as originally anticipated and are being adequately managed. Additionally, recent taxonomic studies have indicated that the species has four new populations and an expanded range in Colorado based on the inclusion of plants previously thought to be different species or subspecies. We find that delisting the species is warranted. Our review of the best available scientific and commercial data indicates that the threats to the North Park phacelia have been eliminated or reduced to the point that the species no longer meets the definition of an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). Accordingly, we propose to delist the North Park phacelia. We request information and comments from the public regarding this proposed rule and the draft post-delisting monitoring (PDM) plan for the North Park phacelia. If we finalize this rule as proposed, the prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to the species.

DATES: We will accept comments received or postmarked on or before May 20, 2024. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by May 3, 2024.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R6–ES–2023–0114, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search 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.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R6–ES–2023–0114, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: This proposed rule and supporting documents, including the 5-year reviews, draft post-delisting monitoring plan, and the species status assessment (SSA) report, are available at *https://www.regulations.gov* under Docket No. FWS–R6–ES–2023–0114 and at the Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Nathan Darnall, Western Colorado Supervisor, U.S. Fish and Wildlife Service, Colorado Ecological Services Field Office, 445 West Gunnison Avenue, Grand Junction, CO 81501; telephone 970–628–7181. 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. Please see Docket No. FWS–R6–ES–2023–0114 on *https://www.regulations.gov* for a document that summarizes this proposed rule.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants delisting if it no longer meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range). The North Park phacelia is listed as endangered, and we are proposing to delist it because we have determined it does not meet the Act's definition of an endangered or threatened species. Delisting a species can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. This action proposes to remove North Park phacelia from the List of Endangered and Threatened Plants (*i.e.,* ''delist'' the species) based on its recovery.

The basis for our action. Under the Act, we may determine that a species is an endangered species or a threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. The determination to delist a species must be based on an analysis of the same factors.

Under the Act, we must review the status of all listed species at least once every 5 years. We must delist a species if we determine, on the basis of the best available scientific and commercial data, that the species is neither a threatened species nor an endangered species. Our regulations at 50 CFR 424.11 identify three reasons why we might determine a species should be delisted: (1) The species is extinct, (2) the species does not meet the definition of an endangered species or a threatened species, or (3) the listed entity does not meet the definition of a species. Here, we have determined that, based on an analysis of the five listing factors, the North Park phacelia has recovered and

no longer meets the definition of an endangered species or a threatened species; therefore, we are proposing to delist it.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) Reasons we should or should not remove the North Park phacelia from the List of Endangered and Threatened Plants.

(2) Relevant data concerning any threats (or lack thereof) to the North Park phacelia, particularly any data on the possible effects of climate change as it relates to habitat, as well as the extent of State protection and management that would be provided to this plant as a delisted species.

(3) Current or planned activities within the geographic range of the North Park phacelia that may have either a negative or positive impact on the species.

(4) Considerations for post-delisting monitoring, including monitoring protocols and length of time monitoring is needed, as well as triggers for reevaluation.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered species or a threatened species must be made solely on the basis of the best scientific and commercial data available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Our final determinations may differ from this proposal because we will consider all comments we receive during the comment period as well as any information that may become available after this proposal. For example, based on the new information we receive (and any comments on that new information), we may conclude that the species should remain listed as endangered, or we may conclude that the species should be reclassified from endangered to threatened. We will clearly explain our rationale and the basis for our final decision, including why we made changes, if any, that differ from this proposal.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of virtual public hearings is consistent with our regulation at 50 CFR 424.16(c)(3).

Peer Review

A species status assessment (SSA) team prepared an SSA report for the North Park phacelia to inform the 2021 5-year review and updated it in 2023. The SSA team was composed of Service biologists who consulted with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing and recovery actions under the Act, we solicited independent scientific review of the information contained in the North Park phacelia SSA report. We sent the SSA report to three independent and appropriate peer reviewers and received three responses. Results of this structured peer review process can be found at *https://www.regulations.gov* at Docket No. FWS–R6–ES–2023–0114. We incorporated the results of these reviews, as appropriate, into the final SSA report, which is the foundation for this proposed rule.

Summary of Peer Reviewer Comments

As discussed in Peer Review above, we received comments from three peer reviewers on the draft SSA report. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the information contained in the SSA report. The three peer reviewers provided additional information, clarifications, and recommendations pertaining to changes to our threat evaluation for residential development, energy development, livestock use, and agriculture; changes to our current and future condition metrics; changes to our scoring of future condition; and an evaluation of the pollinators of North Park phacelia. We summarize the peer reviewers' main comments below and have either incorporated these points into the SSA report or address them below.

(1) Comment: One reviewer asked if there is a potential habitat model for North Park phacelia and whether there is unsurveyed, potential habitat for the species. The reviewer asked how far north the Niobrara formation extends and if the species could be found in Wyoming.

Our response: We developed a potential habitat model for North Park phacelia in 2022 after the recent genetic study (Naibauer and McGlaughlin 2022, entire) confirmed there are four additional populations of North Park phacelia in Larimer and Grand Counties, Colorado. The potential habitat model included the three soil types (Coalmont, Niobrara, and Troublesome Creek formations) on which the species occurs across its range. Based on this model, there is unsurveyed potential habitat for North Park phacelia within its range, which is not surprising because of the recent expansion of the species' known range

(see Background, below). The Niobrara formation does extend north into Wyoming, and habitat assessments would have to be performed to determine whether they in fact contain suitable habitat for North Park phacelia. If there is suitable habitat in Wyoming, surveys would have to be performed to assess occupancy. Our proposal to delist is not dependent on populations occurring in Wyoming.

(2) Comment: One reviewer asked whether we checked the SEINet data portal and NatureServe Encyclopedia of Life, both available online, for North Park phacelia location information and, if so, recommended that we cite them as sources of information.

Our response: We reviewed both websites, but they did not contain any new or additional location information for North Park phacelia beyond what we have on file. Therefore, we did not cite them as sources of information.

(3) Comment: One reviewer recommended that we include the Colorado Natural Heritage Program (CNHP) and NatureServe global (G2) and State (S2) ranks for North Park phacelia in the SSA report.

Our response: We declined to include the CNHP and NatureServe global and State ranks provided by the reviewer in the SSA report because they may be inaccurate and out of date based of the results of the recent genetic study (Naibauer and McGlaughlin 2022, entire) that confirmed the species has four additional populations. The data sources identified by the peer reviewer are also not critical to our evaluation of North Park phacelia's viability.

(4) Comment: One reviewer recommended that we provide the years associated with the range of total plant abundance (908 to 17,750 plants) reported for the North Park basin (Jackson County, Colorado) in chapter 2 of the SSA report. The reviewer asked whether this range reflected a trend, pattern, or simply the result of rosettes (young, non-flowering plants) not being counted in some surveys.

Our response: We removed the information from the SSA report pertaining to the reviewer's comment and instead summarized the range of plant abundance for each population in a table (Service 2023, table 3, p. 11). The recommended information, years and range of plant abundance reported for the North Park basin, are summarized in the species' 2012 5-year status review (Service 2012, table 1, pp. 7–8). In 2012, we noted that some surveys counted rosettes while others did not, and the available data does not allow us to compare years or identify a trend (Service 2012, p. 8). The best available trend information is from the Bureau of Land Management (BLM) plant frequency monitoring results, which we summarize below and in the SSA report (see Background, below; Service 2023, pp. 25–27).

(5) Comment: One reviewer recommended that we add more information to the key findings section in chapter 2 to mention if there are years when the species has low numbers or if there are only areas with low numbers because of the variability of local rain events. The reviewer asked if there were more key findings and citations to add to make that section more robust.

Our response: The key findings section is a summary of the individual, population, and species needs discussed in chapter 2. We added more key findings to this section of the SSA report to partially address the comment. However, we did not include citations because this section is a summary of information presented earlier in the chapter with citations. We also did not add information regarding years and areas with low numbers in chapter 2. Rather, we included information regarding the variability of local weather patterns, and discussed how the species responds to climate conditions in chapter 3 (Service 2023, pp. 23, 25–27).

(6) Comment: One reviewer stated that the SSA report does not reach a clear conclusion about the current condition of North Park phacelia relative to each of the identified threats. The reviewer recommended that we clearly state what the threats are and mentioned three reports (The Colorado Rare Plant Guide (CNHP 2015a, entire), CNHP element occurrence records (CNHP 2020 entire), and North Park Phacelia Conservation Action Plan 2011 Update (Panjabi and Neely 2011, entire)) that document threats to the species.

Our response: We identified threats to North Park phacelia and evaluated their individual and potential cumulative effect at the population level in our assessment of current condition in chapter 3 of the SSA report and below (Service 2023, pp. 19–35; Summary of Biological Status and Threats). The draft SSA report includes information on threats from two of the reports the reviewer mentioned, the Colorado Rare Plant Guide and CNHP element occurrence records. We reviewed the third report, the North Park Phacelia Conservation Action Plan 2011 Update, which evaluated the viability of North Park phacelia using similar metrics as our assessment. While we cited all three reports in the SSA report to address the comment, we primarily relied on the information summarized in the CNHP element occurrence records for our threats assessment, because this report provides threat documentation over a longer timeframe and with more recent information than the other two reports.

(7) Comment: One reviewer disagreed with our assertion in the draft SSA report that threats are either absent or less severe now than described at the time of listing based on data provided by CNHP. The reviewer stated that CNHP occurrence records identify livestock trampling as a threat and document plants trampled by livestock and that it is not known if those plants survived.

Our response: The reviewer is referring to the following sentences in the draft SSA: ''In the final rule to list *Phacelia formosula* as an endangered species under the Act (September 1, 1982; 47 FR 38540), we identified motorcycle (also known as, off road vehicle or ORV) use, cattle trampling, the potential development of resources (coal, oil, and natural gas), and the inadequacy of existing regulatory mechanisms as primary threats to the species. Data provided by CNHP indicate an absence of these threats within *P. formosula* populations, or that these threats are less severe now than described at the time of listing.''

The last sentence pertains to all threats identified at the time of listing, and we stand by our assertion that livestock grazing is a threat that is less severe now than when we listed North Park phacelia in 1982 (see *Conservation Efforts and Regulatory Mechanisms,* below). To address this comment, we amended the sentence to clarify that CNHP data indicate either an absence of threats or that threats are less severe now than described at the time of listing in the SSA report. We summarized the CNHP data regarding livestock grazing in more detail later in chapter 3 (Service 2023, pp. 19–22). While some plants have been trampled by livestock, this stressor affects individuals and not populations of North Park phacelia based on the best available information (see Summary of Biological Status and Threats, below).

(8) Comment: One reviewer stated that the overall threat of oil and gas development is not thoroughly assessed in the draft SSA report. The reviewer commented that a geospatial analysis alone does not seem adequate to determine disturbance and dust associated with oil and gas wells that could be obtained by an on-the-ground evaluation.

Our response: We added more background information regarding the effects of dust and invasive plants to North Park phacelia, the potential for future development, and regulatory

mechanisms on Federal lands in the SSA report (Service 2023, pp. 19–24), and we summarize the oil and gas stressor in the proposed rule (see *Stressors,* below). However, we did not incorporate an on-the-ground evaluation of disturbance and dust or change our oil and gas development evaluation. Two oil and gas wells within 656 feet (ft) (200 meters (m)) of North Park phacelia populations were installed more than 40 years ago. These are no longer active (their well status is plugged and abandoned) and are causing no obvious disturbance based on the aerial imagery (Service 2023, pp. 22–23). Furthermore, while potential for oil and gas is high in Jackson County, Colorado, there are regulatory mechanisms on Federal lands for surveys and avoidance buffers as well as No Surface Occupancy (NSO) stipulations to protect North Park phacelia plants from mortality, disturbance, and dust (BLM 2016, p. 15; Service 2023, pp. 23–24). We expect these regulatory mechanisms to continue for the duration of the post delisting monitoring plan (we propose a 10-year monitoring period) after which the regulatory mechanisms for BLM sensitive species would apply to provide the same level of protection given to Federal Candidate species (BLM 2015b, pp. 3–76—3–77). The regulatory mechanisms afforded to BLM sensitive species should adequately protect the resiliency of North Park phacelia populations from stressors (OHV use, energy development, and livestock grazing) on BLM lands.

Aerial imagery has also been used to evaluate vegetation recovery on well pads in published reports (Nauman et al. 2017, entire), and our 656-ft (200-m) buffer is adequate to evaluate potential dust dispersal from well pads and other disturbed areas to North Park phacelia plants (Service 2023, pp. 19–21). Well pads serve as a potential source of fugitive dust generation over approximately two decades (up to 17 years) following installation (Nauman et al. 2017, pp. 9, 11). The two well pads may have been sources of fugitive dust in the past but are not likely current sources given their installation dates, their plugged and abandoned status, and the lack of obvious surface disturbance in aerial imagery. While an on-the-ground evaluation may be helpful to validate the aerial imagery, it would not provide additional quantitative information on potential dust effects to North Park phacelia plants unless an in-depth and lengthy evaluation of fugitive dust generation by the oil and gas wells compared to background levels is performed. An evaluation such as this would also likely only confirm our current available information on fugitive dust.

(9) Comment: One reviewer asked if agriculture could impact plants or pollinators through pesticide or herbicide use. A second reviewer felt that we should have included agricultural areas in our disturbance calculation for the ecological settings metric because agriculture results in habitat fragmentation, reduced pollinator habitat, and, if tilled, dust and pollution. The second reviewer recommended that we evaluate agricultural disturbance in appendix A.

Our response: We considered the reviewers' comments and discussed them with partners and experts on the species (Service 2022, p. 3). The primary agricultural practices near North Park phacelia populations are haying and grazing that generally use fewer pesticides than croplands and are not tilled. Haying and grazing practices likely do not result in direct impacts to North Park phacelia and one partner, CNHP, did not evaluate this stressor in their review of the species. North Park phacelia requires pollinators for maximum reproduction even though it can produce seeds without pollinators (Warren 1990, pp. 16–17; Service 2023, pp. 13–18). While we do not know the important pollinators of North Park phacelia, native bees in the following genera are frequent floral visitors: plasterer bees (*Colletes spp.*), small carpenter bees (*Ceratina spp.*), sweat bees (*Dialictus spp.*), and potter bees (*Anthidium spp.*) (Warren 1990, pp. 17–18). We have no information to indicate that haying and grazing practices are negatively impacting pollinators of North Park phacelia. Therefore, we declined to include an evaluation of agricultural disturbance in appendix A of the SSA report.

(10) Comment: One reviewer asked if factors such as dust and livestock trampling were missed in our evaluation and calculation of the ecological setting metric used to evaluate current condition in chapter 3.

Our response: We evaluated the potential impacts of disturbance and habitat loss, including the potential effects of dust, to North Park phacelia in our evaluation of the ecological setting metric and thresholds (Service 2023, pp. 27–28). We used the same 656-ft (200-m) evaluation buffer for the ecological setting metric as we did for the oil and gas evaluation discussed in comment number 8, above, which is adequate to evaluate potential dust dispersal from disturbance to North Park phacelia plants (Service 2023, pp. 19–21). We did not include livestock trampling as part of our calculation of this metric because the aerial imagery is too coarse to detect individual livestock tracks. Additionally, we are aware of no areas that have concentrated or extensive livestock use that would result in the loss of suitable or occupied habitat for North Park phacelia consistent with the disturbance types (roads, oil and gas wells, and developed areas) we included in our calculation of this metric. The best available information indicates that livestock grazing results in small, localized effects to individual plants and does not result in population-level effects to North Park phacelia (see *Stressors,* below). We also did not include agricultural areas in our calculation of this metric as discussed in comment number 9, above.

(11) Comment: One reviewer recommended that the SSA report state that more research is needed to better understand North Park phacelia and threats to its long-term survival and that we include research suggestions. The reviewer also expressed concern that off-highway vehicle (OHV) use has not been assessed recently in eight populations.

Our response: While we agree that more monitoring and research would result in a better understanding of the species and the magnitude and extent of possible impacts of OHV use and other stressors, it is beyond the scope of an SSA report to recommend research needs. Instead, we summarized the information available for North Park phacelia and the uncertainties regarding the species. While monitoring of some North Park phacelia populations may be infrequent, OHV use is a concern only in the North Park phacelia Airport population, not the other 11 populations. OHV use in the Airport population has been documented since the species was listed and we evaluate OHV use, below, see *Stressors.* We requested recent data for North Park phacelia to inform our 2021 5-year status review; however, we did not receive new information on OHV use and there is no requirement for additional research, including collecting data on OHV use and other threats.

We review the best scientific and commercial information available when conducting an SSA and making a status determination under the Act. In considering what factors might constitute a threat, we look beyond the mere exposure of the individuals of a species to the factor to determine whether the exposure causes actual impacts to the species. The mere identification of factors that could impact a species negatively is not

sufficient to compel a finding that listing (or maintaining a currently listed species) on the Federal lists of endangered or threatened wildlife and plants is appropriate. In determining whether a species meets the definition of a threatened or endangered species, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level, as well as the cumulative effect of the threats. Based on the best available information, we recommended that North Park phacelia no longer meets the definition of an endangered species or a threatened species in our 2021 5-year status review, and we are proceeding with our recommendation to remove the species from the Federal List of Endangered and Threatened Plants in this proposed delisting rule.

(12) Comment: One reviewer asked how much unsurveyed potential habitat occurs on private lands. The reviewer recommended that we evaluate the risk of residential development to unsurveyed potential habitat on private lands based on how close these lands are to a municipality and current residential development, and their platting status.

Our response: We did not consider unsurveyed potential habitat in our review of the species' status and did not incorporate the reviewer's recommendation into the SSA report. Since the Act requires us to use the best available scientific and commercial information available, we must consider the range of the species as it is currently known. Therefore, we evaluated the residential development stressor to the species and its known occupied habitat, not the status of unsurveyed potential habitat.

(13) Comment: One reviewer stated that climate change may negatively affect pollinator abundance.

Our response: We considered the reviewer's statement and note they did not provide supporting information. We summarized available pollinator information for North Park phacelia in comment number 9, above. We are aware of the potential for climate change to disrupt plant-pollinator interactions if plant flowering and pollinator emergence become out of sync (Gérard et al. 2020, entire). We did not incorporate the comment into the SSA report because plant-pollinator disruption is not a current concern for North Park phacelia and we have no information to indicate that it is likely to occur in the future.

(14) Comment: One reviewer recommended adding another metric, pollinator abundance, to evaluate the current and future condition of North Park phacelia populations because research indicates that adequate pollination is important for species persistence and representation (Warren 1990, entire), climate change may affect pollinator abundance, and pollinators are not explicitly evaluated in the ecological setting metric.

Our response: We agree that pollinator abundance has the potential to influence the resiliency of populations; however, we do not have population abundance or trend information for any of the floral visitors identified in the Warren 1990 study. Best available scientific information indicates that North Park phacelia produces seeds regularly and pollinator-limitation is not a concern for the species. Therefore, we did not include a pollinator abundance metric in our current and future condition evaluation of North Park phacelia populations.

(15) Comment: One reviewer stated that we do not know the temperature requirement to break seed dormancy in North Park phacelia, and the annual mean temperature metric does not necessarily relate to temperatures required to break seed dormancy in the species based on an evaluation of climate information by BLM (Krening 2020, entire). The reviewer recommended that the annual mean temperature metric be considered a placeholder for modeling the impacts of temperature change and should be refined in future SSA revisions as our knowledge of germination requirements improves.

Our response: We reviewed the BLM report (Krening 2020, entire) and North Park phacelia is able to germinate over a range of cold temperatures. We did not incorporate the reviewer's recommendation into the SSA report to retain this metric. Instead, we removed the annual mean temperature metric from our evaluation of current and future condition in the SSA report because it was redundant to the other climate metric we retained in our analysis, the growing season water deficit (GSWD) metric, which is calculated using a combination of seasonal temperature and precipitation information.

(16) Comment: One reviewer recommended that we measure the distance between populations and evaluate the ability of known insect pollinators to travel these distances because low levels of connectivity were identified in Riser et al. (2019, entire).

Our response: We evaluated the distance between North Park phacelia populations that are more than 2 miles apart within the North Park and Larimer River basins. These distances may exceed the maximum flight distances (approximately 1.5 miles (mi) (2,500 m)) of the larger pollinators like bumblebees (*Bombus* sp.); however, bumblebees are able to cover large areas (up to 107 acres (ac) (44 hectares (ha)) in a few days (Hagen et al. 2011, p. 1). We would expect shorter flight distances and area coverage from smaller pollinators. We did not evaluate the ability of North Park phacelia's pollinators to travel between populations because the best available information already indicates that low levels of connectivity may be inherent to the species and low levels have persisted over the last 10,000 generations (approximately the last 5,000 years) (Naibauer and McGlaughlin 2022, entire). Therefore, we determined that the recommendation would not provide additional information about gene flow between North Park phacelia populations.

(17) Comment: One reviewer disagreed with the future condition scores for the population abundance and occupied habitat area metrics that remain the same as current condition under all future scenarios. The reviewer recommended that we change the scoring under future scenarios as was done in SSA reports for other Colorado plants (Rocky Mountain monkeyflower (*Mimulus gemmiparus*) and Skiff milkvetch (*Astragalus microcymbus*)) but did not recommend a particular score for these metrics. The reviewer also recommended that if we add a pollinator abundance metric to our evaluation, as discussed above in comment number 14, future condition scores should be different than current condition scores for that metric as well.

Our response: We considered the reviewer's recommendation but did not change the future condition scores for the population abundance and occupied habitat area metrics. As we mentioned in the SSA report, we are not able to reliably project direct future changes to these two metrics. We expect both metrics to change on an annual basis as they do currently in response to climate and demographic factors (Service 2023, pp. 25–30). Thus, we projected future changes to climatic factors, as measured by the GSWD metric, to assess the potential future change in plant abundance and occupied habitat area indirectly in our evaluation of future condition (Service 2023, pp. 36–47). We did not add a pollinator abundance metric to our evaluation as discussed in our response to comment number 14.

(18) Comment: One reviewer recommended that we include the BLM frequency data in our evaluation of current and future condition. The reviewer considers the BLM frequency data to be statistically robust and stated that the large, annual fluctuations in plant frequency very likely reduce the resilience of small North Park phacelia populations despite not knowing the underlying cause of the fluctuations.

Our response: We declined to include the BLM frequency data as a metric in our evaluation of current and future condition because these data are not available for all populations (Service 2023, p. 26). However, we incorporated the BLM data in the SSA Report when describing and evaluating the species' response to climate, demographic factors, and catastrophic events such as prolonged drought conditions.

(19) Comment: One reviewer recommended that we summarize the scope, hypotheses, and findings of two studies, Colorado Natural Areas Program (1994) and McCormick and Wu (1999), which we cite in the SSA report.

Our response: We summarized the findings of the two studies but declined to include more detail such as their scope and hypotheses in the SSA report, because they were not relevant to our analysis. The two studies are publicly available for those interested in the level of detail desired by the peer reviewer.

(20) Comment: We received conflicting comments from two peer reviewers on the following sentence in the draft SSA report: ''North Park phacelia needs to maintain all 11 populations in their current configuration and distribution to maintain viability.'' One reviewer agreed with the sentence, and another reviewer questioned its accuracy and recommended that we state that this is a hypothesis rather than a fact if there is no supporting information.

Our response: We considered the reviewers' comments and agreed with the reviewer who questioned the accuracy of the sentence because we do not have supporting information that indicates all 11 populations known at the time of the draft SSA report are needed for viability. We revised the sentence to be consistent with our analytical framework and best available information that North Park phacelia needs multiple, resilient populations distributed across its range to reduce risk associated with catastrophes such as severe, prolonged drought (redundancy) and longer-term environmental change (representation) (Service 2023, pp. 18–19).

(20) Comment: One reviewer considers the following sentence to be misleading because the BLM frequency data provides reliable and representative rangewide trend data for North Park phacelia in Jackson County: ''Reliable range-wide census data are not available to compare year-to-year abundance, or trend, because survey data were not collected every year nor at every occurrence.''

Our response: We removed the words, ''or trend'' in the sentence to partially address the comment in the SSA report. However, we consider the rest of the sentence to be accurate with respect to census data because we are not able to derive census data from the BLM frequency data. Furthermore, we agree with the reviewer that the trend information derived from the BLM frequency data applies only to those populations in the North Park basin, not to the populations in the Larimer River and Troublesome Creek basins.

(21) Comment: One reviewer stated that the conclusions of the SSA report were not clear and recommended that the information in appendix A be discussed in more detail or perhaps appendix A should be added to the body of the SSA report.

Our response: We added more detail and a summary of the information in appendix A to the SSA report to partially address the comment. However, we did not add appendix A to the body of the SSA report to maintain a consistent document format and for ease of reading. Appendix A is part of the SSA report, and there was no added benefit to moving the appendix to the body of the SSA report. All information in the SSA report was considered in making our determination of the species' status under the Act.

Previous Federal Actions

On September 2, 1980, we proposed to list the North Park phacelia as an endangered species due to its small, localized extent of one population and the threat of OHV use, specifically motorcycle use, as well as livestock trampling, potential energy development of coal and oil and gas, and the inadequacy of regulatory mechanisms (45 FR 58168–58171). We determined that it would not be prudent to designate critical habitat because of the concern of collection. A second population was identified in 1981 on BLM lands within a Known Recoverable Coal Resource Area that was partially leased for oil and natural gas and subject to livestock trampling. On September 1, 1982, we finalized the listing of North Park phacelia as an endangered species (47 FR 38540). The final rule included a determination that the designation of critical habitat for North Park phacelia was not prudent. In 1986, we published a final recovery plan for North Park phacelia (Service 1986, entire). In 2012, we published a 5-year status review that recommended the species remain an endangered species under the Act (Service 2012, entire).

On April 12, 2019, we published a notice of initiation of a 5-year review for the North Park phacelia in the **Federal Register** and requested information that could have a bearing on the status of North Park phacelia (86 FR 14965–14966). We completed the 5-year status review on August 30, 2021; this 5-year status review recommended that North Park phacelia be delisted since it does not meet the definition of an endangered species or a threatened species under the Act.

Background

A thorough review of the taxonomy, life history, and ecology of the North Park phacelia is presented in the SSA Report Version 1.1 (Service 2023, entire). Recent genetic work has updated the status and range of North Park phacelia since it was listed in 1982. In 2019, a genetic study using microsatellite markers identified that three populations of a closely related subspecies, Scully phacelia (*Phacelia formosula* var. *scullyi*), in adjacent Larimer County, Colorado, were actually North Park phacelia based on an evaluation of genetics, morphology, and ecology, grouping them with the North Park phacelia (*Phacelia formosula*) populations in Jackson County, Colorado (Riser et al. 2019, pp. 7–8). Most recently, in 2022, a genetic study using random site-associated DNA sequencing (RADseq) confirmed the Riser et al. (2019) findings that the three populations in Larimer County are North Park phacelia and determined that another population in Grand County, Colorado, is also North Park phacelia. This population in Grand County was formerly identified as Troublesome phacelia (*Phacelia ginaglenneae*) (Naibauer and McGlaughlin, 2022, entire). These genetic studies are summarized in the SSA report (Service 2023, pp. 3, 8).

North Park phacelia is an herbaceous, short-lived plant in the waterleaf family (*Hydrophyllaceae*) (Ackerfield 2022, p. 533; Service 2023, pp. 5–7). The species occurs in Jackson, Larimer, and Grand Counties, Colorado, at elevations ranging from 7,490 to 8,260 ft (2,282–2,517 m). North Park phacelia grows in sparsely vegetated, well-drained, barren soils of the Coalmont formation, Niobrara Shale, and clay and white shale of the Troublesome Creek

formation surrounded by sagebrush-dominated habitat (*Artemisia tridentata* var. *vaseyana* and *Artemisia nova*) (CNHP 2015a, p. 1; CNHP 2020 pp. 2–3; Service 2023, pp. 6–7).

North Park phacelia plants grow up to approximately 9 inches (in) (22 centimeters (cm)) tall, with one to many stems, and purple or violet flowers on flowering stalks (inflorescences) shaped like a coiled scorpion's tail (helicoid cyme) (Spackman et al. 1997; Ackerfield 2022, p. 533). Each fruit produces four small seeds (Atwood 2010, p. 1). North Park phacelia has four life stages: seeds, seedlings, rosettes, and reproductive adults. Plants live for 1 year (annual) or 2 years (biennial) with one reproductive event if they survive to adulthood. Flowering occurs from late spring through the summer (June through August) during the driest time of the year with June being the most significant transition time to flowering (McCormick and Wu 1999, p. 7). Successful reproduction to produce seeds likely depends on the temperature and moisture conditions of the spring and summer months of that year as well as favorable conditions during the prior year for seedling establishment and rosette survival (McCormick and Wu 1999, pp. 5, 8). The species is not known to reproduce asexually.

Measurable differences in plant morphology (size, leaves, and seeds) in plants and soil type occur across the range by county (and basin). Plants in Jackson and Larimer Counties (the North Park and Larimer River basins) generally have a life span of 2 years and occasionally 1 year. Plants in Grand County (the Troublesome Creek basin) generally have a life span of 1 year. These morphological, life history, and soil differences contributed to the previous taxonomic delineations mentioned above that are no longer applicable (Naibauer and McGlaughlin 2022, pp. 2, 5–7, 23). The Integrated Taxonomic Information System (ITIS) considers North Park phacelia to be a distinct species (ITIS 2023, entire).

Pollinators are likely needed to support maximum reproduction and genetic diversity of the species. Plants can produce seeds without pollinators by self-pollination, although this process results in lower fruit and seed production (Warren 1990, pp. iii, 16). While we do not know what the most important pollinators are for North Park phacelia, insect floral visitors include hover flies, wasps, and a variety of bees (Warren 1990, p. 44; Service 2023, pp. 13–14). Native bees in the following genera are frequent floral visitors: plasterer bees (*Colletes spp.*), small carpenter bees (*Ceratina spp.*), sweat bees (*Dialictus spp.*), and potter bees (*Anthidium spp.*) (Warren 1990, pp. 17–18).

Seeds are produced in the fall and likely require a period of cold stratification (cold temperatures and moist conditions) during the winter months to break dormancy before germinating the following spring or fall (Gamboa-deBuen and Orozco-Segovia 2008, entire). Specific germination requirements of North Park phacelia are not known but likely consist of some combination of appropriate temperature and moisture conditions (Krening 2020, p. 6).

We have incomplete information regarding the longevity of seeds in the seedbank. North Park phacelia seeds are known to remain viable within the soil for at least 1 to 2 years, and longer timeframes are likely but have not been evaluated (Krening 2020, p. 2; Krening and Dawson 2021, p. 5). Based on information for two other species in the *Phacelia* genus with similar life histories, the species likely maintains a persistent seedbank with seeds remaining viable for extended periods, anywhere from approximately 4 to 18 years (Langton 2015 pp. v, 1; Meyer 2018, p. 1; Service 2013, p. 1).

North Park phacelia disperses primarily over short distances through wind, water runoff, ants, and gravity (seeds roll downhill within the habitat). Given the species' expanded range, long-distance dispersal events likely occurred in the past. North Park phacelia's level of genetic diversity is low (using RADseq methods) to moderate (using microsatellite methods) (Naibauer and McGlaughlin 2022, pp. 16–18; Riser et al. 2019, p. 7). These differences in the amount of genetic diversity (moderate in one study versus low in another) are expected based on the different methodologies (Forester 2022, p. 1; Thurman 2022, p. 1). There is agreement by both studies on the differences in genetic structure of populations between the three basins (*i.e.,* at the county level), which are likely the result of isolation effects from the long distances and mountain ranges that separate them (Naibauer and McGlaughlin 2022, pp. 16–18; Riser et al. 2019, p. 7, Forester 2022, p. 2; Thurman 2022, p. 1; Service 2023, pp. 3, 8). These genetic differences are consistent with past taxonomic delineations of different species and subspecies in the three basins (see earlier discussion).

Preliminary genetic information indicates there is little to no recent or historical gene flow between populations over the last approximately 10,000 generations (5,000 to 10,000 years); however, there appears to be sufficient gene flow and genetic diversity within populations that inbreeding is not a concern (Naibauer and McGlaughlin 2022, entire; Service 2022, pp. 3, 8). A more robust sampling and genetic analysis of gene flow is needed to confirm or refute these results (Forester 2022, p. 1). Genetic variation occurs between populations, and the genetic differences increase with distance, indicating a pattern of isolation by distance (Naibauer and McGlaughlin 2022, pp. 3, 16–17, 25). Populations near each other are more alike genetically due to larger amounts of gene exchange relative to more distant populations (Naibauer and McGlaughlin 2022, pp. 3, 27–28). The genetic results indicate the species has a poor dispersal ability and there is little to no pollinator-mediated gene flow between populations.

North Park phacelia's current range in Colorado extends approximately 779 square miles (mi^2) (2,018 square kilometers (km^2)) from the Laramie River in northwestern Laramie County, across the Medicine Bow Mountain Range to North Park in Jackson County, and across the Rabbit Ears Mountain Range to Troublesome Creek in Grand County. The species is distributed in three basins (Laramie River, North Park, and Troublesome Creek), one basin per county, and each basin is separated by a mountain range. The North Park phacelia occurs on approximately 452 ac (183 ha) of occupied habitat, primarily on Federal lands that are managed by BLM and the Service and that comprise 81 percent of its occupied habitat. The remaining occupied habitat (19 percent) occurs on private lands, 5 percent of which is managed under a conservation easement specifically designed to protect North Park phacelia (Service 2023, pp. 10–11).

We do not know if the North Park phacelia was more broadly distributed historically. North Park phacelia's current range is much larger than was known at the time of listing due to the discovery of new populations in Jackson County and the taxonomic revisions of populations in Laramie and Grand Counties. At the time of Federal listing, there were only two known North Park phacelia populations with approximately 2,700 plants located in North Park (Jackson County), Colorado (47 FR 38540, September 1, 1982). As of 2023, there are 12 known populations with approximately 23,000 to 26,000 plants, an increase of more than 20,300 plants than we reported in our listing rule (47 FR 38540, September 1, 1982). The current population size is also an increase of more than 8,600 plants than

we reported in our 2021 5-year status review with the addition of the new population (Troublesome Creek Area of Critical Environmental Concern (ACEC)) in Grand County (Service 2023, pp. 3, 10–11).

Population trends for North Park phacelia are difficult to determine. The best available information includes periodic population estimates provided by the Colorado Natural Heritage Program (CNHP) and annual plant frequency monitoring (the presence or absence of the species within a monitoring grid of 1-m-by-1-m cells) conducted by BLM at five populations in North Park (Jackson County) over a 13-year period (2010 to 2022) (Krening and Dawson 2022, entire). The BLM frequency monitoring cannot be used to estimate population abundance, but it shows large amounts of annual variability attributed to climate and demographic variables with no clear trend over the 13-year period (Service 2023, pp. 25–26). The frequency monitoring also shows that North Park phacelia exhibits a strong response in some years to drought conditions, as seen in 2012 and 2020, with low to no above-ground plant abundance (Krening and Dawson 2022, entire). Following drought conditions, the species is resilient and plant abundance generally rebounds back to pre-drought levels in years with favorable precipitation.

Fluctuations in plant frequency are probably a response to drier conditions in conjunction with demography and perhaps the availability of other resources under various moisture conditions (Schwinning and Sala 2004, pp. 211–219). North Park phacelia and other short-lived plants have the potential to respond to climate conditions within a relatively short timeframe because of their short life span (Tielbörger et al. 2014, p. 2). They can employ adaptations to survive periods of resource limitation (*i.e.,* drought) and can respond strongly to available water (Alexander et al. 1994; p. 2004; Salguero-Gómez et al. 2012, p. 3100; Schwinning and Sala 2004, entire). Moreover, North Park phacelia's ability to respond quickly to precipitation levels is a response that is consistent and compatible with plant adaptations to survive semi-arid environments with periods of drought and is advantageous to avoid stressful conditions (Lesica and Crone 2007, p. 1367; Schwinning et al. 2004, entire; Schwinning and Sala 2004, entire; Verhulst et al. 2008, pp. 104–105). Based on the discovery of many new populations, the lack of extirpated populations, and the CNHP and BLM information, the distribution of the species appears to be currently stable.

Recovery Criteria

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the Federal Lists of Endangered and Threatened Wildlife and Plants.

Recovery plans provide a roadmap for us and our partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to evaluate progress towards recovery and assess the species' likely future condition. However, they are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species or to delist a species is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all of the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and that the species is robust enough that it no longer meets the definition of an endangered species or a threatened species. In other cases, we may discover new recovery opportunities after having finalized the recovery plan. Parties seeking to conserve the species may use these opportunities instead of methods identified in the recovery plan. Likewise, we may learn new information about the species after we finalize the recovery plan. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. The recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all of the guidance provided in a recovery plan.

Here, we provide a summary of progress made toward achieving the recovery criteria for the North Park phacelia. More detailed information related to conservation efforts can be found below under Summary of Biological Status and Threats. We completed a final recovery plan for the North Park phacelia in 1986 (Service 1986, entire). The 1986 plan includes objective, measurable criteria for delisting; however, the plan has not been updated for more than 30 years, so some aspects of the plan may no longer reflect the best scientific information available for the North Park phacelia.

Below is the single delisting criterion described in the 1986 North Park phacelia recovery plan (Service 1986, p. 9) and the progress made to date in achieving the criterion.

Criterion for Delisting

North Park phacelia may be considered recovered when 15 occurrences with 500 mature flowering plants each are identified and secured.

Progress

Based on information through 2022, there are a total of 12 populations with approximately 23,000 to 26,000 plants. We consider populations to be synonymous with the criterion's use of the word ''occurrences,'' and the current number of populations (12) does not meet the recovery criterion (of 15 populations). While we do not know the number of *flowering* plants in each population, we do know the current total population of the species (23,000 to 26,000), which includes flowering and non-flowering plants, exceeds the total number of flowering plants identified by this criterion (7,500). We also know that 7 populations (Case Flats, Potter Creek, Rockwell; Verner and Brownlee; Diamond J State Wildlife Area; North Park Resource Natural Area ACEC; Forrester Creek; Hohnholz North East; and Troublesome Creek ACEC) have at least 500 plants, which includes both flowering and non-flowering plants.

Given what we now know about the species' annual fluctuations in frequency and strong drought response (see Background, above), we do not expect populations to meet the recovery criterion (of 500 flowering plants) every year and consider this metric to be insufficiently tailored to the species' demography (life-history characteristics). This metric (500 flowering plants) is not specific to North Park phacelia but is an application of the 50/500 rule, a generalized rule of

thumb to identify a minimum population size to avoid inbreeding depression (minimum of 50 breeding individuals) and maintain long-term genetic diversity for evolutionary potential (minimum of 500 breeding individuals) in an idealized population that is both small and isolated (Franklin and Frankham 1998, entire; Jamieson and Allendorf 2012, entire). Some researchers recommend that the metric of 500 breeding individuals should not be considered a prediction of extinction risk without further consideration of demography and gene flow (Jamieson and Allendorf 2012, pp. 580–583). Gene flow, even at very low levels, can maintain genetic diversity in populations with fewer than 500 breeding individuals, and lower genetic diversity is a poor predictor of extinction risk when threats such as habitat loss and demography are not taken into account (Swindell and Bouzat 2006, pp. 86–87; Palstra and Ruzzante 2008, pp. 3428, 3430, 3441–3443; Jamieson and Allendorf 2012, pp. 580–583). Recent work recommends an evaluation of many attributes, including but not limited to demography and levels of genetic diversity, to evaluate a species' adaptive capacity and vulnerability to changing conditions (Thurman et al. 2020, entire; Forester et al. 2023, entire).

The North Park phacelia populations occur primarily on Federal lands (81 percent of occupied habitat) with management plans in place to protect the species and its habitat, and we consider these populations to be secure. In addition, on private lands, The Nature Conservancy manages a conservation easement specifically designed to protect the species in perpetuity (5 percent of occupied habitat) (Byers 2023, entire); however, little to no protection exists on the remaining private lands (14 percent of occupied habitat). Despite the lack of protections on private lands for the North Park phacelia, no current or projected future population-level threats occur on these lands except for the Airport population (see *Stressors,* below). Thus, although not all populations are considered secure, we conclude that the intent of the criterion to ensure that sufficient populations were protected from threats into the future has been met for 11 of the 12 known populations. While the North Park phacelia's status does not meet the 1986 recovery criterion, we find that the species' populations are sufficiently resilient and that the smaller number of populations and lack of available information on flowering plant abundance within populations are no longer relevant given what we now know about the species.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). On the same day, we issued a finalrule that revised 50 CFR 17.31 and 17.71 (84 FR 44753) and ended the ''blanket rule'' option for application of section 9 prohibitions to species newly listed as threatened after the effective date of those regulatory revisions (September 26, 2019).

Our analysis for this decision applied the regulations that are currently in effect, which include the 2019 revisions. However, we proposed further revisions to these regulations on June 22, 2023 (88 FR 40764). In case those revisions are finalized before we make a final status determination for this species, we have also undertaken an analysis of whether the decision would be different if we were to apply those proposed revisions. We concluded that the decision would have been the same if we had applied the proposed 2023 regulations. The analyses under both the regulations currently in effect and the regulations after incorporating the June 22, 2023, proposed revisions are included in our decision file.

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects. The determination to delist a species must be based on an analysis of the same five factors.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term

''foreseeable future'' extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define the foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be proposed for delisting. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess North Park phacelia's viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time which we then used to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R6–ES–2023–0114 on *https://www.regulations.gov.*

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future conditions, in order to assess the species' overall viability and the risks to that viability. In addition, the SSA report (Service 2023, entire) documents our comprehensive biological status review for the species, including an assessment of the potential threats to the species.

The following is a summary of this status review and the best available information gathered since that time that has informed this decision.

Individual Needs

Individuals of North Park phacelia need certain habitat factors, including: well-drained sandstone, shale, or clay soils of the Niobrara, Coalmont, and Troublesome Creek formations; a montane, mid-elevation climate (elevations ranging between 7,490 to 8,260 ft (2,282 to 2,517 m) with approximately 12 in (31 cm) of rain and 63 in (1.6 m) of snow per year; a period of cold, moist conditions during the winter to break seed dormancy and facilitate germination in the spring or fall; moisture during the spring and summer (growing season) for successful germination, establishment and reproduction (seed production); and pollinators for maximum reproduction (Service 2023, pp. 14–16; U.S. Climate Data 2023, entire).

Population Needs

To be sufficiently resilient, populations require recruitment, survivorship, and reproduction at rates able to sustain populations, in addition to pollinator connectivity between individuals within populations. We consider population resiliency to be positively correlated with plant abundance (Service 2023, pp. 16–17). Sufficiently resilient populations also contain enough individuals across each life stage (seed, seedling, and mature reproductive adult) to bounce back after experiencing environmental stressors such as drought, livestock grazing, habitat disturbance, and demographic stochasticity (births, deaths, and reproductive events that fluctuate over time). While we do not know the level or amount of recruitment necessary for populations to be sufficiently resilient, we assume that North Park phacelia populations are most resilient when all four life stages are present.

Species Needs

The number of populations across the landscape influences the redundancy of North Park phacelia. More populations across the range increase the species' ability to withstand catastrophic events. Individuals and populations inhabiting diverse ecological settings and exhibiting genetic or phenological variation add to the level of representation across the species' range. The greater diversity observed in North Park phacelia genetics, habitats, and morphology, the more likely it is to be able to adapt to change over time. Thus, the species needs (1) a sufficient number and distribution of resilient populations to withstand catastrophic events (redundancy) and (2) a range of variation that allows the species to adapt to changing environmental conditions (representation) (Service 2023, pp. 18–19). The SSA report provides additional detail on the species' individual-, population-, and species-level needs (Service 2023, pp. 11–19).

Stressors

In the SSA report, we evaluated stressors and other actions that can positively or negatively affect North Park phacelia at the individual, population, or species levels, either currently or into the future (Service 2023, pp. 19–27). In this proposed rule, we will discuss only those factors in detail that could meaningfully impact the status of the species. Residential and urban development, off-highway vehicle

(OHV) use, mining and energy development, livestock grazing, invasive plants, and climate change are all factors that influence or could influence the species' viability (Service 2023, pp. 19–27). Those stressors that are not known to have effects on North Park phacelia populations, such as small mammal and insect herbivory, pesticides, and agriculture, are not discussed here but are evaluated in the SSA report (Service 2023, pp. 21, 27, appendix A).

Residential and Urban Development

Private lands account for approximately 19 percent of occupied habitat for North Park phacelia populations (Service 2023 tables 3 and 4, p. 11). Currently, without a Federal nexus (funds, permits, or approval), the species has little to no protection from residential and urban development on the majority of private lands (14 percent of occupied habitat overall) with the exception of a conservation easement that protects one population (Diamond J State Wildlife Area) comprising 5 percent of occupied habitat. The conservation easement is held by The Nature Conservancy and specifically addresses the management and protection of North Park phacelia in perpetuity (Byers 2023, entire).

We assessed the residential and urban development stressor to North Park phacelia based on our evaluation of disturbance in and near known populations. We also included utility corridors and roads in our evaluation of this stressor. A very low level of residential and urban development occurs in or near plant populations, and residential and urban development does not appear to result in any loss of habitat (Service 2023, appendix A). The current human population estimate for Jackson County is 1,363, with a negative growth rate (−2.2 percent) from 2010 to 2022 (U.S. Census Bureau 2022, entire). The Colorado State Demography Office forecasts that Jackson County's human population will continue to decrease through 2050 (Colorado Department of Local Affairs 2022, entire). The Laramie River Valley portion of Larimer County where North Park phacelia occurs does not contain a municipality, and we assumed that population growth in this area is similar to the projections for Jackson County. We did not perform this evaluation for Grand County because the one population (Troublesome Creek ACEC) occurs on Federal lands designated as a land use avoidance area where rights of way (ROW) grants would be avoided to the extent possible (BLM 2015a, pp. 52–53, 70).

We incorporated the current levels and effects of this stressor in our evaluation of current resiliency. However, given the projected future declines in the human population, we did not project any changes in this stressor in our evaluation of future resiliency (Service 2023, pp. 22, 37–38).

Off Highway Vehicle (OHV) Use

In the final listing rule (47 FR 38540, September 1, 1982), off highway vehicle (OHV) use, specifically motorcycle use, was identified as a primary threat to North Park phacelia in one of the two known populations at the time. Negative effects of OHV use include habitat degradation and plant mortality (Goeft and Alder 2001, entire; Brooks and Lair 2005, entire; White et al. 2006, entire).

We assessed the OHV use stressor to North Park phacelia based on our evaluation of overlap and effects to known populations. We also included other types of off highway recreation, such as mountain biking, hiking, and target shooting, in our evaluation of this stressor. Excessive OHV use continues to occur in the one population (Airport) where it was identified at the time of listing, and this stressor does not appear to have changed since listing (CNHP 2020, p. 1; Service 2023, pp. 26, 33). This location is readily accessible, and corrective actions such as boulder placement may have restricted use temporarily, but those deterrents have been removed and are no longer restricting recreational access and use. This is the only location where OHV use has a population-level effect to North Park phacelia. Low to occasional OHV use was documented in four other populations (Service 2023, appendix A) and currently is affecting only individual plants. OHV use is not permitted on Refuge lands (López, 2023, pp. 1–3) or the private land under conservation easement (Byers 2023, entire).

We incorporated the current levels and effects of this stressor in our evaluation of current resiliency. However, given the projected future declines in the human population, declines in recreational use since listing in four populations, and relatively stable OHV use in the Airport population, we did not project any changes in this stressor in our evaluation of future resiliency (Service 2023, p. 37).

Mining and Energy Development

In the final listing rule (47 FR 38540, September 1, 1982), coal or oil and gas exploration was identified as a potential threat to North Park phacelia in one of the two known populations at the time. Negative effects of mineral and energy development include habitat loss and degradation, plant mortality, reduced plant growth and reproduction, and potential introduction and spread of invasive weeds (Brock and Green 2003, entire).

We assessed the mineral and energy development stressor to North Park phacelia based on our evaluation of overlap and effects to known populations. The best available information indicates this stressor is not present in North Park phacelia populations and there has been no infrastructure development supporting coal, oil, and natural gas development resulting in the loss of plants or habitat (Service 2023, pp. 20–36).

Currently, there are no active coal mining operations or applications for coal mines in Jackson, Larimer, or Grand Counties (Colorado Division of Reclamation, Mining and Safety 2023a and b, entire). Coal is located in Jackson County, but future mining is not likely to occur due to transportation costs (BLM 2009, pp. 8, 14; BLM 2015b, 3–191, 3–194).

We evaluated the number of oil and gas wells in and associated habitat disturbance near North Park phacelia populations. Our evaluation in the SSA report identified two closed (plugged and abandoned) oil and gas wells within 656 ft (200 m) of North Park phacelia populations but no recent habitat disturbance associated with the wells (Service 2023, pp. 23–24). The potential for oil and gas is high within Jackson County, nonexistent in Larimer County, and low in Grand County (BLM 2009, pp. 22, 49, 50, 52; BLM 2015b, 3–190). There are three populations partially or wholly within existing oil and gas leases in Jackson County. We are not aware of any proposed energy development projects in or near North Park phacelia populations. Similar to coal development, oil and gas development in Jackson County is strongly constrained by transportation costs (BLM 2009, pp. 3–4). Future oil and gas development will be restricted in North Park phacelia habitat based on regulatory mechanisms for this stressor afforded to the species and BLM sensitive species on Federal lands as discussed below.

On Federal lands, BLM provides regulatory mechanisms to protect North Park phacelia from mining and energy development. BLM provides a controlled surface use (CSU) stipulation of a 328-ft (100-m) to 656-ft (200-m) avoidance buffer for North Park phacelia and other BLM sensitive plant species that would apply to energy development (coal mining and oil and gas extraction)

(BLM 2015a, pp. 24–26). BLM also provides a no surface occupancy (NSO) stipulation within Areas of Critical Environmental Concern (ACECs) and surveys and avoidance measures to protect North Park phacelia and other BLM sensitive species from plant and habitat loss associated with energy development (coal mining and oil and gas extraction) (BLM 2015a, pp. 64–65). On Refuge lands, most lands have been withdrawn from mining for coal and other locatable minerals. BLM is responsible for mineral management on Refuge lands that have not been withdrawn as well as oil and gas leasing and development; in those cases, BLM stipulations, surveys, and avoidance measures would also apply to Refuge lands (Service 2016, pp. 5–6). The BLM avoidance buffers minimize the potential for measurable, negative effects to North Park phacelia based on our literature review and evaluation for other rare, endemic plants growing in poorly developed or low-fertility soils (Service 2021b, chapter 7 and appendix E). Ten populations occur on lands where BLM regulations apply.

We incorporated the current levels and effects of this stressor in our evaluation of current resiliency. However, given the Federal regulatory mechanisms and lack of current mining and energy development or proposed projects in or near North Park phacelia populations, we did not project any changes in this stressor in our evaluation of future resiliency (Service 2023, pp. 24–25, 37).

Livestock Grazing

In the final listing rule (47 FR 38540, September 1, 1982), livestock grazing was identified as a threat to North Park phacelia in the two known populations at the time. Negative effects of livestock grazing include habitat degradation through the drying or compaction of soils, plant mortality or damage from trampling resulting in reduced individual survival, growth and reproduction, potential introduction and spread of invasive weeds, and the consumption of floral resources for pollinators (Fleischner 1994, entire; Lovich and Bainbridge 1999, entire; Mustajarvi et al. 2001, entire; Reisner et al. 2013, entire).

We assessed the livestock grazing stressor to North Park phacelia based on reporting by the CNHP and agricultural statistics of livestock inventories in the three counties over time. Some populations show evidence of livestock use but no indication of plant damage or mortality (CNHP 2020, entire). On BLM lands, livestock grazing is managed during July and August in North Park phacelia habitat to allow plants to flower and set seed (BLM 2015a, p. H–2). On Refuge lands, livestock grazing is not permitted in North Park phacelia habitat (López, 2023, pp. 1–3). The best available information indicates this stressor is currently affecting only individual plants and is not having a population-level effect to North Park phacelia. Agricultural statistics on livestock totals in the three counties over a 20-year period (1997 to 2017) indicate an approximately 50 percent drop in livestock numbers in Jackson County (28,748 to 14,207) with relatively stable numbers in Larimer and Grand Counties (U.S. Department of Agriculture 2023, entire).

We did not incorporate the current levels and effects of livestock grazing in our evaluation of current and future resiliency because this stressor is not having a population-level effect to North Park phacelia. We do not expect grazing management to change on Refuge lands and on BLM lands under the current BLM resource management plan (RMP) (see *Conservation Efforts and Regulatory Mechanisms,* below; Service 2023, pp. 22–23). Given the stability and decline in livestock totals per county discussed above, we do not expect livestock grazing to increase in North Park phacelia habitat in the future.

Invasive Plants

Invasive plants were not identified as a threat to North Park phacelia at the time of listing or in the 2012 status review (Service 2012, entire). Russian thistle (*Salsola tragus*), other thistles (*Cirsium* spp.), and cheatgrass (*Bromus tectorum*) are present in a few populations and appear to be associated with disturbance from development, OHV use, and livestock grazing (Service 2012, pp. 8, 11; CHNP 2020, pp. 9, 14, 47; Service 2022, p. 3). The Refuge is addressing this stressor by removing invasive thistle by hand (Service 2022, p. 3). The best available information indicates this stressor is currently affecting only individual plants and is not having a population-level effect to North Park phacelia.

We considered the effects of invasive plants to population resilience as part of our disturbance evaluation because this stressor is associated with development, roads, and other surface disturbance (Service 2023, pp. 20–23).

Climate Change

Climate change may affect the long-term survival of native species, including North Park phacelia, especially if longer or more frequent droughts occur. Within the range of North Park phacelia, under lower emission scenarios, summer maximum temperature is expected to increase 4.7 °F (2.6 °C), and under higher emission scenarios, summer maximum temperature is expected to increase 6.6 °F (3.7 °C) by mid-century, compared to the historical average between 1971 and 2010 (Hegewisch and Abatzoglou 2023, entire). Extreme droughts, like those that occurred in 2012 and 2020, could also become more frequent by mid-century. Historically (1979 to 2000), droughts of this scale did not occur within the range of the species (Service 2023, appendix B). Under lower emissions scenarios, these extreme droughts could occur four times between now and mid-century or, under higher emissions scenarios, five times between now and mid-century (Service 2023, appendix B).

North Park phacelia appears to respond strongly and quickly to climate conditions with peak years and trough years of plant frequency, although some uncertainty exists about the climate variables to which the species is responding. Growing season (spring and summer) precipitation appears to be important for plant survival and reproduction; however, seedling recruitment and plant frequency are not strongly correlated with precipitation and temperature (Krening and Dawson 2021, p. 4; Service 2023, p. 24). In some of the populations, there is a 3-to-5-year cycle of plant abundance fluctuations (peak to trough years), which appears to be influenced by climate conditions and demography (Krening and Dawson 2021, p. 4). Two trough years (2012, 2020) with lower plant frequency likely reflect the extreme drought conditions during the growing season. The drought conditions of these 2 years, as measured by the growing season water deficit (GSWD), was approximately 27 in (68.6 cm). Another trough year (2016) occurred in a year with average growing season precipitation and cannot be attributed to drought. Rather, the working hypothesis is that the 2016 trough year was potentially influenced by demographic factors. One limitation is the lack of population-level climate data; there is only one weather station in Jackson County that provides climate information for the entire species' range. Rainfall is highly localized across the range of the species and may vary across short distances and among the populations in Jackson County (Timberman, pers. comm. 2022).

As we mentioned above, growing season precipitation appears to be important for plant survival and reproduction and appears to influence the variation in annual plant frequency.

We evaluated historical and current growing season precipitation conditions with the GSWD metric, a measure of the difference between potential evapotranspiration (water loss by evaporation and transpiration by plants) and precipitation during the growing season. We consider the GSWD metric to be a proxy for plant stress, with higher GSWD values indicating drier conditions and greater plant stress during the growing season. Other climate factors likely play a role in annual frequency variation, but we do not fully understand these relationships. We compared the average GSWD for the historical time period (1971–2000) to the current time period (2011–2022). The historical time period is slightly wetter (lower average GSWD) compared to the current time period. The historical (1979–2000) average GSWD was 21.96 in (55.78 cm) and varied annually between a low of 15 in (38 cm) to a high of 26 in (66 cm) (Service 2023, p. 30, appendix C). Half of the historical time period (11 years) had near-average GSWD conditions (within one-half standard deviation of the average), with 4 wet years and 4 drought years. The current (2011–2022) average GSWD was 23.15 in (58.8 cm), a near-average historical GSWD value. As mentioned above, based on our evaluation of the BLM frequency monitoring, a GSWD of 27 in (68.6 cm) may be a significant drought threshold where North Park phacelia primarily remains dormant in the seedbank.

Given North Park phacelia's strong response to climate conditions, we carried forward this stressor in our analysis in the SSA report to examine the species' potential response to future changes in this stressor. We relied on the historical average GSWD as the baseline to compare current and projected future climate conditions.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have analyzed the cumulative effects of identified threats and conservation actions on the species. To assess the current and future condition of the species, we evaluate the effects of all the relevant factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative-effects analysis.

Current Condition

In our SSA report, we evaluate current condition by examining current levels of resiliency in the 12 North Park phacelia populations and implications for redundancy and representation. Here, we summarize our evaluation of the current condition for resiliency, redundancy, and representation. Additional detail regarding our analysis is provided in the SSA report (Service 2023, pp. 20–36).

Resiliency

We describe the resiliency for each of the 12 populations in terms of the habitat and demographic factors needed by North Park phacelia (Service 2023, pp. 14–20, 27–35). We developed a categorical model to calibrate resiliency for the range of habitat and demographic conditions in each population. We first identified resource or demographic factors that contribute to the species' resiliency; these factors align with the individual resource needs and population-level needs we identified in the SSA analysis. We then defined threshold values for each identified resource or demographic factor that represent high, moderate, or low levels of that factor. Finally, we evaluated whether the current levels of each resource or demographic factor in a population fall within the predetermined thresholds for a high, moderate, or low score for the category; we then averaged these scores for each category to develop an overall current resiliency score for each population.

For North Park phacelia, our categorical model assessed the resiliency of each population by evaluating (1) the size of the occupied habitat area; (2) the ecological setting, a proxy for habitat condition that quantifies disturbance levels and evaluates a number of stressors including residential and urban development, OHV use, mineral and energy development, and invasive species cover; (3) population abundance; and (4) growing season water deficit (GSWD), a proxy for drought and soil moisture that approximates the availability of water during the spring and summer. We selected these habitat and demographic factors based on their importance to the species' resiliency and because we could evaluate them relatively consistently across all 12 populations.

Resiliency categories, thresholds, and scores were established based on the best available information and professional opinion of species experts. Occupied habitat areas are estimates based on expert opinion by CNHP and BLM using aerial imagery or field observations. Ecological setting and disturbance levels are based on a spatial analysis with conservative thresholds to compensate for the lack of detailed species-specific information and monitoring. Population abundance information is based on estimates by CNHP using field observations. GSWD, the difference between potential evapotranspiration and precipitation during the growing season, is based on climate data provided by the North Central Climate Adaptation Science Center and the Cooperative Institute for Research in Environmental Sciences.

There are 12 North Park phacelia populations, and according to our current condition analysis in the SSA report, half of them (6) have high resiliency, 5 have moderate resiliency and 1 has low resiliency (see table 1, below; Service 2023, p. 30). The 11 populations with high and moderate resiliency maintained adequate ecological setting conditions with low levels of disturbance, moderate or high population abundance, and a range of scores for occupied habitat areas. The 11 populations with high or moderate resiliency are distributed across the species' range (present in all three basins) (table 1). Of these, 6 populations have thousands of plants, the largest is estimated to have more than 8,600 plants, and these large populations are also distributed across the species' range (present in all three basins) (table 1). The Airport population in the North Park basin has a low resiliency score due to its low scores for occupied habitat area, population abundance, and ecological setting. This population has higher levels of disturbance from OHV use, and a road and parking lot surround this population, fragmenting the habitat. All 12 populations received a high score for GSWD because the current average (2011 to 2022) is similar to the historical average (1979 to 2000) for this metric. The 11 populations with high or moderate resiliency are at less risk from potential stochastic events, such as climatic variation, than the population with low resiliency.

TABLE 1—CURRENT CONDITION RESILIENCY RANKINGS FOR NORTH PARK PHACELIA POPULATIONS

Basin (county)	Population	Plant abundance	Population resiliency
North Park (Jackson)	North Park Resource Natural Area ACEC	1,200–3,000	High.
	California Gulch	200–350	Moderate.
	Airport	200	Low.
	Case Flats, Potter Creek, Rockwell	6,000	High.
	Verner and Brownlee	>2,000	High.
	Diamond J Ranch	300	High.
	Diamond J State Wildlife Area	2,000	High.
	Battleship–Dwinell Ranch	50–400	Moderate.
Larimer River (Larimer)	Hohnholz North East	375–800	High.
	Laramie River–Bull Mountain	300	Moderate.
	Forrester Creek	2,000	Moderate.
Troublesome Creek (Grand)	Troublesome Creek ACEC	8,675	Moderate.

Redundancy

Redundancy describes the number and distribution of populations, and the greater the number and the wider the distribution of the populations, the better North Park phacelia can withstand catastrophic events. The plausibility of catastrophic events also influences species' redundancy; if catastrophic events are unlikely within the range of the species, catastrophic risk is inherently lower. We identified severe and prolonged drought conditions as a plausible catastrophic event that may affect one or more populations simultaneously.

Redundancy for narrow endemic species is intrinsically limited; however, North Park phacelia populations are distributed across 3 basins (separated by 2 mountain ranges and approximately 20 mi (30 km) and 45 mi (72km)) in 12 populations within the range of the species. Within each basin, populations are separated by at least 1 mile (1.6 km). As we mentioned above, the 11 populations with high or moderate resiliency are distributed across the species' range (present in all 3 basins), and the 6 large populations with thousands of plants are also distributed across the species' range (present in all 3 basins). Thus, the 11 higher resiliency populations and their distribution help spread the risk of catastrophic drought conditions over a larger geographic area and contribute to the species' ability to withstand catastrophic events. We are not aware of any verified populations that have been extirpated (Service 2023, pp. 8–9). Redundancy has increased since North Park phacelia was listed because of our better understanding of the species, including more known populations, and a broader known distribution.

Representation

North Park phacelia exhibits some ecological and morphological variability between the three basins (see Background, above). The species has low to moderate genetic diversity and inbreeding is not a concern (Naibauer and McGlaughlin 2022, pp. 2–3, 25). Genetic variation occurs between populations, and the genetic differences increase with distance. Connectivity between nearby North Park phacelia populations appears to be low currently and historically (Naibauer and McGlaughlin 2022, pp. 3, 25). Six genetic management units were identified for the species, four in North Park basin, and one each in the Larimer River and Troublesome Creek basins (Naibauer and McGlaughlin 2022, pp. 27–28). Representation has increased since North Park phacelia was listed because taxonomic studies have led to the inclusion of additional populations previously considered different species and subspecies that contain more genetic variation (see Background, above).

Future Scenarios and Future Condition

In our SSA report, we forecasted the resiliency of North Park phacelia populations and the redundancy and representation of the species to mid-century (2050) using a range of four plausible future scenarios that capture the range of plausible climate conditions of the four different climate models and emissions scenarios (Bamzai-Dodson and Rangwala 2019, p. 15; Rangwala et al. 2021, pp. 4–5). We selected this timeframe because it encompasses approximately 15 generations of North Park phacelia and allows us to reliably project changes in the species' stressors, land management (*i.e.,* this timeframe encompasses at least the duration (30 years) of the applicable BLM resource management plan), and the species' response to stressors. While climate projections are available beyond 2050, there is a high degree of uncertainty in the species response to future climate conditions because information about North Park phacelia's physiological and genetic responses that may confer tolerance and adaptive capacity are unknown, and the potential exists for seedbank persistence under longer or more frequent drought conditions.

We developed four future scenarios using four plausible climate models that were downscaled to the range of North Park phacelia. By developing a range of plausible future scenarios, we assume that actual future conditions will likely fall somewhere between these four scenarios. Detailed descriptions of each scenario are available in the SSA report (Service 2023, pp. 36–47). Future climate conditions were the only differences among the four scenarios to capture the range of possible drought conditions (using the GSWD metric) to assess how well future climate conditions meet the needs of the species. Based on the best available information, our future scenarios included the assumption that the other stressors will not change in the future. Many of the stressors that affect North Park phacelia at the individual level currently do not influence population resiliency and are not expected to change in the future, so we did not change their extent or severity in our future scenarios. We initially considered increasing the amount of disturbance by as much as 10 percent in all populations, but the outcome did not change the future conditions of populations. Given the strong fluctuations in population abundance, we could not reliably project changes to the future population abundance metric directly. Instead, we relied on the future projections of the GSWD metric to evaluate future climate conditions and provide an indirect assessment of the population abundance. We generally expect population abundance to increase in years with average or near-average GSWD and decline in years with below-average GSWD, consistent

with the thresholds we identified for this metric.

In Scenario 1 (Warm and Wet), we project the resiliency of each population and the species' redundancy and representation will remain the same as the current condition (table 2). The average GSWD is projected to increase slightly compared to the historical average (by 0.96 in (2.4 cm)) but remains in the high-condition category for the GSWD metric. These slightly drier conditions would have minimal impact to populations because they are well within the range of variability that the species experienced historically. Between now and mid-century, the climate model projects only 1 year of GSWD above 27 in (68.6 cm; drought conditions associated with low plant frequency), which is less frequent than we have seen during the current condition time period (2011 to 2022). North Park phacelia is projected to maintain 11 populations with high or moderate resiliency in this scenario, and these populations are at less risk from potential stochastic events, such as climatic variation, than the population with low resiliency.

In Scenario 2 (Hot and Wet), we project the resiliency of nine populations will remain the same as the current condition, and three populations (Diamond J Ranch, Hohnholz North East, and Diamond J State Wildlife Area) will drop from high to moderate overall resiliency (table 2). Redundancy and representation remain relatively unchanged from the current condition. The average GSWD is projected to increase compared to the historical average (by 2.26 in (5.74 cm)), which results in the moderate-condition category for the GSWD metric. Between now and mid-century, the climate model projects 6 years of GSWD above 27 in (68.58 cm; drought conditions associated with low plant frequency), 2 of which were consecutive years, which is more frequent than seen during the current condition time period (2011 to 2022). The increase in water deficit as compared to historical conditions under this scenario (meaning that less water would be available to the plants) has the potential to negatively impact plant abundance. We expect the seedbank to remain viable under this projection and to support population resiliency. Despite some reduction in resiliency, North Park phacelia is projected to maintain 11 populations with high or moderate resiliency under this scenario, and these populations are at less risk from potential stochastic events, such as climatic variation, than the population with low resiliency.

In Scenario 3 (Very Hot and Very Wet), the resiliency of each population and the species' redundancy and representation are projected to remain the same as the current condition (table 2). The average GSWD is projected to increase slightly compared to the historical average (by 0.70 in (1.78 cm)) but remains in the high-condition category for the GSWD metric. These slightly drier conditions would have minimal impact to populations because they are well within the range of variability that the species experienced historically. Between now and mid-century, the climate model projects no years of GSWD above 27 in (68.58 cm; drought conditions associated with low plant frequency), which is less frequent than seen during the current condition time period (2011 to 2022). North Park phacelia is projected to maintain 11 populations with high or moderate resiliency under this scenario, and these populations are at less risk from potential stochastic events, such as climatic variation, than the population with low resiliency.

In Scenario 4 (Very Hot and Dry), we project the resiliency of nine populations will remain the same as current conditions, and three populations (Diamond J Ranch, Hohnholz North East, and Diamond J State Wildlife Area) will drop from high to moderate overall resiliency (table 2). Redundancy and representation remain relatively unchanged from the current condition. The average GSWD is projected to increase compared to the historical average (by 2.72 in (6.91 cm)), which results in the moderate-condition category for the GSWD metric. Between now and mid-century, the climate model projects 9 years of GSWD above 27 in (68.58 cm; drought conditions associated with low plant frequency), with 2 consecutive years and 3 consecutive years, which is more frequent than seen during the current condition time period (2011 to 2022). The increase in water deficit as compared to historical conditions under this scenario (meaning that less water would be available to the plants) has the potential to negatively impact plant abundance. We expect the seedbank to remain viable under this projection and to support population resiliency. Despite some reduction in resiliency, North Park phacelia is projected to maintain 11 populations with high or moderate resiliency, and these populations will be at less risk from potential stochastic events, such as climatic variation, than the population with low resiliency.

TABLE 2—SUMMARY OF NORTH PARK PHACELIA RESILIENCY FOR THE CURRENT CONDITION AND FOUR FUTURE SCENARIOS

Basin (county)	Population	Resiliency				
		Current condition	Future scenario 1	Future scenario 2	Future scenario 3	Future scenario 4
North Park (Jackson)	North Park Resource Natural Area ACEC.	High	High	High	High	High.
	California Gulch	Moderate	Moderate	Moderate	Moderate	Moderate.
	Airport	Low	Low	Low	Low	Low.
	Case Flats, Potter Creek, Rockwell.	High	High	High	High	High.
	Verner and Brownlee	High	High	High	High	High.
	Diamond J Ranch	High	High	Moderate	High	Moderate.
	Diamond J State Wildlife Area	High	High	Moderate	High	Moderate.
	Battleship–Dwinnell Ranch	Moderate	Moderate	Moderate	Moderate	Moderate.
Larimer River (Larimer)	Hohnholz North East	High	High	Moderate	High	Moderate.
	Laramie River–Bull Mountain	Moderate	Moderate	Moderate	Moderate	Moderate.
	Forrester Creek	Moderate	Moderate	Moderate	Moderate	Moderate.
Troublesome Creek (Grand)	Troublesome Creek ACEC	Moderate	Moderate	Moderate	Moderate	Moderate.

Under all four future scenarios, we project that redundancy and representation of North Park phacelia will remain similar to the current condition. The Airport population is projected to maintain its low current condition, and we do not anticipate it will become extirpated. Under the drier scenarios (Scenario 2 and 4), some genetic and morphological diversity within populations could be lost. However, even in the most pessimistic plausible scenario (Scenario 4), all populations are expected to remain extant and ecological, morphological, and genetic variation will continue to be represented by the 12 populations across North Park phacelia's range.

To summarize, we reviewed the current and future viability of North Park phacelia in the 2021 5-year status review and SSA report using the three conservation biology principles of resiliency, redundancy, and representation (see *Analytical Framework,* Service 2021a and 2023, entire; Shaffer and Stein 2000, pp. 306–310). We recommended in the 2021 5-year status review that threats to the species had been sufficiently ameliorated or had not materialized and that listing was no longer warranted. We received new genetics information identifying a new population of North Park phacelia after publication of the 2021 5-year status review that we added to the SSA report.

We evaluated North Park phacelia's resiliency based on the range of habitat and demographic conditions in each population (see *Analytical Framework,* below). Distributed across the species' range (*i.e.,* in all 3 basins), 11 populations have high or moderate resiliency, contributing to the species' ability to withstand stochastic or catastrophic events. Of these, 6 populations have thousands of plants; the largest is estimated to have more than 8,600 plants. These large populations are also distributed across the species' range (present in all three basins) and contribute to the species' overall low risk of extinction. No significant imminent stressors are acting on the species, and drought is the only stressor projected to increase in the future. Given the species' drought tolerance and likely ability to withstand future drought conditions, we project that 11 populations of North Park phacelia will remain in high or moderate resiliency with a low risk of extinction from stochastic or catastrophic events. The species has inherently low to moderate levels of genetic diversity with no apparent change from historical conditions. Ecological and morphological diversity across the range also contribute to North Park phacelia's adaptive capacity (representation) and its ability to respond to changes in the environment. Furthermore, the documented new populations and greater distribution of the species since it was listed in 1982 provide additional resiliency, redundancy, and representation across its range, which has increased our understanding of the viability of the species.

Conservation Efforts and Regulatory Mechanisms

Positive actions, in the form of conservation efforts such as land protections and regulations, have reduced sources of habitat degradation, and multiple agencies are committed to the conservation and preservation of North Park phacelia. BLM and the Service manage approximately 81 percent of the species' occupied habitat (Service 2023, tables 3 and 4, p. 11). The State of Colorado funds and The Nature Conservancy manages a conservation easement on approximately 5 percent of the species' occupied habitat on private land, specifically to protect North Park phacelia and other wildlife (Service 2023, table 4, pp. 11, 25). The remaining habitat (14 percent) is privately owned, with no protections afforded to the species (Service 2023, table 4, pp. 11, 25).

The range of North Park phacelia spans one BLM field office (Kremmling Field Office) and one planning area. The Kremmling Field Office has included conservation measures in their resource management plan to minimize adverse impacts of land use to listed and sensitive species, including the North Park phacelia (BLM 2015a, pp. 24–26, 65, 70, H–2). For example, the BLM resource management plan (RMP) includes motorized recreation restrictions, energy development restrictions, and grazing management; provisions for scientific research to aid in better understanding the effects of stressors on the species and guide conservation efforts; and collection prohibitions for rare plants that benefit North Park phacelia (BLM 2015a, pp. 2–3, 25, 68, H–2).

Six populations, with approximately 243 ac (98 ha) of occupied habitat (representing 54 percent of total occupied habitat), are partially or completely within BLM Areas of Critical Environmental Concern (ACECs), which total approximately 7,225 ac (2,924 ha) (BLM 2015a, pp. 24, 70; Service 2023, p. 23). The three ACECs (North Park Natural Area, Laramie River, and Troublesome Creek) were created in 2015 for the conservation of natural resources including North Park phacelia. The three ACECs are managed as land use authorization avoidance areas where land use authorizations such as rights of way (ROW) grants would be avoided to the extent possible (BLM 2015a, pp. 52–53, 70). The protections provided by ACEC designations are not contingent upon the species' federally listed status, and ACECs help to facilitate the maintenance and recovery of North Park phacelia, because they are areas where the species is not likely to be disturbed or adversely altered by land-use actions such as coal and oil and gas leasing and development (BLM 2015a, pp. 56, 64, 67, 68).

BLM's ACECs do not have an expiration date, and removing an ACEC designation is not simple. A withdrawal of an ACEC can be made only by the Secretary of the Interior (43 U.S.C. 1714). Two ACECs (North Park Natural Area and Laramie River) were designated to protect North Park phacelia, while one ACEC (Troublesome Creek) was designated to protect multiple species and resources in addition to the North Park phacelia (BLM 2015a, p. 70). The ACEC designations will not change under the current BLM RMP, even if North Park phacelia is delisted.

North Park phacelia also occurs on the Arapaho National Wildlife Refuge (Refuge) managed by the Service. The Refuge is closed to OHV use and livestock grazing where North Park phacelia occurs, and the Refuge's Comprehensive Conservation Plan (CCP) includes general management goals in support of North Park phacelia on Refuge lands and the implementation of conservation measures such as fences and minimizing disturbance, as needed, to ensure the species' survival and recovery (Service 2004, pp. 53, 68; Service 2023, p. 24). Other than occasional manual weed control efforts, we are not aware that the Refuge has performed other special management actions for North Park phacelia (López, 2023, pp. 2–3).

The current condition of North Park phacelia provides insight into the effectiveness of Federal management and, in general, the low levels of stressors on Federal and private lands; all but one (Airport) of the populations have high or moderate resiliency, including moderate to high habitat conditions (Service 2023, pp. 30–35). The species' current condition demonstrates that, both due to the species' population resiliency and to Federal management and other land protections, the stressors are not

currently meaningfully affecting the species.

Even without the protections of the Act, North Park phacelia would remain a BLM sensitive species for at least 5 years (BLM 2008, pp. 36, 47). If the species is no longer on the Federal List of Endangered and Threatened Plants or BLM's sensitive species list, the measures specific to listed and sensitive species in the BLM RMPs would no longer apply (*e.g.,* buffers around oil and gas development). However, most stipulations and conservation measures in these RMPs are not unique to North Park phacelia but rather provide general guidance for effective land management and rangeland health. For example, the motorized recreation restrictions mentioned above apply to most BLM lands and are not specific to North Park phacelia habitat. Additionally, the three ACECs discussed above are much larger than the North Park phacelia populations they contain, and they provide land use avoidance designations to the larger, surrounding habitats. If in the future North Park phacelia undergoes a downward trend and its viability is at risk such that it would again meet the definition of a BLM sensitive species, BLM has the authority to designate it as a BLM sensitive species (BLM 2008, pp. 36–37).

Even without the protections of the Act, the Refuge would continue to provide management goals and protections to North Park phacelia under their current CCP (Service 2004, pp. 53, 68). Given the 15-year timeframe of CCPs, protections outlined in the Arapaho Refuge CCP are expected to remain in place for at least the next few years until the next revision (López, 2023, pp. 2–3). The likelihood of future CCP revisions including conservation of North Park phacelia is high because the National Wildlife Refuge System Improvement Act (Pub. L. 105–57) mandates conservation of fish, wildlife, and plants and their habitats within the Refuge system. If the management goals for North Park phacelia are removed in a later version of the CCP, the general land use management and habitat protections would likely remain to provide indirect benefits to the species, including prohibitions on stressors such as OHV use and livestock grazing (López, 2023, pp. 2–3).

Even without the protections of the Act, the conservation easement on private lands where North Park phacelia occurs will be maintained in perpetuity regardless of the species' Federal status (Byers 2023, entire). The Nature Conservancy monitors the property for compliance annually, and the landowner administers a land management plan to benefit the species (Byers 2023, entire).

The State of Colorado has no laws protecting rare plant species. The State of Colorado does identify North Park phacelia as a plant species of greatest conservation need in their 2015 Colorado State Wildlife Action Plan (SWAP) Rare Plant SWAP Addendum (CNHP 2015b, A–13, A–67, A–154, A–203). The SWAP informs the State of Colorado of conservation priorities but is not a regulatory mechanism and does not provide funding or management authority for North Park phacelia.

In summary, conservation efforts and regulatory mechanisms (such as a conservation easement and Federal RMPs and CCPs) have ameliorated, or are continuing to minimize, the previously identified threats of recreation (OHV use), livestock grazing, and energy development to North Park phacelia. As indicated above, the majority of these mechanisms will likely remain in place regardless of the species' Federal listing status. Consequently, we find that conservation efforts and existing regulatory mechanisms are adequate to address previously identified threats and the stressors we evaluated in the SSA report and in this proposed rule.

Proposed Determination of North Park Phacelia (Phacelia formosula) Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

When we listed the North Park phacelia as endangered on September 1, 1982, the Service identified motorcycle use (Factor A), livestock trampling (Factor C), potential energy development of coal and oil and gas (Factor A), and the inadequacy of regulatory mechanisms (Factor D) as threats to the existence of the species (47 FR 38540). In our SSA report, we evaluated these stressors and additional stressors that were identified after the time of listing. Much more is presently known about the species' stressors than at the time of listing.

Several of the stressors identified in the original listing decision are no longer relevant. Given the taxonomic changes, and thus changes to the extent of the known range, that the species has undergone in the past 5 years, motorcycle use (OHV use) (Factor A) is adequately managed in 11 of the 12 populations and existing information indicates this stressor is unlikely to change in the foreseeable future. Mining and energy development (Factor A) have not occurred in occupied habitat since the time of listing and are adequately managed, and existing information indicates this stressor is unlikely to change in the foreseeable future. Although livestock grazing was categorized as a stressor under Factor C at the time of listing, we believe that the effects of livestock grazing are better characterized by Factor A. Livestock grazing does not result in population-level effects and is adequately managed, and existing information indicates this stressor is unlikely to change in the foreseeable future.

Other stressors we considered in the SSA report either do not result in population-level effects (residential and urban development (Factor A) and invasive plants (Factor A)), or the species is tolerant of their effects (climate change (Factor E) and cumulative effects of all stressors (Factor E)).

We also evaluated a variety of conservation efforts and regulatory mechanisms across the 12 populations of North Park phacelia that either reduce or ameliorate stressors and improve or maintain habitat conditions and population resiliency. These conservation efforts and mechanisms include: one BLM RMP and one Service CCP that, when taken together, cover the majority of known occupied habitat (81 percent) and include motorized recreation restrictions, energy development restrictions, and grazing management (BLM 2015a, pp. 2–3, 24–26, 65, 68, 70, H–2; Service 2004, pp. 53, 68). Implementation of the regulatory mechanisms in resource planning documents on all of the BLM and Service lands within the range of the species (Factor D) has helped to address the stressors we identified

under Factors A and E. While we cannot attribute the currently high to moderate resiliency of the species to one specific conservation measure, this high to moderate resiliency demonstrates the amelioration of relevant stressors, both due to the combination of conservation efforts in place and the tolerance of the plant (which has shown an ability to tolerate nearby disturbance).

In addition to the implementation of conservation efforts that minimize impacts to the North Park phacelia on Federal lands (BLM and Refuge lands), approximately 54 percent of the known occupied habitat has special land management designations that limit or exclude the authorization of certain land uses and further help to facilitate the maintenance and recovery of North Park phacelia populations (Factor D) because they are areas where North Park phacelia plants and populations are not likely to be disturbed or adversely altered by land-use actions (BLM 2015a, pp. 2–3, 24–26, 65, 68, 70, H–2; Service 2004, pp. 53, 68). Additionally, approximately 5 percent of the known occupied habitat is private land under conservation easement, with protections and a land management plan specifically designed to protect and maintain North Park phacelia (Byers 2023, entire). The protections provided by these management designations and the conservation easement are not contingent upon the species' federally listed status.

Status Throughout All of Its Range

Endangered Throughout Its Range Determination

Currently, 11 of the 12 populations have high or moderate resiliency, and 1 population has low resiliency (Service 2023, pp. 20–36). The high- and moderate-resiliency populations have moderate to high population-abundance estimates, relatively intact habitat conditions, and a current water deficit that is similar to the historical average. While North Park phacelia tends to occupy relatively small habitat areas, these habitats provide adequate resources to support the species' needs. Rangewide monitoring does not show a clear population trend; however, there is no indication of widespread decline. Recent genetic results have also informed our understanding that North Park phacelia is currently much more abundant than originally estimated at the time of listing.

The only plausible activity or naturally occurring event that would constitute a catastrophic event for North Park phacelia would be extreme drought conditions (meeting or exceeding a GSWD of 27 in (68.6 cm)) sustained over a timeframe that exceeds the species' dormancy in the seedbank. Based on our evaluation of the four plausible future scenarios, there is a low risk of a catastrophic event impacting the species and its redundancy. The individuals within and among the populations also exhibit genetic, ecological, and morphological diversity, contributing to the species' representation.

Moreover, our understanding of the species' stressors has changed since the time the North Park phacelia was listed. Multiple identified stressors are no longer relevant to the species, given past taxonomic changes and subsequent changes in the geographic range of the species (*i.e.,* OHV use and energy development) or because they are not occurring at a scale anticipated at the time of listing (*i.e.,* livestock use). We also have found in our evaluation of other stressors that residential and urban development and invasive species do not result in population-level effects to the species, and North Park phacelia appears to adequately tolerate the effects of climate change (Factor E) and the cumulative effects of all stressors (Factor E) (see *Stressors,* above).

Since the species was listed, conservation efforts and regulatory mechanisms on Federal and private lands have helped to facilitate the maintenance and recovery of North Park phacelia populations. The BLM RMP includes restrictions (motorized use, energy development, and grazing management), stipulations (CSU and NSO), and designations (ACECs) to protect North Park phacelia populations (see *Conservation Efforts and Regulatory Mechanisms,* above). The ACEC designations limit or exclude the authorization of certain land uses, and two ACECs specifically reference the protection of North Park phacelia as a foundational goal. The conservation easement on private lands where North Park phacelia occurs will be maintained in perpetuity to protect and support the species (Byers 2023, entire). The protections provided by the BLM ACEC designations and the conservation easement on private lands are not contingent upon the species' federally listed status. The Service's CCP provides management goals and protections to North Park phacelia, and the likelihood of future CCP revisions including conservation of North Park phacelia is high because the National Wildlife Refuge System Improvement Act (Pub. L. 105–57) mandates conservation of fish, wildlife, and plants and their habitats within the Refuge system.

Given the currently high and moderate levels of resiliency in 11 of the 12 North Park phacelia populations, the lack of significant imminent stressors, and the low likelihood of catastrophic events, we find that North Park phacelia currently has sufficient ability to withstand stochastic and catastrophic events and to adapt to environmental changes.

Thus, after assessing the best available information and evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we conclude that North Park phacelia is not in danger of extinction now throughout all of its range.

Threatened Throughout Its Range Determination

Under the Act, a threatened species is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). The term ''foreseeable future'' extends only so far into the future as the Service can reasonably determine that both the future threats and the species' responses to those threats are likely (50 CFR 424.11(d)). The Service describes the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the listable species' life-history characteristics, threat-projection timeframes, and environmental variability (50 CFR 424.11(d)). The key statutory difference between a threatened species and an endangered species is the timing of when a species may be in danger of extinction, either now (endangered species) or in the foreseeable future (threatened species).

For the purposes of our analysis, we defined the foreseeable future for North Park phacelia to mid-century (2050). After mid-century, the changes in climate conditions that different climate models and emissions scenarios project begin to diverge widely (Bamzai-Dodson and Rangwala 2019, p. 15; Rangwala et al. 2021, pp. 4–5); in other words, the spread of potential projected temperature increases broadens substantially after mid-century. Therefore, we focused our analysis of future condition on mid-century to ''avoid large uncertainty in climate change at the end of the twenty-first century arising from the choice of an emission scenario'' (Rangwala et al. 2021, pp. 4–5). We also selected this timeframe because it is short enough for us to reliably predict changes in other species' stressors and land management, yet long enough to be biologically

meaningful to the species, covering approximately 15 generations, and reliably project the species' response to those changes.

By mid-century, we anticipate a range of plausible future conditions for North Park phacelia under different climate conditions, but the stressors and conservation efforts remain similar to what the species is currently experiencing. Under Scenario 1 (Warm and Wet), we expect the resiliency of each population and the species' redundancy and representation to remain the same as the current conditions. The projected slightly drier conditions would have minimal impact to populations because they are well within the range of variability that the species experienced historically (in the high-condition category for the GSWD metric). In Scenario 2 (Hot and Wet), we expect the resiliency to remain very similar to the current condition (three populations—Diamond J Ranch, Hohnholz North East, and Diamond J State Wildlife Area—drop from high to moderate overall resiliency), and redundancy and representation remain relatively unchanged from the current conditions because of drier conditions (in the moderate-condition category for the GSWD metric). In Scenario 3 (Very Hot and Very Wet), we expect the resiliency of each population and the species' redundancy and representation to remain the same as the current conditions. The projected slightly drier conditions would have minimal impact to populations because they are well within the range of variability that the species experienced historically (in the high-condition category for the GSWD metric). In Scenario 4 (Very Hot and Dry), we expect the resiliency to remain very similar to the current condition (three populations—Diamond J Ranch, Hohnholz North East, and Diamond J State Wildlife Area—drop from high to moderate overall resiliency). Redundancy and representation remain relatively unchanged from the current conditions. The projected slightly drier conditions would have minimal impact to populations because they are well within the range of variability that the species experienced historically (in the high-condition category for the GSWD metric).

Given these future projections of resiliency, redundancy, and representation to mid-century, North Park phacelia could experience a slight decrease in viability under two of the four future scenarios (Scenarios 2 (Hot and Wet) and 4 (Very Hot and Dry)). Even under these two scenarios, the species maintains 11 high- and moderate-resiliency populations despite increasing drought conditions. In all four scenarios, we expect 11 of the 12 populations will maintain viability (will have moderate to high resiliency), and all 12 populations will remain extant, thereby continuing to contribute to the redundancy and representation of the species.

Three factors support this consistently moderate to high future resiliency: Federal and private conservation efforts and regulatory mechanisms, stressors that are not likely to increase in the future, and the species' biological characteristics.

First, the high to moderate resiliency of North Park phacelia is, in part, due to land protections and regulations implemented by BLM, the Service, private landowners, and The Nature Conservancy that will continue to be implemented into the future, even in the absence of protections afforded by the Act (Factor D), as described under *Conservation Efforts and Regulatory Mechanisms,* above. These protections will continue to limit the potential effects of stressors on North Park phacelia in the future. OHV use (Factor A), livestock grazing (Factor A), energy development (Factor A), and invasive plants (Factor A) are adequately managed, and existing information indicates these stressors are unlikely to change in the foreseeable future. The existing regulatory mechanisms (Factor D) are sufficient to ensure protection of the species at the reduced levels of stressors that remain.

Second, independent of future conservation efforts and regulatory mechanisms, the high to moderate resiliency of North Park phacelia is, in part, due to some stressors not increasing in the future. Residential and urban development (Factor A) within North Park phacelia populations has not occurred since the time of listing, and existing information indicates this stressor is unlikely to change in the foreseeable future.

Third, the species' biological characteristics confer some tolerance to moderate its response to projected drier conditions. North Park phacelia appears to adequately tolerate the effects of climate change (Factor E) and cumulative effects of all stressors (Factor E), and existing information indicates that this tolerance is unlikely to substantially change in the foreseeable future. Although conditions could become drier under two future scenarios (Scenarios 2 (Hot and Wet) and 4 (Very Hot and Dry)), populations have maintained healthy recruitment and survival, even through two recent extreme drought years (2012 and 2020) (see *Stressors,* above). These characteristics allow the species to maintain moderate survivorship and resiliency, even under Scenarios 2 (Hot and Wet) and 4 (Very Hot and Dry).

Considering the levels of resiliency, redundancy, and representation projected under each of the future scenarios described in the SSA report, North Park phacelia will be able to withstand stochastic events, catastrophic events, and environmental change into the foreseeable future. Therefore, after assessing the best available information and evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we conclude that North Park phacelia is not likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Having determined that the North Park phacelia is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction (*i.e.,* endangered) or likely to become so in the foreseeable future (*i.e.,* threatened) in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction or likely to become so in the foreseeable future in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

In undertaking this analysis for the North Park phacelia, we chose to address the status question first. We began by identifying portions of the range where the biological status of the species may be different from its biological status elsewhere in its range. For this purpose, we considered information pertaining to the geographic distribution of (a) individuals of the species, (b) the threats that the species faces, and (c) the resiliency condition of populations.

We evaluated the range of the North Park phacelia to determine if the species

is in danger of extinction now or likely to become so in the foreseeable future in any portion of its range. The range of a species can theoretically be divided into portions in an infinite number of ways. We focused our analysis on portions of the species' range that may meet the definition of an endangered species or a threatened species. For North Park phacelia, we considered whether the threats or their effects on the species are greater in any biologically meaningful portion of the species' range than in other portions such that the species is in danger of extinction now or likely to become so in the foreseeable future in that portion. We examined the following threats: residential and urban development, OHV use, mining and energy development, livestock grazing, invasive plants, climate change, and cumulative effects of all stressors.

Livestock grazing, invasive plants, and climate change occur uniformly across the species' range; that is, there are no portions of the species' range where these stressors occur more intensely or have greater impacts on the species. Residential and urban development and mining and energy development have occurred and are present in the North Park and Larimer River basins. However, despite past development activity, these threats do not currently negatively impact population resiliency in these basins and are not expected to increase in the future. Ten of the 11 populations in the North Park and Larimer River basins currently have high or moderate resiliency and are expected to maintain high or moderate population resiliency under all four scenarios. OHV use has occurred in five populations, but this threat is only negatively impacting the population resiliency of the Airport population. This is the only population (Airport) that currently has low resiliency due in part to extensive OHV use, and this population is expected to maintain low resiliency under all four future scenarios. Therefore, we identified this population as a portion of the range that may potentially have a different status than the species as a whole and was worth further consideration. We now assess whether the Airport population is ''significant.'' We do not consider this population, by itself, to represent a biologically meaningful portion of the range. The Airport population has a small population size and small habitat area and contributes the least out of all of the known populations to the species' resiliency, redundancy, and representation. It is one of eight populations in the North Park basin that share similar soil and habitat characteristics (see Background, above). The other seven populations in the North Park basin are larger in size and habitat area and have high or moderate current resiliency and are expected to maintain high or moderate population resiliency under all four future scenarios. Therefore, although the Airport population may have a difference in status relative to other populations of North Park phacelia, we determined that, by itself, it is not significant.

We looked across the remainder of the range of the species for any other portions of the range that may have a different status than the species as a whole, but we did not identify any others. For example, we also explored the status of North Park phacelia in the Troublesome Creek and Larimer River basins, respectively, due to their isolation from the core of the species' range in the North Park basin. The Troublesome Creek basin has one population (Troublesome Creek ACEC) with a large population size and moderate current resiliency and is expected to maintain moderate resiliency under all four future scenarios. The Larimer River basin has three populations (Hohnholz North East, Forrester Creek, and Laramie River–Bull Mountain) with high and moderate current resiliency, and they are expected to maintain their current resiliency under all four future scenarios. Therefore, none of these areas differs in status from the species as a whole, and we did not consider them further.

The Airport population does not represent a significant portion of the range; therefore, we find that the species is not in danger of extinction now or likely to become so in the foreseeable future in any significant portion of its range. This does not conflict with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018) and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not apply the aspects of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37578; July 1, 2014), including the definition of ''significant'' that those court decisions held to be invalid.

Determination of Status

Our review of the best scientific and commercial data available indicates that the North Park phacelia does not meet the definition of an endangered species or a threatened species in accordance with sections 3(6) and 3(20) of the Act. In accordance with our regulations at 50 CFR 424.11€(2), North Park phacelia does not meet the definition of an endangered or a threatened species. Therefore, we propose to remove North Park phacelia from the Federal List of Endangered and Threatened Plants.

Effects of This Proposed Rule

This proposed rule, if made final, would revise 50 CFR 17.12(h) by removing North Park phacelia from the Federal List of Endangered and Threatened Plants. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to this species. Federal agencies would no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect North Park phacelia. No critical habitat is designated for this species, so this proposed rulemaking action would not affect 50 CFR 17.96.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been recovered. Post-delisting monitoring (PDM) refers to activities undertaken to verify that a species delisted due to recovery remains secure from the risk of extinction after the protections of the Act no longer apply. The primary goal of PDM is to monitor the species to ensure that its status does not deteriorate, and if a decline is detected, to take measures to halt the decline so that proposing it as endangered or threatened is not again needed. If at any time during the monitoring period data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

We have prepared a draft PDM plan for North Park phacelia. The draft PDM plan discusses the current status of the taxon and describes the methods proposed for monitoring if we delist the taxon. The draft PDM plan: (1) Summarizes the status of North Park phacelia at the time of proposed delisting; (2) describes the frequency and duration of monitoring; (3) discusses monitoring methods and potential sampling regimes; (4) defines what potential triggers will be evaluated to address the need for additional monitoring; (5) outlines reporting requirements and procedures; (6)

proposes a schedule for implementing the PDM plan; and (7) defines responsibilities. We intend to work with our partners toward maintaining the recovered status of North Park phacelia. We appreciate any information on what should be included in post-delisting monitoring strategies for this species (see Information Requested, above).

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. In accordance with Secretaries' Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We notified the Apache Tribe of Oklahoma, Eastern Shoshone Tribe, Eastern Shoshone and Northern Arapaho Tribes of the Wind River Reservation, Northern Cheyenne Tribe, Southern Ute Indian Tribe, Ute Mountain Ute Tribe, and the Ute Indian Tribe of our recommendation to delist North Park phacelia in our 5-year status review in 2021, and we did not receive a response. We are not aware of any Tribal interests or concerns associated with this proposed rule.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Colorado Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.12, amend paragraph (h) in the List of Endangered and Threatened Plants by removing the entry under Flowering Plants for ''*Phacelia formosula* (North Park phacelia)''.

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2024–05674 Filed 3–18–24; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 89, No. 54
Tuesday, March 19, 2024

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

AGENCY FOR INTERNATIONAL DEVELOPMENT

Information Collection Request; 60-Day Notice and Request for Comments, Data Collection Form for the USAID Science Champion Award for International Science and Engineering Fair-Affiliated Fairs

AGENCY: Agency for International Development (USAID).

ACTION: Notice of information collection; request for comment.

SUMMARY: The Research Division within the Innovation, Technology, and Research Hub (ITR), under the Bureau for Inclusive Growth, Partnerships, and Innovation (IPI), manages U.S. Agency for International Development (USAID) involvement in the annual Regeneron International Science and Engineering Fair (ISEF). Serving as a Special Award Organization at ISEF since 2014 has allowed the Agency to recognize and award students with the USAID Science for Development Award. In the lead up to ISEF, students compete in high school science fairs that are members of the global network of the Society for Science. USAID also awards the Science Champion Award at these fairs. Winners of the Science Champion Award are selected by the high school science fairs' judges and awards committees for projects that could potentially impact a global development challenge. In order to provide accurate accounting for these awards, we need to collect information from the public, specifically from Judging Committees of science fairs participating in the program.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: To access and review the electronic Google forms survey tool, please use *https://forms.gle/NdYUDPhgAHFrpmqU8.* Comments submitted in response to this notice should be submitted electronically through the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Celia Laskowski, Program Analyst, USAID/IPI/ITR/R at *stfellowships@usaid.gov* or +1 202–704–5599.

SUPPLEMENTARY INFORMATION:

OMB Number: Not yet known.
Expiration Date: Not yet known.

Celia Laskowski,

Program Analyst, USAID/IPI/ITR/R.

[FR Doc. 2024–05741 Filed 3–18–24; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

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

Comments regarding this information collection received by April 18, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Employment and Training Opportunities in the Supplemental Nutrition Assistance Program (SNAP).

OMB Control Number: 0584–0653.

Summary of Collection: In accordance with section 6(d)(4)(B)(i) of the Food and Nutrition Act of 2008 (FNA), as amended, and Supplemental Nutrition Assistance Program (SNAP) regulations at 7 CFR 273.7(e)(1) requires State agencies to provide case management services, such as comprehensive intake assessments, individualized service plans, progress monitoring or coordination with service providers to all SNAP Employment and Training (E&T) participants. *SNAP Employment and Training Opportunities:* The State E&T program must provide case management services such as comprehensive intake assessments, individualized service plans, progress monitoring, or coordination with service providers which are provided to all E&T participants. Case management services and activities must directly support an individual's participation in the E&T program and may include referrals to activities and supports outside of the E&T program, but State agencies can only use E&T funds for allowable components, activities, and participant reimbursements. The provision of case management services must not be an impediment to the participant's successful participation in E&T. If it's determined by case manager a mandatory E&T participant may meet an exemption from the requirement to participate in an E&T program, may have good cause for non-compliance with a work requirement, or both, the case manager must inform the appropriate State agency staff. Also, if the case manager is unable to identify an appropriate and available opening in an E&T component for a mandatory E&T participant, the case manager must inform the appropriate State agency staff.

To be considered acceptable by FNS, any component offered by a State agency must entail a certain level of effort by the participants. FNS may

approve components that do not meet this guideline if it determines that such components will advance program goals. The State agency may require SNAP applicants to participate in any component it offers in its E&T program at the time of application. The State agency must screen applicants to determine if it is appropriate to participate in E&T in accordance with 273.7(c)(2), provide the applicant with participant reimbursements in accordance with (d)(4) of this section, and inform the applicant of E&T participation requirements including how to access the component and consequences for failing to participate. The State agency must not impose requirements that would delay the determination of an individual's eligibility for benefits or in issuing benefits to any household that is otherwise eligible. In accordance with section 6(o)(1)(C) of the Food and Nutrition Act of 2008 and § 273.24, supervised job search and job search training, when offered as components of an E&T program, are not qualifying activities relating to the participation requirements necessary to fulfill the ABAWD work requirement under § 273.24. However, job search, including supervised job search, or job search training activities, when offered as part of other E&T program components, are acceptable as long as those activities comprise less than half the total required time spent in the components. An E&T program offered by a State agency must include one or more of the following components: a supervised job search program, a job search training program, a workfare program, a work experience program, a supported work program, educational programs or activities to improve basic skills and build work readiness, and job retention services. *Retention And Custody of Records.* In accordance with § 272.1(f), State agencies are required to retain records concerning the frequency of noncompliance with FSP work requirements and the resulting disqualification actions imposed. These records must be available for inspection and audit at any reasonable time to ensure conformance with the minimum mandatory disqualification periods instituted.

Need and Use of the Information: The purpose of the case management services is to guide E&T participants towards appropriate E&T components and activities based on the participant's needs and interests, to support the participant in the E&T program and to provide activities and resources that will assist the participant toward self-sufficiency. State agencies may adopt different modes for the delivery of case management services, such as virtual, over the telephone, in-person or hybrid approach. This information will be used to better administer the SNAP E&T Program and provide improved customer service to SNAP E&T participants. If the Department does not require State agencies to conduct case management services, the Department will be out of compliance with Federal law.

Description of Respondents: State, Local, Tribal Government, Individuals, Households.

Number of Respondents: 375,053.

Frequency of Responses: Recordkeeping; Reporting: Occasionally; Annually.

Total Burden Hours: 1,431,364.

Rachelle Ragland-Greene,

Acting Departmental Information Collection Clearance Officer.

[FR Doc. 2024–05759 Filed 3–18–24; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS–24–NONE–0004]

60-Day Notice of Proposed Information Collection: Title Clearance and Loan Closing; OMB Control No.: 0575–0147

AGENCY: Rural Housing Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: The United States Department of Agriculture (USDA), Rural Housing Service (RHS) announces its' intention to request an extension of a currently approved information collection and invites comments on this information collection.

DATES: Comments on this notice must be received by May 20, 2024 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically by the Federal eRulemaking Portal, *http://www.regulations.gov.* In the ''Search for dockets and documents on agency actions'' box, enter the docket number ''RHS–24–NONE–0004,'' and click the ''Search'' button. From the search results: click on or locate the document title: ''60-Day Notice of Proposed Information Collection: Title Clearance and Loan Closing; OMB Control No.: 0575–0147'' and select the ''Comment'' button. Before inputting comments, commenters may review the ''Commenter's Checklist'' (optional). To submit a comment: Insert comments under the ''Comment'' title, click ''Browse'' to attach files (if available), input email address, select box to opt to receive email confirmation of submission and tracking (optional), select the box ''I'm not a robot,'' and then select ''Submit Comment.''

Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link.

All comments will be available for public inspection online at the Federal eRulemaking Portal (*https://www.regulations.gov*).

FOR FURTHER INFORMATION CONTACT: Crystal Pemberton, Management Analyst, Branch 1, Rural Development Innovation Center—Regulations Management Division, United States Department of Agriculture, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 260–8621. Email *Crystal.Pemberton@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see,* 5 CFR 1320.8(d)). This notice identifies the following information collection that the Rural Housing Service is submitting to OMB as an extension of an existing collection.

Title: Real Estate Title Clearance and Loan Closing.

OMB Control Number: 0575–0147.

Expiration Date of Approval: August 31, 2024.

Type of Request: Extension of a currently approved information collection.

Estimate of Burden: Public burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: Individuals or Households, Businesses, Closing agents/Attorneys and the field office staff.

Estimated Number of Respondents: 22,214.

Estimated Number of Responses per Respondent: 1.

Estimate Number of Responses: 22,214.

Estimated Total Annual Burden on Respondents: 2,957 hours.

Abstract: Section 501 of title V of the Housing Act of 1949, as amended, authorizes the Secretary of Agriculture to extend financial assistance to

construct, improve, alter, repair, replace or rehabilitate dwellings, farm buildings, and/or related facilities to provide decent, safe, and sanitary living conditions and adequate farm buildings and other structures in rural areas. Title clearance is required to assure the Agency that the loan is legally secured and has the required lien priority.

RHS will be collecting information to assure that those participating in this program remain eligible to proceed with loan closing and to ensure that loans are made with Federal funds are legally secured. The respondents are individuals or households, businesses, and non-profit institutions. The information required is used by the USDA personnel to verify that the required lien position has been obtained. The information is collected at the field office responsible for processing a loan application through loan closing. The information is also used to ensure the program is administered in manner consistent with legislative and administrative requirements. If not collected, the Agency would be unable to determine if the loan is adequately and legally secure. RHS continually strives to ensure that information collection burden is kept to a minimum.

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility;

(b) the accuracy of the RHS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Copies of this information collection can be obtained from Crystal Pemberton, Rural Development Innovation Center—Regulations Management Division, at (202) 260–8621. Email: *Crystal.Pemberton@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Yvonne Hsu,

Acting Administrator, Rural Housing Service.

[FR Doc. 2024–05758 Filed 3–18–24; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

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

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Commonwealth of the Northern Mariana Islands Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 9 a.m. ChST on Wednesday, April 10, 2024 (7 p.m. ET on Tuesday, April 9, 2024). The purpose of this meeting is to discuss the Committee's project, *Access to Adequate Health Care for Incarcerated Individuals in the CNMI Judicial System.*

DATES: Wednesday, April 10, 2024, 9 a.m.–10:30 a.m. Chamorro standard time (Tuesday, April 9, 2024, 7 p.m.–8:30 p.m. eastern time)

ADDRESSES: The meeting will be held via Zoom Webinar.

Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_jZB158GpRS6wxM6tLeEc4A

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 161 475 9826

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. Approval of Minutes
III. Discussion and Project Planning: Access to Health Care for incarcerated individuals within the CNMI Judicial System
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: March 14, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–05785 Filed 3–18–24; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Current Population Survey (CPS) Basic Demographic Items; Correction

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: On March 1, 2024, the Department of Commerce published a 60-day public comment period notice in the **Federal Register** seeking public comments for an information collection entitled, ''Current Population Survey (CPS) Basic Demographic Items.'' This document referenced incorrect information in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections, and Commerce hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: For additional information concerning this correction, contact Kyra Linse, Survey Director, Current Population Surveys via the internet at *dsd.cps@census.gov,* or by calling 301–763–9280.

SUPPLEMENTARY INFORMATION:

Corrections

In the **Federal Register** of March 1, 2024, in FR Doc. 2024–04381, correct the following:

1. On page 15119, in the second column, correct the **SUMMARY** section to read:

SUMMARY: The purpose of this notice is to allow for 60 days of public comment on the proposed extension without change of the Current Population Survey Basic Demographics as required by the Paperwork Reduction Act of 1995, prior to the submission of the information collection request (ICR) to OMB for approval.

2. On page 15120, in the first column, correct the text following the heading ''*Type of Review:*'' in the ''III. Data'' section in the **SUPPLEMENTARY INFORMATION** section to read:

III. Data

Type of Review: Regular submission. Extension without change of a currently approved collection.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–05797 Filed 3–18–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD722]

Deepwater Horizon Natural Resource Damage Assessment Alabama Trustee Implementation Group Draft Supplemental Restoration Plan II and Environmental Assessment: Marine Mammals

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

ACTION: Notice of availability; request for public comments.

SUMMARY: The Deepwater Horizon (DWH) natural resource Trustees for the Alabama Trustee Implementation Group (Alabama TIG) have prepared the Draft Supplemental Restoration Plan II and Environmental Assessment: Marine Mammals (Supplemental RPII/EA). The Draft Supplemental RPII/EA proposes to use additional funds from the Marine Mammals Restoration Type to extend the implementation of one or more projects currently underway in the Alabama Restoration Area to continue the Alabama TIG's efforts to restore for injuries to marine mammals impacted by the DWH oil spill. The Draft Supplemental RPII/EA evaluates two restoration alternatives under the Oil Pollution Act (OPA) and the National Environmental Policy Act (NEPA). This evaluation includes consideration of the criteria set forth in the OPA natural resource damage assessment (NRDA) regulations, and an analysis under NEPA's implementing regulations. A No Action Alternative is also evaluated pursuant to the NEPA. The total estimated cost to implement the Alabama TIG's Preferred Alternative—an extension of the Enhancing Capacity for the Alabama Marine Mammal Stranding Network Project—is $1,881,237. If selected for implementation, this action would allocate the Alabama TIG's remaining Marine Mammals restoration funds. The Alabama TIG invites the public to comment on the Draft Supplemental RPII/EA.

DATES: The Alabama TIG will consider public comments on the Draft Supplemental RPII/EA received on or before April 18, 2024.

ADDRESSES: You may view and download the Draft Supplemental RPII/EA at *https://www.gulfspillrestoration.noaa.gov/restoration-areas/alabama*. You may also request a flash drive containing the Supplemental RPII/EA (see **FOR FURTHER INFORMATION CONTACT**).

Submitting Comments: You may submit comments on the Draft Supplemental RPII/EA by either of the following methods:

- *Website: https://parkplanning.nps.gov/ALTIGMM*. Follow the online instructions for submitting comments.
- *Mail:* Alabama Department of Conservation and Natural Resources, 31115 Five Rivers Boulevard, Spanish Fort, AL 36527, ATTN: Jaime Miller. To be considered, mailed comments must be postmarked on or before the comment deadline given in **DATES**.

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.

FOR FURTHER INFORMATION CONTACT: National Oceanic and Atmospheric Administration—Stella Wilson, NOAA Restoration Center, (850) 332–4169, *gulfspill.restoration@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

On April 20, 2010, the mobile offshore drilling unit Deepwater Horizon, which was drilling a well for BP Exploration and Production, Inc. (BP), experienced a significant explosion, fire and subsequent sinking in the Gulf of Mexico, resulting in the release of millions of barrels of oil and other discharges into the Gulf. Under the authority of the OPA, designated Federal and state Trustees, acting on behalf of the public, assessed the injuries to natural resources and prepared the Deepwater Horizon Oil Spill Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS), and the Record of Decision for the Deepwater Horizon Oil Spill Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement (ROD), which sets forth the governance structure and process for DWH restoration planning under the OPA NRDA regulations. On April 4, 2016, the United States District Court for the Eastern District of Louisiana entered a Consent Decree resolving civil claims by the Trustees against BP.

The Alabama TIG, which is composed of the Alabama Department of Conservation and Natural Resources, the NOAA, Environmental Protection Agency, the U.S. Department of the Interior, the Environmental Protection Agency, and the U.S. Department of Agriculture, selects and implements restoration projects under the Alabama TIG's management authority in accordance with the Consent Decree. The Final PDARP/PEIS, ROD, Consent Decree, and information on the DWH Trustees can be found at *https://www.gulfspillrestoration.noaa.gov/restoration-planning/gulf-plan.*

Background

In September 2018, the Alabama TIG completed the Deepwater Horizon Oil Spill Alabama Trustee Implementation Group Final Restoration Plan II and Environmental Assessment: Restoration of Wetlands, Coastal, and Nearshore Habitats; Habitat Projects on Federally Managed Lands; Nutrient Reduction (Nonpoint Source); Sea Turtles; Marine Mammals; Birds; and Oysters (RPII/EA). Twenty restoration projects were selected for implementation; one of which was *Enhancing Capacity for the Alabama Marine Mammal Stranding Network.* That project has been successfully implemented utilizing Marine Mammal Restoration Type funds identified in the DWH Consent Decree.

Overview of the Alabama TIG Supplemental RPII/EA

The Trustees are now proposing to commit additional funds to marine mammal restoration in Alabama. In the Draft Supplemental RPII/EA, the Alabama TIG analyzes a reasonable range of two project alternatives and, pursuant to the NEPA, a No Action Alternative. Those alternatives include:

- Enhancing Capacity for the Alabama Marine Mammal Stranding Network Project Extension (preferred); and
- Reducing Illegal Feeding of Bottlenose Dolphins Project (non-preferred).

Funding to implement either alternative ultimately selected by the Alabama TIG would come from the Marine Mammal Restoration Type Allocation. The total estimated cost to implement the Preferred Alternative is $1,881,237 and would utilize the remaining allocation of Alabama TIG Marine Mammals restoration funds.

Next Steps

After the public comment period ends, the Alabama TIG will consider and address all substantive comments received before making a final decision on which, if any, alternative to fund and implement. A Final Supplemental RPII/EA and Finding of No Significant Impact, as appropriate, identifying the selected alternative will be made publicly available.

Administrative Record

The Administrative Record for the Draft Supplemental RPII/EA can be viewed electronically at *https://www.doi.gov/deepwaterhorizon/adminrecord* under the folder 6.5.3.2.

Authority

The authority for this action is the OPA of 1990 (33 U.S.C. 2701 *et seq.*), its implementing NRDA regulations found at 15 CFR part 990, and the NEPA of 1969 (42 U.S.C. 4321 *et seq.*), its implementing regulations found at 40 CFR parts 1500–1508.

Dated: March 12, 2024.

Carrie Diane Robinson,

Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 2024–05768 Filed 3–18–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Mississippi River Commission.

TIME AND DATE: 9:00 a.m., April 8, 2024.

PLACE: On board MISSISSIPPI V at City Front, New Madrid, Missouri.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9:00 a.m., April 9, 2024.

PLACE: On board MISSISSIPPI V at Mud Island Park, Memphis, Tennessee.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9:00 a.m., April 10, 2024.

PLACE: On board MISSISSIPPI V at City Front, Greenville, Mississippi.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Vicksburg District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9:00 a.m., April 12, 2024.

PLACE: On board MISSISSIPPI V at City Front, Baton Rouge, Louisiana.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the New Orleans District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles A. Camillo, telephone 601–634–7023.

David B. Olson,

Federal Register Liaison Officer, U.S. Army Corps of Engineers.

[FR Doc. 2024–05813 Filed 3–15–24; 11:15 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Personnel Development To Improve Services and Results for Children With Disabilities—National Center on Historically Black Colleges and Universities, Tribally Controlled Colleges and Universities, and Other Minority Serving Institutions To Diversify the Workforce Serving Children With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2024 for the National Center on Historically Black Colleges and Universities (HBCUs), Tribally Controlled Colleges and Universities (TCCUs), and Other Minority Serving Institutions (MSIs) to Diversify the Workforce Serving Children with Disabilities, Assistance Listing Number (ALN) 84.325B. This notice relates to the approved information collection under OMB control number 1820–0028.

DATES:

Applications Available: March 19, 2024.

Deadline for Transmittal of Applications: May 15, 2024.

Deadline for Intergovernmental Review: July 29, 2024.

Pre-Application Webinar Information: No later than March 25, 2024, the Office of Special Education and Rehabilitative Services will post details on pre-recorded informational webinars designed to provide technical assistance (TA) to interested applicants. Links to the webinars may be found at *https://www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *www.federalregister.gov/d/2022-26554.*

FOR FURTHER INFORMATION CONTACT: Tracie Dickson, U.S. Department of Education, 400 Maryland Avenue SW, Room 4A10, Washington, DC 20202. Telephone: (202) 987–0145. Email: *tracie.dickson@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:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for personnel preparation in special education, early intervention, related services, and regular education to work with children, including infants, toddlers, and youth with disabilities; and (2) ensure that those personnel have the necessary knowledge, skills, and competencies derived from practices that have been determined through scientifically based research, to be successful in serving those children.

Priority: This competition includes one absolute priority. In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 662 and 681 of the Individuals with Disabilities Education Act (IDEA); 20 U.S.C. 1462 and 1481).

Absolute Priority: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

National Center on Historically Black Colleges and Universities, Tribally Controlled Colleges and Universities, and Other Minority Serving Institutions to Diversify the Workforce Serving Children with Disabilities.

Background:

Through its Raise the Bar initiative, the Department is focused on improving learning opportunities and conditions by working to eliminate the shortage of personnel in early intervention, early childhood special education, special education, and related services while building a higher education system that is inclusive and diverse, thereby preparing our Nation for global competitiveness (U.S. Department of Education, 2022; U.S. Department of Education, 2023b). Diversity is inherently valuable, and we are stronger as a Nation when people of varied backgrounds, experiences, and perspectives work and learn together. Diversity and inclusion also foster innovation and help to prepare everyone for an interconnected world. All children benefit from a diverse educator workforce, including children with and without disabilities, who are multilingual and from racially and ethnically diverse backgrounds. Furthermore, all children demonstrate improved academic achievement, social and emotional development, and behavior when they are taught by multilingual teachers and teachers from racially and ethnically diverse backgrounds (Carver-Thomas, 2018; U.S. Department of Education, n.d.; U.S. Department of Health and Human Services and U.S. Department of Education, 2016).

The population of children receiving services under IDEA is increasingly racially and ethnically diverse (U.S. Department of Education, 2020). Although children from racially and ethnically diverse backgrounds make up greater than 50 percent of children receiving early intervention and special education services (U.S. Department of Education, 2023a), the demographics of personnel entering the early intervention and special education fields are not reflective of the demographics of the children and families served under IDEA. Data from the Office of Special Education Programs' (OSEP's) Personnel Development Program Data Collection System reveals that scholars supported under the personnel preparation program are predominantly White. Specifically, the race/ethnicity of scholars obtaining a graduate degree to serve children with disabilities in FY 2020 was 65.8 percent White, 14.5 percent Hispanic, 11.5 percent Black, 3.9 percent Asian, 0.7 percent American Indian or Alaska Native, 1.4 percent Native Hawaiian or other Pacific Islander, and 2.2 percent two or more races (U.S. Department of Education, 2021).

IDEA [1] recognizes the need to diversify the workforce and support multilingual scholars and scholars from racially and ethnically diverse backgrounds in obtaining degrees in early intervention, early childhood special education, special education, and related services. HBCUs, TCCUs, and MSIs are uniquely positioned to recruit, prepare, and graduate personnel who have the necessary knowledge, skills, and competencies to provide effective and equitable evidence-based, culturally, and linguistically responsive instruction, interventions, and services. For example, HBCUs play a critical role in producing teachers of color in the United States. Specifically, nearly half of Black teachers nationwide are graduates of an HBCU (U.S. Department

[1] Section 681(c)(2) of IDEA requires the Secretary to set aside funds to support one or both of the following activities: (1) the provision of outreach and TA to Historically Black Colleges and Universities and to institutions of higher education (IHEs) with high levels of minority enrollment to promote their participation in certain activities under IDEA; or (2) the provision of support to enable such institutions to assist other institutions and agencies in improving educational and transitional results for children with disabilities.

of Education, 2023c). More importantly, HBCUs, TCCUs, and other MSIs have the experience and expertise to recruit, prepare, and graduate scholars who are multilingual and from racially and ethnically diverse backgrounds with the necessary knowledge, skills, and competencies to serve children with disabilities and who can also serve as models for predominantly White institutions and other institutions on increasing the diversity of the scholars that they prepare.

While HBCUs, TCCUs, and other MSIs are more likely to graduate scholars who are multilingual and from racially and ethnically diverse backgrounds, there are currently a limited number that receive OSEP funding to prepare personnel to work in early intervention, early childhood special education, special education, and related services. Therefore, there is a need to build capacity at HBCUs, TCCUs, and other MSIs to access and successfully implement Federal grants to improve or develop high-quality degree or certification programs of study, and to prepare scholars to work in early intervention and special education fields. However, during listening sessions held by OSEP, faculty at HBCUs, TCCUs, and other MSIs identified barriers to accessing funding for personnel preparation, such as a lack of knowledge about funding opportunities, faculty workload, and lack of existing institutional infrastructure and support. Supporting HBCUs, TCCUs, and other MSIs to improve or develop high-quality degree or certification programs of study, and to receive and successfully implement Federal personnel preparation grants, would increase the number of multilingual and racially and ethnically diverse personnel with the necessary knowledge, skills, and competencies to serve children with disabilities in early intervention, early childhood special education, special education, and related services. This priority is consistent with the Secretary's Supplemental Priority related to supporting a diverse educator workforce and professional growth to strengthen student learning. See Secretary's Final Supplemental Priorities and Definitions for Discretionary Grants Programs, 86 FR 70612 (December 10, 2021) (Supplemental Priorities) (Priority 3).

Priority:

The purpose of this priority is to fund a cooperative agreement to establish and operate a National Technical Assistance Center to Diversify the Workforce Serving Children with Disabilities (Center) by supporting HBCUs,[2] TCCUs,[3] and other MSIs [4] that offer high-quality degree [5] or certification [6] programs in early intervention, early childhood special education, special education, or related services.[7] The Center must achieve, at a minimum, the following expected outcomes:

(a) Improve the capacity of HBCUs, TCCUs, and MSIs to improve or develop high-quality degree programs that integrate effective, equitable, evidence-based,[8] and culturally and linguistically responsive instruction, interventions, and services in inclusive settings to prepare early intervention, early childhood special education, special education, and related services personnel with the competencies necessary to provide services to children with disabilities, including those who are multilingual and those from racially and ethnically diverse backgrounds;

(b) Increase the numbers of HBCUs, TCCUs, and other MSIs that are aware of, apply for, and successfully receive and implement Federal grants to prepare early intervention, early childhood special education, special education, and related services personnel to serve children with disabilities, including those who are multilingual and from racially and ethnically diverse backgrounds; and

(c) Increase collaboration, networking, and mentorship among faculty at HBCUs, TCCUs, and other MSIs to increase their capacity to improve or develop high-quality degree programs, and receive and implement Federal grants to prepare early intervention, special education, and related services personnel to serve children with disabilities, including those who are multilingual and from racially and ethnically diverse backgrounds.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements in this priority, which are:

(a) In the narrative section of the application under ''Significance''—

(1) Describe how the proposed project will address current and emerging needs to increase the number of high-quality preservice preparation programs at HBCUs, TCCUs, and other MSIs that prepare early intervention, early childhood special education, special education, and related services personnel to ensure that the special education and early intervention workforce is prepared to serve children with disabilities, including those who are multilingual and from racially and ethnically diverse backgrounds;

(2) Demonstrate knowledge about the current capacity of faculty in HBCUs, TCCUs, and other MSIs to apply for, evaluate, and manage Federal personnel preparation discretionary grant projects to prepare scholars in early intervention, special education, and related services; and

(3) Present applicable data and demonstrate knowledge of the current research on the need for early intervention, early childhood special education, special education, and related services preservice programs of study at HBCUs, TCCUs, and other MSIs to prepare personnel to deliver equitable interventions and services for children with disabilities, including those who are multilingual and from racially and ethnically diverse backgrounds.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this

[2] For purposes of this priority, ''Historically Black Colleges and Universities'' means colleges and universities that meet the criteria set out in 34 CFR 608.2.

[3] For purposes of this priority, ''Tribally Controlled Colleges and Universities'' has the meaning ascribed to it in section 316(b)(3) of the Higher Education Act of 1965 (HEA).

[4] For purposes of this priority, ''Minority-Serving Institution'' means an institution that is eligible to receive assistance under sections 316 through 320 of part A of title III, under part B of title III, or under title V of the HEA. For purposes of this priority, the Department will use the FY 2023 Eligibility Matrix to determine MSI eligibility (see *https://www2.ed.gov/about/offices/list/ope/idues/eligibility.html*).

[5] For purposes of this priority ''degree'' refers to programs of study that lead to bachelor's, master's, educational specialist, or clinical doctoral degrees.

[6] For the purposes of this priority, ''certification'' refers to programs of study for individuals with bachelor's, master's, educational specialist, or clinical doctoral degrees that lead to licensure, endorsement, or certification from a State or national credentialing authority following completion of the degree program that qualifies graduates to teach or provide services to children with disabilities.

[7] For the purposes of this priority, ''related services'' includes the following: speech-language pathology and audiology services; assistive technology services; sign language interpreting services; intervener services; psychological services; applied behavior analysis; physical therapy and occupational therapy; recreation, including therapeutic recreation; artistic and cultural services, including music, art, dance and movement therapy; social work services; counseling services, including rehabilitation counseling; and orientation and mobility services.

[8] For the purposes of this priority, ''evidence-based'' means, at a minimum, evidence that demonstrates a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that services and products meet the needs of the intended recipients of the project's services;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: *https://osepideasthatwork.org/sites/default/files/2021-12/ConceptualFramework_Updated.pdf* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Be based on current research and make use of evidence-based practices. To meet this requirement, the applicant must describe—

(i) The current research on improving or developing high-quality programs of study in early intervention, early childhood special education, special education, and related services to include effective, equitable, evidence-based, and culturally and linguistically responsive instruction, interventions, and services in inclusive settings to prepare scholars to serve children with disabilities, including those who are multilingual and from racially and ethnically diverse backgrounds;

(ii) The current research and theoretical constructs that support the development and implementation of faculty communities of practice;

(iii) The current research about adult learning principles and implementation science that will inform the proposed TA; and

(iv) How the proposed project will incorporate current research and practices in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base on—

(A) Improving and developing high-quality programs to include effective and equitable, evidence-based, culturally, and linguistically responsive instruction, interventions, and services in inclusive settings necessary to prepare scholars who are multilingual and racially, ethnically, and culturally diverse to serve children with disabilities, including those who are multilingual and from racially and ethnically diverse backgrounds; and

(B) Building the capacity of faculty to access Federal grant funding to support the long-standing resource needs of HBCUs, TCCUs, and MSIs to prepare early intervention, early childhood special education, special education, and related services personnel to serve children with disabilities, including those who are multilingual and from racially and ethnically diverse backgrounds;

(ii) The proposed approach to universal, general TA,[9] which must describe—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services;

(B) The products and services that the project proposes to make available;

(C) The development and maintenance of a high-quality website, with an easy-to-navigate design, that meets or exceeds government- or industry-recognized standards for accessibility; and

(D) The expected reach and impact of universal, general TA;

(iii) The proposed approach to targeted, specialized TA,[10] which must describe—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services;

(B) The products and services that the project proposes to make available;

(C) The proposed approach to measure the readiness of potential TA recipients to work with the project, including, at a minimum, an assessment of potential recipients' current infrastructure, available resources, and ability to build capacity of faculty;

(D) The proposed approach to provide TA to grants funded under ''Preservice Development Grants at Historically Black Colleges and Universities, Tribally Controlled Colleges and Universities, and Other Minority Serving Institutions to Diversify Personnel Serving Children with Disabilities (ALN 84.325X)'' and ''Personnel Preparation of Special Education, Early Intervention, and Related Services Personnel at Historically Black Colleges and Universities, Tribally Controlled Colleges and Universities, and Other Minority Serving Institutions (ALN 84.325M)''; and

(E) The expected reach and impact of targeted, specialized TA; and

(iv) The proposed approach to intensive, sustained TA,[11] which must describe—

(A) The intended recipients, including the type and number of recipients from a variety of settings and geographic distribution, that will receive the products and services designed to impact;

(B) The proposed approach to measure the readiness of recipients of the products and services; and

(C) The expected impact of intensive, sustained TA;

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

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[9] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA project staff and including one-time, invited or offered conference presentations by TA project staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA project's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

[10] ''Targeted, specialized TA'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA project staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[11] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA project staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes;

(7) How the project will systematically disseminate information, products, and services to varied intended audiences. To address this requirement the applicant must describe—

(i) The variety of dissemination strategies the project will use throughout the five years of the project to promote awareness and use of its products and services;

(ii) How the project will tailor dissemination strategies across all planned levels of TA to ensure that products and services reach intended recipients, and how those recipients can access and use those products and services;

(iii) How the project's dissemination plan is connected to the proposed outcomes of the project; and

(iv) How the project will evaluate and remediate all digital products and external communications to ensure they meet or exceed government and industry-recognized standards for accessibility.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project as described in the following paragraphs. The evaluation plan must describe measures of progress in implementation, including the criteria for determining the extent to which the project's products and services have met the goals for reaching its target population; measures of intended outcomes or results of the project's activities in order to evaluate those activities; and how well the goals or objectives of the proposed project, as described in its logic model, have been met.

The applicant must provide an assurance that, in designing the evaluation plan, it will—

(1) Designate, with the approval of the OSEP project officer, a project liaison with sufficient dedicated time, experience in evaluation, and knowledge of the project to work in collaboration with the Center to Improve Program and Project Performance (CIPP),[12] the project director, and the OSEP project officer on the following tasks:

(i) Revise the logic model submitted in the application, as needed, to provide for a more comprehensive measurement of implementation and outcomes and to reflect any changes or clarifications to the model discussed at the kick-off meeting;

(ii) Refine the evaluation design and instrumentation proposed in the application consistent with the revised logic model and using the most rigorous design suitable (*e.g.,* prepare evaluation questions about significant program processes and outcomes; develop quantitative or qualitative data collections that permit both the collection of progress data, including fidelity of implementation, as appropriate, and the assessment of project outcomes; and identify analytic strategies); and

(iii) Revise, as needed, the evaluation plan submitted in the application such that it clearly—

(A) Specifies the evaluation questions, measures, and associated instruments or sources for data appropriate to answer these questions, suggests analytic strategies for those data, provides a timeline for conducting the evaluation, and includes staff assignments for completing the evaluation activities;

(B) Delineates the data expected to be available by the end of the second project year for use during the project's evaluation (3+2 review) for continued funding described under the heading *Fourth and Fifth Years of the Project;* and

(C) Assists the project director and the OSEP project officer, with the assistance of CIPP, as needed, in specifying the project performance measures to be addressed in the project's annual performance report;

(2) Dedicate sufficient staff time and other resources during the first six months of the project to collaborate with CIPP staff, including regular meetings (*e.g.,* weekly, biweekly, or monthly) with CIPP and the OSEP project officer, in order to accomplish the tasks described in paragraph (C)(1) of this section; and

(3) Dedicate sufficient funds in each budget year to cover the costs of carrying out the tasks described in paragraphs (C)(1) and (2) of this section and revising and implementing the evaluation plan. Applicants must include funds dedicated for this activity in the budget and budget narrative.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources and quality of project personnel,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed project will have processes, resources, and funds in place to provide equitable access for project staff, contractors, and partners, who require digital accessibility accommodations; [13] and

(5) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of faculty and graduates from HBCUs, TCCUs, and other MSIs; families; educators; TA providers; researchers; and policy makers, among others, in its development and operation.

[12] The major tasks of CIPP are to guide, coordinate, and oversee the design of formative evaluations for every large discretionary investment (*i.e.,* those awarded $500,000 or more per year and required to participate in the 3+2 process) in OSEP's Technical Assistance and Dissemination; Personnel Development; Parent Training and Information Centers; and Educational Technology, Media, and Materials programs. The efforts of CIPP are expected to enhance individual project evaluation plans by providing expert and unbiased TA in designing the evaluations with due consideration of the project's budget. CIPP does not function as a third-party evaluator.

[13] For information about digital accessibility and accessibility standards from Section 508 of the Rehabilitation Act, visit *https://osepideasthatwork.org/resources-grantees/508-resources.*

(f) Address the following application requirements. The applicant must—

(1) Include, in appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A three-day project directors' conference in Washington, DC, during each year of the project period. The project must reallocate funds for travel to the project directors' conference no later than the end of the third quarter of each budget period if the conference is conducted virtually;

(iii) Three annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP. The project must reallocate funds for travel to the meetings no later than the end of the third quarter of each budget period if the meetings are conducted virtually; and

(iv) A one-day virtual intensive 3+2 review meeting during the second year of the project period;

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Engage doctoral scholars or post-doctoral fellows, including those who are multilingual and racially, ethnically, and culturally diverse, in the implementation of the project to increase the number of future leaders in the field who are knowledgeable about early intervention, special education, and related services personnel preparation, academic program development and implementation, OSEP discretionary grant funding, and delivering equity-focused professional development and TA;

(5) Maintain a high-quality website;

(6) Ensure that annual project progress toward meeting project goals is posted on the project website; and

(7) Include, in appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to HBCUs, TCCUs, and other MSIs during the transition to a new award at the end of this award period, as appropriate.

Fourth and Fifth Years of the Project:

In deciding whether to continue funding the project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), including—

(a) The recommendations of a 3+2 review team consisting of experts knowledgeable about early intervention, special education, and related services personnel preparation, academic program development and implementation, OSEP discretionary grant funding, and delivering equity-focused professional development and TA. This review will be conducted during a one-day intensive meeting that will be held during the last half of the second year of the project period;

(b) The timeliness with which, and how well, the requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The quality, relevance, and usefulness of the project's products and services and the extent to which the project's products and services are aligned with the project's objectives and likely to result in the project achieving its intended outcomes.

Under 34 CFR 75.253, the Secretary may reduce continuation awards or discontinue awards in any year of the project period for excessive carryover balances or a failure to make substantial progress. The Department intends to closely monitor unobligated balances and substantial progress under this program and may reduce or discontinue funding accordingly.

References:

Carver-Thomas, D. (2018). Diversifying the teaching profession: How to recruit and retain teachers of color. Learning Policy Institute. *https://doi.org/10.54300/559.310*.

U.S. Department of Education. (n.d.). *Diversifying the teacher workforce: Research and strategies. https://ies.ed.gov/ncee/edlabs/regions/midwest/pdf/infographics/teacher-diversity-508.pdf*.

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U.S. Department of Education. (2023a). *Students with disabilities. https://nces.ed.gov/programs/coe/pdf/2023/cgg_508.pdf*.

U.S. Department of Education. (2023b). Raise the Bar: Lead the World. *www.ed.gov/raisethebar*.

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U.S. Department of Education, Office of Special Education Programs. (2021). *Personnel Development Program Data Collection System*.

U.S. Department of Health and Human Services and the U.S. Department of Education. (2016). *Policy statement on supporting the development of children who are dual language learners in early childhood programs. https://www2.ed.gov/about/inits/ed/earlylearning/files/dll-policy-statement-2016.pdf*.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1462 and 1481.

Note: Project will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on

Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: The Administration has requested $250,000,000 for the Personnel Development to Improve Services and Results for Children with Disabilities program for FY 2024, of which we intend to use an estimated $1,500,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2025 from the list of unfunded applications from this competition.

Maximum Award: We will not make an award exceeding $1,500,000 for a single budget period of 12 months.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* HBCUs, TCCUs, MSIs, and private nonprofit organizations that have legal authority to enter into grants and cooperative agreements with the Federal Government on behalf of an HBCU, TCCU, or MSI.

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html*.

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c), a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: IHEs, nonprofit organizations suitable to carry out the activities proposed in the application, and public agencies. The grantee may award subgrants to entities it has identified in an approved application or that it selects through a competition under procedures established by the grantee, consistent with 34 CFR 75.708(b)(2).

4. *Other General Requirements:*

a. Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

b. Applicants for, and recipients of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *www.federalregister.gov/d/2022-26554,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 70 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed below:

(a) *Significance (10 points).*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by

the proposed project, including the nature and magnitude of those gaps or weaknesses.

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project.

(b) *Quality of project services (35 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework.

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(iv) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(v) The extent to which the TA services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(c) *Quality of the project evaluation (20 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(iv) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(d) *Adequacy of resources and quality of project personnel (15 points).*

(1) The Secretary considers the adequacy of resources for the proposed project and the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel.

(ii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(iii) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(iv) The extent to which the budget is adequate to support the proposed project.

(e) *Quality of the management plan (20 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions, and under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards

in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

6. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

5. *Performance Measures:* For the purpose of Department reporting under 34 CFR 75.110, we have established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program. These measures are:

- Program Performance Measure #1: The percentage of Technical Assistance and Dissemination products and services deemed to be of high quality by an independent review panel of experts qualified to review the substantive content of the products and services.
- Program Performance Measure #2: The percentage of Special Education Technical Assistance and Dissemination products and services deemed by an independent review panel of qualified experts to be of high relevance to educational and early intervention policy or practice.
- Program Performance Measure #3: The percentage of all Special Education Technical Assistance and Dissemination products and services deemed by an independent review panel of qualified experts to be useful in improving educational or early intervention policy or practice.
- Program Performance Measure #4: The cost efficiency of the Technical Assistance and Dissemination Program includes the percentage of milestones achieved in the current annual performance report period and the percentage of funds spent during the current fiscal year.
- Long-term Program Performance Measure: The percentage of States receiving Special Education Technical Assistance and Dissemination services regarding scientifically or evidence-based practices for infants, toddlers, children, and youth with disabilities that successfully promote the implementation of those practices in school districts and service agencies.

The measures apply to projects funded under this competition, and grantees are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual and final performance reports to the Department (34 CFR 75.590).

The Department will also closely monitor the extent to which the products and services provided by the Center meet needs identified by stakeholders and may require the Center to report on such alignment in their annual and final performance reports.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Glenna Wright-Gallo,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2024–05767 Filed 3–18–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0003]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Migrant Student Information Exchange User Application Form

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before April 23, 2024.

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 Benjamin Starr, 202–245–8116.

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: Migrant Student Information Exchange User Application Form.

OMB Control Number: 1810–0686.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 732.

Total Estimated Number of Annual Burden Hours: 366.

Abstract: Regulations for the Migrant Information Exchange (MSIX), effective on June 9, 2016, were issued by the U.S. Department of Education (the Department). The MSIX, a nationwide, electronic records exchange mechanism mandated under Title I, Part C of the Elementary and Secondary Education Act (ESEA), as amended. As a condition of receiving a grant of funds under the Migrant Education Program (MEP), each State educational agency (SEA) is required to collect, maintain, and submit minimum health and education-related data to MSIX within established timeframes. MSIX is designed to facilitate timely school enrollment, grade and course placement, accrual of secondary course credits and participation in the MEP for migratory children. Additionally, the regulations help the Department to determine accurate migratory child counts and meet other MEP reporting requirements. The MEP is authorized under sections 1301–1309 in Title I, Part C of the ESEA, as amended. MSIX and the minimum data elements (MDEs) are authorized specifically under section 1308(b) of the ESEA, as amended.

The Department is requesting approval to extend the 1810–0686 information collection that supports statutory requirements for data collection under Title I, Part C—MEP. The purpose of the MSIX User Application Form is to collect user directory data to verify the identity of users in order to grant access to the MSIX system for the purpose of transferring migratory student data. The application collects information on an MSIX users' identity, title/position, work address, work telephone, email, and role in MSIX.

Dated: March 14, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–05780 Filed 3–18–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Application Deadline for Fiscal Year 2024; Small, Rural School Achievement Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: Under the Small, Rural School Achievement (SRSA) program, Assistance Listing Number 84.358A, the U.S. Department of Education (Department) awards grants on a formula basis to eligible local educational agencies (LEAs) to address the unique needs of rural school districts. In this notice, we establish the deadline and describe the application process for the fiscal year (FY) 2024 SRSA grant. This notice relates to the approved information collection under OMB control number 1810–0646. All LEAs eligible for FY 2024 SRSA funds must apply electronically via the process described in this notice by the deadline listed below.

DATES:

Applications Available: March 19, 2024.

Deadline for Transmittal of Applications: May 10, 2024.

Application Technical Assistance: The Department will announce application technical assistance opportunities for applicants when the application becomes available.

FOR FURTHER INFORMATION CONTACT: Leslie Poynter, REAP Group Leader, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202. Telephone: (202) 401–0039. Email: *reap@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:

I. Award Information

Type of Award: Formula grant.

Available Funds: The Administration has requested $107,500,000 for SRSA in FY 2024. The actual level of funding depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $0–$60,000.

Note: The amount of an LEA's award depends on the number of eligible LEAs in a given year, the number of eligible LEAs that complete the SRSA application, and the amount Congress appropriates for the program. Some eligible LEAs may receive an SRSA allocation of $0 due to the statutory funding formula and, in that case, will not be invited to submit an application.

Estimated Number of Awards: 4,200.

II. Program Authority and Eligibility Information

Under what statutory authority will FY 2024 SRSA grant awards be made?

The FY 2024 SRSA grant awards will be made under title V, part B, subpart 1 of the Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. 7345–7345a.

Which LEAs are eligible for an award under the SRSA program?

For FY 2024, an LEA (including a public charter school that meets the definition of LEA in section 8101(30) of the ESEA) is eligible for an award under the SRSA program if it meets both criteria below:

(a) The total number of students in average daily attendance at all schools served by the LEA is fewer than 600, or each county in which a school served by the LEA is located has a total population density of fewer than 10 persons per square mile; and

(b) All schools served by the LEA are designated with a school locale code of 41, 42, or 43 by the Department's National Center for Education Statistics (NCES), or the Secretary has determined, based on a demonstration by the LEA and concurrence of the State educational agency, that the LEA is located in an area defined as rural by a governmental agency of the State.

The Department provides an eligibility spreadsheet listing each LEA eligible to apply for FY 2024 SRSA grant funds. The spreadsheet is available on the Department's website at: *https://oese.ed.gov/offices/office-of-formula-grants/rural-insular-native-achievement-programs/rural-education-achievement-program/small-rural-school-achievement-program/eligibility/.*

If an LEA on the Department's list of LEAs eligible to apply for an FY 2024 SRSA award will close prior to the 2024–2025 school year, that LEA is not eligible to receive an FY 2024 SRSA award and should not apply.

Note: The ''Choice of Participation'' provision under section 5225 of the ESEA gives an LEA eligible for both SRSA and the Rural and Low-Income School (RLIS) program, which is authorized under title V, part B, subpart 2 of the ESEA, the option to participate in either the SRSA program or the RLIS program. 20 U.S.C. 7351d. An LEA eligible for both SRSA and RLIS is henceforth referred to as a ''dual-eligible LEA.''

Which eligible LEAs must submit an application to receive an FY 2024 SRSA grant award?

Under 34 CFR 75.104(a), the Secretary makes a grant only to an eligible entity that submits an application.

In FY 2024, each LEA eligible to receive an SRSA award is required to submit an SRSA application in order to receive SRSA funds, regardless of whether the LEA received an award or submitted an application in a previous year. For example, if a rural community has two distinct LEAs—one composed of its elementary school(s) and one composed of its high school(s)—each distinct LEA must submit its own SRSA application. This requirement applies to all eligible LEAs, including each dual-eligible LEA that chooses to participate in the SRSA program instead of the RLIS program and each SRSA-eligible LEA that is a member of an educational service agency (ESA) that does not receive SRSA funds on the LEA's behalf. In the case of an SRSA-eligible LEA that is a member of an SRSA-eligible ESA, the LEA and ESA must coordinate directly with each other to determine which entity will submit an SRSA application on the LEA's behalf, as both entities may not apply for or receive SRSA funds for the LEA. As noted above, pursuant to section 5225 of the ESEA, a dual-eligible LEA that applies for SRSA funds may not receive an RLIS award.

What are the Unique Entity Identification (UEI) number requirements for the SRSA program?

As required by 2 CFR part 25, appendix A, entities receiving funds from the Federal Government, including SRSA-eligible LEAs that apply for an SRSA award, must maintain current entity information in the System for Award Management (SAM). SAM is the Federal Government's primary registrant database and is managed by the General Services Administration, not the Department of Education. The UEI, a 12-character alphanumeric code, is the primary means of entity identification for Federal awards.

Each SRSA-eligible LEA must provide its UEI on the SRSA application or notify the REAP team by emailing *reap@ed.gov* to explain why the LEA is unable to provide a UEI. An LEA must have a UEI with an active registration status in SAM to access its awarded SRSA grant funds. An LEA without a UEI may not receive an SRSA award until it has obtained and registered a UEI. Obtaining a UEI is free to LEAs and is available at *www.SAM.gov.* LEAs may find SAM's guide helpful in understanding the registration process, available at: *https://sam.gov/content/entity-registration.* For additional resources or technical support related to the UEI registration process please utilize the support features at *www.fsd.gov.*

III. Application and Submission Information

Note: Since FY 2020, the SRSA grant application is no longer housed on the *Grants.gov* platform. Please see below for the updated application process.

Electronic Submission of Applications Using Connect.gov

The Department will send an email with a unique application link on March 19, 2024, to each LEA that is eligible and estimated to receive a positive allocation for an FY 2024 SRSA grant award. The email will include detailed instructions for completing the electronic application.

An eligible LEA must submit an electronic application via *Connect.gov* by May 10, 2024, to be assured of receiving an FY 2024 SRSA grant award. The Department may consider applications submitted after the deadline to the extent practicable and contingent upon the availability of funding.

Please note the following:

- The application is estimated to take 30 minutes to complete. LEAs are encouraged not to wait until the application deadline date to begin the application process.
- Eligible LEAs will receive periodic emails during the application period with a reminder to complete the SRSA application prior to the May 10, 2024, deadline.
- An application received by *Connect.gov* is dated and time stamped upon submission, and an applicant will receive a confirmation email after the application is submitted.
- If any applicant information changes (*e.g.,* address or contact information for the LEA) after an application has been submitted via *Connect.gov,* the applicant must contact REAP staff directly by emailing *reap@ed.gov* to update such information.

Application Deadline Date Extension in Case of Technical Issues

If you are unable to submit an application by May 10, 2024, because of technical issues, contact REAP staff by emailing *reap@ed.gov* within 5 business days and provide an explanation of the technical problem you experienced. The late application will be accepted as having met the deadline if REAP program staff can confirm that a technical issue occurred with the *Connect.gov* system that affected your ability to submit the application by the deadline. As noted above, if you submit the application after the deadline and the late submission is not due to a technical issue about which you have notified REAP program staff, the Department may consider your application to the extent practicable and contingent upon the availability of funding.

IV. Other Procedural Requirements

System for Award Management (SAM)

To do business with the Department, an entity must maintain an active registration in the SAM, the Federal Government's primary registrant database, using the following information:

a. UEI.

b. Legal business name.

c. Physical address associated with the UEI.

d. Taxpayer identification number (TIN).

e. Taxpayer name associated with the TIN.

f. Bank information to set up Electronic Funds Transfer (EFT) (*i.e.,* routing number, account number, and account type (checking/savings)).

V. Accessibility Information and Program Authority

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *https://www.govinfo.gov/.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: Sections 5211–5212 of the ESEA, 20 U.S.C. 7345–7345a.

Adam Schott,

Principal Deputy Assistant Secretary, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary Office of Elementary and Secondary Education.

[FR Doc. 2024–05760 Filed 3–18–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Biological and Environmental Research Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open virtual meeting.

SUMMARY: This notice announces an open virtual meeting of the Biological and Environmental Research Advisory Committee (BERAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, April 11, 2024; 11 a.m.–5 p.m. EDT.

Friday, April 12, 2024; 11 a.m.–5 p.m. EDT.

ADDRESSES: This meeting will be held digitally via webcast using Zoom. Instructions for Zoom, as well as any updates to meeting times or meeting agenda, can be found on the BERAC meeting website at: *https://science.osti.gov/ber/berac/Meetings.*

FOR FURTHER INFORMATION CONTACT: Dr. Tristram West, Designated Federal Officer, BERAC, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, BER/Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585–1290. Phone (301) 903–5155; fax (301) 903–5051 or email: *tristram.west@science.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many

complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental Research Program.

Tentative Agenda:

- News from the Office of Biological and Environmental Research
- News from the Biological Systems Science and Earth and Environmental Systems Sciences Divisions
- Update from the BERAC Subcommittee on Unified Data
- Update from the BERAC Subcommittee on Low Dose Radiation
- Update from the BERAC Subcommittee on Project Prioritization
- Briefings from recent Workshops
- BERAC business and discussion
- Public comment

Public Participation: The two-day meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, please send an email request to both Tristram West at *tristram.west@science.doe.gov* and Andrew Flatness at *andrew.flatness@science.doe.gov.* You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comments will be limited to five minutes each. If you have any questions or need a reasonable accommodation under the Americans with Disabilities Act for this event, please send your request to Andrew Flatness at *andrew.flatness@science.doe.gov,* two weeks but no later than 48 hours, prior to the event. Closed captions will be enabled during this event.

Minutes: The minutes of this meeting will be available for public review and copying within 45 days at the BERAC website: *https://science.osti.gov/ber/berac/Meetings/BERAC-Minutes.*

Signing Authority: This document of the Department of Energy was signed on March 13, 2024, by David Borak, Deputy Committee Management Officer, 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 March 14, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–05761 Filed 3–18–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meetings

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: March 21, 2024, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE, Washington, DC 20426, Open to the public.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* *Note*—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Debbie-Anne A. Reese, Acting Secretary, Telephone (202) 502–8400.

For a recorded message listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed online at the Commission's website at *https://elibrary.ferc.gov/eLibrary/search* using the eLibrary link.

1111TH—MEETING

[Open Meeting; March 21, 2024, 10:00 a.m.]

Item No.	Docket No.	Company
	Administrative	
A–1	AD24–1–000	Agency Administrative Matters.
A–2	AD24–2–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD06–3–000	Market Update.
	Electric	
E–1	RM22–14–001	Improvements to Generator Interconnection Procedures and Agreements.
E–2	ER24–679–000	Duke Energy Carolinas, LLC and Duke Energy Florida, LLC.
	ER24–683–000	Duke Energy Carolinas, LLC, Duke Energy Florida, LLC, and Duke Energy Progress, LLC.
E–3	ER24–330–000	Arizona Public Service Company.
E–4	ER24–10–000; ER24–1399–000	Idaho Power Company.
E–5	AD21–15–000	Joint Federal-State Task Force on Electric Transmission.
	AD24–7–000	Federal and State Current Issues Collaborative.
E–6	RM22–2–000	Compensation for Reactive Power Within the Standard Power Factor Range.
E–7	PL24–1–000	Project-Area Wage Standards in the Labor Cost Component of Cost-of-Service Rates.
E–8	ER23–2656–001	Louisville Gas and Electric Company and Kentucky Utilities Company.
	ER23–2662–001; ER21–894–003; ER21–895–002; ER21–896–002; ER21–897–001; ER21–900–001; ER21–904–001 (Consolidated).	Kentucky Utilities Company. Louisville Gas and Electric Company and Kentucky Utilities Company.
E–9	ER23–2656–002	Louisville Gas and Electric Company.

1111TH—MEETING—Continued

[Open Meeting; March 21, 2024, 10:00 a.m.]

Item No.	Docket No.	Company
E–10	ER24–36–001; ER24–38–00; ER24–39–001.	Wabash Valley Power Association, Inc.
E–11	ER24–771–000	Viridon New England LLC.
E–12	ER18–1182–007; ER18–1182–000	System Energy Resources, Inc.
	EL17–41–000	*Arkansas Public Service Commission and Mississippi Public Service Commission* v. *System Energy Resources, Inc.*
	EL18–142–000; EL18–204–000 (consolidated).	*Louisiana Public Service Commission* v. *System Energy Resources, Inc. and Entergy Services, Inc.*
	EL18–152–000	*Louisiana Public Service Commission* v. *System Energy Resources, Inc. and Entergy Services, Inc.*
	EL20–72–000	*Louisiana Public Service Commission, Arkansas Public Service Commission, Council of the City of New Orleans, Louisiana, and Mississippi Public Service Commission* v. *System Energy Resources, Inc. and Entergy Services, LLC.*
	ER21–117–000; ER21–129–000; EL21–24–000; ER21–748–000; EL21–46–000; (consolidated).	System Energy Resources, Inc.
	EL21–56–000	*Louisiana Public Service Commission, Arkansas Public Service Commission, and Council of the City of New Orleans, Louisiana* v. *System Energy Resources, Inc., Entergy Services, LLC, and Entergy Operations, Inc.*
	ER22–958–000; ER23–435–000; ER23–816–000; ER23–1022–000; ER23–1164–000.	System Energy Resources, Inc.
	EL24–5–000	*Louisiana Public Service Commission, Arkansas Public Service Commission, and Council of the City of New Orleans, Louisiana* v. *System Energy Resources, Inc., Entergy Services, LLC, and Entergy Operations, Inc.*
E–13	EL23–100–000; QF86–765–006	Algonquin Power Windsor Locks, LLC.
E–14	OMITTED.	
E–15	EL24–54–000	*Karen Schedler, Jeremy Helms, Solar United Neighbors, and Vote Solar* v. *Salt River Project Agricultural Improvement and Power District.*
	Gas	
G–1	RM96–1–043	Standards for Business Practices of Interstate Natural Gas Pipelines.
G–2	RM22–17–000	Petition for Rulemaking to Update Commission Regulations Regarding Allocation of Interstate Pipeline Capacity.
	Hydro	
H–1	P–9690–115; P–10481–069; P–10482–122	Eagle Creek Hydro Power, LLC, Eagle Creek Water Resources, LLC, and Eagle Creek Land Resources, LLC.
H–2	P–12790–015	Andrew Peklo III.
H–3	P–5728–022; P–5728–023	Sandy Hollow Power Company, Inc.
	Certificates	
C–1	CP23–194–000	Transcontinental Gas Pipe Line Company, LLC.
C–2	CP23–131–000	East Tennessee Natural Gas, LLC.

A free webcast of this event is available through the Commission's website. Anyone with internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The Federal Energy Regulatory Commission provides technical support for the free webcasts. Please call (202) 502–8680 or email *customer@ferc.gov* if you have any questions.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters but will not be telecast.

Issued: March 14, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05883 Filed 3–15–24; 4:15 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–107–001.

Applicants: Horus West Virginia I, LLC.

Description: Notice of Non-Material Change in Circumstances of Horus West Virginia 1, LLC.

Filed Date: 3/11/24.

Accession Number: 20240311–5288.

Comment Date: 5 p.m. ET 4/1/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1727–000.
Applicants: Nevada Power Company.
Description: Annual Informational Report on Unreserved Use Penalties of Nevada Power Company and Sierra Pacific Power Company.
Filed Date: 3/4/24.
Accession Number: 20240304–5221.
Comment Date: 5 p.m. ET 3/25/24.

Docket Numbers: ER24–729–001.
Applicants: Holyoke BESS LLC.
Description: Tariff Amendment: Response to Request for Additional Information in Docket No. ER24–729–000 to be effective 12/22/2023.
Filed Date: 3/12/24.
Accession Number: 20240312–5104.
Comment Date: 5 p.m. ET 4/2/24.

Docket Numbers: ER24–738–001.
Applicants: PNY BESS LLC.
Description: Tariff Amendment: Response to Request for Additional Information in Docket No. ER24–738–000 to be effective 12/22/2023.
Filed Date: 3/12/24.
Accession Number: 20240312–5105.
Comment Date: 5 p.m. ET 4/2/24.

Docket Numbers: ER24–816–002.
Applicants: Puget Sound Energy, Inc.
Description: Tariff Amendment: Second Amendment to Boeing Filing—Response to Deficiency Letter to be effective 1/1/2024.
Filed Date: 3/11/24.
Accession Number: 20240311–5226.
Comment Date: 5 p.m. ET 4/1/24.

Docket Numbers: ER24–1448–000.
Applicants: Stonepeak Kestrel Energy Marketing LLC.
Description: § 205(d) Rate Filing: Notice of Succession—Stonepeak Kestrel to Canal Marketing, LLC to be effective 3/12/2024.
Filed Date: 3/11/24.
Accession Number: 20240311–5238.
Comment Date: 5 p.m. ET 4/1/24.

Docket Numbers: ER24–1449–000.
Applicants: Goose Prairie Solar LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 5/11/2024.
Filed Date: 3/11/24.
Accession Number: 20240311–5247.
Comment Date: 5 p.m. ET 4/1/24.

Docket Numbers: ER24–1450–000.
Applicants: New York Independent System Operator, Inc., New York State Electric & Gas Corporation.
Description: § 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: NYISO–NYSEG Joint 205: Scnd Amnd LGIA Eight Point Wind SA2452 (CEII) to be effective 2/27/2024.
Filed Date: 3/12/24.
Accession Number: 20240312–5044.
Comment Date: 5 p.m. ET 4/2/24.

Docket Numbers: ER24–1451–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 5382; Queue No. W3–003/AD2–026/AE1–156 (amend) to be effective 5/12/2024.
Filed Date: 3/12/24.
Accession Number: 20240312–5049.
Comment Date: 5 p.m. ET 4/2/24.

Docket Numbers: ER24–1452–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2900R22 KMEA NITSA NOA to be effective 3/1/2024.
Filed Date: 3/12/24.
Accession Number: 20240312–5051.
Comment Date: 5 p.m. ET 4/2/24.

Docket Numbers: ER24–1454–000.
Applicants: Riverstart Solar Park LLC.
Description: Baseline eTariff Filing: Reactive Power Compensation to be effective 3/13/2024.
Filed Date: 3/12/24.
Accession Number: 20240312–5157.
Comment Date: 5 p.m. ET 4/2/24.

Docket Numbers: ER24–1456–000.
Applicants: Tropicana Manufacturing Company Inc.
Description: Baseline eTariff Filing: Application for Market Based Rate Authority to be effective 5/13/2024.
Filed Date: 3/12/24.
Accession Number: 20240312–5179.
Comment Date: 5 p.m. ET 4/2/24.

Docket Numbers: ER24–1457–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC–SCPSA Dynamic Transfer Agreement RS No. 653 to be effective 6/1/2024.
Filed Date: 3/12/24.
Accession Number: 20240312–5197.
Comment Date: 5 p.m. ET 4/2/24.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: March 12, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05731 Filed 3–18–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP24–70–000, CP16–454–000]

Rio Grande LNG, LLC; Rio Grande LNG Train 4, LLC; Rio Grande LNG Train 5, LLC;

Notice of Comment Period Extension

On February 27, 2024, the Federal Energy Regulatory Commission (Commission) issued a Notice of Application and Establishing Intervention Deadline regarding the applications filed by Rio Grande LNG, LLC (RGLNG), Rio Grande LNG Train 4, LLC (RGLNG 4), and Rio Grande LNG Train 5, LLC (RGLNG 5) (collectively, RGLNG Entities) seeking authorization to transfer part of the ownership of RGLNG's NGA section 3 authorization [1] for the Rio Grande LNG Terminal located in Cameron County, Texas. The February 27 Notice set a due date for comments and interventions of March 8, 2024. By this notice the due date for comments and interventions is extended to March 21, 2024.

As stated in the February 27 Notice, any person wishing to comment on the RGLNG Entities' request for transfer of ownership of Train 4 and Train 5 to RGLNG 4 and RGLNG 5 respectively may do so. No reply comments or

[1] *Rio Grande LNG, LLC,* 169 FERC ¶ 61,131 (2019) (Authorization), *reh'g denied,* 170 FERC ¶ 61,046 (2020) (Order on Rehearing).

answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10).

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Intervention Deadline: 5:00 p.m. Eastern Time on March 21, 2024.

Dated: March 13, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05790 Filed 3–18–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC24–58–000.

Applicants: Global Infrastructure Management, LLC, BlackRock, Inc.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Global Infrastructure Management, LLC.

Filed Date: 3/12/24.

Accession Number: 20240312–5234.

Comment Date: 5 p.m. ET 4/2/24.

Docket Numbers: EC24–59–000.

Applicants: North East Offshore, LLC, Revolution Wind, LLC, South Fork Wind, LLC, GIP IV Whale Fund Holdings, L.P.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of North East Offshore, LLC, et al.

Filed Date: 3/13/24.

Accession Number: 20240313–5193.

Comment Date: 5 p.m. ET 4/3/24.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL24–86–000.

Applicants: New York Power Authority.

Description: Petition for Declaratory Order of New York Power Authority.

Filed Date: 3/6/24.

Accession Number: 20240306–5197.

Comment Date: 5 p.m. ET 4/5/24.

Docket Numbers: EL24–87–000.

Applicants: City of Tacoma, City of Tacoma, Department of Public Utilities, Light Division v. *California Independent System Operator Corporation.*

Description: Complaint of *City of Tacoma, Department of Public Utilities, Light Division* v. *California Independent System Operator Corporation.*

Filed Date: 3/13/24.

Accession Number: 20240313–5142.

Comment Date: 5 p.m. ET 4/2/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–2471–006.

Applicants: NedPower Mount Storm, LLC.

Description: Compliance filing: NedPower Mount Storm LLC submits tariff filing per 35: NedPower Mount Storm PJM Schedule 2 Informational Filing to be effective N/A.

Filed Date: 3/12/24.

Accession Number: 20240312–5205.

Comment Date: 5 p.m. ET 4/2/24.

Docket Numbers: ER22–507–004.

Applicants: Pinnacle Wind, LLC.

Description: Compliance filing: Pinnacle Wind PJM Schedule 2 Informational Filing to be effective N/A.

Filed Date: 3/12/24.

Accession Number: 20240312–5210.

Comment Date: 5 p.m. ET 4/2/24.

Docket Numbers: ER22–944–005.

Applicants: Black Rock Wind Force, LLC.

Description: Compliance filing: Black Rock Wind Force PJM Schedule 2 Informational Filing to be effective N/A.

Filed Date: 3/12/24.

Accession Number: 20240312–5204.

Comment Date: 5 p.m. ET 4/2/24.

Docket Numbers: ER24–1458–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 3023R3 Panama Wind GIA to be effective 2/22/2024.

Filed Date: 3/12/24.

Accession Number: 20240312–5214.

Comment Date: 5 p.m. ET 4/2/24.

Docket Numbers: ER24–1463–000.

Applicants: Ameren Illinois Company.

Description: 205(d) Rate Filing: Filing of a Reimbursement Agreement to be effective 5/13/2024.

Filed Date: 3/13/24.

Accession Number: 20240313–5054.

Comment Date: 5 p.m. ET 4/3/24.

Docket Numbers: ER24–1464–000.

Applicants: Sunlight Road Solar, L.L.C.

Description: 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 5/13/2024.

Filed Date: 3/13/24.

Accession Number: 20240313–5058.

Comment Date: 5 p.m. ET 4/3/24.

Docket Numbers: ER24–1465–000.

Applicants: Ameren Illinois Company, Ameren Illinois Company.

Description: 205(d) Rate Filing: Ameren Illinois Company submits tariff filing per 35.13(a)(2)(iii: Filing of a Reimbursement Agreement to be effective 5/13/2024.

Filed Date: 3/13/24.

Accession Number: 20240313–5059.

Comment Date: 5 p.m. ET 4/3/24.

Docket Numbers: ER24–1466–000.

Applicants: Ameren Illinois Company, Ameren Illinois Company.

Description: 205(d) Rate Filing: Ameren Illinois Company submits tariff filing per 35.13(a)(2)(iii: Filing of a Reimbursement Agreement to be effective 5/13/2024.

Filed Date: 3/13/24.

Accession Number: 20240313–5060.

Comment Date: 5 p.m. ET 4/3/24.

Docket Numbers: ER24–1467–000.

Applicants: Trans Bay Cable LLC.

Description: 205(d) Rate Filing: Correction to 2024 TRBAA Annual Update to be effective 1/1/2024.

Filed Date: 3/13/24.

Accession Number: 20240313–5062.

Comment Date: 5 p.m. ET 4/3/24.

Docket Numbers: ER24–1469–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Revisions to OA, Sch. 12 and RAA, Sch 17 re: 4Q 2023 Membership Lists to be effective 12/1/2023.

Filed Date: 3/13/24.

Accession Number: 20240313–5085.

Comment Date: 5 p.m. ET 4/3/24.

Docket Numbers: ER24–1471–000.

Applicants: NextEra Energy Transmission MidAtlantic Indiana, Inc.

Description: 205(d) Rate Filing: NextEra Energy Transmission MidAtlantic, Inc. Notice of Succession to be effective 12/13/2023.

Filed Date: 3/13/24.

Accession Number: 20240313–5120.

Comment Date: 5 p.m. ET 4/3/24.

Docket Numbers: ER24–1472–000.

Applicants: Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconsin corporation.

Description: 205(d) Rate Filing: Northern States Power Company, a Minnesota corporation submits tariff filing per 35.13(a)(2)(iii: 2024 Interchange Agreement Annual Filing to be effective 1/1/2024.

Filed Date: 3/13/24.

Accession Number: 20240313–5122.

Comment Date: 5 p.m. ET 4/3/24.

Docket Numbers: ER24–1473–000.

Applicants: Midcontinent Independent System Operator, Inc., ALLETE, Inc.

Description: 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2024–03–13_ALLETE Request for Transmission Rate Incentives to be effective 3/14/2024.

Filed Date: 3/13/24.

Accession Number: 20240313–5138.

Comment Date: 5 p.m. ET 4/3/24.

Docket Numbers: ER24–1477–000.

Applicants: ISO New England Inc., Central Maine Power Company.

Description: 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: ISO–NE/CMP; Original Service Agreement No. LGIA–ISONE/CMP–24–01 to be effective 2/12/2024.

Filed Date: 3/13/24.

Accession Number: 20240313–5168.

Comment Date: 5 p.m. ET 4/3/24.

Docket Numbers: ER24–1478–000.

Applicants: AEP Texas Inc.

Description: 205(d) Rate Filing: AEPTX-Monte Cristo 1st Amended Windpower System Upgrade Agreement to be effective 2/22/2024.

Filed Date: 3/13/24.

Accession Number: 20240313–5173.

Comment Date: 5 p.m. ET 4/3/24.

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.

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Dated: March 13, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05792 Filed 3–18–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1449–000]

Goose Prairie Solar LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Goose Prairie Solar LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 1, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary.

The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

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: March 12, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05729 Filed 3–18–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24–521–000.

Applicants: Cimarron River Pipeline, LLC.

Description: § 4(d) Rate Filing: Fuel Tracker 2024—Summer Rates to be effective 4/1/2024.

Filed Date: 3/11/24.

Accession Number: 20240311–5189.

Comment Date: 5 p.m. ET 3/25/24.

Docket Numbers: RP24–522–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Yankee Gas to Emera Energy eff 3–12–24 to be effective 3/12/2024.

Filed Date: 3/12/24.

Accession Number: 20240312–5063.C

Comment Date: 5 p.m. ET 3/25/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding. The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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Dated: March 12, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05730 Filed 3–18–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24–523–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Compliance filing: 3.13.24 Annual Fuel and Losses Retention Calculations to be effective N/A.

Filed Date: 3/13/24.

Accession Number: 20240313–5034.

Comment Date: 5 p.m. ET 3/25/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP24–441–001.

Applicants: Adelphia Gateway, LLC.

Description: Compliance filing: Adelphia Gateway Corrected Refund Report Filing to be effective N/A.

Filed Date: 3/13/24.

Accession Number: 20240313–5063.

Comment Date: 5 p.m. ET 3/25/24.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: March 13, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05791 Filed 3–18–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1456–000]

Tropicana Manufacturing Company Inc.; 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 Tropicana Manufacturing Company Inc.'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 April 2, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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: March 13, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05789 Filed 3–18–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8093–023]

Methuen Falls Hydroelectric Company; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 8093–023.

c. *Date filed:* February 28, 2024.[1]

d. *Applicant:* Methuen Falls Hydroelectric Company (Methuen Hydro).

e. *Name of Project:* Methuen Falls Hydroelectric Project.

f. *Location:* On the Spicket River in Essex County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Kevin Olson, Olson Electric Development Company, Inc., 30r Hampshire Street, Methuen, MA 01844; (978) 975–0400; email at *kevin@olsonelectric.com.*

i. *FERC Contact:* Bill Connelly at (202) 502–8587, or *william.connelly@ferc.gov.*

j. *Cooperating agencies:* Federal, State, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* April 29, 2024.[2]

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier

[1] On March 11, 2024, Methuen Hydro resubmitted the application to correctly identify and designate the single-line electrical diagram as critical energy and electric infrastructure information.

[2] The Commission's Rules of Practice and Procedure provide that if a filing deadline falls on a Saturday, Sunday, holiday, or other day when the Commission is closed for business, the filing deadline does not end until the close of business on the next business day. 18 CFR 385.2007(a)(2). Because the 60-day filing deadline falls on a Sunday (*i.e.,* April 28, 2024), the filing deadline is extended until the close of business on Monday, April 29, 2024.

must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Methuen Falls Hydroelectric Project (P–7883–020).

m. The application is not ready for environmental analysis at this time.

n. The existing Methuen Falls Hydroelectric Project consists of the following: (1) a 20-foot-high stone masonry dam with two hydraulic sluice gates and a stone masonry spillway topped with 3-foot-high wooden flashboards with a crest elevation of 104.4 feet National Geodetic Vertical Datum of 1929 (NGVD 29) at the top of the flashboards; (2) an impoundment with a normal surface elevation of 104.4 feet NGVD 29; (3) an intake structure equipped with a trashrack and a headgate; (4) an underground penstock (4) a powerhouse with two Vertical Francis turbine-generator units with an authorized installed capacity of 357 kilowatts; (5) a 20-foot-long, 2-foot-wide tailrace; (6) two generator leads; (7) a transformer; (8) a 3.74-kV, 250-foot-long transmission line; and (9) appurtenant facilities.

The project operates in a run-of-river mode with a minimum flow of 3 cubic feet per second (cfs) to the bypassed reach. The project has an average annual generation of 1,000 megawatt-hours.

Methuen Hydro is proposing to continue run-of-river operation, increase the minimum flow from 3 cfs to 16 cfs, and install upstream and downstream passage for American eels.

o. Copies of the application may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document (P–8093). For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call tollfree, (866) 208–3676 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.

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.*

p. Procedural schedule and final amendments: The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Issue Deficiency Letter (if necessary).	April 2024.
Request Additional Information.	April 2024.
Issue Acceptance Letter ..	August 2024.
Issue Scoping Document 1 for comments.	August 2024.
Request Additional Information (if necessary).	September 2024.
Issue Scoping Document 2 (if necessary).	November 2024.
Issue Notice of Ready for Environmental Analysis.	November 2024.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: March 12, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05728 Filed 3–18–24; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meetings

TIME AND DATE: 10 a.m. on March 21, 2024.

PLACE: This Board meeting will be open to public observation only by webcast. Visit *https://www.fdic.gov/news/board-matters/video.html* for a link to the webcast. FDIC Board Members and staff will participate from FDIC Headquarters, 550 17th Street NW, Washington, DC.

Observers requiring auxiliary aids (*e.g.,* sign language interpretation) for this meeting should email *DisabilityProgram@fdic.gov* to make necessary arrangements.

STATUS: Open to public observation via webcast.

MATTERS TO BE CONSIDERED: The Federal Deposit Insurance Corporation's Board of Directors will meet to consider the following matters:

Discussion Agenda

Memorandum and resolution re: Proposed Statement of Policy on Bank Merger Transactions.

Summary Agenda

No substantive discussion of the following items is anticipated. The Board will resolve these matters with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of Minutes of a Board of Directors' Meeting Previously Distributed.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

CONTACT PERSON FOR MORE INFORMATION: Direct requests for further information concerning the meeting to Debra A. Decker, Executive Secretary of the Corporation, at 202–898–8748.

Authority: 5 U.S.C. 552b.

Dated at Washington, DC, on March 14, 2024.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–05842 Filed 3–15–24; 11:15 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the

standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than April 18, 2024.

A. Federal Reserve Bank of Minneapolis (Stephanie Weber, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291. Comments can also be sent electronically to *MA@mpls.frb.org:*

1. *Stearns Financial Services, Inc. Employee Stock Purchase Plan, Saint Cloud, Minnesota;* to increase its ownership interest in the voting shares of Stearns Financial Services, Inc., Saint Cloud, Minnesota, up to 23.2753 percent and thereby indirectly increase its ownership interest in the voting shares of Stearns Bank National Association, Saint Cloud, Minnesota; Stearns Bank of Upsala, Upsala, Minnesota; and Stearns Bank of Holdingford, Holdingford, Minnesota.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–05796 Filed 3–18–24; 8:45 am]

BILLING CODE P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Board Meeting

DATES: March 26, 2024 at 9 a.m. EDT

ADDRESSES: Telephonic. Dial-in (listen only) information: Number: 1–202–599–1426, Code: 675 746 624#; or via web: *https://teams.microsoft.com/l/meetup-join/19%3ameeting_OTIxOTM4MzAtYTUyOC00NzNkLWFkMTUtZGQ3ODVhZTY0OGQx%40thread.v2/0?context=%7b%22Tid%22%3a%223f6323b7-e3fd-4f35-b43d-1a7afae5910d%22%2c%22Oid%22%3a%2241d6f4d1-9772-4b51-a10d-cf72f842224a%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 February 27, 2024, Board Meeting Minutes
2. Monthly Reports
   (a) Participant Report
   (b) Investment Report
   (c) Legislative Report
3. Quarterly Reports
   (d) Vendor Risk Management

Closed Session

4. Information covered under 5 U.S.C. 552b (c)(10).

Authority: 5 U.S.C. 552b(e)(1).

Dated: March 14, 2024.

Dharmesh Vashee,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2024–05787 Filed 3–18–24; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–24–1181]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Airline and Traveler Information Collection: Domestic Manifests and the Passenger Locator Form'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on January 16, 2024, to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Airline and Traveler Information Collection: Domestic Manifests and the Passenger Locator Form (OMB Control No. 0920–1181, Exp. 3/31/2024)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The rapid speed and tremendous volume of domestic, international, and transcontinental travel, commerce, and human migration enable infectious disease threats to disperse worldwide in 24 hours—less time than the incubation period of most communicable diseases. These and other forces intrinsic to modern technology and ways of life favor the emergence of new communicable diseases and the reemergence or increased severity of known communicable diseases.

Stopping a communicable disease outbreak—whether it is naturally occurring or intentionally caused—requires the use of the most rapid and effective public health tools available. Basic public health practices, such as collaborating with airlines in the identification and notification of potentially exposed contacts, are critical tools in the fight against the introduction, transmission, and spread of communicable diseases in the United States.

The collection of timely, accurate, and complete conveyance and traveler information enables CDC to notify State,

local, and Territorial health departments in order for them to make contact with individuals who may have been exposed to a communicable disease during travel and identify appropriate next steps.

Section 361 of the Public Health Service Act (42 U.S.C. 264) authorizes the Secretary of the Department of Health and Human Services to make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States, or from one State or possession into any other State or possession. Regulations that implement Federal quarantine authority are currently promulgated in 42 CFR parts 70 and 71. Part 71 contains regulations to prevent the introduction, transmission, and spread of communicable diseases into the States and possessions of the United States, while part 70 contains regulations to prevent the introduction, transmission, or spread of communicable diseases from one State into another.

Passenger and crew manifests contain certain information for travelers on an aircraft and are generally collected from airlines when a communicable disease is confirmed after the air travel has been completed. Manifests include locating and contact information, as well as information concerning where passengers sat while aboard the aircraft. The specific list of data elements included in the domestic manifest order is:

- Full name (last, first, and, if available, middle or others);
- Date of birth;
- Sex;
- Country of residence;
- If a passport is required; passport number, passport country of issuance, and passport expiration date;
- If a travel document, other than a passport is required, travel document type, travel document number, travel document country of issuance and travel document expiration date;
- Address while in the United States (number and street, city, State, and zip code), except that U.S. citizens and lawful permanent residents will provide address of permanent residence in the U.S. (number and street, city, State, and zip code; as applicable);
- Primary contact phone number to include country code;
- Secondary contact phone number to include country code;
- Email address;
- Airline name;
- Flight number;
- City of departure;
- Departure date and time;
- City of arrival;
- Arrival date and time; and
- Seat number for all passengers

CDC also requests seat configuration for the requested contact area (example: AB/aisle/CDE/aisle/FG, bulkhead in front of row 9), identification on the manifest of the crew and what zone crew were assigned to, the identification of any babies-in-arms, and finally CDC requests the total number of passengers on board if measles is the cause of the investigation, due to the highly infectious nature of the disease.

CDC then uses this passenger and crew manifest information to coordinate with State and local health departments so they can follow up with residents who live or are currently located in their jurisdiction. In most cases, the manifests are issued for air travel, and State and local health departments or IHR NFPs are responsible for the contact investigations; airlines may take responsibility for the follow-up of crew members. In rare cases, CDC may use the manifest data to perform the contact investigation directly.

CDC requests OMB approval for an estimated 3,240 annual burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Airline Medical Officer or Equivalent/Airline Administrative or Safety Manager.	Domestic Manifest Order Template	500	1	6
Airline Administrative or Safety Manager	Informal Manifest Request	25	1	6
Traveler	Public Health Passenger Locator Form: limited onboard exposure (International Flights).	545	1	5/60
Traveler	Public Health Passenger Locator Form: limited onboard exposure (Domestic Flights).	545	1	5/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–05770 Filed 3–18–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Sole Source Cooperative Agreement To Fund Rwanda Biomedical Center (RBC)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the award of approximately $17,500,000, for Year 1 funding to RBC. The award will support a sustainable, affordable, integrated, and country-led HIV/AIDS clinical and public health program in Rwanda. Funding amounts for years 2–5 will be set at continuation.

DATES: The period for this award will be September 30, 2024, through September 29, 2029.

FOR FURTHER INFORMATION CONTACT: Antyme Kayisabe, Center for Global Health, Centers for Disease Control and Prevention, 30 KG 7 Avenue (Kacyiru), P.O. Box 28 Kigali, Rwanda, telephone: 788382114, e-Mail: *hqq9@cdc.gov.*

SUPPLEMENTARY INFORMATION: The sole source award will support the government of Rwanda's vision of achieving and maintaining HIV epidemic control and the UNAIDS goal of ending HIV/AIDS as a public health threat by 2030.

RBC is in a unique position to conduct this work, as it possesses not only the mandate but also has the capacities to manage donor funds efficiently and in accordance with PEPFAR principles and United State Government regulations. All health workers implementing PEPFAR-supported HIV clinical services including HIV testing, Antiretroviral Therapy, TB/HIV, prevention of mother to child transmission, and laboratory services are Ministry of Health (MOH) staff. All health facilities where PEPFAR-supported services are offered are under RBC accreditation and authorization. RBC is successfully coordinating HIV services in all health facilities countrywide. It is the only entity capable of providing comprehensive services and integrating HIV into the national health system to cover all Rwanda districts at each level.

Summary of the Award

Recipient: Rwanda Biomedical Center (RBC).

Purpose of the Award: The purpose of this award is to support a sustainable, affordable, integrated, and country-led HIV/AIDS clinical and public health program in Rwanda.

Amount of Award: For RBC, the approximate year 1 funding amount will be $17,500,000 in Federal Fiscal Year (FYY) 2024 funds, subject to the availability of funds. Funding amounts for years 2–5 will be set at continuation.

Authority: This program is authorized under Public Law 108–25 (the United States Leadership Against HIV AIDS, Tuberculosis and Malaria Act of 2003) (22 U.S.C. 7601, *et seq.*) and Public Law 110–293 (the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008), and Public Law 113–56 (PEPFAR Stewardship and Oversight Act of 2013).

Period of Performance: The period for this award will be September 30, 2024, through September 29, 2029.

Dated: March 13, 2024.

Jamie Legier,

Acting Director, Office of Grants Services, Centers for Disease Control and Prevention.

[FR Doc. 2024–05776 Filed 3–18–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Sole Source Cooperative Agreement To Fund National Tuberculosis Control Program (NTCP)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the award(s) of approximately $3,000,000, for Year 1 funding to NTCP. The award will improve the capacity of the health system at national, regional, district, and facility levels to provide an effective public health response for Tuberculosis (TB) and human immunodeficiency virus (HIV) co-infection in Cameroon, reduce disease burden, and contribute to achieving and sustaining epidemic control. Funding amounts for years 2–5 will be set at continuation.

DATES: The period for this award will be September 30, 2024, through September 29, 2029.

FOR FURTHER INFORMATION CONTACT: F.E. Harrison, Center for Global Health, Centers for Disease Control and Prevention, telephone: (404) 639–6095, email: *ckv3@cdc.gov*.

SUPPLEMENTARY INFORMATION: This sole source award will accelerate progress in reducing the burden of TB and TB/HIV co-infection in Cameroon through a multistakeholder approach.

NTCP is in a unique position to conduct this work, as it is the only institution that has the legal mandate to develop and implement the national strategic plan for TB control, which aims to reduce the morbidity and mortality associated with TB.

Summary of the Award

Recipient: National Tuberculosis Control Program (NTCP).

Purpose of the Award: The purpose of this award is to improve the capacity of the health system at national, regional, district, and facility levels to provide an effective public health response for TB and HIV co-infection in Cameroon, reduce disease burden, and contribute to achieving and sustaining epidemic control.

Amount of Award: For NTCP, the approximate year 1 funding amount will be $3,000,000 in Federal Fiscal Year (FYY) 2024 funds, subject to the availability of funds. Funding amounts for years 2–5 will be set at continuation.

Authority: This program is authorized under Public Law 108–25 (the United States Leadership Against HIV AIDS, Tuberculosis and Malaria Act of 2003) (22 U.S.C. 7601, *et seq.*) and Public Law 110–293 (the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008), and Public Law 113–56 (PEPFAR Stewardship and Oversight Act of 2013).

Period of Performance: The period for this award will be September 30, 2024, through September 29, 2029.

Dated: March 13, 2024.

Jamie Legier,

Acting Director, Office of Grants Services, Centers for Disease Control and Prevention.

[FR Doc. 2024–05772 Filed 3–18–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Sole Source Cooperative Agreement To Fund World Health Organization (WHO)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the award of approximately $20,000,000, for Year 1 funding to WHO. This award will support the development of global guidelines and provide technical assistance through WHO to aid PEPFAR-supported countries to meet the 95–95–95 targets and achieve program sustainability by 2030. Funding amounts for years 2–5 will be set at continuation.

DATES: The period for this this award will be September 30, 2024, through September 29, 2029

FOR FURTHER INFORMATION CONTACT: Francheskie Velez, Center for Global Health, Centers for Disease Control and Prevention, 1600 Clifton Road NE MS–E39 Atlanta, GA 30329, telephone: 404.245.5639, e-Mail: *gpg2@cdc.gov*.

SUPPLEMENTARY INFORMATION: The sole source award will support efforts to improve surveillance, prevention, care, and treatment of HIV, Tuberculosis (TB), sexually transmitted infection

(STIs), viral hepatitis, and associated chronic co-infections and noncommunicable diseases (NCDs); promote health equity; increase sustainability of programs; strengthen public health systems and health security; and follow science.

WHO is in a unique position to conduct this work, as it is the sole international global health organization responsible for issuing normative standard and guidelines for implementation of health programs including HIV/AIDS within the UN system. No other organization has the authority to issue international standards for health in the UN system as denoted by the WHO constitution signed in 1948.

Summary of the Award

Recipient: World Health Organization (WHO).

Purpose of the Award: The purpose of this award is to support the development of global guidelines and provide technical assistance through WHO to aid PEPFAR-supported countries to meet the 95–95–95 targets and achieve program sustainability by 2030. In alignment with the 2022 PEPFAR Five-Year Strategy.

Amount of Award: For WHO, the approximate year 1 funding amount will be $20,000,000 in Federal Fiscal Year (FYY) 2024 funds, subject to the availability of funds. Funding amounts for years 2–5 will be set at continuation.

Authority: This program is authorized under Public Law 108–25 (the United States Leadership Against HIV AIDS, Tuberculosis and Malaria Act of 2003) (22 U.S.C. 7601, *et seq.*) and Public Law 110–293 (the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008), and Public Law 113–56 (PEPFAR Stewardship and Oversight Act of 2013). Additionally, this program is authorized under section 307 of the Public Health Service Act (42 U.S.C. 242l), as amended and section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended.

Non-PEPFAR Funding

Additionally, this program is authorized under the Public Health Service Act 42 CFR part 51b—Project Grants for Preventive Health Services section 318 (42 U.S.C. 247c) section 318 (42 U.S.C. 247c) Sexually transmitted diseases; prevention and control projects; sections 301(a), 317N, and 318 of the Public Health Service Act (42 U.S.C. 241(a), 247b–15, and 247c).

Period of Performance: The period for this award will be September 30, 2024, through September 29, 2029.

Dated: March 13, 2024.

Jamie Legier,

Acting Director, Office of Grants Services, Centers for Disease Control and Prevention.

[FR Doc. 2024–05774 Filed 3–18–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Sole Source Cooperative Agreement To Fund National Health Laboratory Service (NHLS)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the award(s) of approximately $5,000,000, for Year 1 funding to NHLS. The(se) award(s) will strengthen laboratory systems for improved access to sustainable delivery of quality laboratory services and promote rational use of diagnostic services in South Africa through above site interventions. Funding amounts for years 2–5 will be set at continuation.

DATES: The period for this award will be September 30, 2024, through September 29, 2029.

FOR FURTHER INFORMATION CONTACT: Artur Ramos, Center for Global Health, Centers for Disease Control and Prevention, 100 Totius Street, Groenkloof, Pretoria, telephone: 3108483712, e-Mail: *cer9@cdc.gov.*

SUPPLEMENTARY INFORMATION: The(se) sole source award(s) will address gaps in line with PEPFAR strategies and the Government of South Africa's key priority areas that need continued PEPFAR support. This includes developing and reviewing laboratory policies, strategic plans, and governance structures to expand diagnostic health equity and response to Human Immunodeficiency Virus (HIV), Tuberculosis (TB) and related public health needs. It also includes prioritizing technical and systems advancements to increase operational efficiencies and improve service delivery as well as supporting an environment that facilitates and endorses integration, ownership, and sustainable transition of PEPFAR-funded laboratory activities to NHLS and the National Department of Health.

NHLS is in a unique position to conduct this work, as it is the sole provider of diagnostic pathology services to the public sector in South Africa and has been mandated by the government of South Africa under the National Health Laboratory Service Act, 2000 to provide quality, affordable, and sustainable laboratory and related public health services. Quality laboratory testing is an essential building block of the HIV clinical cascade as accurate and timely clinical laboratory services will facilitate the earlier diagnosis of HIV, staging, identification of adverse drug events and opportunistic infections, and monitoring the response of individual patients to therapy, including identification of treatment failures.

Summary of the Award

Recipient: National Health Laboratory Service (NHLS).

Purpose of the Award: The purpose of this award is to strengthen laboratory systems for improved access to sustainable delivery of quality laboratory services and promote rational use of diagnostic services in South Africa through above site interventions.

Amount of Award: For NHLS, the approximate year 1 funding amount will be $5,000,000 in Federal Fiscal Year (FYY) 2024 funds, subject to the availability of funds. Funding amounts for years 2–5 will be set at continuation.

Authority: This program is authorized under Public Law 108–25 (the United States Leadership Against HIV AIDS, Tuberculosis and Malaria Act of 2003) (22 U.S.C. 7601, *et seq.*) and Public Law 110–293 (the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008), and Public Law 113–56 (PEPFAR Stewardship and Oversight Act of 2013). Additionally, this program is authorized under section 307 of the Public Health Service Act (42 U.S.C. 242l), as amended and section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended.

Period of Performance: The period for this award will be September 30, 2024, through September 29, 2029.

Dated: March 13, 2024.

Jamie Legier

Acting Director, Office of Grants Services, Centers for Disease Control and Prevention.

[FR Doc. 2024–05777 Filed 3–18–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–24–24AA]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Rape Prevention and Education (RPE) Program'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on October 16, 2023 to obtain comments from the public and affected agencies. CDC received three comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Rape prevention and education (RPE) program—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Sexual violence (SV) is a major public health problem, one in three women and one in four men experienced sexual violence involving physical contact during their lifetimes. Nearly one in five women and one in 38 men have experienced completed or attempted rape. Sexual violence starts early: one in three female and one in four male rape victims experienced it for the first time between 11–17 years old. The Rape Prevention and Education Program (RPE) provides funding to health departments and sexual violence coalitions in all 50 states, the District of Columbia (DC), and U.S. territories as well as up to 10 tribal coalitions. CDC will collect data from RPE Program recipients to assess how recipients are improving prevention infrastructure, implementing, and evaluating prevention strategies to expand efforts to prevent sexual assault, and using data to inform prevention action.

Recipients will have an opportunity to: (1) continue to build program and partner capacity to facilitate and monitor the implementation of SV prevention programs, practices, and policies; (2) continue to support state and territorial health departments' implementation of community-and societal-level programs, practices, and policies to prevent SV; (3) continue to support the implementation of data-driven, comprehensive, evidence-based SV primary prevention strategies, and approaches focused mainly on health equity; and (4) continuously conduct data to action activities to inform changes or adaptations to existing SV strategies or on selected and implemented additional strategies.

RPE Program recipients or designated delegates will submit data annually into an online data system. Recipients will monitor and report progress on their goals, objectives, and activities, as well as relevant information on the implementation of their prevention strategies, outcomes, evaluation, and state action plan. Information will be collected via online web-based survey software. Descriptive analyses (*e.g.,* frequencies and crosstabs) will be performed on numeric or categorical data, and content analyses (*e.g.,* categorization) on open-ended or text data.

Information to be collected will provide crucial data for program performance monitoring and provide CDC with the capacity to respond in a timely manner to requests for information about the program from the Department of Health and Human Services (HHS), the White House, Congress, and other sources. Information to be collected will also strengthen CDC's ability to monitor awardee progress, provide data-driven technical assistance, and disseminate the most current surveillance data on unintentional and intentional injuries.

The total annual burden requested by CDC is estimated to be 1,408 hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
RPE-funded Health Departments (State, DC, and Territories), Sexual Assault Coalitions, Tribal Coalitions and their Designated Delegates.	Annual Performance Report	128	1	10
	Program Director Survey	128	1	30/60
	Lead Evaluator Survey	128	1	30/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–05775 Filed 3–18–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Sole Source Cooperative Agreement To Fund Ministry of Health of Mozambique (MISAU)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the award(s) of approximately $10,000,000, for Year 1 funding to MISAU. The(se) award(s) will support the GRM through MISAU to continue to address Tuberculosis (TB) and human immunodeficiency virus (HIV) as a public health problem through the expansion of access to quality HIV prevention, care, and treatment services to reduce remaining gaps among children, adolescents, key populations (KP) and men. Funding amounts for years 2–5 will be set at continuation.

DATES: The period for this award will be September 30, 2024, through September 29, 2029.

FOR FURTHER INFORMATION CONTACT: Scott Salo, Center for Global Health, Centers for Disease Control and Prevention, Avenida Marginal nr 5467 Sommerschield, Distrito Municipal de KaMpfumo Caixa Postal 783 CEP 0101–11 Maputo, Moçambique, Telephone: 404.553.7439, E-Mail: *evf1@cdc.gov.*

SUPPLEMENTARY INFORMATION: The sole source award(s) will strengthen technical, managerial, and institutional capacities at MISAU to optimize some of the following approaches: youth appropriate HIV testing services, HIV-related DREAMS services for Adolescent Girls and Young Women, pre-exposure prophylaxis services, voluntary medical male circumcision services, cervical cancer services, and gender-based violence services. Other approaches include maternal and child health services, differentiated HIV service delivery models, and HIV and TB services.

MISAU is in a unique position to conduct this work, as it is the central institution of public sector, which according to the law of the Republic of Mozambique, is responsible for the implementation of health policy in the public, private, and community domains. MISAU, by law, has the authority to lead, provide oversight, monitor the implementation of healthcare programs and services at national level, and is mandated to develop policies and guidelines, and plan, manage, and coordinate all health-related activities including HIV/TB services.

Summary of the Award

Recipient: Ministry of Health of Mozambique (MISAU).

Purpose of the Award: The purpose of this award is to to prepare MISAU to sustain the gains of the national HIV response through the development of a measurable roadmap for sustainability and support the Government of Mozambique through MISAU to continue to address HIV/TB as a public health problem through the expansion of access to quality HIV prevention, care, and treatment services to reduce remaining gaps among children, adolescents, KP, and men.

Amount of Award: For MISAU, the approximate year 1 funding amount will be $10,000,000 in Federal Fiscal Year (FYY) 2024 funds, subject to the availability of funds. Funding amounts for years 2–5 will be set at continuation.

Authority: This program is authorized under Public Law 108–25 (the United States Leadership Against HIV AIDS, Tuberculosis and Malaria Act of 2003) [22 U.S.C. 7601, *et seq.*] and Public Law 110–293 (the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008), and Public Law 113–56 (PEPFAR Stewardship and Oversight Act of 2013).

Period of Performance: The period for this award will be September 30, 2024, through September 29, 2029.

Dated: March 13, 2024.

Jamie Legier,

Acting Director, Office of Grants Services, Centers for Disease Control and Prevention.

[FR Doc. 2024–05778 Filed 3–18–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Sole Source Cooperative Agreement To Fund International Union Against Tuberculosis and Lung Disease (The Union)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the award of approximately $500,000, for Year 1 funding to The Union. The award will continue developing and updating Tuberculosis (TB) scientific and programmatic resources, disseminating TB best practices, and building TB capacity. Funding amounts for years 2–5 will be set at continuation.

DATES: The period for this award will be September 30, 2024, through September 29, 2029.

FOR FURTHER INFORMATION CONTACT: Victoria Tully, Center for Global Health, Centers for Disease Control and Prevention, 1600 Clifton Road, MS US1–1 Atlanta, Georgia 30329, Telephone: 404.718.2549, E-Mail: *nts2@cdc.gov.*

SUPPLEMENTARY INFORMATION: The sole source award will focus on developing and updating scientific and programmatic resources, disseminating clinical and programmatic best practices, and building capacity. These activities are expected to equip health officials, health professionals, and health care and public health workers with skills and knowledge based on the latest TB recommendations.

The Union is in a unique position to conduct this work, as it was given the mandate: (1) to establish a Federation amongst the national associations or organizations engaged in the campaign against TB, to coordinate their efforts throughout the world, and to work in collaboration with international organizations to end TB disease; (2) to organize scientific conferences and congresses regarding TB; (3) to compare national legislation in preventing and controlling TB; (4) to collect international TB statistics; (5) to stimulate scientific and social investigations regarding the distribution, spread, prevention, and treatment of TB in various countries; and (6) to collect and distribute

information to national organizations included in The Union on all questions concerning scientific and sociological study on TB. The Union is uniquely qualified to combat TB and lung disease globally and to offer training and other capacity-building activities leading to health solutions for the poor in resource limited countries, the key activities under this NOFO, due to its WHO-recognized accomplishments and leadership role in the global TB fight since its founding in 1920.

Summary of the Award

Recipient: International Union Against Tuberculosis and Lung Disease (The Union).

Purpose of the Award: The purpose of this award is to continue developing and updating TB scientific and programmatic resources, disseminating TB best practices, and building TB capacity.

Amount of Award: For The Union, the approximate year 1 funding amount will be $500,000 in Federal Fiscal Year (FYY) 2024 funds, subject to the availability of funds. Funding amounts for years 2–5 will be set at continuation.

Non-PEPFAR Authority: This program is authorized under section 307 of the Public Health Service Act (42 U.S.C. 242l), as amended and section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended.

Period of Performance: The period for this award will be September 30, 2024, through September 29, 2029.

Dated: March 13, 2024.

Jamie Legier,

Acting Director, Office of Grants Services, Centers for Disease Control and Prevention.

[FR Doc. 2024–05771 Filed 3–18–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–1181]

Air Products and Chemicals, Inc.; Withdrawal of Approval of a New Drug Application and New Animal Drug Application for Helium, USP

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of the new drug application (NDA) 205864 and the new animal drug application (NADA) 141–395 for the designated medical gas Helium, USP held by Air Products and Chemicals, Inc., 1940 Air Products Blvd., Allentown, PA 18106–5500 (Air Products). Air Products notified the Agency in writing that the drug product was no longer marketed and requested that the approval of the application be withdrawn.

DATES: Approval is withdrawn as of April 18, 2024.

FOR FURTHER INFORMATION CONTACT: Kimberly Lehrfeld, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6226, Silver Spring, MD 20993–0002, 301–796–3137, *Kimberly.Lehrfeld@fda.hhs.gov;* or Scott Fontana (HFV–180), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0656, *Scott.Fontana@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Air Products has informed FDA that it is no longer marketing the designated medical gas Helium, USP and has requested that FDA withdraw approval of NDA 205864 and NADA 141–395 under the processes in § 314.150© (21 CFR 314.150(c)) and § 514.115(d) (21 CFR 514.115(d)). Air Products has also, by its request, waived its opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) or an NADA or abbreviated new animal drug application under § 514.115(d) is without prejudice to refiling.

Therefore, approval of NDA 205864 and NADA 141–395, and all amendments and supplements thereto, are hereby withdrawn as of April 18, 2024. Introduction or delivery for introduction into interstate commerce of Helium, USP, without an approved new drug application or an approved new animal drug application violates sections 505(a), 512(a), 301(a), and 301(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(a), 360b(a)(1), 331(a), and 331(d)). Any Helium, USP manufactured by Air Products pursuant to these applications that is in inventory on April 18, 2024 may continue to be dispensed until the inventories have been depleted or the drug product has reached its expiration date or otherwise become violative, whichever occurs first.

Dated: March 13, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–05742 Filed 3–18–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting. This meeting is open to the public. The public is welcome to attend in person or to obtain the link to attend this meeting by following the instructions posted on the Committee website: *https://ncvhs.hhs.gov/meetings/full-committee-meeting-16/.*

Name: National Committee on Vital and Health Statistics (NCVHS) Meeting.

DATES: Thursday, April 11, 2024: 9:15 a.m.–5:30 p.m. EDT and Friday, April 12, 2024: 8:30 a.m.–3:00 p.m. EDT.

ADDRESSES: In-person/hybrid (includes virtual attendance option).

FOR MORE INFORMATION CONTACT: Substantive program information may be obtained from Rebecca Hines, MHS, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, Maryland 20782, or via electronic mail to *vgh4@cdc.gov;* or by telephone (301) 458–4715. Summaries of meetings and a roster of Committee members are available on the NCVHS website *https://ncvhs.hhs.gov/,* where further information including an agenda and instructions to access the broadcast of the meeting will be posted.

Should you require reasonable accommodation, please telephone the CDC Office of Equal Employment Opportunity at (770) 488–3210 as soon as possible.

SUPPLEMENTARY INFORMATION:

Purpose: As outlined in its Charter, the National Committee on Vital and Health Statistics assists and advises the Secretary of HHS on health data, data standards, statistics, privacy, national health information policy, and the Department's strategy to best address those issues. Under the Health Insurance Portability and Accountability Act of 1996 (HIPAA),[1] NCVHS advises the Secretary on administrative simplification standards, including those for privacy, security,

[1] Public Law 104–191, 110 Stat. 1936 (Aug 21, 1996), available at *https://www.congress.gov/104/plaws/publ191/PLAW-104publ191.pdf.*

adoption and implementation of transaction standards, unique identifiers, code sets, and operating rules adopted under the Patient Protection and Affordable Care Act (ACA).[2]

The meeting agenda will include discussion of the 2024 workplan including the NCVHS Report to Congress, and briefings and discussions with invited experts on several health data policy topics, including: standards for SDOH data elements; possible implications of Value Based Care Models vs Fee-For-Service on HIPAA standards; an overview of the key elements of the Trusted Exchange Framework and Common Agreement (TEFCA) published by the Office of the National Coordinator for Health IT (ONC) in November 2023; and exploration of privacy and security in AI in technology and healthcare.

The NCVHS Workgroup on Timely and Strategic Action to Inform ICD–11 Policy for morbidity will report to the full Committee on Phase II of its work focusing on analysis of the recent Request for Information (RFI), published in October 2023.[3]

The Committee will reserve time on the agenda for public comment. Meeting times and topics are subject to change. Please refer to the agenda posted on the NCVHS website for updates: *https://ncvhs.hhs.gov/meetings/full-committee-meeting-16/.*

Sharon Arnold,

Associate Deputy Assistant Secretary, Office of Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2024–05779 Filed 3–18–24; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; P01 and R03 Review.

Date: April 3, 2024.

Time: 10:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: M. Catherine Bennett, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/HHS, NSC, 6001 Executive Blvd., Rockville, MD 20852, 301–435–1766, *bennettc3@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: March 13, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–05727 Filed 3–18–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at (240) 276–1243.

Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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.

Project: Minority AIDS Initiative—Management Reporting Tools (MAI–MRTs)—(OMB No. 0930–0357)—Renewal

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Prevention (CSAP) is requesting from the Office of Management and Budget (OMB) approval for the renewal of Minority AIDS Initiative (MAI) monitoring tools, which includes both youth and adult questionnaires, as well as the quarterly progress report. This revision includes the inclusion of new cohorts, substantial revisions to the youth and adult questionnaires, updates to the data used to estimate response rates and expected numbers of participants by service duration (see Table 1 below).

The cohorts of grantees funded by the MAI and included in this clearance request are:

- Prevention Navigators 2019
- Prevention Navigators 2020
- Prevention Navigators 2021
- Prevention Navigators 2022
- Prevention Navigators 2023

The target population for the grantees will be at-risk minority adolescents and young adults. All MAI grantees are expected to report their monitoring data using SAMHSA's Strategic Prevention Framework (SPF) and to target minority populations, as well as other high-risk groups residing in communities of color with high prevalence of Substance Abuse and HIV/AIDS. The primary objectives of the monitoring tools include:

- Assess the success of the MAI in reducing risk factors and increasing protective factors associated with the transmission of the Human Immunodeficiency Virus (HIV), Hepatitis C Virus (HCV) and other sexually transmitted diseases (STD).
- Measure the effectiveness of evidence-based programs and infrastructure development activities such as: outreach and training, mobilization of key stakeholders, substance abuse and HIV/AIDS counseling and education, testing, referrals to appropriate medical treatment and/or other intervention strategies (*i.e.,* cultural enrichment

[2] Public Law 111–148, 124 Stat.119, available at *https://www.congress.gov/111/plaws/publ148/PLAW-111publ148.pdf.*

[3] **Federal Register** Notice, October 16, 2023: *https://www.federalregister.gov/documents/2023/10/16/2023-22753/national-committee-on-vital-and-health-statistics.*

activities, educational and vocational resources, social marketing campaigns, and computer-based curricula).

- Investigate intervention types and features that yield the best outcomes for specific population groups.
- Assess the extent to which access to health care was enhanced for population groups and individuals vulnerable to behavioral health disparities residing in communities targeted by funded interventions.
- Assess the process of adopting and implementing the SPF with the target populations.
- Added questions to capture details on the intervention and the referrals to the record management section (completed by grantee staff).

TABLE 1—ESTIMATES OF ANNUALIZED HOUR BURDEN

Type of respondent activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Quarterly Progress Report	183	4	732	4	2,928
Adult questionnaire	10,000	3	30,000	.20	6,000
Youth questionnaire	2,500	3	7,500	.20	1,500
Total	12,683		38,232		10,428

Send comments to Carlos Graham, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–B, Rockville, Maryland 20857, *OR* email a copy to *carlos.graham@samhsa.hhs.gov.* Written comments should be received by May 20, 2024.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2024–05794 Filed 3–18–24; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7080–N–13]

30-Day Notice of Proposed Information Collection: Tribal Housing and Urban Development Veteran Administration Supportive Housing Program; OMB Control No.: 2577–NEW

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* April 18, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410; email *PaperworkReductionActOffice@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs*.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on October 19, 2023 at 88 FR 72096.

A. Overview of Information Collection

Title of Information Collection: Tribal Housing and Urban Development Veteran Administration Supportive Housing Program.

OMB Control Number: 2577–XXXX.

Type of Request: New Collection.

Agency Form Numbers: Tribal HUD–VASH Family Report and Tribal HUD–VASH Application Materials.

Description of the Need for the Information and Proposed Use:

Application materials to obtain benefits under the Tribal Housing and Urban Development Veteran Administration Supportive Housing Program (Tribal HUD–VASH), which provides rental housing assistance and supportive services to Native American veterans who are homeless or at risk of homelessness living on or near a reservation or other Indian areas. Housing assistance under this program is available by grants to Tribes and Tribally Designated Housing Entities that are eligible to receive Indian Housing Block Grant (IHBG) funding under the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4101) (NAHASDA). Grants and renewal funds are awarded and approved by HUD. Grants include an additional amount for administrative costs and eligible homeless veterans receive case management services through the Department of Veterans Affairs.

Respondents: Tribes and Tribally Designated Housing Entities.

Estimated Annual Reporting and Recordkeeping Burden:

Description	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours
Tribal HUD–VASH Family Report	35	25	875.00	1.50	1,312.50
Tribal HUD–VASH application materials	35	1.00	35.00	8.00	280
Totals	70	910	1592.50		

B. Solicitation of Public Comment

This notice is soliciting comments from members of the pubic and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of burden of the proposed collection of information;

(3) Ways to enhance the quality, utility and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2024–05736 Filed 3–18–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_CO_FRN_MO4500177646]

Rocky Mountain Resource Advisory Council Announces 2024 Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Colorado's Rocky Mountain Resource Advisory Council (RAC) is announcing its 2024 meeting dates.

DATES: The Rocky Mountain RAC will meet as follows:

- April 25, 2024, virtually, from 9 a.m. to noon Mountain Time (MT);
- June 20, 2024, in-person and virtually, from 10 a.m. to 4 p.m. MT. A field tour will be held June 21, 2024, beginning at 9 a.m.;
- September 19, 2024, in-person and virtually, from 10 a.m. to 4 p.m. MT. A field tour will be held Sept. 20, 2024, beginning at 9 a.m.; and
- November 7, 2024, virtually, from 9 a.m. to noon MT.

All meetings and field tours are open to the public.

ADDRESSES: The April 25 meeting will be held through the Zoom platform.

The June 20 meeting will be held and the June 21 field tour will commence and conclude at the BLM's San Luis Valley Field Office at 1313 US–160, Monte Vista, CO 81144, as well as virtually through the Zoom platform.

The Sept. 19 meeting will be held and the Sept. 20 field tour will commence and conclude at the BLM's Royal Gorge Field Office at 3028 East Main Street, Cañon City, CO 81212, as well as virtually through the Zoom platform.

The Nov. 7 meeting will be held virtually through the Zoom platform.

Registration and participation guidelines for all meetings and field tour details will be available on the RAC's web page 30 days in advance of the meetings at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/colorado/rocky-mountain-rac.*

FOR FURTHER INFORMATION CONTACT: Levi Spellman, Public Affairs Specialist; BLM Rocky Mountain District Office, 3028 E. Main St., Cañon City, CO, 81212; telephone: (719) 269–8553; email: *lspellman@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. 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 15-member RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues in the Rocky Mountain District of Colorado, including the Royal Gorge Field Office, San Luis Valley Field Office, and Browns Canyon National Monument. Each meeting will include field office updates and a time reserved for open discussion, followed by a public comment period. Depending on the number of people who wish to speak, the time for individual comments may be limited.

The public may submit written comments to the RAC in advance of the meeting to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least 5 business days prior to the meeting. Any written comments received will be provided to RAC members before the meeting. Please include ''RAC Comment'' in your submission. Before including your address, phone number, email address, or other personal identifying information in your comment, please be aware that your entire comment—including your personally identifying information—may be made publicly available at any time. While individuals may request their personally identifying information to be withheld from public view, we cannot guarantee that we will be able to do so.

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 7 business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Detailed minutes for RAC meetings will be maintained in the Rocky Mountain District Office and will be available for public inspection and reproduction during regular business hours within 90 days following the meeting. Previous minutes and agendas are also available on the RAC's web

page listed in the **ADDRESSES** section of this notice.

(Authority: 43 CFR 1784.4–2)

Douglas J. Vilsack,

BLM Colorado State Director.

[FR Doc. 2024–05793 Filed 3–18–24; 8:45 am]

BILLING CODE 4331–16–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 regarding *Certain Smart Wearable Devices, Systems, and Components Thereof,* DN 3731*;* 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 Ouraring, Inc. and Ōura Health Oy on March 13, 2024. 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 smart wearable devices, systems, and components thereof. The complaint names as respondents: Ultrahuman Healthcare Pvt. Ltd. of India; Ultrahuman Healthcare SP LLC of United Arab Emirates; Ultrahuman Healthcare Ltd. of United Kingdom; Guangdong Jiu Zhi Technology Co. Ltd. of China; RingConn LLC of Wilmington, DE; and Circular SAS of France. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondent 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. 3731'') 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

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

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: March 14, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–05781 Filed 3–18–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

On March 12, 2024, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of Missouri in the lawsuit entitled *United States* v. *Ameren Corporation, et al.,* Civil Action No. 1:24–cv–00047. *See* Docket No. 2–1.

The proposed Consent Decree resolves claims brought by the United States under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) against thirty-six defendants for the recovery of costs that the United States incurred responding to releases of hazardous substances at the Missouri Electric Works Superfund Site in Cape Girardeau, Missouri.

The settlement requires defendants to pay $6,074,739 of the United States' response costs and requires certain settling federal agencies to pay further $600,798 of the United States' response costs. In return for the defendants' commitments, the United States agrees not to sue the defendants under sections 106 and 107 of CERCLA. The Environmental Protection Agency also covenants not to take administrative action against the settling Federal agencies under sections 106 and 107 of CERCLA.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Ameren Corporation, et al.,* D.J. Ref. No. 90–11–2–614/4. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Any comments submitted in writing may be filed by the United States in whole or in part on the public court docket without notice to the commenter.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* If you require assistance accessing the proposed Consent Decree, you may request assistance by email or by mail to the addresses provided above for submitting comments.

Kathryn C. Macdonald,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–05746 Filed 3–18–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2024–0004]

Occupational Exposure to Beryllium and Beryllium Compounds Standard in the Construction Industry; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Occupational Exposure to Beryllium and Beryllium Compounds Standard in the Construction Industry.

DATES: Comments must be submitted (postmarked, sent, or received) by May 20, 2024.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the websites. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2024–0004) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The purpose of these requirements is specified by the beryllium standard for the construction industry help protect workers from harmful elements when exposed to permissible exposure limits of beryllium and beryllium compounds in the workplace.

Paragraph (d)(2) contains the performance options where the employer must assess the 8-hour time-weighted average (TWA) exposure and the 15-minute short-term exposure for each employee on the basis of any combination of air monitoring data and objective data sufficient to accurately characterize airborne exposure to beryllium. Employers do not have to conduct initial exposure monitoring if they rely on objective data that would satisfy the exposure assessment requirements contained in this standard. Paragraph (d)(3) says the employer must perform initial monitoring to assess the 8-hour TWA exposure for each employee on the basis of one or more personal breathing zone air samples that reflect the airborne exposure of employees on each shift, for each job classification, and in each work area and the employer is required to periodic monitoring when the most recent exposure monitoring indicates that airborne exposure is at or above the action level but at or below the TWA PEL, the employer must repeat such monitoring within six months of the most recent monitoring. Where the most recent exposure monitoring indicates that airborne exposure is above the TWA PEL or above the STEL, the employer must repeat such monitoring within three months of the most recent 8-hour TWA or short-term exposure monitoring. Paragraph (d)(4) requires the employer to reassess airborne exposure whenever a change in the production, process, control equipment, personnel, or work practices may reasonably be expected to result in new or additional airborne exposure at or above the action level or STEL, or when the employer has any reason to believe that new or additional airborne exposure at or above the action level or STEL has occurred.

In paragraph (f)(1)(i) the employer is required to establish, implement, and maintain a written exposure control plan and what information and procedures are included in the plan. Paragraph (f)(1)(ii) requires the employer to review and evaluate the effectiveness of each written exposure control plan at least annually and update it, as necessary. Also, in paragraph (f)(1)(iii) the employer must make a copy of the written exposure control plan accessible to each employee who is, or can reasonably be expected to be, exposed to airborne beryllium in accordance with OSHA's Access to Employee Exposure and Medical Records (Records Access) standard (29 CFR 1910.1020(e)).

Paragraph (g)(2) requires the employer to provide respiratory protection for the selection and use of respirators, medical evaluations of employees required to use respirators, respirator fit testing procedures for tight-fitting respirators and procedures for proper use of respirators in routine and reasonably foreseeable emergency situations.

Under paragraph (k)(l)(i) the employer is required to make medical surveillance available at no cost to the employee, and at a reasonable time and place, to each employee who: (A) Is reasonably expected to be exposed at or above the action level for more than 30 days per year; (B) Shows signs or symptoms of chronic beryllium disease (CBD) or other beryllium-related health effects; or (C) Most recent written medical opinion required by paragraph (k)(6) or (k)(7) recommends periodic medical surveillance.

In paragraph (k)(5) of medical surveillance, the employer is required to ensure that the employee receives a written medical report from the licensed physician within 45 days of the examination (including any follow-up beryllium lymphocyte proliferation test (BeLPT) required under paragraph (k)(3)(ii)(E) of this standard) and that the physician or other licensed health care professional (PLHCP) explains the results of the examination to the employee. The requirement for a written medical report ensures that the employee receives a record of all findings. In paragraph (k)(6) of medical surveillance the employer is required to obtain a written medical opinion from the licensed physician within 45 days of the medical examination and what must be contained in the written medical option. Under (k)(7) of medical surveillance, when being referred to the CBD Diagnostic Center, the employer is required to provide an evaluation at no cost to the employee at a CBD diagnostic center that is mutually agreed upon by the employer and the employee. The examination must be provided within 30 days of: (A) The employer's receipt of a physician's written medical opinion to the employer that recommends referral to a CBD diagnostic center; or (B) The employee presenting to the employer a physician's written medical report indicating that the employee has been confirmed positive or diagnosed with CBD or recommending referral to a CBD diagnostic center. The employer must ensure that the employee receives all written medical reports from the CBD diagnostic center that contains all the information required in paragraph (k)(5)(i), (ii), (iv), and (v) and that the PLHCP explains the results of the examination to the employee within 30 days of the examination. Also, the employer is required to obtain a written medical opinion from the CBD diagnostic center within 30 days of the medical examination and ensure that each employee receives a copy of the written medical opinion from the CBD diagnostic center within 30 days of any medical examination performed for that employee.

Under paragraph (l)(1) of medical removal, the employer is required to remove an employee that is eligible for medical removal, if the employee works in a job with airborne exposure at or above the action level and either: (i) the employee provides the employer with a written medical report indicating a confirmed positive finding or CBD diagnosis or a written medical report recommending removal from airborne exposure to beryllium in accordance with paragraph (k)(5)(v) or (k)(7)(iii) of the standard; or (ii) the employer receives a written medical opinion recommending removal from airborne exposure to beryllium in accordance with paragraph (k)(6)(v) or (k)(7)(iii) of the standard.

In paragraph (m)(2)(iv) the employer is required to make a copy of this standard and its appendices readily available at no cost to each employee and designated employee representative(s).

Under paragraph (n) recordkeeping, the employer is required to make and maintain records for the air monitoring data, objective data, medical surveillance, and training. Access to these records must be made available upon request for examination and copying to the Assistance Secretary, the Director, each employee, and each employee's designated representative(s) in accordance with the Records Access standard (29 CFR 1910.1020).

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements contained in the Occupational Exposure to Beryllium and Beryllium Compounds in the Construction Industry. The agency is requesting an adjustment decrease in burden hours from 18,075 hours to 7,047 hours, a difference of 11,028 hours. This decrease is due to the removal of the collection of information requirements for rule familiarization, and a decrease in the non-compliance rate by 60 percent, since the standard has been in effect for the past three years.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Occupational Exposure to Beryllium and Beryllium Compounds Standard in the Construction Industry.

OMB Control Number: 1218–0275.

Affected Public: Business or other for-profits.

Number of Respondents: 2,100.

Number of Responses: 12,642.

Frequency of Responses: On occasion.

Average Time per Response: Varies.

Estimated Total Burden Hours: 7,407.

Estimated Cost (Operation and Maintenance): $2,249,246.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; or (2) by facsimile (fax), if your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at 202–693–1648. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA–2024–0004). You may supplement electronic submission by uploading document files electronically.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submission, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC, on March 12, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–05735 Filed 3–18–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2023–0012]

Occupational Safety and Health State Plans; Federal Advisory Council on Occupational Safety and Health (FACOSH); Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice; correction.

SUMMARY: The Occupational Safety and Health Administration (OSHA) published a document in the **Federal Register** on March 12, 2024 (89 FR 17885) giving notice of a FACOSH meeting on April 18, 2024. The document contained an incorrect link for the public to register to attend the meeting. This notice corrects the error.

DATES: This correction is effective March 19, 2024.

FOR FURTHER INFORMATION CONTACT: Lana Nieves of the Office of Federal Agency Programs, OSHA, U.S. Department of Labor; telephone: (202) 693–2128 at *ofap@dol.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of March 12, 2024 (89 FR 17885), correct the paragraph as described below.

1. On page 17885 in the second column, replace the second paragraph titled *Participation in the FACOSH meeting:* to read: *Participation in the FACOSH meeting:* Members of the public may register to attend the FACOSH meeting by going to the website: *https://usdolee.webex.com/weblink/register/r9d1ba59530df355b6fc569206b6b9eaa.*

* * * * *

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice under the authority granted by section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668), 5 U.S.C. 7902, the Federal Advisory Committee Act (5 U.S.C. 10), Executive Order 12196 and 14109, Secretary of Labor's Order 8–2020 (85 FR 58393, 9/18/2020, 29 CFR 1960 (Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters), and 41 CFR part 102–3.

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–05784 Filed 3–18–24; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings

TIME AND DATE: The Legal Services Corporation (LSC) Board of Directors and its committees will hold their

spring 2024 quarterly business meeting over a range of days in March–April 2024 (on March 25–26, April 2–3 and April 8, 2024). On Monday, March 25, the Audit Committee will meet over Zoom, beginning at 12:00 p.m. Eastern Time. On Tuesday, March 26, the Communications Subcommittee of the Institutional Advancement Committee will meet over Zoom, beginning at 3:30 p.m. Eastern Time, and the Governance and Performance Review Committee will meet over Zoom commencing promptly upon adjournment of the immediately preceding meeting. On Tuesday, April 2, the Operations & Regulations Committee will meet over Zoom, beginning at 2:00 p.m. Eastern Time, the Delivery of Legal Services Committee will meet over Zoom, commencing promptly upon adjournment of the immediately preceding meeting, and the Finance Committee will meet over Zoom, commencing promptly upon adjournment of the immediately preceding meeting. On Wednesday, April 3, the Institutional Advancement Committee will meet over Zoom, beginning at 11:00 a.m. Eastern Time. On Monday, April 8, the Combined Audit and Finance Committees will meet in person and over Zoom, beginning at 8:00 a.m. Eastern Time, and the LSC Board of Directors will meet in person and over Zoom commencing promptly upon adjournment of the immediately preceding meeting.

PLACE:

Public Notice of Virtual and Hybrid Meetings. LSC will conduct its March 25–26 and April 2–3 committee meetings virtually via Zoom video conference. LSC will conduct its April 8, 2024 meetings at the Omni Shoreham Hotel, 2500 Calvert Street NW, Washington, DC 20008, and virtually via Zoom video conference.

Public Observation: Unless otherwise noted herein, the Board meeting will be open to in-person public observation and all committee meetings plus the Board meeting will be open to virtual public observation via Zoom video conference. Members of the public who wish to participate virtually in the public proceedings may do so by following the directions provided below.

Directions for Open Sessions

Monday, March 25, 2024

To join the Zoom meeting by computer, please use this link.

- *https://lsc-gov.zoom.us/j/89368335636?pwd=AhQwhbKVXGufA7ghx7ZTRIbu2vIcab.1&from=addon*
  - *Meeting ID:* 893 6833 5636
  - *Passcode:* 392878

Tuesday, March 26, 2024

To join the Zoom meeting by computer, please use this link.

- *https://lsc-gov.zoom.us/j/83371345770?pwd=f6lSmkaTiIlLStbZkOBdmdXjlIzxug.1&from=addon*
  - *Meeting ID:* 833 7134 5770
  - *Passcode:* 420050

Tuesday, April 2, 2024

To join the Zoom meeting by computer, please use this link.

- *https://lsc-gov.zoom.us/j/84746108616?pwd=QeNfR0PuYKzKYAhcZXztOu6Pxfvh0X.1*
  - *Meeting ID:* 847 4610 8616
  - *Passcode:* 208980

Wednesday, April 3, 2024

To join the Zoom meeting by computer, please use this link.

- *https://lsc-gov.zoom.us/j/89029063077?pwd=VQc8Qn030zBFaxWESh3VUWF6kt6jw9.1&from=addon*
  - *Meeting ID:* 890 2906 3077
  - *Passcode:* 438294

Monday, April 8, 2024

To join the Zoom meeting by computer, please use this link.

- *https://lsc-gov.zoom.us/j/85650576111?pwd=OP70wffMQHtS9Zohf0r5ffn2c6jvMW.1*
  - *Meeting ID:* 856 5057 6111
  - *Passcode:* 422251

Once connected to Zoom, please immediately mute your computer or telephone. Members of the public are asked to keep their computers or telephones muted to eliminate background noise. To avoid disrupting the meetings, please refrain from placing the call on hold if doing so will trigger recorded music or other sound.

From time to time, the Board or Committee Chair may solicit comments from the public. To participate in the meeting during public comment, use the 'raise your hand' or 'chat' functions in Zoom and wait to be recognized by the Chair before stating your questions and/or comments.

STATUS: Open, except as noted below.

Audit Committee—Open, except that, upon a vote of the Committee, the meeting may be closed to the public for a briefing by the Office of Compliance and Enforcement on active enforcement matter(s) and follow-up open investigation referrals from the Office of Inspector General.

Governance and Performance Review Committee—Open, except that, upon a vote of the Committee, the meeting may be closed to the public to discuss a report on evaluations of Vice President for Grants Management, Vice President for Government Relations & Public Affairs, Vice President for Legal Affairs and General Counsel, and Chief Financial Officer and Treasurer.

Institutional Advancement Committee—Open, except that, upon a vote of the Committee, the meeting may be closed to the public to receive an update on LSC's 50th Anniversary Fundraising Campaign and to consider and act on the motion to approve Leaders Council and Emerging Leaders Council members.

Combined Audit and Finance Committees—Open, except that, upon a vote of the Committee, the meeting may be closed to the public to receive a management briefing on Fiscal Year 2023 Annual Financial Audit, have the opportunity to ask auditors questions without Management present, and receive a briefing by the corporate auditor with those charged with governance under Statement on Auditing Standard 114.

Board of Directors—Open, except that, upon a vote of the Board of Directors, a portion of the meeting may be closed to the public to receive briefings by management and the Inspector General and to consider and act on General Counsel's report on potential and pending litigation involving LSC as well as a list of prospective Leaders Council and Emerging Leaders Council members.

Any portion of the closed session consisting solely of briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session.[1]

A verbatim written transcript will be made of the closed sessions of the Audit Committee, Governance and Performance Review Committee, Institutional Advancement Committee, Combined Audit and Finance Committees and Board of Directors meetings. The transcript of any portions of the closed sessions falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), (7), (9) and (10), will not be available for public inspection. A copy of the General Counsel's Certification that, in his opinion, the closing is authorized by law will be available upon request.

[1] 5 U.S.C. 552b(a)(2) and (b). See also 45 CFR 1622.2 & 1622.3.

MATTERS TO BE CONSIDERED:

Meeting Schedule

Monday, March 25, 2024

Start Time: 12 p.m. Eastern Time

Audit Committee

Portions Open to the Public

1. Approval of Agenda
2. Approval of Minutes of the Committee's Open Session Meeting on January 22, 2024
3. Update on reassessment of the Committee's Charter (Audit Committee Charter § D (2))
4. Briefing by the Office of Inspector General (ACC § VIII A (3) and (ACC § VIII A (4)), to include:
   a. IG update on key plans and priorities,
   b. Highlights of audit insights, recently completed work, ongoing work, and planned work for the next quarter, and
   c. Highlights of investigative insights, recently completed work, ongoing work, and planned work planned oversight work for the next quarter.
5. Management Update Regarding Risk Management
6. Briefing about Follow-up by the Office of Compliance and Enforcement on Referrals by the Office of Inspector General Regarding Audit Reports and Annual Financial Statement Audits of Grantees (ACC § VIII A (5))
7. Public Comment
8. Consider and Act on Other Business
9. Consider and Act on Motion to Adjourn the Open Session Meeting and Proceed to a Closed Session Meeting

Portions Closed to the Public

10. Approval of Minutes of the Committee's Closed Session Meeting on January 22, 2024
11. Briefing by the Office of Compliance and Enforcement on Active Enforcement Matter(s) and Follow-Up on Open Investigation Referrals from the Office of Inspector General (ACC § VIII A (5))
12. Consider and Act on Motion to Adjourn the Meeting

Tuesday, March 26, 2024

Start Time: 3:30 p.m. Eastern Time

Communications Subcommittee of the Institutional Advancement Committee

Portions Open to the Public

1. Approval of Agenda
2. Approval of Minutes of the Subcommittee's Open Session Meeting on January 23, 2023
3. Communications and Social Media Update
4. Public Comment
5. Consider and Act on Other Business
6. Consider and Act on Motion to Adjourn the Meeting

Tuesday, March 26, 2024

Start Time: 4 p.m. Eastern Time

Governance and Performance Review Committee

Portions Open to the Public

1. Approval of Agenda
2. Approval of Minutes of the Committee's Open Session Meeting on January 22, 2024
3. Public Comment
4. Consider and Act on Other Business
5. Consider and Act on Motion to Adjourn the Open Session Meeting and Proceed to a Closed Session

Portions Closed to the Public

6. Report on Evaluations of Vice President for Grants Management, Vice President for Government Relations & Public Affairs, Vice President for Legal Affairs and General Counsel, and Chief Financial Officer and Treasurer
7. Consider and Act on Motion to Adjourn the Meeting

Tuesday, April 2, 2024

Start Time: 2 p.m. Eastern Time

Operations and Regulations Committee

Portions Open to the Public

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on January 21, 2024
3. Consider and Act on Justification Memo/Notice of Proposed Rulemaking for 45 CFR part 1607—Governing Bodies
4. Consider and Act on Final Rule for 45 CFR part 1638—Restriction on Solicitation
5. Consider and Act on 2024–2025 Rulemaking Agenda
6. Briefing on Request for Information for 45 CFR parts 1621—Client Grievance Procedures and 1624—Prohibition Against Discrimination on the Basis of Disability
7. Public comment
8. Consider and act on other business
9. Consider and act on adjournment of meeting

Tuesday, April 2, 2024

Start Time: 3 p.m. Eastern Time

Delivery of Legal Services Committee

Portions Open to the Public

1. Approval of Agenda
2. Approval of Minutes of the Committee's Open Session meeting on January 22, 2024
3. LSC Performance Criteria Revisions Update & Timeline
4. Presentation on LSC Grantee Oversight and Compliance
5. Public Comment
6. Consider and Act on Other Business
7. Consider and Act on a Motion to Adjourn the Meeting

Tuesday, April 2, 2024

Start Time: 4 p.m. Eastern Time

Finance Committee

Portions Open to the Public

1. Approval of Agenda
2. Approval of the Minutes of the Committee's Open Session Meeting on January 21, 2024
3. Approval of Minutes of the Committee's Closed Session Meeting on January 21, 2024
4. Consider and Act on Resolution #2024–XXX: Approving Consolidated Operating Budget for Fiscal Year 2024
5. Discussion of LSC's FY 2025 Appropriations Request
6. Discussion Regarding Process and Timetable for FY 2026 Budget Request
7. Public Comment
8. Consider and Act on Other Business
9. Consider and Act on Motion to Adjourn the Meeting

Wednesday, April 3, 2024

Start Time: 11 a.m. Eastern Time

Institutional Advancement Committee

Portions Open to the Public

1. Approval of Agenda
2. Approval of Minutes of the Institutional Advancement Committee's Open Session Meeting on January 23, 2024
3. Update on Leaders Council and Emerging Leaders Council
4. Development Report
5. Update on Opioid and Veterans Task Forces
6. Update on 50th Anniversary Celebration, April 8–9, in Washington, DC
7. Public Comment
8. Consider and Act on Other Business
9. Consider and Act on Motion to Adjourn the Open Session Meeting and Proceed to a Closed Session

Portions Closed to the Public

10. Approval of Minutes of the Institutional Advancement Committee's Closed Session Meeting on January 23, 2024
11. Update on LSC's 50th Anniversary Fundraising Campaign
12. Consider and Act on Motion to Approve Leaders Council and Emerging Leaders Council Invitees

13. Consider and Act on Other Business
14. Consider and Act on Motion to Adjourn the Meeting

Monday, April 8, 2024

Start Time: 8 a.m. Eastern Time

Combined Audit and Finance Committees

Portions Open to the Public

1. Approval of Agenda
2. Presentation of Fiscal Year 2023 Annual Financial Audit
3. Consider and Act on Motion to Suspend the Open Session Meeting and Proceed to a Closed Session

Portions Closed to the Public

4. Management Briefing on Fiscal Year 2023 Annual Financial Audit
5. Opportunity to Ask Auditors Questions without Management Present
6. Communication by Corporate Auditor with those Charged with Governance Under Statement on Auditing Standard 114
7. Consider and Act on Motion to Adjourn the Closed Session Meeting and Resume the Open Session Meeting

Portions Open to the Public

8. Consider and Act on *Resolution #2024–XXX, Acceptance of Draft Audited Financial Statements for Fiscal Year 2023 and Fiscal Year 2022*
9. Public Comment
10. Consider and Act on Other Business
11. Consider and Act on Motion to Adjourn the Meeting

Monday, April 8, 2024

Start Time: Commencing Promptly Upon Adjournment of the Preceding Meeting (Eastern Time)

Board of Directors Meeting

Portions Open to the Public

1. Pledge of Allegiance
2. Approval of Agenda
3. Approval of Minutes of the Board's Open Session Meeting on January 23, 2024
4. Chairman's Report
5. Members' Reports
6. President's Report
7. Inspector General's Report
8. Consider and Act on the Report of the Audit Committee *(Meeting held on March 25)*
9. Consider and Act on the Report of the Governance and Performance Review Committee *(Meeting held March 26)*
10. Consider and Act on the Report of the Operations and Regulations Committee *(Meeting held April 2)*
11. Consider and Act on the Report of the Delivery of Legal Services Committee *(Meeting held April 2)*
12. Consider and Act on the Report of the Finance Committee *(Meeting held April 2)*
13. Consider and Act on *Resolution #2024–XXX: Approving Consolidated Operating Budget for Fiscal Year 2024*
14. Consider and Act on the Report of the Institutional Advancement Committee *(Meeting held April 3)*
15. Consider and Act on the Report of the Combined Audit and Finance Committees *(Meeting held April 8)*
16. Consider and Act on *Resolution #2024–XXX, Acceptance of Draft Audited Financial Statements for Fiscal Year 2023 and Fiscal Year 2022*
17. Update on 50th Anniversary Celebration, April 8–9, in Washington, DC
18. Public Comment
19. Consider and Act on Other Business
20. Consider and Act on Whether to Authorize a Closed Session of the Board to Address Items Listed Below

Portions Closed to the Public

21. Approval of Minutes of the Board's Closed Session Meeting on January 23, 2024
22. Management Briefing
23. Inspector General's Briefing
24. Consider and Act on General Counsel's Report on Potential and Pending Litigation Involving Legal Services Corporation
25. Consider and Act on List of Prospective Leaders Council and Emerging Leaders Council Invitees
26. Consider and Act on Motion to Adjourn the Meeting

CONTACT PERSON FOR MORE INFORMATION: Jessica Wechter, Special Assistant to the President, (202) 295–1626. Questions may also be sent by email to *wechterj@lsc.gov.*

Non-Confidential Meeting Materials: Please refer to the LSC website (*https://www.lsc.gov/events/board-committee-meetings*) for the final meeting agendas and materials in electronic format. Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website.

(Authority: 5 U.S.C. 552b.)

Dated: March 15, 2024.

Stefanie Davis,

Deputy General Counsel & Ethics Officer, Legal Services Corporation.

[FR Doc. 2024–05902 Filed 3–15–24; 4:15 pm]

BILLING CODE 7050–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings

TIME AND DATE: 3:30 p.m., Friday, March 22, 2024.

PLACE: Video Conference Call/Zoom.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

- Special Board of Directors Meeting

Agenda

I. Call to Order
II. Action Item: Election of Governor Cook as Board Chair
III. Discussion Item: FY2024 Budget
IV. Discussion Item: Appropriation Update
V. Adjournment

CONTACT PERSON FOR MORE INFORMATION: Jenna Sylvester, Paralegal, (202) 568–2560; *jsylvester@nw.org.*

Jenna Sylvester,

Paralegal.

[FR Doc. 2024–05823 Filed 3–15–24; 11:15 am]

BILLING CODE 7570–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2024–0056]

Monthly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Monthly notice.

SUMMARY: Pursuant to section 189.a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular monthly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration (NSHC), notwithstanding the pendency before the Commission of a request for a hearing from any person.

DATES: Comments must be filed by April 18, 2024, A request for a hearing or petitions for leave to intervene must be filed by May 20, 2024. This monthly notice includes all amendments issued,

or proposed to be issued, from February 2, 2024, to February 29, 2024. The last monthly notice was published on February 20, 2024.

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–2024–0056. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the

FOR FURTHER INFORMATION CONTACT: section of this document.

- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Paula Blechman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–2242; email: *Paula.Blechman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2024–0056, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0056.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2024–0056, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

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

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

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

For the facility-specific amendment requests shown in this notice, the Commission finds that the licensees' analyses provided, consistent with section 50.91 of title 10 of *the Code of Federal Regulations* (10 CFR) ''Notice for public comment; State consultation,'' are sufficient to support the proposed determinations that these amendment requests involve NSHC. Under the Commission's regulations in 10 CFR 50.92, operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on these proposed determinations. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determinations.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue any of these license amendments before expiration of the 60-day period provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue any of these amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action on any of these amendments prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination for any of these amendments, any hearing will take place after issuance. The Commission expects that the need to take action on any amendment before 60 days have elapsed will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave to Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent

a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration, which will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC's public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The following table provides the plant name, docket number, date of application, ADAMS accession number, and location in the application of the licensees' proposed NSHC determinations. For further details with respect to these license amendment applications, see the applications for amendment, which are available for

public inspection in ADAMS. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT REQUESTS

Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC; Perry Nuclear Power Plant, Unit 1; Lake County, OH	
Docket No(s)	50–440.
Application date	January 24, 2024.
ADAMS Accession No	ML24025A011.
Location in Application of NSHC	Pages 4–6 of Attachment 1.
Brief Description of Amendment(s)	The proposed amendment would adopt Technical Specifications Task Force (TSTF) Traveler TSTF–264–A, Revision 0, ''3.3.9 and 3.3.10—Delete Flux Monitors Specific Overlap Requirement SRs [Surveillance Requirements]'' and delete SRs 3.3.1.1.6 and 3.3.1.1.7, which verify overlap between the source range monitor and intermediate range monitor (IRM), and between the IRM and average power range monitor.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Rick Giannantonio, General Counsel, Energy Harbor Nuclear Corp.,168 E. Market Street Akron, OH 44308–2014.
NRC Project Manager, Telephone Number	Scott Wall, 301–415–2855.
Nine Mile Point Nuclear Station, LLC and Constellation Energy Generation, LLC; Nine Mile Point Nuclear Station, Units 1 and 2; Oswego County, NY	
Docket No(s)	50–220, 50–410.
Application date	August 18, 2023, as supplemented by letter dated February 1, 2024.
ADAMS Accession No	ML23230A010, ML24032A005.
Location in Application of NSHC	Pages 2–3 of Attachment 1.
Brief Description of Amendment(s)	The proposed amendments would remove the Nine Mile Point 3 Nuclear Project, LLC (NMP3) designation from the Nine Mile Point Nuclear Station, Unit 1 (NMP1), and Nine Mile Point Nuclear Station, Unit 2 (NMP2) technical specifications (TSs), which are not applicable to the current design features of the NMP site. Specifically, Section 5.0, ''Design Features,'' in the NMP1 TSs and Section 4.0, ''Design Features,'' in the NMP1 TSs and Section 4.0, ''Design Features,'' Figure 4.1–1 in the NMP2 TSs would be revised to reflect as they were prior to the issuance of License Amendment Nos. 212 (NMP1) and 142 (NMP2), which were issued on July 12, 2012 (ML12157A556). In addition, the name Entergy Nuclear Fitzpatrick, LLC'' would be revised on Figure 5.1–1 for NMP1 and Figure 4.1–1 for NMP2 to ''Constellation FitzPatrick, LLC,'' to reflect the current name of the licensee for the James A. FitzPatrick Nuclear Power Plant site. The original license amendment requests associated with License Amendment Nos. 212 and 142 were submitted with reference to the Combined License (COL) application supporting the proposed NMP3 project. Following receipt of the aforementioned approved amendments, Constellation Energy Nuclear Group, LLC (CENG), the previous owners of NMP1 and NMP2, halted further progress in pursuing a COL for NMP3. As a result, CENG decided not to implement the changes into the NMP1 and NMP2 TSs. Additionally, Constellation Energy Generation, LLC has no proposed plans for NMP3.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jason Zorn, Associate General Counsel, Constellation Energy Generation, 101 Constitution Ave. NW, Suite 400 East, Washington, DC 20001.
NRC Project Manager, Telephone Number	Richard Guzman, 301–415–1030.
Northern States Power Company; Monticello Nuclear Generating Plant; Wright County, MN	
Docket No(s)	50–263.
Application date	December 29, 2023.
ADAMS Accession No	ML23363A174.
Location in Application of NSHC	Pages 12–15 of Enclosure 1.
Brief Description of Amendment(s)	The proposed amendment would replace the current neutron fluence methodology with a newer methodology and revise the technical specifications to update the methodology for developing a pressure temperature limits report.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Peter M. Glass, Assistant General Counsel, Xcel Energy, 414 Nicollet Mall—401–8, Minneapolis, MN 55401.
NRC Project Manager, Telephone Number	Brent Ballard, 301–415–0680.
Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN	
Docket No(s)	50–390, 50–391.
Application date	January 9, 2024.
ADAMS Accession No	ML24009A170.
Location in Application of NSHC	Pages E1 2 of 3 and E1 3 of 3 of Enclosure1, which incorporates, by reference, the NSHC notice of availability published in the **Federal Register** on October 3, 2006 (71 FR 58444).
Brief Description of Amendment(s)	The proposed amendments would revise Watts Bar Nuclear Plant, Units 1 and 2, technical specifications by adding Limiting Condition for Operation 3.0.9, consistent with Technical Specification Task Force (TSTF) Traveler TSTF–427, Revision 2, ''Allowance for Non-Technical Specification Barrier Degradation on Supported System OPERABILITY.''
Proposed Determination	NSHC.

LICENSE AMENDMENT REQUESTS—Continued

Name of Attorney for Licensee, Mailing Address	David Fountain, Executive VP and General Counsel, Tennessee Valley Authority, 6A West Tower, 400 West Summit Hill Drive, Knoxville, TN 37902.
NRC Project Manager, Telephone Number	Kimberly Green, 301–415–1627.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed NSHC determination, and opportunity for a hearing in connection with these actions, were published in the **Federal Register** as indicated in the safety evaluation for each amendment.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated in the safety evaluation for the amendment.

For further details with respect to each action, see the amendment and associated documents such as the Commission's letter and safety evaluation, which may be obtained using the ADAMS accession numbers indicated in the following table. The safety evaluation will provide the ADAMS accession numbers for the application for amendment and the **Federal Register** citation for any environmental assessment. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT ISSUANCES

Omaha Public Power District; Fort Calhoun Station, Unit 1; Washington County, NE	
Docket No(s)	50–285.
Amendment Date	January 31, 2024.
ADAMS Accession No	ML24019A145 (Package).
Amendment No(s)	302.
Brief Description of Amendment(s)	The amendment approved the License Termination Plan for the decommissioning of Fort Calhoun Station, Unit 1.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Constellation Energy Generation, LLC; Clinton Power Station, Unit No. 1; DeWitt County, IL	
Docket No(s)	50–461.
Amendment Date	February 6, 2024.
ADAMS Accession No	ML23338A110.
Amendment No(s)	252.
Brief Description of Amendment(s)	The amendment revised diesel generator starting air system requirements in Technical Specification 3.8.3, ''Diesel Fuel Oil, Lube Oil, and Starting Air,'' to allow a starting air system to be considered operable with one of two starting air receivers at or above required pressure.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Constellation Energy Generation, LLC; LaSalle County Station, Units 1 and 2; LaSalle County, IL	
Docket No(s)	50–373, 50–374.
Amendment Date	February 9, 2024.
ADAMS Accession No	ML24018A068.
Amendment No(s)	262 (Unit 1) and 247 (Unit 2).
Brief Description of Amendment(s)	The amendments changed the Updated Final Safety Analysis Report for LaSalle County Station, Units 1 and 2, to allow the use of plastic section properties in analysis of the lower downcomer braces.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC; Perry Nuclear Power Plant, Unit No. 1; Lake County, OH	
Docket No(s)	50–440.
Amendment Date	February 21, 2024.
ADAMS Accession No	ML23353A001.
Amendment No(s)	202.

LICENSE AMENDMENT ISSUANCES—Continued

Brief Description of Amendment(s)	The amendment modified the NOTES in Technical Specification (TS) 3.8.1, ''AC [Alternating Current] Sources—Operating,'' Surveillance Requirements (SR) 3.8.1.9, 3.8.1.10 and 3.8.1.14, consistent with Technical Specification Task Force (TSTF) Traveler TSTF–276, Revision 2, ''Revise DG [diesel generator] full load rejection test.'' The NOTES allow the SRs to be performed at a specified power factor with clarifications addressing situations when the power factor cannot be achieved.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Florida Power & Light Company, et al.; St. Lucie Plant, Unit Nos. 1 and 2; St. Lucie County, FL

Docket No(s)	50–335, 50–389.
Amendment Date	February 20, 2024.
ADAMS Accession No	ML24005A277.
Amendment No(s)	253 (Unit 1) and 208 (Unit 2).
Brief Description of Amendment(s)	The amendments revised the technical specifications to improved standard technical specifications, consistent with NUREG–1432, Revision 5, ''Standard Technical Specifications—Combustion Engineering Plants.''
Public Comments Received as to Proposed NSHC (Yes/No).	No.

STP Nuclear Operating Company; South Texas Project, Units 1 and 2; Matagorda County, TX

Docket No(s)	50–498, 50–499.
Amendment Date	February 20, 2024.
ADAMS Accession No	ML24022A225.
Amendment No(s)	227 (Unit 1) and 212 (Unit 2).
Brief Description of Amendment(s)	The amendments authorized the revision of the alternative source term dose calculation for the main steam line break and the locked rotor accident. The reanalysis uses the asymmetric natural circulation cooldown thermohydraulic analyses, various radiation transport assumptions, and the current licensing basis source term and meteorological data to evaluate the dose effects of an extended cooldown on the existing accident analyses.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Susquehanna Nuclear, LLC and Allegheny Electric Cooperative, Inc.; Susquehanna Steam Electric Station, Units 1 and 2; Luzerne County, PA

Docket No(s)	50–387, 50–388.
Amendment Date	February 27, 2024.
ADAMS Accession No	ML24039A188.
Amendment No(s)	286 (Unit 1) and 270 (Unit 2).
Brief Description of Amendment(s)	The amendments revised technical specifications by modifying requirements on control rod withdrawal order and conditions to protect against a postulated control rod drop accident during startup and low power conditions. The amendments also included editorial changes to the technical specifications.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Vistra Operations Company LLC; Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2; Somervell County, TX

Docket No(s)	50–445, 50–446.
Amendment Date	February 9, 2024.
ADAMS Accession No	ML24023A296.
Amendment No(s)	186 (Unit 1) and 186 (Unit 2).
Brief Description of Amendment(s)	The amendments authorized an Updated Final Safety Analysis Report change to implement a licensing basis change regarding compliance with 10 CFR part 50, appendix A, General Design Criterion 5, ''Sharing of structures, systems, and components,'' and conformance with Regulatory Guide (RG) 1.81, Revision 1, ''Shared Emergency and Shutdown Electric Systems for Multi-Unit Nuclear Power Plants.'' The licensing basis change permitted certain safety-related common electrical loads, and some Unit 1 specific electrical loads to be fed from common electrical panels, which represents a deviation from RG 1.81.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Wolf Creek Nuclear Operating Corporation; Wolf Creek Generating Station, Unit 1; Coffey County, KS

Docket No(s)	50–482.
Amendment Date	February 27, 2024.
ADAMS Accession No	ML24026A021.
Amendment No(s)	239.
Brief Description of Amendment(s)	The amendment modified the implementation date of License Amendment No. 238 for Wolf Creek Generating Station, Unit 1.

LICENSE AMENDMENT ISSUANCES—Continued

Public Comments Received as to Proposed NSHC (Yes/No).	No.

Dated: March 13, 2024.

For the Nuclear Regulatory Commission.

Aida E. Rivera-Varona,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2024–05678 Filed 3–18–24; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–668, OMB Control No. 3235–0751]

Proposed Collection; Comment Request; Extension: Rule 18a–6

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 18a–6 (17 CFR 240.18a–6), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 18a–6, which is modeled on Rule 17a–4, establishes record maintenance and preservation requirements for stand-alone and bank security-based swap dealers (''SBSDs'') and major security-based swap participants (''MSBSPs'') (collectively, ''SBS entities''). Specifically, Rule 18a–6 prescribes the period of time the records required to be made and kept current under Rule 18a–5 must be preserved by stand-alone SBSDs and MSBSPs and the manner in which the records must be preserved. Rule 18a–6 also identifies additional types of records that must be preserved (*e.g.,* written communications and agreements relating to the firm's business) if the record is made or received by the SBS entity.

The Commission estimates that the total hour burden under Rule 18a–6 is approximately 15,626 burden hours per year, and the total cost burden is approximately $1,349,098 per year.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by May 20, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: March 14, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–05765 Filed 3–18–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99729; File No. SR–NYSEARCA–2024–23]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule

March 13, 2024.

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 February 29, 2024, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (''Fee Schedule'') to introduce certain fees for Floor Market Makers. The Exchange proposes to implement the fee change effective February 29, 2024.[4] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule to establish fees relating to OTPs utilized by Floor Market Makers.[5] The Exchange proposes to implement the fee changes effective February 29, 2024.

Currently, the number of option issues a Market Maker may quote in their assignment is based on the number of OTPs the Market Maker holds per month. The Exchange charges monthly fees for Market Maker OTPs as set forth in the ''Market Maker OTP Table''

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange originally filed to amend the Fee Schedule on February 1, 2024 (SR–NYSEARCA–2024–12), then withdrew such filing and amended the Fee Schedule on February 15, 2024 (SR–NYSEARCA–2024–18), which latter filing the Exchange withdrew on February 29, 2024.

[5] Per Rule 1.1, an OTP is an Options Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange.

below, which fees are not being modified by this proposal: [6]

Number of OTPs	Monthly fee per OTP	Number of issues permitted in a Market Maker's quoting assignment
1st OTP	$8,000	60 plus the Bottom 45%.
2nd OTP	6,000	150 plus the Bottom 45%.
3rd OTP	5,000	500 plus the Bottom 45%.
4th OTP	4,000	1,100 plus the Bottom 45%.
5th OTP	3,000	All issues.
6th to 9th OTP	2,000	All issues.
10th or more OTPs	500	All issues.
Reserve Market Maker OTP	175	N/A.

As described herein, the Exchange proposes to adopt fees for ''Floor Market Maker OTPs,'' which fees would be discounted and available to Floor Market Makers that satisfy certain criteria. As proposed, a Floor Market Maker would be defined as a registered Market Maker who makes transactions as a dealer-specialist while on the Floor of the Exchange, which proposed definition is identical to the definition recently adopted by the Exchange.[7]

Proposed Fee Change

The proposed fee change described below is designed to further increase open outcry trading by providing special fee treatment for OTP fees to Floor Market Makers that execute a specified percentage of trading in open outcry. As proposed, a Floor Market Maker would pay $6,000 for the first OTP and $4,000 for the second OTP, for up to two OTPs, provided that the Floor Market Maker transacts at least 75% of its volume, excluding Qualified Contingent Transactions (''QCCs'') and Strategy Executions, as Manual (open outcry) trades (the ''minimum 75% Manual trading requirement'').[8] This proposed minimum 75% *Manual* trading requirement is distinct from a Market Maker's appointment trading requirement as described in Rule 6.35–O(i), which includes both electronic and Manual trading. In addition, the minimum 75% Manual trading requirement is consistent with Commentary .01 to Rule 6.35–O insofar as it would count a Floor Market Maker's trading in all option issues (not just those in its appointment) towards the minimum 75% Manual trading requirement.[9]

To effect this change, the Exchange proposes to add the following fees to the bottom of the Market Maker OTP Table: [10]

Number of OTPs	Monthly fee per OTP	Number of issues permitted in a Market Maker's quoting assignment
1st Floor Market Maker OTP	$6,000	60 plus the Bottom 45%.
2nd Floor Market Maker OTP	4,000	150 plus the Bottom 45%.

The proposed rates for each of the first and second OTP would allow a Floor Market Maker that meets the minimum 75% Manual trading requirement to quote in the same number of option issues as a Market Maker with a 1st or 2nd OTP, but at a discounted rate (*i.e.,* as compared to the fees for the first and second OTP (for non-Floor Market Maker), which are $8,000 and $6,000, respectively). This proposed discount is designed to encourage Floor Market Makers to actively quote and trade in a greater number of option issues and to ensure that each Floor Market Maker OTP is being used to foster price discovery in public outcry markets. The Exchange notes that this proposed fee structure—*i.e.,* tiered pricing—is consistent with how the Exchange charges for non-Floor Market Maker OTPs as shown in the Market Maker OTP Table above.

The Exchange proposes to charge a lower rate for the second Floor Market Maker OTP than for the first Floor Market Maker OTP, even though the second OTP offers the Floor Market Maker a higher number of issues in its quoting assignment, to encourage additional Floor Market Maker quoting

[6] *See* Fee Schedule, NYSE Arca GENERAL OPTIONS and TRADING PERMIT (OTP) FEES, available at: *https://www.nyse.com/publicdocs/nyse/markets/arcaoptions/NYSE_Arca_Options_Fee_Schedule.pdf*.

[7] *See* proposed Fee Schedule, Endnote 1 (defining Floor Market Maker) and Rule 1.1 (defining Floor Market Maker). Consistent with this proposal, the Exchange submitted a separate rule filing to adopt the new category of Market Maker called a Floor Market Maker, which includes a definition of Floor Market Maker that is identical to the definition proposed herein. *See* Securities Exchange Act Release No. 99606 (February 26, 2024) (NYSEARCA–2024–16) (immediately effective filing to modify Rule 1.1 to adopt a category of Market Makers called Floor Market Makers and to make conforming changes to various Exchange rules regarding Market Maker obligations, including modifying Rule 6.32–O(a) (Market Maker Defined) to include Floor Market Maker in the definition of Market Maker).

[8] *See* proposed Fee Schedule, NYSE Arca GENERAL OPTIONS and TRADING PERMIT (OTP) FEES (setting forth the $6,000 and $4,000 monthly fee for the first and second Floor Market Maker OTP, respectively) and Endnote 1 (describing minimum 75% Manual trading requirement for Floor Market Maker OTPs). *See also* Fee Schedule, QUALIFIED CONTINGENT CROSS (''QCC'') TRANSACTION FEES AND CREDITS (describing fees and credits associated with QCC transactions) and LIMIT OF FEES ON OPTIONS STRATEGY EXECUTIONS and Endnote 10 (describing Strategy Executions and limit of fees on such executions).

[9] Commentary .01 to Rule 6.35–O provides that a Market Maker's trades effected on the Trading Floor to accommodate cross trades (per Rule 6.47–O) will count toward the Market Maker's appointment trading requirement, regardless of whether the trades are in issues within the Market Maker's appointment.

[10] *See* proposed Fee Schedule. The ''bottom 45%'' of issues traded on the Exchange means ''the least actively traded issues on the Exchange, ranked by industry volume, as reported by the OCC for each issue during the calendar quarter.'' The Exchange notes that the proposed fees for Floor Market OTPs are similar to fees charges on the Exchange's affiliated exchange, NYSE American, LLC (''NYSE American''), insofar as the total for two Floor Market Maker trading permits is $10,000, QCC and Strategy executions are excluded, and the same number of option issues may be quoted with the first and second permit; the proposed fees differ however in that NYSE American charges the same amount for each trading permit—*i.e.,* $5,000 for each. *See* NYSE American Fee Schedule, Section III.A. (Monthly ATP Fees), n.1 (''An NYSE American Options Floor Market Maker ATP is a Floor Market Maker that purchases no more than two ATPs per month and transacts at least 75% of its volume, excluding QCC and Strategy Executions, as Manual trades in open outcry on the Trading Floor.'').

in a wider range of option classes. Floor Market Makers would be required to meet the 75% Manual trading requirement to qualify for the reduced OTP fees, as proposed, but their OTPs would also entitle them to quote and electronically trade names in their appointment. Accordingly, the proposed discount afforded on the second OTP is intended to enable Floor Market Makers to quote and electronically trade a robust suite of symbols for which it could also reasonably be actively engaged in providing liquidity in open outcry.

The Exchange notes that it does not limit the number of participants who may act as Market Makers and would likewise not limit the number of Market Makers acting as Floor Market Makers. The Exchange notes that the primary role of a Floor Market Maker is to provide liquidity for orders submitted for execution on the Floor of the Exchange through open outcry. As such, the Exchange believes that affording Floor Market Makers discounted rates would benefit all market participants because doing so would continue to incent Floor Market Makers to quote in a broad range of options, including especially illiquid and inactive issues (*i.e.,* the Bottom 45%), with a specific focus on open outcry transactions.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[12] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

As noted herein, the Exchange does not limit the number of participants who may act as Market Makers and would likewise not limit the number of Market Makers acting as Floor Market Makers. The primary role of a Floor Market Maker is to provide liquidity for orders submitted for execution on the Floor of the Exchange through open outcry. The Exchange believes that the proposed rates (and obligations) associated with Floor Market Maker OTPs are reasonably designed to incentivize Market Makers to avail themselves of at least one (and up to two) Floor Market Maker OTP(s) and to quote in a broad range of options, including especially illiquid and inactive issues (*i.e.,* the Bottom 45%), with a specific focus on open outcry transactions. To the extent that this proposal results in increased order flow being directed to the Exchange (and the Trading Floor, in particular), this increased liquidity would improve market quality to benefit all market participants. Moreover, the proposal to exclude QCC and Strategy Executions from the minimum 75% Manual trading requirement is reasonable because these transaction types are subject to their own fees and credits.

The Exchange believes that charging the less for the second Floor Market Maker OTP is not only consistent with how the Exchange charges Market Makers for non-Floor OTPs but is reasonable because the proposed discount extended to the second OTP is intended to encourage Floor Market Makers to actively quote and trade in open outcry, while also affording them the ability to quote and electronically trade in a wider range of symbols.

The Exchange believes the proposed rates (and obligations) associated with Floor Market Maker OTPs are equitable and not unfairly discriminatory. Specifically, the proposal would apply equally to all Market Makers that choose to primarily transact business on the Exchange's Trading Floor. The Exchange notes that transacting on the Trading Floor, as well as utilizing the proposed Floor Market Maker OTP(s), is entirely voluntary.

Regarding the proposed rates (and obligations) associated with Floor Market Maker OTPs generally, the Exchange believes the proposal is reasonable, equitable and not unfairly discriminatory because it would benefit all market participants trading on the Exchange. In addition, the proposed Floor Market Maker OTP would encourage Market Makers that already have a presence on the Trading Floor (or that are contemplating having a Floor presence) to utilize at least one Floor Market Maker OTP and to satisfy the applicable quoting standards, which may increase liquidity and provide more trading opportunities and tighter spreads. Indeed, the Exchange notes that these Floor Market Makers serve a role in providing quotes and the opportunity for market participants to trade in a broad range of options, especially the less actively-traded issues in the ''Bottom 45%,'' which can lead to increased volume, providing for robust markets.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. First, the Exchange does not believe that the proposed rule change would impose an undue burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposal would apply equally to all Floor Market Makers in a uniform manner. The decision to utilize a Floor Market Maker OTP (and to meet the requirements to qualify for the discounted rates for a Floor Market Maker OTP) is entirely voluntary and no Market Maker is required to undertake the obligation. As discussed herein, the proposed fees for Floor Market Maker OTPs are designed to encourage Floor Market Makers to quote in a broad range of options, especially less liquid and less active issues (*i.e.,* the Bottom 45%), with a specific focus on open outcry transactions. Market Makers play a crucial role in providing active and liquid markets in their appointed products, thereby providing a robust market which benefits all market participants. Such Market Makers also have obligations and regulatory requirements that other participants do not have. The Exchange also notes that the proposal is designed to attract additional order flow to the Floor of the Exchange, wherein greater liquidity benefits all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery, and signals to other market participants to direct their order flow to those markets, thereby contributing to robust levels of liquidity. As a result, the Exchange believes that the proposed change furthers 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.'' [13]

Intermarket Competition. Further, the Exchange does not believe that the proposed rule change would impose an undue burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as the proposal would apply solely to Market Makers

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37498–99 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

that opted to act as Floor Market Makers and to utilize at least one Floor Market OTP. As noted above, the proposal is designed to attract additional order flow to the Exchange (and to the Trading Floor in particular), wherein greater liquidity benefits all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery, and signals to other market participants to direct their order flow to those markets, thereby contributing to robust levels of liquidity.

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 17 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[14] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in December 2023, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.[15]

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment. The Exchange further believes that the proposed change could promote competition between the Exchange and other execution venues. Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange, and, additionally 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [18] of the Act and subparagraph (f)(2) of Rule 19b–4 [19] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [20] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSEARCA–2024–23 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–2024–23. 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. 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

[14] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[15] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.,* the Exchange's market share in equity-based options decreased from 12.31% for the month of November 2022 to 11.67% for the month of November 2023.

[16] *See* Reg NMS Adopting Release, 70 FR 37496, 37499.

[17] *See 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)).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(2).

[20] 15 U.S.C. 78s(b)(2)(B).

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–2024–23 and should be submitted on or before April 9, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–05739 Filed 3–18–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99727; File No. SR–CBOE–2024–010]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

March 13, 2024.

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 February 29, 2024, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule.[3] Specifically, the Exchange proposes to amend the Global Trading Hours (''GTH'') Executing Agent Subsidy Program, set forth in the Fees Schedule. The GTH Executing Agent Subsidy Program offers a monthly subsidy to Trading Permit Holders (''TPHs'') with executing agent operations[4] during the GTH trading session. Pursuant to the current program, a designated GTH executing agent receives the monthly subsidy amount that corresponds to the number of contracts executed on behalf of customers (including public and broker-dealer customers) during GTH in a calendar month per the GTH Executing Agent Subsidy Program table, as shown in the table below. Qualifying customer volume is limited to those symbols that trade during GTH (*i.e.,* SPX, VIX, and XSP).

GTH monthly customer volume	Subsidy
0–999 contracts	$0.00
1,000–4,999 contracts	5,000
5,000–29,999 contracts	15,000
30,000+ contracts	20,000

To become a designated GTH executing agent, a TPH must submit a form to the Exchange no later than 3:00 p.m. on the second to last business day of a calendar month to be designated an GTH executing agent under the program, and thus eligible for the subsidy, beginning the following calendar month. The TPH must include on or with the form information demonstrating it maintains an GTH executing agent operation: (1) physically staffed throughout each entire GTH trading session and (2) willing to accept and execute orders on behalf of customers, including customers for which the agent does not hold accounts. The designation will be effective the first business day of the following calendar month, subject to the Exchange's confirmation the TPH's GTH executing agent operations satisfies these two conditions and will remain in effect until the Exchange receives an email from the TPH terminating its designation or the Exchange determines the TPH's GTH executing agent operation no longer satisfies these two conditions.

The Exchange proposes to amend the GTH Executing Agent Subsidy Program to only include SPX and VIX options that trade during GTH; as such, the Exchange proposes to add clarifying language to the table to reflect that qualifying customer volume under the program is limited to GTH monthly customer SPX and VIX Options volume. The Exchange also proposes to increase the GTH monthly customer volume thresholds, as well as certain subsidy amounts, as shown in the table below.

GTH monthly customer SPX and VIX options volume	Subsidy
0–19,999 contracts	$0.00
20,000–39,999 contracts	10,000
40,000–99,999 contracts	15,000
100,000+ contracts	50,000

The proposed changes reflect the growth of the GTH trading session, which has occurred predominantly in SPX and VIX options. The proposed changes are designed to continue to encourage designated GTH executing agents to increase their order flow executed as agent in SPX and VIX options that trade during GTH, to meet the proposed amended volume thresholds and receive the proposed corresponding subsidies. The Exchange notes that incentivizing TPHs to conduct executing agent operations willing to accept orders from all customers during GTH is intended to increase customer accessibility to the GTH trading session. The Exchange believes that increased order flow through designated GTH executing

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed fee changes on February 1, 2024 (SR–CBOE–2024–007). On February 14, 2024, the Exchange withdrew that filing and submitted SR–CBOE–2024–009. On February 29, 2024, the Exchange withdrew that filing and submitted SR–CBOE–2024–010.

[4] An executing agent operation is one that accepts orders from customers (who may be public or broker-dealer customers and including customers for which the agent does not hold accounts) and submits the orders for execution (either directly to the Exchange or through another TPH).

agents would allow the Exchange to grow participation during GTH, which may benefit all market participants, as additional liquidity to the Exchange during GTH would create more trading opportunities during GTH, and in turn attract market participants to submit additional order flow during GTH.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] 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)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes that the proposed rule change to amend the volume thresholds and certain corresponding subsidies for the GTH Executing Agent Subsidy Program is reasonably designed to encourage designated GTH executing agents to increase their customer order flow in SPX and VIX options traded during GTH. The Exchange believes the tiers, as proposed, are reasonable because they amend existing opportunities in a manner that incentivizes increased order flow to the GTH trading session via incrementally more challenging criteria in order to receive incrementally increasing subsidy amounts.

Further, the Exchange believes such changes are reasonable, as the proposed increased subsidy amounts remain commensurate with the higher volume thresholds proposed. The current program provides a maximum subsidy of $20,000 for designated GTH executing agents that submit 30,000 customer contracts or more in XSP, SPX or VIX options. The amended tiers, as proposed, present additional opportunities for designated GTH executing agents to receive larger subsidies than that which is currently offered by the program, for submitting a larger number of customer orders. Under the program as proposed, the maximum subsidy available is $50,000 for designated GTH executing agents that submit 100,000 customer contracts or more in SPX or VIX options. As noted above, the proposed changes reflect the growth of the GTH trading session, which has occurred predominantly in SPX and VIX options. The proposed changes are designed to continue to encourage designated GTH executing agents to increase their order flow executed as agent in SPX and VIX options that trade during GTH, to meet the proposed amended volume thresholds and receive the proposed corresponding subsidies. The Exchange believes that increased order flow would allow the Exchange to grow participation in the GTH trading session to the benefit of all market participants that trade during GTH, by providing greater trading opportunities as a result of increased liquidity, thereby attracting additional order flow from market participants during GTH.

The Exchange believes the proposed volume thresholds and corresponding subsidy amounts provide benefits, similar to other volume incentives offered by the Exchange and other options exchanges, that are reasonably related to the value to an exchange's market quality and associated higher levels of market activity, in this case, increased executing agent operations. The proposed changes to the volume thresholds are designed as an incentive to any and all TPHs conducting executing agent operations willing to accept orders from all customers during GTH to submit additional customer orders to the Exchange. Each will have the opportunity to submit the requisite order flow and will receive the applicable subsidy if the volume criteria is met. Under current criteria, one firm qualifies for the $15,000 subsidy and two firms qualify for the $20,000 subsidy. While the Exchange has no way of predicting with certainty how the proposed tiers will impact TPH activity, the Exchange anticipates that approximately one TPH may be able to achieve the $10,000 subsidy (20,000–39,999 contracts tier), one TPH may be able to achieve the $15,000 subsidy (40,000–99,999 contracts tier), and one TPH may be able to achieve the $50,000 subsidy (100,000 or more contracts tier). The Exchange also notes that the proposed volume tiers will not adversely impact any TPH's pricing or their ability to qualify for other incentive programs. Rather, should a TPH that conducts executing agent operations not meet the criteria for a tier, the TPH will merely not receive the corresponding subsidy.

Further, the Exchange believes limiting the GTH Executing Agent Subsidy Program to only include SPX and VIX options that trade during GTH is reasonable, given the Exchange wishes to incentivize increased order flow in SPX and VIX options during GTH. The Exchange also believes the proposed change is reasonable, as the Exchange no longer wishes to include XSP in the GTH Executing Agent Subsidy Program and is not required to do so.

The Exchange also believes that the proposed rule change is equitable and not unfairly discriminatory. In particular, the Exchange believes that increasing the volume thresholds and certain corresponding subsidies for the GTH Executing Agent Subsidy Program is equitable and not unfairly discriminatory because TPHs that conduct executing agent operations willing to accept orders from all customers take on additional risks and potential costs (including those related to staffing and clearing) associated with this type of business. Such TPHs also provide benefits to investors during GTH, including increased customer accessibility to the GTH trading session and increased order flow. All TPHs that conduct this type of operation during GTH will continue to have the opportunity to become a designated GTH executing agent and thus eligible for the monthly subsidy commensurate with applicable customer volumes. As noted above, the proposed changes reflect the growth of the GTH trading session and are designed to continue to encourage designated GTH executing agents to increase their order flow executed as agent in SPX and VIX symbols that trade during GTH, to meet the proposed amended volume thresholds and receive the proposed corresponding subsidies.

The Exchange believes the proposed change to offer up to a $50,000 subsidy to designated GTH executing agents that submit up to 100,000 contracts or more

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] 15 U.S.C. 78f(b)(4).

of customer SPX and VIX options orders is equitable and not unfairly discriminatory. As noted above, TPHs that conduct executing agent operations willing to accept orders from all customers take on additional risks and potential costs (including those related to staffing and clearing) associated with this type of business. For example, SPX and VIX options are high notional products and liquidity may be more challenging to navigate during GTH, which session runs for a total of thirteen hours, from 7:15pm CT to 8:15am CT. Further, achieving higher volume threshold may require TPHs to incur additional and incrementally higher costs, such as adding additional staff needed to handle such volumes during the GTH session. The proposed changes are therefore designed to encourage TPHs to incur these additional risks and potentially higher costs and not only act as designated GTH executing agents, but also incentivize them to strive to achieve the highest thresholds, by providing increasingly higher benefits for satisfying increasingly more stringent criteria. As such, the Exchange believes it is not unfairly discriminatory to offer incrementally higher subsidies to TPHs who act as designated GTH executing agents and submit up to 100,000 or more customer contracts in SPX or VIX. All designated GTH executing agents that participate in the program are eligible to receive the subsidy amounts, if they meet the corresponding volume threshold.

Finally, the Exchange believes the proposed change to limit the GTH Executing Agent Subsidy Program to only include SPX and VIX options is equitable and not unfairly discriminatory, as the change will uniformly apply to all designated GTH executing agents that participate in the program.

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 change would encourage the submission of additional liquidity to the floor of a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution and price improvement opportunities for all TPHs. As a result, the Exchange believes that the proposed change furthers 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.'' [9]

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed changes apply uniformly to similarly situated TPHs. As stated, all TPHs that conduct executing agent operations willing to accept orders from all customers will continue to have an opportunity to be eligible for the GTH Executing Agent Subsidy program. Also, such TPHs that conduct this type of operation take on additional risks and potential costs (including those related to staffing and clearing) associated with this type of business, and may provide benefits to investors during GTH, including increased customer accessibility to, and liquidity and trading opportunities during, the GTH trading session. The proposed changes reflect the growth of the GTH trading session and are designed to continue to encourage designated GTH executing agents to increase their order flow executed as agent in SPX and VIX symbols that trade during GTH, to meet the proposed amended volume thresholds and receive the proposed corresponding subsidies.

The Exchange also does not believe that the proposed changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the Act because each of the proposed changes applies only to fees and programs applicable to transactions in products exclusively listed on the Exchange.

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 [10] and paragraph (f) of Rule 19b–4 [11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CBOE–2024–010 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–CBOE–2024–010. 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

[9] *See* Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

submissions should refer to file number SR–CBOE–2024–010 and should be submitted on or before April 9, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–05737 Filed 3–18–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99728; File No. SR–CboeEDGX–2024–015]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

March 13, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2024, Cboe EDGX 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 EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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/options/regulation/rule_filings/edgx/*), 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 (''EDGX Equities'') by modifying the rates associated with the Remove Volume Tiers. The Exchange proposes to implement these changes effective March 1, 2024.

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 available information,[3] no single registered equities exchange has more than 16% 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 ''Maker-Taker'' model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced at or above $1.00, the Exchange provides a standard rebate of $0.00160 per share for orders that add liquidity and assesses a fee of $0.0030 per share for orders that remove liquidity.[4] For orders in securities priced below $1.00, the Exchange provides a standard rebate of $0.00003 per share for orders that add liquidity and assesses a fee of 0.30% of the total dollar value for orders that 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.

Remove Volume Tiers

Under footnote 1 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers two Remove Volume Tiers that each provide a reduced fee for Members' qualifying orders yielding fee codes BB,[6] N[7] and W[8] where a Member reaches certain add volume-based criteria. Currently, the Exchange assesses a reduced fee of $0.00275 per share in securities at or above $1.00 and 0.28% of dollar value for securities priced below $1.00 for orders appended with fee codes BB, N, or W that satisfy the criteria of Remove Volume Tier 1 and 2. The Exchange now proposes to increase the reduced fee to $0.00285 per share in securities at or above $1.00 for orders appended with fee codes BB, N, or W that satisfy the criteria of Remove Volume Tiers 1 and 2. There is no proposed change in the reduced fee assessed to securities priced below $1.00. The purpose of increasing the fee associated with the Remove Volume Tiers in securities priced at or above $1.00 is for business and competitive reasons, as the Exchange believes that increasing such fee as proposed would decrease the Exchange's expenditures with respect to transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity.

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.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (February 21, 2024), available at *https://www.cboe.com/us/equities/_statistics/.*

[4] *See* EDGX Equities Fee Schedule, Standard Rates.

[5] *Id.*

[6] Fee code BB is appended to orders that remove liquidity from EDGX in Tape B securities.

[7] Fee code N is appended to orders that remove liquidity from EDGX in Tape C securities.

[8] Fee code W is appended to orders that remove liquidity from EDGX in Tape A securities.

[9] 15 U.S.C. 78f(b).

6(b)(5) [10] 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) [11] 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) [12] 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 that its proposal to modify the reduced fee associated with Remove Volume Tiers 1 and 2 reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. In particular, the Exchange believes its proposal to modify the reduced fee associated with Remove Volume Tiers 1 and 2 is reasonable, equitable, and consistent with the Act because such change is designed to decrease the Exchange's expenditures with respect to transaction pricing in order to offset some of the costs associated with the Exchange's current pricing structure, which provides various rebates for liquidity-adding orders, and the Exchange's operations generally, in a manner that is consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The proposed increased fee of $0.00285 per share is reasonable and appropriate because while it is slightly higher than the existing fee, it remains lower than other fees assessed by competing Exchanges in order to remove liquidity.[13] The Exchange further believes that the proposed increase to the fee associated with Remove Volume Tiers 1 and 2 is not unfairly discriminatory because it applies to all Members equally, in that all Members will be assessed the higher fee upon satisfying the criteria associated with Remove Volume Tiers 1 and 2.

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. Particularly, the proposed change to the reduced fee associated with Remove Volume Tiers 1 and 2 does not impose an unnecessary burden as all Members will be subject to the higher fee assessed to orders that satisfy the criteria of Remove Volume Tiers 1 and 2. The Exchange does not believe the proposed changes burden competition, but rather, enhances competition as it is intended to increase the competitiveness of EDGX by amending existing pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

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. Based on publicly available information, no single equities exchange has more than 16% of the market share.[14] 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.'' [15] 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'. . . .''.[16] 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.

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

[12] 15 U.S.C. 78f(b)(4)

[13] *See e.g.,* Nasdaq Fee Schedule, Add and Remove Rates and MIAX Pearl Equities Fee Schedule, Remove Volume Tiers. Orders that remove liquidity on Nasdaq are assessed a fee of $0.0030 while orders that satisfy the criteria of the Remove Volume Tier on MIAX Pearl Equities are assessed a fee of $0.00290.

[14] *Supra* note 3.

[15] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[16] *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)).

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 [17] and paragraph (f) of Rule 19b–4 [18] 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–CboeEDGX–2024–015 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-CboeEDGX–2024–015. 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-CboeEDGX–2024–015 and should be submitted on or before April 9, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–05738 Filed 3–18–24; 8:45 am]

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[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99721; File No. SR–CBOE–2023–063]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the Exchange's Rules Relating to Position and Exercise Limits

March 12, 2024.

I. Introduction

On November 29, 2023, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules relating to position and exercise limits. The proposed rule change was published for comment in the **Federal Register** on December 14, 2023.[3] The Commission has received three comment letters regarding the proposed rule change.[4] On January 23, 2024, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[6] This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposal

The Exchange states that position limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options.[8] The Exchange states that, because participation in the options market may be discouraged if the position limits are too low, position limits must balance concerns regarding mitigating potential manipulation and the cost of inhibiting potential hedging activity that could be used for legitimate economic purposes.[9]

Cboe Rule (''Rule'') 8.30 currently provides that the position limits for equity options are 25,000 or 50,000 or 75,000 or 200,000 or 250,000 contracts on the same side of the market (with adjustments for splits and re-capitalizations) or such other number of option contracts as may be fixed from time to time by the Exchange.[10] The position limit applicable to a class depends upon the trading volume and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 99119 (Dec. 8, 2023), 88 FR 86701 (''Notice'').

[4] *See* letters to Vanessa Countryman, Secretary, Commission, from: Ellen Greene, Managing Director, Equity and Options Market Structure, Securities Industry and Financial Management Association (''SIFMA''), dated January 26, 2024 (''SIFMA Letter''); and Jiří Król, Deputy CEO, Global Head of Government Affairs, Alternative Investment Management Association (''AIMA''), dated January 14, 2024 (''AIMA Letter''); and letter from Jennifer W. Han, Executive Vice President, Chief Counsel and Head of Global Regulatory Affairs, Managed Funds Association (''MFA''), to Sherry R. Haywood, Assistant Secretary, Commission, dated January 4, 2024 (''MFA Letter''). Comment letters can be accessed at *https://www.sec.gov/comments/sr-cboe-2023-063/srcboe2023063.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 99417 (Jan. 23, 2024), 89 FR 5588 (Jan. 29, 2024). The Commission designated March 13, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Notice, 88 FR at 86701.

[9] *See id.*

[10] Rule 8.42 provides that the exercise limit for an equity option is the same as the position limit established in Rule 8.30 for that equity option. *See* Notice, 88 FR at 86701, n. 4.

outstanding shares of the underlying security.[11] The 25,000-contract limit applies to options on an underlying security that does not meet the requirements for a higher option contract limit.[12] To be eligible for the 50,000-contract limit, the most recent six-month trading volume of the underlying security must have totaled at least 20,000,000 shares; or the most recent six-month trading volume of the underlying security must have totaled at least 15,000,000 shares and the underlying security must have at least 40,000,000 shares currently outstanding.[13] To be eligible for the 75,000-contract limit, the most recent six-month trading volume of the underlying security must have totaled at least 40,000,000 shares; or the most recent six-month trading volume of the underlying security must have totaled at least 30,000,000 shares and the underlying security must have at least 120,000,000 shares currently outstanding.[14] To be eligible for the 200,000-contract limit, the most recent six-month trading volume of the underlying security must have totaled at least 80,000,000 shares; or the most recent six-month trading volume of the underlying security must have totaled at least 60,000,000 shares and the underlying security must have at least 240,000,000 shares currently outstanding.[15] To be eligible for the 250,000-contract limit, the most recent six-month trading volume of the underlying security must have totaled at least 100,000,000 shares; or the most recent six-month trading volume of the underlying security must have totaled at least 75,000,000 shares and the underlying security must have at least 300,000,000 shares currently outstanding.[16] These limits have been in place since 2005.[17]

The Exchange proposes to amend Rule 8.30 to adopt three additional equity option position limits of 500,000 option contracts, 1,000,000 option contracts, and 2,000,000 option contracts.[18] To be eligible for the 500,000-contract limit, the most recent six-month trading volume of the underlying security must have totaled at least 500,000,000 shares; or the most recent six-month trading volume of the underlying security must have totaled at least 375,000,000 shares and the underlying security must have at least 1,500,000,000 shares currently outstanding.[19] To be eligible for the 1,000,000-contract limit, the most recent six-month trading volume of the underlying security must have totaled at least 1,000,000,000 shares; or the most recent six-month trading volume of the underlying security must have totaled at least 750,000,000 shares and the underlying security must have at least 3,000,000,000 shares currently outstanding.[20] To be eligible for the 2,000,000-contract limit, the most recent six-month trading volume of the underlying security must have totaled at least 5,000,000,000 shares; or the most recent six-month trading volume of the underlying security must have totaled at least 3,750,000,000 shares and the underlying security must have at least 15,000,000,000 shares currently outstanding.[21]

The Exchange states that since the last position limit increase in 2005, there has been a significant increase in the overall volume of exchange traded equity options and a steady increase in the number of accounts that approach the current highest position limit of 250,000 option contracts.[22] As described in greater detail in the Notice, the Exchange states that annual equity options trading volume in recent years is nearly seven times the volume amount when the current position limits were adopted in 2005, and has more than doubled since 2017.[23] The Exchange further states that, as of October 12, 2023, over 300 equity options classes that currently are limited to the maximum position limit of 250,000 contracts would qualify for one of the three proposed position limits: 182 equity options classes would be eligible for the 500,000-contract limit; 110 equity options classes would be eligible for the 1,000,000-contract limit; and 13 equity options classes would be eligible for the 2,000,000-contract limit.[24] According to the Exchange, the increase in options volume and lack of evidence of market manipulation over the past 20 years justifies the proposed increases in the position and exercise limits.[25]

The Exchange also points to Apple Inc. (''AAPL'') options as an example supporting the proposal. Prior to an AAPL stock split in August 2020, AAPL had approximately 4,000,000,000 shares outstanding and the option position limit of 250,000 contracts represented control of 25,000,000 AAPL shares, or 0.625% of the shares outstanding.[26] After the stock split, AAPL had approximately 16,000,000,000 shares outstanding, and the immediate adjustment of the AAPL option position limit to 1,000,000 contracts following the split reflected control of 100,000,000 shares, or 0.625% of the shares outstanding, which retained the pre-stock split ratio.[27] When the last AAPL option listed at the time of the stock split in 2020 expired in September 2022, The Options Clearing Corporation (''OCC'') reverted back to the original position limit for AAPL of 250,000 contracts, the maximum stock option position limit permitted under the Exchange's rules.[28] The Exchange states that this position limit is more restrictive than the original position limit because readjusting the position limit back to 250,000 contracts when there are 16,000,000,000 shares outstanding reduces the position limit to 0.156% of the shares outstanding, making the post-stock split position limit more restrictive than the pre-stock split position limit, and, in the Exchange's view, arguably no longer meaningfully related to the current shares outstanding.[29]

The Exchange further states that the current 250,000-contract limit for AAPL options forces market participants to reduce trading activity because the maximum position limit represents only 0.156% of the total shares outstanding.[30] The Exchange states that this reduction in trading volume also represents a reduction in available liquidity and negatively impacts liquidity, trading volume, and possibly execution prices.[31] The Exchange states that, under the proposal, AAPL options would qualify for the 2,000,000-contract limit, which is over 12% higher than the current maximum position limit.[32] The adjustment of the position limit from 250,000 contracts to 2,000,000 contracts reflects control of 200,000,000 shares or 1.25% of the shares outstanding, which the Exchange states is well within ratios provided by the prior methodology.[33] The Exchange states that the proposed increase would lead to a more liquid and competitive market for AAPL options, as well as all qualifying equity

[11] *See* Rule 8.30, Interpretation and Policy (''Int.'') .02.
[12] *See* Rule 8.30, Int. .02(a).
[13] *See* Rule 8.30, Int. .02(b).
[14] *See* Rule 8.30, Int. .02(c).
[15] *See* Rule 8.30, Int. .02(d).
[16] *See* Rule 8.30, Int. .02(e).
[17] *See* Notice, 88 FR at 86701.
[18] *See id.*
[19] *See* proposed Rule 8.30, Int. .02(f).
[20] *See* proposed Rule 8.30, Int. .02(g).
[21] *See* proposed Rule 8.30, Int. .02(h).
[22] *See* Notice, 88 FR at 86702.
[23] *See id.*
[24] *See id.*
[25] *See id.*
[26] *See id.*
[27] *See id.*
[28] *See id.*
[29] *See id.*
[30] *See id.*
[31] *See id.*
[32] *See id.*
[33] *See id.*

options, which would benefit customers that trade the options.[34] The Exchange also states that, given the total increased volume in options trading, it is reasonable to conclude that in addition to AAPL options, position limits for many classes are currently more restrictive than they were when adopted in 2005.[35] The Exchange further states that it has no reason to believe that the growth in trading volume in equity options will not continue, and that it expects continued options volume growth as opportunities for investors to participate in the options markets increase and evolve.[36]

The Exchange states that the current position and exercise limits are restrictive, and that not adopting increased position and exercise limits will hamper the listed options markets from being able to compete fairly and effectively with the over-the-counter (''OTC'') markets.[37] The Exchange states that OTC transactions occur through bilateral agreements, the terms of which are not publicly disclosed to the marketplace, and, as a result, OTC transactions do not contribute to the price discovery process on a public exchange or other lit markets.[38] The Exchange states that without the proposed changes to position and exercise limits, market participants will find the standard equity position limits an impediment to their business and investment objectives.[39] The Exchange states that market participants therefore may find the less transparent OTC markets a more attractive alternative to achieve their investment and hedging objectives, leading to a retreat from the listed options markets, where trades are subject to reporting requirements and daily surveillance.[40] The Exchange further states that the Commission previously highlighted competition with the OTC markets as a reason for increasing the standard position and exercise limits.[41]

The Exchange states that the proposal will allow market participants to more effectively execute their trading and hedging activities and allow market makers to maintain their liquidity in these options in amounts commensurate with the continued high consumer demand in the market for the underlying securities.[42] The Exchange states that the proposed higher position limits also may encourage other liquidity providers to continue to trade on the Exchange rather than shift their volume to OTC markets, which will enhance the process of price discovery conducted on the Exchange through increased order flow.[43]

In addition, the Exchange believes that the current liquidity in shares of and options on the underlying securities will mitigate concerns regarding potential manipulation of the products and/or disruption of the underlying markets upon increasing the relevant position limits.[44] The Exchange states that, as a general principle, increases in active trading volume and deep liquidity of the underlying securities do not lead to manipulation and/or disruption.[45] The Exchange further states that this general principle applies to the recently observed increased levels of trading volume and liquidity in shares of and options on the underlying securities, and, as a result, the Exchange does not believe that the options markets or underlying markets would become susceptible to manipulation and/or disruption as a result of the proposed higher position limit categories.[46] In addition, the Exchange expects continued options volume growth as opportunities for investors to participate in the options markets continue to increase and evolve.[47] The Exchange states that it continues to maintain a process in which, every six months, the status of the underlying securities are reviewed to determine what limit should apply.[48] The Exchange states that, accordingly, if the stock trading volume and/or outstanding shares for particular securities significantly decline in the future, the overlying options classes will be moved to a lower corresponding position limit under the rules at the next regularly scheduled review.[49] The Exchange states that the proposed rule change to adopt increased position limits for actively traded options is not novel, and that the Commission has previously expressed the belief that not just increasing, but removing, position and exercise limits may bring additional depth and liquidity to the options markets without increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.[50]

The Exchange states that the Commission has approved similar Exchange proposals to increase position limits for options on highly liquid and actively traded exchanged-traded products (''ETP(s)'') (*e.g.,* iShares Russell 2000 ETF (''IWM''), iShares MSCI Emerging Markets ETF (''EEM''), iShares China Large-Cap ETF (''FXI''), iShares MSCI EAFE ETF (''EFA''), VanEck Vectors Gold Miners ETF (''GDX''), and iShares iBoxx $ Investment Grade Corporate Bond ETF (''LQD'')).[51] The Exchange states that although those proposals related to options on ETPs and the current proposal applies to equity options,[52] pursuant to Rule 8.30, the position limits for options on stock and ETPs are generally calculated in the same manner and based in part on trading volume of the underlying.[53] The Exchange states that, by way of comparison, the amount of outstanding shares of AAPL stock is significantly higher than that of IWM, EEM, FXI and EFA, which have an overlying options position limit of 1,000,000 contracts (as compared to the 250,000-contract limit for AAPL options).[54] The Exchange states that AAPL currently has nearly 16 billion shares outstanding, and the outstanding shares of IWM, EEM, FXI and EFA range between approximately 187 million and 673 million.[55] The Exchange also states that the criteria under the proposed new position limits of 1,000,000 and 2,000,000 for equity options require the most recent six-month trading volume of the underlying security to have totaled at least 1 billion or 5 billion shares, respectively, or have at least 3 billion or 15 billion shares, respectively, of the underlying security outstanding.[56] The Exchange further states that the proposed criteria under the 500,000-contract limit category

[34] *See* Notice, 88 FR at 86702–03.

[35] *See* Notice, 88 FR at 86702.

[36] *See* Notice, 88 FR at 86703.

[37] *See id.*

[38] *See id.*

[39] *See id.*

[40] *See id.*

[41] *See id.* at n.16 (citing Securities Exchange Act Release No. 40875 (Dec. 31, 1998), 64 FR 1842 (Jan. 12, 1999) (SR–CBOE–1998–25)).

[42] *See* Notice, 88 FR at 86704.

[43] *See id.*

[44] *See id.*

[45] *See id.*

[46] *See id.*

[47] *See id.*

[48] *See id.*

[49] *See id.*

[50] *See id.* at n. 22 (citing Securities Exchange Act Release No. 40969 (Jan. 22, 1999), 64 FR 4911, 4913 (Feb. 1, 1999) (SR–CBOE–98–23)).

[51] *See* Notice, 88 FR at 86704, n. 23 (citing Securities Exchange Act Release Nos. 93525 (Nov. 4, 2021), 86 FR 62584 (Nov. 10, 2021) (SR–CBOE–2021–029); 88768 (Apr. 29, 2020), 85 FR 26736 (May 5, 2020) (SR–CBOE–2020–015); 83415 (June 12, 2018), 83 FR 28274 (June 18, 2018) (SR–CBOE–2018–042); and 68086 (Oct. 23, 2012), 77 FR 65600 (Oct. 29, 2012) (SR–CBOE–2012–066)).

[52] The Commission notes that the equity options encompassed by the proposal include both stock options and ETP options.

[53] *See* Notice, 88 FR at 86704.

[54] *See id.*

[55] *See id.*

[56] *See id.* The Exchange states that there is also a corresponding recent six-month volume of the underlying security requirement that must be satisfied in addition to the requirement relating to total outstanding shares. *See id.* at n. 25.

requires the most recent six-month trading volume of the underlying security to have totaled at least 500 million shares or have at least 1.5 billion shares of the underlying security outstanding.[57] The Exchange states that, in comparison, LQD and GDX have approximately 275 million shares and 395 million shares outstanding, and have an overlying options position limit of 500,000 contracts.[58] The Exchange states that it is therefore reasonable and appropriate to increase the position limit of options, as proposed, to similar position limits that apply for certain ETPs.[59]

The Exchange states that existing surveillance and reporting safeguards are designed to deter and detect possible disruptive or manipulative trading behavior that might arise from increasing position and exercise limits in certain classes.[60] The Exchange represents that it has adequate surveillances in place to detect potential manipulation, as well as reviews in place to identify continued compliance with the Exchange's listing standards.[61] The Exchange states that daily monitoring of market activity is performed via automated surveillance techniques to identify unusual activity in both options and the underlying securities, as applicable.[62]

The Exchange also states that the reporting requirement for equity options would remain unchanged, and, accordingly, that the Exchange would continue to require that each trading permit holder (''TPH'') or TPH organization that maintains positions in impacted options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange.[63] The Exchange states that this information includes the options positions, whether the positions are hedged, and a description of any hedge(s).[64] The Exchange states that although market makers (including the Exchange's designated primary market makers) would continue to be exempt from this reporting requirement, the Exchange may access market maker position information.[65] The Exchange further states that the Exchange's requirement that TPHs file reports with the Exchange for any customer who held aggregate long or short positions on the same side of the market of 200 or more option contracts of any single class for the previous day (referred to as large option position reporting or ''LOPR'') will remain at this level and continue to serve as an important part of the Exchange's surveillance efforts.[66] The Exchange also states that large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G, which are used to report ownership of stock which exceeds 5% of a company's total stock issue and may assist in providing information in monitoring for any potential manipulative schemes.[67]

The Exchange also believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged positions in equity options.[68] In this vein, the Exchange states that current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a TPH must maintain for a large position held by itself or by its customer.[69] In addition, Rule 15c3–1[70] imposes a capital charge on TPHs to the extent of any margin deficiency resulting from the higher margin requirement.[71]

III. Summary of Comments Received

The Commission has received three comment letters regarding the proposal.[72] All three commenters expressed support for the proposal. Two commenters stated that the current position limits have remained unchanged for 18 years, despite significant increases in options trading volume,[73] and one stated that the position limits should be modernized.[74] One commenter stated that position limits that are too low impede trading activity and the ability of market participants to implement investment strategies in names with large market capitalizations.[75] Another commenter stated that the current position limits could limit hedging in accounts that are treated as acting in concert but have different trading strategies.[76] The commenter further stated that there has been a steady increase in the number of accounts that approach the current highest position limit of 250,000 contracts.[77] Another commenter stated that the current position limits have limited the trading volume for some equity options and suggested that the current limits have negatively impacted liquidity and execution prices in some cases.[78] Commenters stated that the proposal would lead to a more liquid and competitive market for equity options,[79] and would help to address concerns associated with the temporary increase in option position limits following a stock split and the subsequent reversion to pre-split position limits.[80] In addition, one commenter stated that existing surveillance procedures and reporting requirements would remain in place and help the Exchange and other self-regulatory organizations identify disruptive and/or manipulative trading activity.[81] Another commenter stated that Commission and Exchange financial requirements limit a member firm's ability to establish a large unhedged position in equity options, and that the OCC and prime brokers review accounts for concentration risk in single securities like equity options.[82]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–CBOE–2023–063 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[83] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[84] the Commission is providing

[57] *See* Notice, 88 FR at 86704. The Exchange states that there is also a corresponding recent six-month volume of the underlying security requirement that must be satisfied in addition to the requirement relating to total outstanding shares. *See id.* at n. 26.

[58] *See* Notice, 88 FR at 86704.

[59] *See id.*

[60] *See* Notice, 88 FR at 86703.

[61] *See id.*

[62] *See id.*

[63] *See id.*

[64] *See id.*

[65] *See id.*

[66] *See id.* and Rule 8.43.

[67] *See* Notice, 88 FR at 86703.

[68] *See id.*

[69] *See id.* and Rule 10.3.

[70] 17 CFR 240.15c3–1.

[71] *See* Notice, 88 FR at 86703.

[72] *See supra* note 4.

[73] *See* AIMA Letter at 1–2; and SIFMA Letter at 1.

[74] *See* AIMA Letter at 1.

[75] MFA Letter at 1.

[76] *See* SIFMA Letter at 2.

[77] *See id.*

[78] *See* AIMA Letter at 2.

[79] *See* AIMA Letter at 2; SIFMA Letter at 2.

[80] *See* MFA Letter at 2; SIFMA Letter at 2.

[81] *See* AIMA Letter at 2; *see also* SIFMA Letter at 3.

[82] *See* SIFMA Letter at 3.

[83] 15 U.S.C. 78s(b)(2)(B).

[84] 15 U.S.C. 78s(b)(2)(B).

notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act,[85] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change.'' [86] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[87] and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[88]

As discussed above, the Exchange has proposed to increase the position and exercise limits for equity options by establishing new, additional position limits of 500,000 contracts, 1,000,000 contracts, and 2,000,000 contracts. The proposed position and exercise limits would be available for options with underlying securities that meet specified requirements with respect to six-month trading volume or six-month trading volume and number of shares outstanding.[89] The Exchange states that since the current position limits were last updated, there has been an almost seven-fold increase in the overall volume of exchange-traded equity options and a steady increase in the number of accounts that approach the current highest position limit of 250,000 contracts.[90] Commenters reiterated the Exchange's statements, asserting that current option volumes justify a position limit increase and that the number of accounts approaching the current limits has steadily increased.[91]

Position and exercise limits serve as a regulatory tool designed to address the potential for manipulative schemes and adverse market impact surrounding the use of options.[92] The proposal would establish new equity option position limits that are substantially larger than the existing maximum limit and would affect a significant number of option classes. The proposed new maximum equity option position and exercise limit of 2,000,000 contracts represents an eightfold increase over the current maximum equity option position and exercise limit of 250,000 contracts. In contrast, when the current maximum limit of 250,000 contracts was approved, it represented a three and one-third fold increase over the then-existing maximum equity option position and exercise limit of 75,000 contracts.[93] The additional proposed equity option position and exercise limits of 1,000,000 contracts and 500,000 contracts represent, respectively, a fourfold increase over and a doubling of the current maximum limit. These proposed increases—particularly the proposed increase to 2,000,000 contracts—represent a significant increase in the size of equity options positions that market participants would be able to establish on a given side of the market, and raise the potential for adverse impacts in the markets for the underlying equity securities and for manipulative schemes.

The Exchange states that the overall increase in options volumes since the equity option position limits were last updated justifies the Exchange's proposal. But options volume is not part of the eligibility criteria for any equity option position limit. The Exchange does not explain how overall option volume establishes that the proposed position limits are consistent with the Act. The Exchange sets forth no data or analysis as to why each proposed position limit is appropriate or as to why each proposed limit's underlying security share trading volume or share trading volume plus shares outstanding thresholds appropriately correspond to the particular limit. The Commission therefore has no basis to conclude, for example, that a 2,000,000-contract limit is appropriate for equity options where the most recent six-month trading volume of the underlying security totaled at least 5,000,000,000 shares or where the most recent six-month trading volume of the underlying security totaled at least 3,750,000,000 shares and the underlying security had at least 15,000,000,000 shares currently outstanding. Likewise, while the Exchange and commenters assert that the number of accounts approaching the current maximum position limit has increased, the Exchange provides no data or detail to support these assertions, such as, for example, the number of accounts that have approached the current maximum limit.[94]

The Exchange puts forth AAPL as an example of an equity option for which a position limit increase is warranted, stating that, as a result of the AAPL stock split in August 2020, the 250,000-contract limit that applies to AAPL options represents 0.156% of the post-split shares outstanding, a level that the Exchange characterizes as not meaningfully related to the current shares outstanding.[95] The Exchange also states that, under the proposal, by contrast, a 2,000,000-contract limit for AAPL options would result in maximum ownership of 1.25% of outstanding shares, which the Exchange states is well within ratios provided by the prior methodology. But an equity option's underlying security share trading volume is a necessary metric in the determination of the appropriate position limit, aside from consideration of the number of outstanding shares of the underlying security or what proportion of those shares would be represented by an option position that is at the maximum limit. As noted above, the Exchange does not explain how it

[85] 15 U.S.C. 78f(b)(5).

[86] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[87] *See id.*

[88] *See id.*

[89] *See supra* notes 19–21 and accompanying text.

[90] *See* Notice, 88 FR at 86702. The Commission notes that certain ETP options have positions limits that are higher than 250,000 contracts, which limits are set forth in Int. .07 to Rule 8.30. 250,000 contracts is the current maximum position limit set forth in Int. .02 to Rule 8.30 for stock options and ETP options not identified in Int. .07.

[91] *See* AIMA Letter at 1–2; SIFMA Letter at 1–2.

[92] *See, e.g.,* Securities Exchange Act Release No. 68086 (Oct. 23, 2012), 77 FR 65600 (Oct. 29, 2012) (SR–CBOE–2012–066).

[93] *See, e.g.,* Securities Exchange Act Release No. 51244 (Feb. 23, 2005), 70 FR 10010 (Mar.1, 2005) (File No. SR–CBOE–2003–30) (order approving two option position and exercise limit programs on a pilot basis) (''Pilot Approval''); and Securities Exchange Act Release No. 57352 (Feb.19, 2007), 73 FR 10076 (Feb. 25, 2008) (File No. SR–CBOE–2008–007) (order granting permanent approval of two option position and exercise limit pilot programs) (''Pilot Permanent Approval,'' and together with the ''Pilot Approval,'' the ''Pilot Programs''). In addition to increasing the maximum equity option position limit from 75,000 to 250,000 contracts, the Pilot Programs increased other equity option position and exercise limits as follows: the 13,500-contract limit was increased to 25,000 contracts; the 22,500-contract limit was increased to 50,000 contracts; the 31,500-contract limit was increased to 75,000 contracts; and the 60,000-contract limit was increased to 200,000 contracts.

[94] *See, e.g.,* Pilot Permanent Approval, *supra* note 93 (setting forth data showing, among other things, the number of accounts approaching the pilot position limits).

[95] *See* Notice, 88 FR at 86702.

determined that the proposed underlying security share trading volume eligibility criteria for each proposed position limit justifies the corresponding limit, nor has the Exchange done so in the particular case of AAPL options.

The Exchange further states that the current 250,000-contract limit for AAPL options forces market participants to reduce trading activity, and that ''[t]his reduction in trading volume also represents a reduction in available liquidity and negatively impacts liquidity, trading volume, and possibly execution prices.'' [96] Commenters also stated that the current position limits impede trading and hedging activity, and suggested that the current limits have negatively impacted liquidity and execution prices.[97] But the Exchange provides no analysis or data to support these assertions, such as the types of trading activity that may be limited by the current position limit levels or data showing, for example, wider quote spreads or reduced quote sizes in AAPL or other equity options.

In addition, as discussed above, the Exchange states that, as of October 12, 2023, over 300 equity options classes that currently are limited to the maximum position limit of 250,000 contracts would qualify for one of the three proposed new position limits, with 182 equity options classes eligible for the 500,000-contract limit, 110 equity options classes eligible for the 1,000,000-contract limit, and 13 equity options classes eligible for the 2,000,000-contract limit.[98] The proposed position limits would apply not only to options on stock, but also to options on ETPs. Indeed, the Commission understands that the proposal encompasses equity options with a variety of underlying exposures including, for example, commodity-based ETPs, volatility-based ETPs, leveraged and inverse leveraged ETPs, and American Depository Receipts (''ADRs''). The proposal gives no consideration to the heterogeneity among the securities underlying the options covered by the proposal or whether differences in underlying exposures present different levels of risk of adverse market impact.

The Exchange also seeks to justify the proposal in part by providing a comparative analysis of options on certain broad-based index exchange-traded funds (''ETFs'') that currently have position limits of 500,000 or 1,000,000 contracts.[99] But the proposal does not provide sufficient information to explain why the underlying markets for the broad-based index ETFs are sufficiently comparable to the market for stock, or sufficient information to independently support a finding that the proposed position limits would not have an adverse market impact. Unlike an ETF, a stock is not subject to the creation and redemption processes that apply to ETFs, nor to the issuer arbitrage mechanisms that help to keep an ETF's price in line with the value of its underlying portfolio when overpriced or trading at a discount to the securities on which it is based. The Commission previously has considered how these processes and mechanisms may serve to mitigate the potential price impact that might otherwise result from increased position limits for an ETF option.[100]

Further, Rule 8.30, Int. .07 provides bespoke position limits for certain ETF options that are higher than the current maximum position limit of 250,000 contracts set forth in Rule 8.30, Int. .02, including a 1,800,000-contract limit for options on the PowerShares QQQ Trust (''QQQ''), and a 500,000-contract limit for options on each of the following ETFs: LQD, GDX, the iShares MSCI Brazil Capped ETF (''EWZ''), the iShares iBoxx High Yield Corporate Bond Fund (''HYG''), the iShares 20+ Year Treasury Bond Fund ETF (''TLT''), and the Financial Select Sector SPDR Fund (''XLF''). The Commission understands that, under the proposal, these ETF options could qualify for position limits higher than those set forth in Rule 8.30, Int. .07 by satisfying proposed Rule 8.30, Int. .02's share volume or share volume plus shares outstanding thresholds for the proposed 2,000,000-contract limit in the case of QQQ options and the proposed 1,000,000-contract limit in the cases of the other aforementioned ETF options. But the proposal does not set forth corresponding revisions to Rule 8.30, Int. .07 to account for this or otherwise address what these ETF options' position limits would be under the proposal. As a result, the position limits set forth in Rule 8.30, Int .07 for certain ETF options could be lower than the proposed position limits that these ETF options could qualify for in proposed Rule 8.30, Int. .02, rendering it unclear what position limit would apply to these options under the proposal.

Accordingly, the Exchange has not provided an adequate basis for the Commission to conclude that the proposal would be consistent with Section 6(b)(5) of the Act.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,[101] any request for an opportunity to make an oral presentation.[102]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by April 9, 2024. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 23, 2024. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[103] in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. Has the Exchange demonstrated that the proposed position limit increases are appropriate based on the share trading volumes and shares outstanding of the securities underlying the equity options that would be

[96] *Id.*

[97] *See* MFA Letter at 1; SIFMA Letter at 2; AIMA Letter at 2.

[98] *See* Notice, 88 FR at 86702. The Commission understands that, based on more recent statistics, over 400 equity option classes would qualify for a position limit increase under the proposal.

[99] *See* Notice, 88 FR at 86704; *see also* Rule 8.30, Int. 07.

[100] *See* Securities Exchange Act Release No. 93525 (Nov. 4, 2021), 86 FR 62584, 62587 (Nov. 10, 2021) (order approving File No. SR–Cboe–2021–029).

[101] 17 CFR 240.19b-4.

[102] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[103] *See supra* note 3.

covered by the proposal? Has the Exchange adequately explained the need for the proposed 2,000,000-contract limit? Would a more measured, incremental approach, beginning with an increase in the maximum position limit to a level less than 2,000,000 contracts, be more appropriate as a means of implementing an equity option position limit increase? If so, what would be an appropriate maximum limit? If not, why?

2. Has the Exchange provided sufficient data and analysis to support a conclusion that the proposed position limit increases should not result in attempted manipulations of the underlying securities or in adverse market impacts, such as disruptions in the markets for the underlying securities? As discussed above, the proposal would significantly increase the position limits for options on a large number of underlying securities. The proposal discusses trading in AAPL but provides no discussion or analysis of the trading volume and other characteristics of the many other underlying securities that also would be subject to options position limit increases under the proposal. Are the proposed position limit increases also appropriate for the many equity options on underlying securities with lower share trading volumes and numbers of shares outstanding than AAPL that would qualify for higher limits under the proposal?

3. Are the proposed position limits appropriate for all of the equity options covered by the proposal in light of the heterogeneity in their underlying instruments? For example, should options on commodity-based ETPs be subject to the same position limits as options on stock? Should position limits for options on commodity-based ETPs consider the available supply in the markets for the commodity on which the ETP is based? As other examples, the proposal would encompass options on volatility-based ETPs, leveraged or inverse leveraged ETPs, and ADRs that provide non-U.S. market exposure. What are commenters views as to the appropriateness of increasing position limits for these equity options or any other type of equity option that is not based on U.S. company stock exposure?

4. Should the proposed position limit increases be implemented on a pilot basis to allow the Exchange to assess the impact of the proposed position limit increases on the markets for the underlying securities? If so, what pilot data should be collected?

5. The Exchange states that existing surveillance procedures as well as, among other things, TPH option position and hedge reporting requirements and LOPR for customer positions are adequate to identify violative and/or disruptive trading activity. Do commenters agree that existing surveillance and reporting mechanisms will be adequate if equity option position limits are increased as the Exchange has proposed? Are current intra-day surveillance procedures capable of monitoring the intra-day trading in underlying securities by large option position holders that could have a strong incentive to manipulate an options settlement price, a practice known as ''marking the close'' or ''marking the open?'' To what extent are such surveillance procedures conducted on a manual or automated basis?

6. The Exchange and commenters suggest that the existing position limits unnecessarily restrict market participants' trading or hedging strategies. The Commission understands that multi-strategy funds that employ relative value trading strategies may be one example where this is the case. Can commenters provide other examples of trading or hedging strategies that are impeded by the current position limits? Would higher position limits facilitate the execution of relative value strategies or other trading strategies on exchanges?

7. The Exchange states that listed option position limits that are too restrictive may cause market participants to find the OTC market for conventional options a more attractive alternative to achieve their investment and hedging objectives, leading to a retreat from the listed options markets.[104] Can commenters provide data or analysis to support the notion that the existing equity option position limits cause trades to occur in the OTC market that otherwise would occur in listed options on exchanges if the position limits were higher? Can commenters provide data or analysis to support the notion that equity option position limit increases would result in the migration of equity option trading interest from the OTC market to exchanges? Customizable FLEX equity options generally are not subject to position limits with the exceptions of FLEX equity options with third-Friday-of-the-month expirations and certain FLEX equity options that are cash-settled.[105] Do FLEX equity options serve market participants' needs for an alternative to standardized, listed equity options? In contrast to FLEX equity options, OTC equity options are subject to position limits. If the listed, standardized option position limits restrict market participants' ability to implement their trading strategies, why would market participants seek to utilize OTC equity options instead of FLEX equity options given that OTC equity options are subject to position limits whereas FLEX equity options generally are not? Historically, a justification for not imposing position limits on FLEX equity options has been that this would encourage exchange trading of listed options instead of OTC option trading.[106] Are commenters able to provide evidence that the general lack of FLEX equity option position limits has had this effect?

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–CBOE–2023–063 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–CBOE–2023–063. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the 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

[104] *See* Notice, 88 FR at 86703.

[105] *See, e.g.,* Rule 8.35(c).

[106] *See, e.g.,* Securities Exchange Act Release No. 42223 (Dec. 10, 1999), 64 FR 71158 (Dec. 20, 1999).

withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CBOE–2023–063 and should be submitted by April 9, 2024. Rebuttal comments should be submitted by April 23, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[107]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–05633 Filed 3–18–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99731; File No. SR–OCC–2023–801]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection To Advance Notice, as Modified by Partial Amendment No. 1 and Amendment No. 2, Concerning Modifications to the Amended and Restated Stock Options and Futures Settlement Agreement Between the Options Clearing Corporation and the National Securities Clearing Corporation

March 13, 2024.

I. Introduction

On August 10, 2023, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–OCC–2023–801 (''Advance Notice'') pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) [2] under the Securities Exchange Act of 1934 (''Exchange Act'') [3] to change terms related to the physical settlement of equities arising out of certain futures and options contracts.[4] On August 30, 2023, notice of the Advance Notice was published in the **Federal Register** to solicit public comment and to extend the review period for the Advance Notice.[5]

On November 8, 2023, OCC filed Partial Amendment No. 1 to the Advance Notice.[6] On November 14, 2023, the Commission requested additional information for consideration of the Advance Notice from OCC, pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act,[7] which tolled the Commission's period of review of the Advance Notice until 120 days from the date the information requested by the Commission was received by the Commission.[8] On December 5, 2023, the Commission received OCC's response to the Commission's request for additional information.[9] On January 23, 2024, OCC filed Amendment No. 2 to the Advance Notice, which was published in the **Federal Register** for public comment on January 30, 2024.[10] The Commission has received public comment regarding the changes proposed in the Advance Notice.[11] The Commission is hereby providing notice of no objection to the Advance Notice as modified by Partial Amendment No. 1 and Amendment No. 2 (hereinafter defined as the ''Advance Notice'').

II. Background

The National Securities Clearing Corporation (''NSCC'') is a clearing agency that provides clearing, settlement, risk management, and central counterparty services for trades involving equity securities. OCC is the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission, including options that contemplate the physical delivery of equities cleared by NSCC in exchange for cash (''physically settled'' options).[12] OCC also clears certain futures contracts that, at maturity, require the delivery of equity securities cleared by NSCC in exchange for cash. As a result, the exercise and assignment of certain options or maturation of certain futures cleared by OCC effectively results in stock settlement obligations to be cleared by NSCC (''Exercise and Assignment Activity'' or ''E&A Activity''). NSCC and OCC maintain a legal agreement, generally referred to by the parties as the ''Accord,'' that governs the processing of such E&A Activity for firms that are members of both OCC and NSCC (''Common Members'').[13]

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[107] 17 CFR 200.30–3(a)(57).

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

[4] *See* Notice of Filing *infra* note 5, at 88 FR 59988.

[5] Securities Exchange Act Release No. 98214 (Aug. 24, 2023), 88 FR 59988 (Aug. 30, 2023) (File No. SR–OCC–2023–801) (''Notice of Filing''). On Aug. 10, 2023, OCC also filed a related proposed rule change (SR–OCC–2023–007) with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder (''Proposed Rule Change''). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. In the Proposed Rule Change, which was published in the **Federal Register** on Aug. 30, 2023, OCC seeks approval of proposed changes to its rules necessary to implement the Advance Notice. Securities Exchange Act Release No. 98215 (Aug. 24, 2023), 88 FR 59976 (Aug. 30, 2023) (File No. SR–OCC–2023–007). The initial comment period for the related Proposed Rule Change filing closed on Sept. 20, 2023. The Commission solicited further comment when it subsequently instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change. The additional comment period closed on Dec. 26, 2023. *See* Securities Exchange Act Release No. 98932 (Nov. 14, 2023), 88 FR 80781 (Nov. 20, 2023) (File No. SR–OCC–2023–007).

[6] Partial Amendment No. 1 delays implementation of the proposed change. In Partial Amendment No. 1, OCC proposes to implement the proposed rule change within 90 days of receiving all necessary regulatory approvals and would announce the specific date of implementation on its public website at least 14 days prior to implementation. The delay is proposed in light of the technical system changes that are required to implement the liquidity stress testing enhancements and to be able to provide sufficient notice to Clearing Members following receipt of approval.

[7] 12 U.S.C. 5465(e)(1)(D).

[8] *See* 12 U.S.C. 5465(e)(1)(E)(ii) and (G)(ii); Memorandum from the Office of Clearance and Settlement Supervision, Division of Trading and Markets, titled ''Commission's Request for Additional Information,'' *available at https://www.sec.gov/comments/sr-occ-2023-801/srocc2023801-298099-727262.pdf.*

[9] *See* 12 U.S.C. 5465(e)(1)(E)(ii) and (G)(ii); Memorandum from the Office of Clearance and Settlement Supervision, Division of Trading and Markets, titled ''Response to the Commission's Request for Additional Information,'' *available at https://www.sec.gov/comments/sr-occ-2023-801/srocc2023801-307799-792662.pdf.*

[10] *See* Securities Exchange Act Release No. 99427 (Jan. 24, 2024), 89 FR 5953 (Jan. 30, 2024) (File No. SR–OCC–2023–801) (''Notice of Amendment'').

[11] Comments on the Advance Notice are available at *https://www.sec.gov/comments/sr-occ-2023-801/srocc2023801.htm.* The Commission received one comment supporting the proposed changes. *See* comment from John P. Davidson, Principal, Pirnie Advisory (Oct. 4, 2023), available at *https://www.sec.gov/comments/sr-occ-2023-801/srocc2023801-268179-645042.htm.* Since the proposal contained in the Advance Notice was also filed as a proposed rule change, all public comments received on the proposal are considered regardless of whether the comments are submitted on the Proposed Rule Change or the Advance Notice. Comments on the Proposed Rule Change are available at *https://www.sec.gov/comments/sr-occ-2023-007/srocc2023007.htm.* The Commission received comments on the proposed rule change that express concerns unrelated to the substance of the filing. *See, e.g.,* comment from Gregory Englebert (Feb. 2, 2024) (raising concerns about a conflict of interest in the role of Financial Risk Management Officers as well as margin calls) comment from Curtis H. (Feb. 3, 2024) (referencing short selling and margin), and comment from CK Kashyap (Feb. 5, 2024) (referring to broker risk management in response to margin).

[12] The term ''physically-settled,'' as used throughout the OCC Rulebook, refers to cleared contracts that settle into their underlying interest (*i.e.,* options or futures contracts that are not cash-settled). When a contract settles into its underlying interest, shares of stock are sent (*i.e.,* delivered) to contract holders who have the right to receive the shares from contract holders who are obligated to deliver the shares at the time of exercise/assignment in the case of an option and at the time of maturity in the case of a future. Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at *https://www.theocc.com/about/publications/bylaws.jsp.*

[13] Pursuant to OCC Rule 302, outside of certain limited exceptions, every Clearing Member that effects transactions in physically-settled options or futures must also be a participant of NSCC.

Under certain circumstances, the Accord currently allows NSCC not to guaranty the settlement of securities arising out of E&A Activity for a Common Member for whom NSCC has ceased to act (*e.g.,* due to a default by that member). To the extent NSCC chooses not to guaranty such transactions of a defaulting Clearing Member, OCC would have to engage in an alternate method of settlement outside of NSCC to manage the default. This presents two issues. First, based on historical data, the cash required for such alternative settlement could be as much as $300 billion.[14] Second, because NSCC's netting process dramatically decreases the volume of securities settlement obligations that must be addressed, settlement of physically-settled options and futures outside of NSCC introduces significant operational complexities. Specifically, without NSCC's netting process, OCC would have to coordinate a significantly increased number of transactions on a broker-to-broker basis rather than through a single central counterparty, and the total value of settlement obligations that would need to be processed would be significantly higher.[15]

OCC proposes to revise the Accord to address these liquidity and operational issues. In particular, OCC and NSCC have agreed to modify the Accord to require NSCC to accept E&A activity from OCC (*i.e.,* guaranty the positions of a defaulting Common Member), provided that OCC makes a payment to NSCC called the ''Guaranty Substitution Payment,'' or ''GSP.'' The GSP is designed to cover OCC's share of the incremental risk to NSCC posed by the defaulting Common Member's positions. The total risk posed to NSCC by a defaulting Common Member would be the sum of (i) the defaulter's unpaid deposit to the NSCC Clearing Fund (''Required Fund Deposit''),[16] and (ii) the defaulter's unpaid Supplemental Liquidity Deposit (''SLD'').[17] If OCC pays the GSP to NSCC, NSCC would be obligated under the amended Accord to accept that member's E&A activity from OCC and conduct settlement through NSCC's netting process and systems. NSCC would calculate how much of the defaulting Common Member's Required Fund Deposit and SLD are attributable to the E&A Activity that OCC sends to NSCC, and that amount would be the GSP. Based on historical data, OCC's GSP could be as much as $6 billion, which is significantly less than the potential $300 billion that could be required for alternative settlement outside of NSCC.[18]

As noted above, OCC amended the Advance Notice after filing. The primary purposes of the Amendment No. 2 were to provide for improved information sharing between OCC and NSCC, and ensure that the new process and timing for NSCC to calculate the GSP and OCC to pay the GSP will be consistent with relevant process and timing requirements necessitated by the industry transitions to a T+1 settlement cycle for securities.[19] OCC has labeled the proposed changes included in the initial filing to allow OCC to pay the GSP to NSCC and enhance OCC's liquidity stress testing as Phase 1 of the proposed changes, and the additional changes in the amendment to enhance information sharing and facilitate the transition to T+1 as Phase 2.[20]

OCC also proposes to make conforming changes throughout its rules to accommodate the changes summarized above, as well as a number of changes to its rules to facilitate the proposed changes to the Accord noted above. For example, OCC proposes to change its rules to permit payment of the GSP to NSCC and revise other of its rules related to liquidity risk management to account for the potential need to make such a cash payment to NSCC.

A. Information Sharing and the Guaranty Substitution Payment

The proposed revisions to the Accord designed to introduce and facilitate the new GSP include the following: changes designed to facilitate improved information sharing between OCC and NSCC; changes that would define the calculation of the GSP; changes that would define the process and timing by which guaranty of the E&A Activity would transfer from OCC to NSCC;[21] and additional conforming changes to the Accord to support these and the other changes described in more detail below.

Improved Information Sharing. Currently, NSCC sends a file daily to OCC defining which securities are eligible to settle through NSCC. OCC then delivers to NSCC a file identifying securities to be physically settled at NSCC as a result of E&A Activity. This process would continue under the proposal, however, as part of Phase 1 NSCC would also communicate the GSP daily to OCC.[22] In Phase 2, NSCC would continue to communicate the GSP daily to OCC, but the calculation would differ, as described in more detail below.

Also in Phase 2, OCC and NSCC would share additional information beyond the daily exchange of position files and communication of the GSP. Specifically, NSCC would communicate to OCC daily the single largest GSP observed in the prior 12 months (the ''Historical Peak GSP''), which would in turn provide a data point for discussion between OCC and NSCC to confirm that OCC will likely be in a position to commit to paying the actual GSP in the event of the default of a Common Member.[23] NSCC would also communicate a set of margin and liquidity-related data to OCC daily (the ''GSP Monitoring Data''). The GSP Monitoring Data would be for informational purposes and would facilitate OCC's daily assessment of its ability to commit to pay the actual GSP

[14] *See* Notice of Filing, 88 FR at 59989.

[15] For example, in 2022 it is estimated that netting through NSCC's continuous net settlement (''CNS'') accounting system reduced the value of CNS settlement obligations from $519 trillion to $9 trillion, an approximately 98 percent reduction. *See* Notice of Filing, 88 FR at 59989.

[16] The Required Fund Deposit is calculated pursuant to Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the NSCC Rules. *See* Notice of Filing, 88 FR at 59991, n.28.

[17] Under the NSCC Rules, in certain circumstances, NSCC collects the Supplemental Liquidity Deposit, which is an additional cash deposit from each of those Members who would generate the largest settlement debits in stressed market conditions. *See* Rule 4A of the NSCC Rules. *See also* Notice of Filing, 88 FR at 59991, n.29.

[18] *See* Notice of Filing, 88 FR at 59989.

[19] On Feb. 15, 2023, the Commission adopted rules to shorten the standard settlement cycle for most broker-dealer transactions from T+2 to T+1. *See* Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 (Mar. 6, 2023) (File No. S7–05–22).

[20] OCC has proposed a two-step implementation based on the categorization of changes as part of Phase 1 and Phase 2. *See* Notice of Amendment, 89 FR at 5968.

[21] Here, the ''transfer'' of the guaranty refers to the point at which OCC's settlement guaranty with respect to E&A Activity ends and NSCC's settlement guaranty begins.

[22] NSCC would communicate both the total amount of collateral required to cover the risk presented by each common clearing member and what percentage of that risk is attributable to OCC (*i.e.,* the GSP) and therefore OCC would need to pay to require NSCC to guaranty the positions of a Common Member for whom NSCC has ceased to act. As described further below, OCC proposes to incorporate the total risk presented by each common member into its management of liquidity risk.

[23] NSCC would provide the Historical Peak GSP to OCC daily, and OCC would communicate to NSCC whether OCC has Clearing Fund cash in excess of the Historical Peak GSP. If OCC does not have sufficient cash in the Clearing Fund, this would allow OCC and NSCC to escalate discussion of whether OCC will likely be in a position to commit to paying the actual GSP (*e.g.,* what other resources OCC has, whether the actual GSP is likely to be as large as the historical peak). The comparison of OCC's resources to the Historical Peak GSP would not affect whether OCC is permitted to send E&A Activity to NSCC.

in the event of the default of a Common Member.

The Guaranty Substitution Payment. As described above, NSCC would communicate to OCC the GSP amount each day. In the event of a Common Member default, this is the amount OCC would need to pay to require NSCC to guaranty the positions of the defaulting Common Member. Under both Phases 1 and 2, the GSP for a given member would be the amount necessary to cover the risk posed by the member's E&A Activity, and would be calculated by determining the portion of the defaulting Clearing Member's Required Fund Deposit and SLD that the member owes to NSCC that is attributable to the member's E&A Activity at OCC. The calculation of OCC's portion of the Required Fund Deposit obligation would differ between Phases 1 and 2, with a precise calculation in Phase 2 replacing a proxy from Phase 1.

In Phase 1, NSCC would approximate the percentage of the member's Required Fund Deposit attributable to E&A Activity by referencing the day-over-day change in gross market value of the Common Member's positions at NSCC. OCC acknowledges that this gross market value proxy methodology overestimates or underestimates the Required Fund Deposit attributable to a Common Member's E&A Activity, but states that current technology constraints prohibit NSCC from performing a precise calculation of the GSP on a daily basis for every Common Member. The Phase 2 changes to the Accord would introduce a more precise allocation of the Required Fund Deposit portion of the GSP, which would help eliminate the potential over- or under-estimation of OCC's portion of the Required Fund Deposit.[24] Specifically, in Phase 2, NSCC would calculate OCC's portion of the Required Fund Deposit as a difference between the Required Fund Deposit of the Common Member's entire portfolio and the Required Fund Deposit of the Common Member's portfolio prior to the submission of E&A Activity. This more precise calculation would completely replace the Phase 1 gross market value proxy. Under both Phases 1 and 2, the SLD portion of the GSP would be the Common Member's unpaid SLD associated with any E&A Activity.

Guaranty Transfer. As described above, the purpose of the proposed changes is to increase the circumstances under which NSCC must assume the obligation to guaranty E&A Activity. Currently, the guaranty for such transactions transfers from OCC to NSCC after NSCC has received Required Fund Deposits from the Common Members. The guaranty would not transfer if a member fails to satisfy its obligations to NSCC. Under the proposed changes, the guaranty would transfer after NSCC has received Required Fund Deposits from the Common Members or at such time that OCC pays the GSP if a Common Member fails to satisfy its obligations to NSCC.

B. Liquidity Risk Management

The changes to the Accord regarding the GSP and transfer of the guaranty are designed to resolve a potential gap in OCC's liquidity risk management. As noted above, the potential liquidity exposure to OCC posed by E&A Activity would be dramatically reduced by the proposed changes because it would go through NSCC's netting process. However, that reduction would only occur if OCC has sufficient liquid resources to pay the GSP. The potential payment of the GSP is, therefore, a liquidity demand that OCC must manage.

OCC's Liquidity Risk Management Framework (''LRMF'') sets forth a comprehensive overview of OCC's liquidity risk management practices and governs OCC's policies and procedures as they relate to liquidity risk management.[25] OCC proposes changes to the LRMF as well as to *OCC's Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description*[26] to incorporate the GSP into OCC's liquidity stress testing practices by treating the GSP as a potential liquidity demand.[27]

To implement this change, OCC would add an amount representing the potential GSP to each member account on each day on which options expire. The amount would be based on historical data. Specifically, OCC would add the peak GSP observed in the prior 12 months for the member to the potential liquidity risk posed by the member.[28] The reliance on the peak GSP observed in a 12-month lookback, however, raises two issues that OCC proposes to address in its management of liquidity risk.

First, future liquidity exposures may exceed past exposures, so holding enough liquidity to meet historical demands does not ensure that OCC will hold enough to meet future exposures. To address this issue, OCC proposes to incorporate a member's total Required Fund Deposit and SLD obligations to NSCC (not just the portion represented in the GSP), into its liquidity risk management. As with most risk management, there is no guaranty that a future GSP could not exceed OCC's stress test exposures, but the proposed change increases the likelihood that OCC would have sufficient cash to pay the GSP.[29]

Second, the more E&A Activity that OCC sends to NSCC, the larger the amount of Required Fund Deposit and SLD attributable to E&A Activity. However, the level of E&A Activity varies predictably based on the expiration cycle of options such that different expiration cycles consistently present different volumes. Put simply, different expiration cycles are likely to pose different levels of liquidity risk to OCC in the form of the potential size of the GSP. Based on its analysis, OCC proposes to separate expirations into five categories.[30] For each day, OCC proposes to apply the peak obligation observed over the prior 12 months within the relevant expiration category for that day.[31] The five categories that

[24] *See* Notice of Amendment, 89 FR at 5964–65. OCC and NSCC agreed that performing the necessary technology build during Phase 1 would delay the implementation of the proposal. NSCC will incorporate those technology updates in connection with Phase 2 of this proposal. *See* Notice of Amendment, 89 FR at 5957, n.32.

[25] *See* Securities Exchange Act Release No. 89014 (June 4, 2020), 85 FR 35446 (June 10, 2020) (File No. SR–OCC–2020–003).

[26] OCC provided a marked version of the *Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description* to the Commission as exhibit 5D to File No. SR–OCC–2023–801.

[27] OCC would incorporate this potential liquidity demand at the level of a group of affiliated members.

[28] OCC states that the one-year lookback allows for the best like-to-like application of a historical GSP as there is a cyclical nature to option standard expirations with quarterly (*i.e.,* Mar., June, Sept., and Dec.) and Jan. generally being more impactful than non-quarterly expirations. *See* Notice of Filing, 88 FR at 59998. OCC states further that the one-year lookback allows behavior changes of a Clearing Member to be recognized within an annual cycle. *See id.*

[29] For example, assume the largest member obligation to NSCC would have been $100, but the largest GSP (representing the amount attributable to E&A Activity) would only have been $75. Rather than hold $75 and hope that the future exposures do not exceed past demands, OCC would hold $100 to cover a future GSP.

[30] OCC provided its analysis supporting the specific categories to the Commission in confidential Exhibit 3E to File No. SR–OCC–2023–007. The confidential Exhibit 3E sets forth data related to OCC's liquidity stress testing for Sufficiency and Adequacy scenarios with and without the inclusion of the GSP, including Available Liquidity Resources, Minimum Cash Requirement thresholds, and liquidity breaches.

[31] For example, for a standard monthly expiration, which is typically the third Friday of the month, OCC would look at the peak obligation observed across all standard monthly expirations in the preceding 12 months.

OCC proposes to employ are the following:

- Standard Monthly Expiration: typically the third Friday of each month;
- End of Week Expirations: the last business day of the week, excluding the third Friday of each month;
- End of Month Expirations: the last trading day of the month;
- Bank Holiday Expirations: days where banks are closed but the markets are open; [32]
- Daily Expirations: all other days with an expiration that do not fall into any of the categories above (typically most Mondays through Thursdays).

Notwithstanding this categorization and the underlying analysis, OCC proposes to impose two floors to certain expirations. First, the peak obligation applied in the End of Week, End of Month, and Bank Holiday categories cannot be lower than the peak obligation observed in the Daily Expirations category. Second, the obligation applied in the Standard Monthly Expiration category cannot be lower than the peak obligation observed in either the End of Week, End of Month, or Daily Expiration category. As discussed below, the imposition of the floors would help OCC control for the possibility of an unusually large liquidity demand that is not related to the different expiration cycles.

The liquidity risk management changes described above are part of Phase 1. Additionally, OCC proposes changes to its Rules and By-Laws to allow OCC to pay the GSP out of its liquid resources.[33] Under Phase 2, OCC proposes to make further clarifying and definitional changes in the LRMF, but the substance of the Phase 1 changes would persist in Phase 2.

C. Transition to T+1

Phase 1 of the proposed changes are primarily designed to provide OCC the right to require NSCC to accept and guaranty the E&A Activity of a Common Member even if that member has not met its obligations to NSCC. The mechanism by which OCC would exercise that right would be the payment of the GSP to NSCC, and OCC would account for such payment as a potential liquidity demand that it must manage. Phase 1 does not, however, materially change the time at which OCC would cease (and NSCC would start) to guaranty the E&A Activity.[34]

Under the current Accord, NSCC's guaranty attaches (and OCC's ceases) when NSCC has received all Required Fund Deposits taking into account the E&A Activity.[35] Currently, NSCC's guaranty would not attach if a Common Member defaults on its obligations to NSCC. Under Phase 1 of the proposed changes, however, OCC would have the opportunity to pay the GSP to NSCC as an effective substitution for the defaulted member's obligations with respect to the E&A Activity. Phase 1, therefore, allows for a change in who pays NSCC, but does not alter the timing of payment.

Phase 2 will alter the timing of payment, primarily to accommodate the transition from a T+2 settlement cycle to a T+1 settlement cycle.[36] Under the current process, which takes place in a T+2 settlement cycle, there is sufficient time after expiration for NSCC and OCC to determine whether a member has defaulted before NSCC begins to process settlement of the E&A Activity. However, in a T+1 settlement cycle, settlement processing could begin before NSCC or OCC become aware of a member default. Thus, in a T+1 environment, the timing and process by which OCC's guaranty would cease (and NSCC's would attach) would need to shift.

Specifically, under Phase 2, OCC would commit to payment of the GSP (regardless of whether a member has defaulted) prior to NSCC's acceptance of E&A Activity. If OCC is unable to commit to pay the GSP, NSCC would be permitted, but not required, to reject the E&A Activity. The process would vary slightly between expirations occurring on a Friday and expirations occurring Monday through Thursday. For a Friday expiration, NSCC would communicate the GSP to OCC and OCC would subsequently commit to pay the GSP on Saturday morning. For Monday through Thursday expirations, OCC's transmission of the E&A Activity itself to NSCC would constitute a commitment by OCC to pay the GSP related to that E&A Activity.[37] For all expirations, OCC would send the E&A Activity to NSCC by 1 a.m. the morning after expiration (*e.g.,* 1 a.m. Saturday for a Friday expiration). This would help ensure that, in a T+1 settlement environment, NSCC has OCC's commitment to pay the GSP before NSCC must begin processing any E&A Activity from OCC.

III. Discussion and Notice of No Objection

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, the stated purpose of the Clearing Supervision Act is instructive: to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities (''SIFMUs'') and strengthening the liquidity of SIFMUs.[38]

Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe regulations containing risk management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency.[39] Section 805(b) of the Clearing Supervision Act provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a):[40]

- To promote robust risk management;
- To promote safety and soundness;
- To reduce systemic risks; and
- To support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission's risk management standards may address such areas as risk management and default policies and procedures, among other areas.[41]

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and Section 17A of the Exchange

[32] The Bank Holiday category recognizes that for Veterans Day and Columbus Day, the equity and equity derivative markets are open for trading, but the banking system is closed. Because of this, settlement at NSCC encompasses two days of equity trading and E&A Activity. This creates the possibility of a significant outlying GSP requirement due to the settlement of two days of activity simultaneously. In OCC's view this necessitates the ability to separately risk manage such occurrences through the creation of the Bank Holiday category. Additional supporting data in support of the creation of the Bank Holiday Expiration category is included as Exhibit 3E to File No. SR–OCC–2023–007.

[33] For example, OCC proposes changes to its rules to allow OCC to borrow funds from the Clearing Fund to pay the GSP, which is consistent with OCC's use of the Clearing Fund to address other liquidity needs such as to cover losses resulting from a member's failure to satisfy an obligation on a confirmed trade accepted by OCC. *See* OCC Rule 1006(a)(i).

[34] The Commission described the current timing and process under which OCC's guaranty ceases and NSCC's guaranty attaches in a prior order. *See* Securities Exchange Act Release No. 81266 (July 31, 2017), 82 FR 36484, 36486–87 (Aug. 4, 2017) (File No. SR–OCC–2017–013).

[35] *See id.* at 36487.

[36] *See* Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 (Mar. 6, 2023) (File No. S7–05–22).

[37] The requirement to commit prior to calculation of the final GSP for E&A Activity arising Monday through Thursday highlights the importance of the improved information sharing described above.

[38] *See* 12 U.S.C. 5461(b).

[39] 12 U.S.C. 5464(a)(2).

[40] 12 U.S.C. 5464(b).

[41] 12 U.S.C. 5464(c).

Act (the ''Clearing Agency Rules'').[42] The Clearing Agency Rules require, among other things, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for its operations and risk management practices on an ongoing basis.[43] As such, it is appropriate for the Commission to review advance notices against the Clearing Agency Rules and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act. As discussed below, the Commission believes the changes proposed in the Advance Notice are consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act,[44] and in the Clearing Agency Rules, in particular Rules 17Ad–22(e)(1), (e)(7), and (e)(20).[45]

A. Consistency With Section 805(b) of the Clearing Supervision Act

The proposal contained in OCC's Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act. In particular, the proposal is consistent with promoting robust risk management, promoting safety and soundness, reducing systemic risks, and supporting the stability of the broader financial system.[46]

The Advance Notice is consistent with promoting robust risk management, specifically liquidity risk management, as well as safety and soundness primarily because the introduction of the GSP would allow OCC to require NSCC to accept E&A Activity in the event of a Common Member default, so long as OCC pays the GSP to NSCC. Processing E&A Activity through NSCC's netting system would significantly reduce the risk posed by such E&A Activity by reducing the volume and value of settlement obligations.[47] It would also reduce OCC's potential liquidity demands as a result of the E&A Activity from an amount that could exceed its available liquid resources to an amount that would fall well within its current liquid resources. Reducing OCC's liquidity risk in this manner is consistent with both sound risk management practices and safety and soundness more broadly. The information sharing contemplated under the proposed changes is also consistent with promoting robust risk management because it will allow OCC to better understand and monitor its exposures and provide for more dialogue between NSCC and OCC, which could, in turn, allow them to better manage the risks posed by the E&A Activity.

To the extent the proposed changes are consistent with promoting OCC's safety and soundness, they are also consistent with reducing systemic risks and supporting the stability of the broader financial system. OCC has been designated as a SIFMU, in part, because its failure or disruption could increase the risk of significant liquidity or credit problems spreading among financial institutions or markets.[48] The proposed changes would support OCC's ability to continue providing services to the options markets by addressing losses and shortfalls arising out of the default of a Common Member. OCC's continued operations would, in turn, help support the stability of the financial system by reducing the risk of significant liquidity or credit problems spreading among market participants that rely on OCC's central role in the options market. Further, Phase 2 is consistent with supporting the stability of the broader financial system because the proposed changes in Phase 2 are designed to support the shortening of the standard settlement cycle for most broker-dealer transactions from T+2 to T+1.

Accordingly, and for the reasons stated above, the changes proposed in the Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act.[49]

B. Consistency With Rule 17Ad–22(e)(1) Under the Exchange Act

Rule 17Ad-22(e)(1) under the Exchange Act requires, in part, that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[50] In adopting Rule 17Ad–22(e)(1), the Commission provided guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address legal risk.[51] The Commission stated that a covered clearing agency should consider, *inter alia,* whether its contracts are consistent with relevant laws and regulations.[52]

On February 15, 2023, the Commission adopted a final rule to shorten the standard settlement cycle for most broker-dealer transactions from two business days after the trade date to one business day after the trade date.[53] Currently, and under Phase 1, the terms of the Accord are designed for consistency with a T+2 settlement cycle. As described above, the terms of the Accord under Phase 2, which OCC intends to implement on the T+1 compliance date established by the Commission,[54] would be designed for consistency with a T+1 settlement cycle.

Accordingly, the proposal to amend the Accord to conform to a T+1 settlement cycle is consistent with Rule 17Ad–22(e)(1) under the Exchange Act.[55]

C. Consistency With Rule 17Ad–22(e)(7) Under the Exchange Act

Rule 17Ad–22(e)(7) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity.[56] In adopting Rule 17Ad–22(e)(7), the Commission provided guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address liquidity risk.[57] The Commission stated that a covered clearing agency should consider, *inter alia,* whether it maintains sufficient liquid resources in all relevant currencies to settle securities-related payments and meet

[42] 17 CFR 240.17Ad–22. *See* Securities Exchange Act Release No. 68080 (Oct. 22, 2012), 77 FR 66220 (Nov. 2, 2012) (S7–08–11). *See also* Securities Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786 (Oct. 13, 2016) (S7–03–14) (''Covered Clearing Agency Standards''). OCC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5). *See* 17 CFR 240.17Ad–22(a)(5).

[43] 17 CFR 240.17Ad–22.

[44] 12 U.S.C. 5464(b).

[45] 17 CFR 240.17Ad–22(e)(1); 17 CFR 240.17Ad–22(e)(7); and 17 CFR 240.17Ad–22(e)(20).

[46] 12 U.S.C. 5464(b).

[47] As noted above, it is estimated that, in 2022, netting through NSCC's CNS accounting system reduced the value of CNS settlement obligations by approximately 98% or $510 trillion from $519 trillion to $9 trillion. *See* Notice of Filing, 88 FR at 59977.

[48] *See* Financial Stability Oversight Council (''FSOC'') 2012 Annual Report, Appendix A, *https://home.treasury.gov/system/files/261/here.pdf* (last visited Feb. 17, 2022).

[49] 12 U.S.C. 5464(b).

[50] 17 CFR 240.17Ad–22(e)(1).

[51] *See* Covered Clearing Agency Standards, 81 FR at 70802.

[52] *See id.*

[53] *See* Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 (Mar. 6, 2023) (File No. S7–05–22).

[54] *See* Notice of Amendment, 89 FR at 5968.

[55] 17 CFR 240.17Ad–22(e)(1).

[56] 17 CFR 240.17Ad–22(e)(7).

[57] *See* Covered Clearing Agency Standards, 81 FR at 70823.

other payment obligations on time with a high degree of confidence under a wide range of stress scenarios.[58]

OCC's LRMF sets forth a comprehensive overview of OCC's liquidity risk management practices and governs OCC's policies and procedures as they relate to liquidity risk management. As described above, the potential cash necessary to manage a member default without utilizing NSCC's settlement process could exceed OCC's available liquid resources. The proposed changes to the Accord would allow OCC to send E&A Activity to NSCC even in the event of a Common Member default, which, based on an analysis of historical data, would reduce OCC's potential liquidity to an amount that is within the scope of its current resources.

To take advantage of the proposed changes to the Accord, OCC must be prepared to make a cash payment to NSCC (*i.e.,* the GSP). OCC proposes to recognize that potential payment obligation as an input to OCC's liquidity risk processes. In particular, OCC proposes to consider the full amount of a Common Member's past obligations to NSCC rather than consider only the portion of such obligation attributable to E&A Activity. OCC's reliance on historical data would allow it to approximate, but not predict potential future exposures. Reliance solely on past GSP requirements would not position OCC to cover a future peak GSP. The incorporation of the full amount of a Common Member's past obligations, however, would provide a buffer to increase the likelihood that OCC would be in a position to pay a future GSP that exceeds historical GSP requirements. OCC also proposes to align its measurement of the potential obligation to pay NSCC with the cyclical nature of the products that OCC clears,[59] and to increase its information sharing with NSCC, which would allow OCC to better monitor the potential liquidity need posed by the GSP.

Accordingly, the proposed changes to the Accord regarding the GSP and to OCC's internal liquidity risk management rules are consistent with Rule 17Ad–22(e)(7) under the Exchange Act.[60]

[58] *See id.*

[59] Alignment with the cyclical nature of the products would be achieved, as described above, through the use of expiration categories when incorporating collateral requirements into OCC's stress testing. To balance this process, however, OCC would also impose floors across expiration categories that would help control for the possibility for an unusually large liquidity demand that is not related to the different expiration cycles.

[60] 17 CFR 240.17Ad–22(e)(7).

D. Consistency With Rule 17Ad–22(e)(20) Under the Exchange Act

Rule 17Ad–22(e)(20) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies, financial market utilities, or trading markets.[61] For the purposes of Rule 17Ad–22(e)(20), ''link'' means, among other things, a set of contractual and operational arrangements between two or more clearing agencies, financial market utilities, or trading markets that connect them directly or indirectly for the purpose of participating in settlement.[62]

In adopting Rule 17Ad–22(e)(20), the Commission provided guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address links.[63] Notably, the Commission stated that a covered clearing agency should consider whether a link has a well-founded legal basis, in all relevant jurisdictions, that supports its design and provides adequate protection to the covered clearing agencies involved in the link.[64]

As described above, the Accord is a contractual arrangement between NSCC and OCC that governs the processing of E&A Activity, which consists of settlement obligations arising out of certain products cleared by OCC. The Accord, therefore, is a link for the purposes of Rule 17Ad–22(e)(20). The specific legal basis for the Accord to conform to a T+1 settlement cycle was discussed above in section III.B. Likewise, Section III.C. discussed the ways the Accord provides adequate protection to both OCC and NSCC by introducing the GSP, enhancing information sharing between OCC and NSCC, and ensuring that OCC and NSCC have the tools and information they need to monitor the potential liquidity need posed by the GSP.

For the reasons discussed in those sections, the Accord between OCC and NSCC has a well-founded legal basis that supports its design and provides adequate protection to the covered clearing agencies involved in the Accord. Accordingly, the proposed changes to the Accord are consistent with Rule 17Ad–22(e)(20) under the Exchange Act.[65]

[61] 17 CFR 240.17Ad–22(e)(20).

[62] 17 CFR 240.17Ad–22(a)(8).

[63] *See* Covered Clearing Agency Standards, 81 FR at 70841.

[64] *Id.*

[65] 17 CFR 240.17Ad–22(e)(20).

IV. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission DOES NOT OBJECT to Advance Notice (SR–OCC–2023–801) as modified by Partial Amendment No. 1 and Amendment No. 2, and that OCC is AUTHORIZED to implement the proposed changes as of the date of this notice or the date of an order by the Commission approving proposed rule change SR–OCC–2023–007, whichever is later.

By the Commission.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–05734 Filed 3–18–24; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20225 and #20226; TEXAS Disaster Number TX–20005]

Administrative Declaration of a Disaster for the State of Texas

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Texas dated 03/13/2024.

Incident: Windy Deuce Fire.

Incident Period: 02/26/2024 and continuing.

DATES: Issued on 03/13/2024.

Physical Loan Application Deadline Date: 05/13/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 12/13/2024.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Vanessa Morgan, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations.

Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Carson

Contiguous Counties:

Texas: Armstrong, Donley, Gray, Hutchinson, Moore, Potter, Randall, Roberts

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.375
Homeowners without Credit Available Elsewhere	2.688
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 202255 and for economic injury is 202260.

The State which received an EIDL Declaration is Texas.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2024–05732 Filed 3–18–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20223 and #20224; TEXAS Disaster Number TX–20004]

Administrative Declaration of a Disaster for the State of Texas

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of TEXAS dated 03/13/2024.

Incident: Smokehouse Creek Fire.

Incident Period: 02/26/2024 and continuing.

DATES: Issued on 03/13/2024.

Physical Loan Application Deadline Date: 05/13/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 12/13/2024.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Vanessa Morgan, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Hemphill, Hutchinson.

Contiguous Counties:

Texas: Carson, Gray, Hansford, Lipscomb, Moore, Roberts, Sherman, Wheeler

Oklahoma: Roger Mills, Ellis

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.375
Homeowners without Credit Available Elsewhere	2.688
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 202235 and for economic injury is 202240.

The States which received an EIDL Declaration are Oklahoma, Texas.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2024–05725 Filed 3–18–24; 8:45 am]

BILLING CODE 8026–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Fiscal Year 2024 Allocation of Additional Tariff-Rate Quota Volume for Raw Cane Sugar

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of the allocation of additional Fiscal Year (FY) 2024 in-quota quantities of the World Trade Organization (WTO) tariff-rate quota (TRQ) for imported raw cane sugar.

DATES: The changes made by this notice are applicable as of March 19, 2024.

FOR FURTHER INFORMATION CONTACT: Erin Nicholson, Office of Agricultural Affairs, at 202–395–9419, or *Erin.H.Nicholson@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to Chapter 17 of the Harmonized Tariff Schedule of the United States (HTSUS), the United States maintains WTO TRQs for imports of raw cane and refined sugar. Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a TRQ for any agricultural product among supplying countries or customs areas. The President delegated this authority to the U.S. Trade Representative under Presidential Proclamations 6763 (60 FR 1007) and 7235 (64 FR 55611).

On March 7, 2024, the U.S. Department of Agriculture announced additional in-quota quantity of the WTO TRQ for raw cane sugar for the remainder of FY 2024 (ending September 30, 2024) in the amount of 125,000 metric tons raw value (MTRV) (conversion factor: 1 metric ton raw value = 1.10231125 short tons raw value). This quantity is in addition to the minimum amount to which the United States is committed under the WTO Agreement (1,117,195 MTRV). USTR is allocating this additional quantity of 125,000 MTRV to the following countries in the amounts specified below:

Country	FY 2024 raw sugar TRQ increase allocation (MTRV)
Australia	15,555
Belize	2,061
Bolivia	1,499
Brazil	27,174
Colombia	4,498
Costa Rica	2,811
Ecuador	2,061
El Salvador	4,873
Eswatini (Swaziland)	2,998
Fiji	1,687
Guatemala	8,996
Guyana	2,249
Honduras	1,874
Jamaica	2,061
Mozambique	2,436
Peru	7,684
Philippines	25,300
South Africa	4,310
Thailand	2,624
Zimbabwe	2,249

The allocation of the increased in-quota quantities of the raw cane sugar WTO TRQ to countries that are net importers of sugar are conditioned on receipt of the appropriate verifications of origin. Certificates of quota eligibility must accompany imports from any country for which an allocation has been provided.

Douglas McKalip,

Chief Agricultural Negotiator, Office of the United States Trade Representative.

[FR Doc. 2024–05763 Filed 3–18–24; 8:45 am]

BILLING CODE 3390–F4–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–2307; Summary Notice No. 2024–11]

Petition for Exemption; Summary of Petition Received; The Boeing Company

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before April 8, 2024.

ADDRESSES: Send comments identified by docket number FAA–2023–2307 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: Deana Stedman, AIR–646, Federal Aviation Administration, phone 206–231–3187, email *deana.stedman@faa.gov*.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC on March 13, 2024.

Daniel J. Commins,

Manager, Integration and Performance Branch, Policy and Standards Division, Aircraft Certification Service.

Petition for Exemption

Docket No.: FAA–2023–2307.

Petitioner: The Boeing Company.

Section(s) of 14 CFR Affected: § 25.901(c).

Description of Relief Sought: Boeing is seeking relief from 14 CFR 25.901(c), as it relates to the propulsion control system on Model 787–8, 787–9, and 787–10 airplanes, until November 10, 2025. Specifically, Boeing is petitioning for an exemption from considering latent failures in combination with a single failure as a probable combination of failures under the requirements of § 25.901(c), to allow for sufficient time to fully evaluate the propulsion control system and show full compliance.

[FR Doc. 2024–05740 Filed 3–18–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket ID Number: DOT–OST–2014–0031 BTS Paperwork Reduction Notice]

Agency Information Collection; Activity Under OMB Review; Submission of Audit Reports—Part 248

AGENCY: Office of the Assistant Secretary for Research and Technology (OST–R), Bureau of Transportation Statistics (BTS), Department of Transportation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS requiring U.S. large certificated air carriers to submit a true and complete copy of its annual audit that is made by an independent public accountant. If a carrier does not have an annual audit, the carrier must file a statement that no audit has been performed. Comments are requested concerning whether the audit reports are needed by BTS and DOT; BTS accurately estimated the reporting burden; there are other ways to enhance the quality, utility and clarity of the information collected; and there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted by April 18, 2024.

ADDRESSES: You may submit comments identified by DOT Docket ID Number DOT–OST–2014–0031 and the associated OMB approval #2138–0004 by any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail: Docket Services: U.S. Department of Transportation, 1200

New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Fax: 202–366–3383.

Instructions: Identify docket number, DOT–OST–2014–0031, at the beginning of your comments, and send two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Internet users may access all comments received by DOT at *http://www.regulations.gov.* All comments are posted electronically without charge or edits, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

Electronic Access

You may access comments received for this notice at *http://www.regulations.gov,* by searching docket DOT–OST–2014–0031.

FOR FURTHER INFORMATION CONTACT: Jennifer Rodes, *Jennifer.rodes@dot.gov,* Office of Airline Information, RTS–42, Room E34, Bureau of Transportation Statistics, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or by phone at 202 366–8513.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0004.

Title: Submission of Audit Reports—Part 248.

Form No.: None.

Type of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 71.

Number of Responses: 71.

Total Annual Burden: 36 hours.

Needs and Uses: BTS collects independent audited financial reports from U.S. certificated air carriers. Carriers not having an annual audit must file a statement that no such audit has been performed. In lieu of the audit report, BTS will accept the annual report submitted to the stockholders. The audited reports are needed by the Department of Transportation as (1) a means to monitor an air carrier's continuing fitness to operate, (2) reference material used by analysts in examining foreign route cases, (3) reference material used by analysts in examining proposed mergers, acquisitions and consolidations, (4) a means whereby BTS sends a copy of the report to the International Civil Aviation Organization (ICAO) in fulfillment of a United States treaty obligation, and (5) corroboration of a carrier's Form 41 filings.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on March 13, 2024.

William Chadwick, Jr.,

Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 2024–05753 Filed 3–18–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket: DOT–OST–2014–0031 BTS Paperwork Reduction Notice]

Agency Information Collection; Activity Under OMB Review; Reporting Required for International Civil Aviation Organization (ICAO)

AGENCY: Office of the Assistant Secretary for Research and Technology (OST–R), Bureau of Transportation Statistics (BTS), Department of Transportation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need and usefulness of BTS collecting supplemental data for the International Civil Aviation Organization (ICAO). Comments are requested concerning whether the supplemental reports are needed by BTS to fulfill the United States treaty obligation of furnishing financial and traffic reports to ICAO; BTS accurately estimated the reporting burden; there are other ways to enhance the quality, utility and clarity of the information collected; and there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted by May 20, 2024.

ADDRESSES: You may submit comments identified by DOT Docket ID Number DOT–OST–2014–0031 OMB Approval No. 2138–0039 by any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail: Docket Services: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Fax: 202–366–3383.

Instructions: Identify docket number, DOT–OST–2014–0031, at the beginning of your comments, and send two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Internet users may access all comments received by DOT at *http://www.regulations.gov.* All comments are posted electronically without charge or edits, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* or the street address listed above. Follow the online instructions for accessing the dockets.

Electronic Access

An electronic copy of this rule, a copy of the notice of proposed rulemaking, and copies of the comments may be

downloaded at *http://www.regulations.gov,* by searching docket DOT–OST–2014–0031.

FOR FURTHER INFORMATION CONTACT: James Bouse, *james.bouse@dot.gov,* 202–366–3000, Office of Airline Information, RTS–42, Room E34, OST–R, 1200 New Jersey Avenue Street SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0039.

Title: Reporting Required for International Civil Aviation Organization (ICAO).

Form No.: BTS Form EF.

Type Of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 34.

Number of Responses: 34.

Total Annual Burden: 23 hours.

Needs and Uses: As a party to the Convention on International Civil Aviation (Treaty), the United States is obligated to provide ICAO with financial and statistical data on operations of U.S. carriers. Over 99% of the data filled with ICAO is extracted from the air carriers' Form 41 submissions to BTS. BTS Form EF is the means by which BTS supplies the remaining 1% of the air carrier data to ICAO.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on March 12, 2024.

William Chadwick, Jr.,

Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 2024–05726 Filed 3–18–24; 8:45 am]

BILLING CODE 4910–69X–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket ID Number: DOT–OST–2014–0031 BTS Paperwork Reduction Notice]

Agency Information Collection; Activity Under OMB Review; Report of Extension of Credit to Political Candidates—Form 183

AGENCY: Office of the Assistant Secretary for Research and Technology (OST–R), Bureau of Transportation Statistics (BTS), Department of Transportation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need and usefulness of BTS collecting reports from air carriers on the aggregated indebtedness balance of a political candidate or party for Federal office. The reports are required when the aggregated indebtedness is over $5,000 on the last day of a month.

DATES: Written comments should be submitted by April 18, 2024.

ADDRESSES: You may submit comments identified by DOT Docket ID Number DOT–OST–2014–0031 and the associated OMB approval # 2138–0016 by any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail: Docket Services: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Fax: 202–366–3383.

Instructions: Identify docket number, DOT–OST–2014–0031, at the beginning of your comments, and send two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Internet users may access all comments received by DOT at *http://www.regulations.gov.* All comments are posted electronically without charge or edits, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Jennifer Rodes, *Jennifer.rodes@dot.gov,* Office of Airline Information, RTS–42, Bureau of Transportation Statistics, 1200 New Jersey Avenue Street SE, Washington, DC 20590–0001, (202) 366–8513.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0016.

Title: Report of Extension of Credit to Political Candidates—Form 183, 14 CFR Part 374a.

Form No.: 183.

Type of Review: Extension of a currently approved collection.

Respondents: Certificated air carriers.

Number of Respondents: 2 (Monthly Average).

Number of Responses: 24.

Estimated Time per Response: 1 hour.

Total Annual Burden: 24 hours.

Needs and Uses: The Department uses this form as the means to fulfill its obligation under the Federal Election Campaign Act of 1971 (the Act). The Act's legislative history indicates that one of its statutory goals is to prevent candidates for Federal political office from incurring large amounts of unsecured debt with regulated transportation companies (*e.g.,* airlines). This information collection allows the Department to monitor and disclose the amount of unsecured credit extended by airlines to candidates for Federal office. All certificated air carriers are required to submit this information.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on March 13, 2024.

William Chadwick, Jr.,

Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 2024–05754 Filed 3–18–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

2024 Report on the Effectiveness of the Terrorism Risk Insurance Program

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Request for comment.

SUMMARY: The Terrorism Risk Insurance Act of 2002, as amended (TRIA), established the Terrorism Risk Insurance Program (TRIP or Program). TRIA requires the Secretary of the Treasury (Secretary) to submit a report to Congress by June 30, 2024 concerning, in general, the overall effectiveness of TRIP. To assist the Secretary in formulating the report, the Federal Insurance Office (FIO) within the Department of the Treasury (Treasury) is seeking comments from the insurance sector and other stakeholders on the statutory factors to be analyzed in the report, as well as feedback on other issues relating to the effectiveness of TRIP.

DATES: Submit comments on or before May 3, 2024.

ADDRESSES: Submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site, or by mail to the Federal Insurance Office, Attn: Richard Ifft, Room 1410 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Because postal mail may be subject to processing delays, it is recommended that comments be submitted electronically. If submitting comments by mail, please submit an original version with two copies. Comments concerning the 2024 report on the effectiveness of the Terrorism Risk Insurance Program should be captioned with ''2024 TRIP Effectiveness Report.'' In general, Treasury will post all comments to *www.regulations.gov* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. All comments, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly. Where appropriate, a comment should include a short Executive Summary (no more than five single-spaced pages).

Additional Instructions. Responses should also include: (1) The data or rationale, including examples, supporting any opinions or conclusions; and (2) any specific legislative, administrative, or regulatory proposals for carrying out recommended approaches or options.

FOR FURTHER INFORMATION CONTACT: Richard Ifft, Lead Management and Senior Insurance Policy Analyst, Terrorism Risk Insurance Program, (202) 622–2922, or Theodore Newman, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, (202) 622–1748. Persons who have difficulty hearing or speaking may access these numbers via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

TRIA [1] requires participating insurers to make insurance available for losses resulting from acts of terrorism and provides a federal government backstop for the insurers' resulting financial exposure. TRIA established TRIP within Treasury, and TRIP is administered by the Secretary with the assistance of FIO. TRIA Section 104(h)(2) requires the Secretary to periodically prepare and submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on, among other things, the impact and effectiveness of TRIP (Effectiveness Report). TRIA was reauthorized in December 2019 with an additional requirement that Treasury's Effectiveness Reports analyze the availability and affordability of terrorism risk insurance, including specifically for houses of worship. The Effectiveness Report to be submitted by June 30, 2024 will include an analysis of information that is being collected by Treasury through the 2024 TRIP Data Call,[2] as well as data that Treasury collected in prior TRIP data calls. Treasury's data calls are conducted to obtain information to facilitate Treasury's analysis of the effectiveness of TRIP and the competitiveness of small insurers in the terrorism risk insurance marketplace,[3] as well as to assist Treasury more generally in the administration of TRIP.

II. Solicitation for Comments

This request for comment will provide stakeholders the opportunity to provide qualitative feedback and analysis that may not be otherwise observable through the results of the TRIP data calls. Information and views of stakeholders on the factors listed above will assist Treasury in the formulation of the Effectiveness Report and provide a meaningful opportunity for stakeholder engagement. In addition, and more generally, such public input may assist the Secretary in the administration of TRIP.

Statutory Factors

Treasury seeks comments on each of the following factors, which Treasury is required under TRIA Section 104(h)(2) to consider in the Effectiveness Report:

1. The overall effectiveness of TRIP;
2. The availability and affordability of terrorism risk insurance, including specifically for places of worship;
3. Any changes or trends relating to the data Treasury collects in its annual TRIP data calls, and the implications of such observations with regard to the effectiveness of TRIP;
4. Whether any aspects of TRIP have the effect of discouraging or impeding insurers from providing one or more lines of commercial property and casualty insurance coverage or coverage for acts of terrorism; and
5. Any impact of TRIP on workers' compensation insurers in particular.

In addition to seeking comments on the above factors outlined in Section 104(h)(2) of TRIA, Treasury understands that other issues and factors in the insurance market relating to terrorism risk insurance, other than those factors specified in TRIA, could have an impact on the effectiveness of the Program, as well as FIO's administration of TRIP. Treasury accordingly also seeks comments on the following topics:

Additional Topics

1. Whether the lines of insurance currently subject to the Program properly identify those areas where TRIP is necessary to ensure the availability and affordability of terrorism risk insurance, or whether certain lines of insurance should either be deleted or added;
2. The availability of terrorism risk insurance coverage for losses arising from nuclear, biological, chemical, or radiological (NBCR) exposures, and the

[1] Public Law 107–297, 116 Stat. 2322, codified at 15 U.S.C. 6701, note. Because the provisions of TRIA (as amended) appear in a note, instead of particular sections, of the United States Code, the provisions of TRIA are identified by the sections of the law.

[2] A notice announcing the commencement of the 2024 TRIP Data Call also appears in this issue of the **Federal Register**.

[3] TRIA sec. 108(h).

availability of reinsurance or capital markets support for terrorism risk insurance for such exposures;

3. Changes in the property, casualty, and reinsurance markets since the 2022 Program Effectiveness Report that may have affected the pricing, affordability, availability, and take up of terrorism risk insurance;

Cyber-Related Topics

4. Terrorism risk insurance issues presented by cyber-related losses, and the potential response of TRIP in connection with such exposures, including your views on the type of cyber-related terrorism losses that may be included within TRIP and those losses that may not be covered by TRIP;

5. Any potential changes to TRIA or TRIP that would encourage the take up of insurance for cyber-related losses arising from acts of terrorism as defined under TRIA, including, but not limited to the modification of the lines of insurance covered by TRIP and revisions to the current TRIP risk-sharing mechanisms for cyber-related losses, including how TRIP would respond to potential catastrophic cyber events;

6. The availability of reinsurance or capital markets support for cyber-related losses arising from acts of terrorism as defined under TRIA;

Other Topics

7. How captive insurers access TRIP, including the extent to which they provide coverage on a standalone versus embedded basis, or provide coverage for NBCR risks only;

8. The current status of terrorism risk modeling capabilities, and the use of those techniques in the placement of terrorism risk insurance;

9. Given the nature of terrorism risk, whether FIO should be seeking more granular information than state or metropolitan level information (such as ZIP code level or geocoded information) to assist in FIO's analysis of the terrorism risk insurance market and TRIP;

10. How and whether developments in Artificial Intelligence technologies will affect terrorism insurance underwriting, marketing, claims management, and perils;

11. In what ways, if any, small business clients face distinct challenges in the terrorism insurance market and whether small business have materially different exposures or take-up rates from the broader terrorism insurance market;

12. Given that FIO now chairs the International Forum of Terrorism (Re)Insurance Pools, any issues that FIO should consider in its engagement with international entities or authorities providing support for terrorism risk insurance or reinsurance; and

13. Any other issues relating to TRIP, terrorism risk insurance, or reinsurance that may be relevant to FIO's assessment of the effectiveness of TRIP in the report.

Steven E. Seitz,

Director, Federal Insurance Office.

[FR Doc. 2024–05750 Filed 3–18–24; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE TREASURY

2024 Terrorism Risk Insurance Program Data Call

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Data collection.

SUMMARY: Pursuant to the Terrorism Risk Insurance Act of 2002, as amended (TRIA), insurers that participate in the Terrorism Risk Insurance Program (TRIP or Program) are directed to submit information for the 2024 TRIP Data Call, which covers the reporting period from January 1, 2023 to December 31, 2023. Participating insurers are required to register and report information in a series of forms approved by the Office of Management and Budget (OMB). All insurers writing commercial property and casualty insurance in lines subject to TRIP, subject to certain exceptions identified in this notice, must respond to this data call no later than May 15, 2024.

DATES: Participating insurers must register and submit data no later than May 15, 2024.

ADDRESSES: Participating insurers will register through a website that has been established for this data call. After registration, insurers will receive data collection forms through a secure file transfer portal, and they will submit the requested data through the same secure portal. Participating insurers can register for the 2024 TRIP Data Call at *https://tripsection111data.com.* Additional information about the data call, including sample data collection forms and instructions, can be found on the TRIP website at *https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program/annual-data-collection.*

FOR FURTHER INFORMATION CONTACT: Richard Ifft, Lead Management and Senior Insurance Policy Analyst, Terrorism Risk Insurance Program, Room 1410, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, (202) 622–2922; or Theodore Newman, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office Room 1410, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, (202) 622–1748. Persons who have difficulty hearing or speaking may access these numbers via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

TRIA [1] created the Program within the U.S. Department of the Treasury (Treasury) to address disruptions in the market for terrorism risk insurance, to help ensure the continued availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for the private market to stabilize and build insurance capacity to absorb any future losses for terrorism events. The Program has been reauthorized on a number of occasions, and was most recently extended until December 31, 2027.[2] TRIA requires the Secretary of the Treasury (Secretary) to collect certain insurance data and information from insurers on an annual basis regarding their participation in the Program.[3] TRIA also requires the Secretary to prepare a biennial report on the effectiveness of the Program (Effectiveness Report).[4] The Effectiveness Report must be submitted to Congress by June 30, 2024. The Federal Insurance Office (FIO) is authorized to assist the Secretary in the administration of the Program,[5] including conducting the annual data call and preparing reports and studies required under TRIA.

II. Elements of the 2024 TRIP Data Call

For purposes of the 2024 TRIP Data Call, FIO, state insurance regulators, and the National Association of Insurance Commissioners (NAIC) will again use the consolidated data call mechanism first developed for use in the 2018 TRIP Data Call. This approach relies on four joint reporting templates, to be

[1] Public Law 107–297, 116 Stat. 2322, codified at 15 U.S.C. 6701, note. Because the provisions of TRIA (as amended) appear in a note, instead of particular sections, of the United States Code, the provisions of TRIA are identified by the sections of the law.

[2] Terrorism Risk Insurance Program Reauthorization Act of 2019, Public Law 116–94, 133 Stat. 2534.

[3] TRIA, sec. 104(h)(1). Treasury regulations also address the annual data collection requirement. See 31 CFR 50.51, 50.54.

[4] TRIA, sec. 104(h)(2).

[5] 31 U.S.C. 313(c)(1)(D).

completed by Small Insurers, Non-Small Insurers, Captive Insurers, and Alien Surplus Lines Insurers, each as defined below. The use of joint reporting templates is designed to satisfy the objectives of both Treasury and state insurance regulators, while also reducing burden on participating insurers. State insurance regulators or the NAIC will provide separate notification regarding the reporting of information into the state reporting portal, including any reporting requirements to state insurance regulators that are distinct from the Treasury requirements. Insurers subject to the consolidated data call that are part of a group will report on a group basis, while those that are not part of a group will report on an individual company basis.

A. Reporting of Workers' Compensation Information

The TRIP Data Calls request certain information relating to workers' compensation insurance. For the 2024 TRIP Data Call, Treasury will again work with the National Council on Compensation Insurance (NCCI), the California Workers' Compensation Insurance Rating Bureau (California WCIRB), and the New York Compensation Insurance Rating Board (NYCIRB) to provide workers' compensation data relating to premium and payroll information on behalf of participating insurers, either directly or through other workers' compensation rating bureaus. The data aggregator used by Treasury will provide such insurers with reporting templates that do not require them to report this workers' compensation data. Reporting insurers that write only workers' compensation policies are still required to register for the 2024 TRIP Data Call and provide general company information and data related to private reinsurance. The data received from NCCI, the California WCIRB, and the NYCIRB will be merged with the information provided by the insurers.

B. Reporting Templates

There are no material changes to the data collection worksheets or instructions from last year, and each category of insurer is required to complete the same worksheets that they completed in the 2023 TRIP Data Call.[6] The same reporting exceptions apply this year as applied in the 2023 TRIP Data Call, as specified further below in the discussions for each category of insurer.

Various worksheets used in the 2024 TRIP Data Call seek certain information relating to workers' compensation insurance. NCCI, the California WCIRB, and the NYCIRB will complete the workers' compensation elements of these worksheets on behalf of reporting insurers. Further information concerning the reporting templates for each category of insurer, and the individual worksheets contained within each, can be found in the instructions for the reporting templates for each category of insurer. The individual reporting templates and worksheets will also be addressed in the training webinars discussed below.

For the 2024 TRIP Data Call, an insurer will qualify as a Small Insurer if it had both 2022 policyholder surplus of less than $1 billion and 2022 direct earned premiums in TRIP-eligible lines of insurance of less than $1 billion.[7] Of this group, Small Insurers with TRIP-eligible direct earned premiums of less than $10 million in 2023 will be exempt from the 2024 TRIP Data Call.[8] Neither Captive Insurers nor Alien Surplus Lines Insurers are eligible for this reporting exemption. Insurers defined as Small Insurers for the 2024 TRIP Data Call will report the same information to Treasury and to state insurance regulators (in each case on a group basis), except as state insurance regulators may separately direct for purposes of the state data call.

The Non-Small Insurer template will be completed by insurance groups (or individual insurers not affiliated with a group) that are not subject to reporting on the Captive Insurer or Alien Surplus Lines Insurer reporting templates and had either a 2022 policyholder surplus of greater than $1 billion or 2022 direct earned premiums in TRIP-eligible lines of insurance equal to or greater than $1 billion. Insurers defined as Non-Small Insurers for the 2024 TRIP Data Call will report the same information to Treasury and to state insurance regulators (in each case on a group basis), except as state insurance regulators may separately direct for purposes of the state data call. Captive Insurers are defined in 31 CFR 50.4(g) as insurers licensed under the captive insurance laws or regulations of any state. Captive Insurers that wrote policies in TRIP-eligible lines of insurance during the reporting period (January 1, 2023 to December 31, 2023) are required to register and submit data to Treasury, unless they did not provide their insureds with any terrorism risk insurance (either on standalone basis, or embedded in policies providing coverage for risks other than terrorism) subject to the Program. Alien Surplus Lines Insurers are defined in 31 CFR 50.4(o)(1)(i)(B) as insurers not licensed or admitted to engage in the business of providing primary or excess insurance in any state, but that are eligible surplus line insurers listed on the NAIC Quarterly Listing of Alien Insurers. Alien Surplus Lines Insurers that are part of a larger group classified as a Non-Small Insurer or a Small Insurer should report to Treasury as part of the group, using the appropriate template. Therefore, the Alien Surplus Lines Insurer template should be used only by an Alien Surplus Lines Insurer that is not part of a larger group subject to the 2024 TRIP Data Call.

C. Supplemental Reference Documents

Treasury will continue to make available on the TRIP data collection website[9] documents providing a complete ZIP code listing for areas subject to reporting on the Geographic Exposures (Nationwide) Worksheet, as well as several hypothetical policy reporting scenarios.

D. Training Webinars

As in prior years, Treasury will hold four separate training sessions corresponding to the four reporting templates that will be used by insurers (Small Insurers, Non-Small Insurers, Captive Insurers, and Alien Surplus Lines Insurers). The webinars will be held on April 3 and April 4, 2024 to assist reporting insurers in responding to the 2024 TRIP Data Call, with each webinar focusing on a specific reporting template. Specific times and details

[6] There is a new modeled loss scenario identified in the Reinsurance Worksheet that will be used in connection with the modeled loss questions (which have not changed from those posed in prior data collections). The modeled loss questions must be completed by Non-Small Insurers, Alien Surplus Lines Insurers, and Captive Insurers. As in prior years, Small Insurers complete a separate Reinsurance Worksheet that does not contain modeled loss questions.

[7] Small Insurers are defined in 31 CFR 50.4(z) as insurers (or an affiliated group of insurers) whose policyholder surplus for the immediately preceding year is less than five times the Program Trigger for the current year, and whose direct earned premiums in TRIP-eligible lines for the preceding year are also less than five times the Program Trigger for the current year. Accordingly, for the 2024 TRIP Data Call (covering the 2023 calendar year), an insurer qualifies as a Small Insurer if its 2022 policyholder surplus and 2022 direct earned premiums are less than five times the 2023 Program Trigger of $200 million.

[8] Individual insurers with less than $10 million in direct earned premiums in TRIP-eligible lines that are part of a larger group must still report as part of the group as a whole if the group's direct earned premiums in these lines are over $10 million.

[9] See *https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program/annual-data-collection.*

concerning participation in the webinars will be made available on the TRIP data collection website, and recordings of each webinar will be made available on the website following each training session.

III. 2024 TRIP Data Call

Treasury, through an insurance statistical aggregator, will accept group or insurer registration forms through *https://tripsection111data.com.* Registration is mandatory for all insurers participating in the 2024 TRIP Data Call. Upon registration, the aggregator will transmit individualized data collection forms (in Excel format) to the reporting group or insurer via a secure file transfer portal. The reporting group or insurer may transmit a complete data submission via the same portal using either the provided Excel forms or a .csv file.[10]

Copies of the instructions and data collection forms are available on Treasury's website in read-only format. Reporting insurers will obtain the fillable reporting forms directly from the data aggregator only after registering for the data collection process.

Reporting insurers are required to register and submit complete data to Treasury no later than May 15, 2024.[11] Because of the statutory reporting deadline for Treasury's 2024 Effectiveness Report to Congress, no extensions will be granted. Reporting insurers can ask the data aggregator questions about registration, form completion, and submission at *tripsection111data@iso.com.* Reporting insurers may also submit questions to the Treasury contacts listed above. Questions regarding submission of data to state insurance regulators should be directed to the appropriate state insurance regulator or the NAIC.

All data submitted to the aggregator is subject to the confidentiality and data protection provisions of TRIA and the Program Rules, as well as to section 552 of title 5, United States Code, including any exceptions thereunder. In accordance with the Paperwork Reduction Act (44 U.S.C. 3501–3521), the information collected through the web portal has been approved by OMB under Control Number 1505–0257. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

Steven E. Seitz,

Director, Federal Insurance Office.

[FR Doc. 2024–05751 Filed 3–18–24; 8:45 am]

BILLING CODE 4810–AK–P

[10] Specifications for submission of data using a .csv file will be provided to the insurer by the aggregator.

[11] Under 31 CFR 50.51(a), data is to be provided to Treasury no later than May 15 in each calendar year.

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee Public Meeting—April 16, 2024 (Day One) and April 17, 2024 (Day Two)

ACTION: Notice of meeting.

Pursuant to United States Code, title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for April 16–17, 2024.

FOR FURTHER INFORMATION CONTACT: Jennifer Warren, United States Mint Liaison to the CCAC; 801 9th Street NW; Washington, DC 20220; or call 202–354–7208.

SUPPLEMENTARY INFORMATION:

Date: April 16, 2024, and April 17, 2024.

Time: 10 a.m.–4 p.m. (EDT) (April 16, 2024) and 9 a.m.–3:30 p.m. (April 17, 2024).

Location: 2nd Floor Conference Rooms; United States Mint; 801 9th Street NW; Washington, DC 20220.

Subject: Review and discussion of obverse and reverse candidate designs for the Emmett Till and Mamie Till-Mobley Congressional Gold Medal (April 16, 2024); review and discussion of the reverse candidate design for the 2026 Native American $1 Coin (April 16, 2024); review and discussion of the obverse and reverse candidate designs for the 2025 American Liberty 24K Gold Coin and Silver Medal (April 16, 2024); review and discussion of the obverse and reverse candidate designs for the United States Marine Corps 250th Anniversary Commemorative Coin Program (April 17, 2024); review and discussion of the obverse and reverse candidate designs for the Joseph R. Biden Presidential Medal (April 17, 2024); review and discussion of the obverse and reverse candidate designs for the Janet Yellen Secretary of the Treasury Medal (April 17, 2024); and review and discussion of the obverse and reverse candidate designs for the Ventris C. Gibson Director of the Mint Medal (April 17, 2024).

Interested members of the public can either attend the meeting in person or may watch the meeting live stream on the United States Mint's YouTube Channel at *https://www.youtube.com/user/usmint.* To watch the meeting live, members of the public may click on the ''April 16, 2024'' and ''April 17, 2024'' icon under the Live Tab. If you will be attending in person, please contact Jennifer Warren (*jennifer.warren@usmint.treas.gov*) no later than April 8, 2024, to be placed on the list for entry into the Mint Headquarters Building.

Members of the public should call the CCAC HOTLINE at (202) 354–7502 for the latest updates on meeting time and access information.

The CCAC advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals; advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made; and makes recommendations with respect to the mintage level for any commemorative coin recommended. Members of the public interested in attending the meeting in person will be admitted into the meeting room on a first-come, first-serve basis as space is limited. If you will be attending in person, please contact Jennifer Warren (*Jennifer.warren@usmint.treas.gov*) no later than April 8, 2024. In addition, all persons entering a United States Mint facility must adhere to building security protocols. This means they must consent to the search of their persons and objects in their possession while on government grounds and when they enter and leave the facility and prohibited from bringing into the facility weapons of any type, illegal drugs, drug paraphernalia, or contraband. The United States Mint Police Office conducting the search will evaluate whether an item may enter into or exit from a facility based upon Federal law, Treasury policy, United States Mint policy, and local operating procedures; and all prohibited and unauthorized items will be subject to confiscation and disposal. The public will need to fill out a background clearance form and will need the day of the meeting to provide a government id (*e.g.,* driver's license) to enter the building.

For members of the public interested in watching on-line, this is a reminder that the remote access is for observation purposes only. Members of the public may submit matters for the CCAC's consideration by email to *info@ccac.gov.*

For Accommodation Request: If you require an accommodation to watch the CCAC meeting, please contact the Office of Equal Employment Opportunity by April 8, 2024. You may submit an email request to *Reasonable.Accommodations@usmint.treas.gov* or call 202–354–7260 or 1–888–646–8369 (TTY).

(Authority: 31 U.S.C. 5135(b)(8)(C))

Eric Anderson,

Executive Secretary, United States Mint.

[FR Doc. 2024–05788 Filed 3–18–24; 8:45 am]

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FEDERAL REGISTER

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Part II

Commodity Futures Trading Commission

17 CFR Parts 37 and 38
Requirements for Designated Contract Markets and Swap Execution Facilities Regarding Governance and the Mitigation of Conflicts of Interest Impacting Market Regulation Functions; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 37 and 38

RIN 3038–AF29

Requirements for Designated Contract Markets and Swap Execution Facilities Regarding Governance and the Mitigation of Conflicts of Interest Impacting Market Regulation Functions

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing new rules and amendments to its existing regulations for designated contract markets (''DCMs'') and swap execution facilities (''SEFs'') that would establish governance and fitness requirements with respect to market regulation functions, as well as related conflict of interest standards. The proposed new rules and amendments include minimum fitness standards, requirements for identifying, managing, and resolving conflicts of interest, and structural governance requirements to ensure that SEF and DCM governing bodies adequately incorporate an independent perspective. The proposal also address requirements relating to the following: composition requirements for board of directors and disciplinary panels; limitations on the use and disclosure by employees and certain others of material non-public information; requirements relating to Chief Regulatory Officers, Chief Compliance Officers, and Regulatory Oversight Committees; and notification of certain changes in the ownership or corporate or organizational structure of a SEF or DCM.

DATES: Comments must be received on or before April 22, 2024.

ADDRESSES: You may submit comments, identified by ''Requirements for Designated Contract Markets and Swap Execution Facilities Regarding Governance and the Mitigation of Conflicts of Interest'' and RIN 3038–AF29, 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 instructions 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 § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from *https://www.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 and other applicable laws, and may be accessible under FOIA.

FOR FURTHER INFORMATION CONTACT: Rachel Berdansky, Deputy Director, *rberdansky@cftc.gov,* 202–418–5429; Swati Shah, Associate Director, *sshah@cftc.gov,* 202–418–5042; Marilee Dahlman, Special Counsel, *mdahlman@cftc.gov,* 202–418–5264; Jennifer L. Tveiten-Rifman, Special Counsel, *jtveitenrifman@cftc.gov,* 312–802–3848; Lillian Cardona, *lcardona@cftc.gov,* Assistant Chief Counsel, 202–418–5012.

SUPPLEMENTARY INFORMATION:

Table of Contents

[1] 17 CFR 145.9.

I. Introduction

The Commission proposes to establish governance fitness regulations related to market regulation functions,[2] and related conflict of interest requirements, for swap execution facilities (''SEFs'') and designated contract markets (''DCMs''). Although SEFs and DCMs have similar obligations with respect to market regulation functions, they are subject to different obligations with respect to governance fitness standards and mitigating conflicts of interest. SEFs and DCMs are required to minimize and resolve conflicts of interest pursuant to identical statutory core principles.[3] However, SEF and DCM regulatory requirements addressing governance fitness standards currently differ. With respect to governance fitness standards, DCMs are subject to specific statutory core principles addressing governance,[4] while SEFs do not have parallel core principle requirements. Additionally, SEFs and DCMs currently have different regulatory obligations with respect to governance fitness standards.[5] Further, while both SEFs and DCMs are subject to equity transfer requirements,[6] the applicable regulatory provisions currently have different notification thresholds and obligations.

In this proposal, the Commission is drawing on staff experience in conducting its routine oversight of SEF and DCM ''market regulation functions,'' which include responsibilities related to trade practice surveillance, market surveillance, real-time market monitoring, audit trail data and recordkeeping enforcement, investigations of possible SEF or DCM rule violations, and disciplinary actions. Commission staff conducts oversight of these market regulation functions in a number of ways, including rule enforcement reviews,[7] SEF regulatory consultations and registration application reviews, DCM designation application reviews, and regular engagement with SEFs and DCMs.[8]

Through its oversight, Commission staff has identified areas where it preliminarily believes that SEF and DCM regulations should be enacted, in lieu of existing guidance and acceptable practices, to further support the statutory objective of ensuring that conflicts of interest are appropriately mitigated. The Commission is proposing enhanced substantive requirements for identifying, managing, and resolving conflicts of interest related to a SEF's or DCM's market regulation functions, and structural governance requirements to ensure that SEF and DCM governing bodies adequately incorporate an independent perspective. The Commission is also proposing additional amendments to address governance standards as they relate to the performance of the market regulation function. The Commission is further proposing enhanced notification requirements with respect to changes in the ownership or corporate or organizational structure of a SEF or DCM.

More specifically, the Commission proposes: (1) new rules to implement DCM Core Principle 15 (Governance Fitness Standards) that are consistent with the existing guidance on compliance with DCM Core Principle 15; [9] (2) new rules to implement DCM Core Principle 16 (Conflicts of Interest) that are consistent with the existing guidance on, and acceptable practices in, compliance with DCM Core Principle 16; [10] (3) new rules to implement SEF Core Principle 2 (Compliance With Rules) that are consistent with the DCM Core Principle 15 Guidance; [11] (4) new rules to implement SEF Core Principle 12 (Conflicts of Interest) that are consistent with the DCM Core Principle 16 Guidance and Acceptable Practices; (5) new rules under part 37 of the Commission's regulations for SEFs and part 38 of the Commission's regulations for DCMs that are consistent with existing conflicts of interest and governance requirements under Commission regulations §§ 1.59 and 1.63; [12] (6) new rules for DCM Chief Regulatory Officers (''CROs''); (7) amendments to certain requirements relating to SEF Chief Compliance Officers (''CCOs''); and (8) new rules for SEFs and DCMs relating to the establishment and operation of a Regulatory Oversight Committee (''ROC''). The Commission also is proposing to remove the guidance on

[2] As discussed further below, the Commission is proposing to define ''market regulation functions'' to include the SEF functions required by SEF Core Principles 2 (Compliance with Rules), 4 (Monitoring of Trading and Trade Processing), and 6 (Position Limits or Accountability), the DCM functions required by DCM Core Principles 2 (Compliance with Rules), 4 (Prevention of Market Disruption), 5 (Position Limitations or Accountability), 10 (Trade Information), 12 (Protection of Markets and Market Participants), and 13 (Disciplinary Procedures), and regulations thereunder. These responsibilities include, but are not limited to, the responsibilities of SEFs and DCMs to conduct trade practice surveillance, market surveillance, real-time market monitoring, audit trail enforcement, investigations of possible SEF or DCM rule violations, and disciplinary actions. *See* proposed §§ 37.1201(b)(9) and 38.851(b)(9).

[3] *See* SEF Core Principle 12, Commodity Exchange Act (''CEA'') section 5h(f), 7 U.S.C. 7b–3(f), and DCM Core Principle 16, CEA section 5(d), 7 U.S.C. 7(d).

[4] *See* DCM Core Principles 15 and 17, CEA section 5(d)(15), 7 U.S.C. 7(d)(15), and CEA section 5(d)(17), 7 U.S.C. 7(d)(17), respectively.

[5] As discussed below, SEFs, but not DCMs, are required to comply with requirements under part 1 of the Commission's regulations addressing the sharing of nonpublic information, service on the board or committees by persons with disciplinary histories, board composition, and voting by board or committee members where there may be a conflict of interest.

[6] Commission regulation § 37.5(c) (SEFs) and Commission regulation § 38.5(c) (DCMs).

[7] *See* Rule Enforcement Reviews of Designated Contract Markets, *https://www.cftc.gov/IndustryOversight/TradingOrganizations/DCMs/dcmruleenf.html*.

[8] As explained below, this proposal is not addressing SEF and DCM obligations relating to core principles that specifically address the financial integrity of transactions under SEF Core Principle 7 and DCM Core Principle 11.

[9] Part 38, Appendix B, Core Principle 15 Guidance.

[10] Part 38, Appendix B, Core Principle 16 Acceptable Practices.

[11] As discussed further below, SEF Core Principle 2 requires SEFs to establish rules governing the operations of the facility. To effectuate this requirement, the Commission preliminarily believes it is necessary to establish governance fitness standards for the individuals responsible for directing the operations of the SEF. *See* Section III(a) herein.

[12] The Commission is also proposing conforming amendments to remove SEFs and DCMs from the scope of these part 1 requirements. *See* Section V(a) herein.

compliance with DCM Core Principle 15, as well as the guidance on, and acceptable practices in, compliance with DCM Core Principle 16.

The Commission also proposes amendments to existing rules in part 37 and part 38 of its regulations regarding the notification of a transfer of equity interest in a SEF or DCM. The proposal would harmonize and enhance the rules for SEFs and DCMs, and would also harmonize these SEF and DCM rules with the corollary rules for derivatives clearing organizations (''DCOs'') under part 39 of the Commission's regulations.[13] The proposal would further confirm the Commission's authority to obtain information concerning continued regulatory compliance in the event of changes in the ownership or corporate or organizational structure of a SEF or DCM.

Finally, the Commission is proposing certain technical and conforming changes to SEF and DCM rules relating to disciplinary panels, staffing, and investigations.[14]

In developing the rules proposed in this NPRM, the Commission has consulted with the Securities and Exchange Commission (''SEC''), pursuant to section 712(a)(1) of the Dodd-Frank Act.[15]

II. Background

a. Statutory Requirements for SEFs and DCMs

Section 5h [16] of the CEA sets forth requirements for SEFs. CEA section 5h(f)(1)(A) provides that in order to be registered, and to maintain registration, with the Commission, a SEF must comply with (1) 15 core principles, and (2) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5) of the CEA.[17] Unless otherwise determined by the Commission by rule or regulation, a SEF has reasonable discretion to establish the manner in which it complies with a particular core principle. As of January 2024, there were 21 registered SEFs.

Similarly, Section 5 of the CEA sets forth requirements for DCMs. CEA section 5(d)(1)(A) requires that to be designated, and to maintain designation, by the Commission, a DCM must comply with (1) 23 core principles, and (2) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5) of the CEA.[18] Unless otherwise determined by the Commission by rule or regulation, a DCM has reasonable discretion to establish the manner in which it complies with a particular core principle.[19] As of January 2024, there were 17 registered DCMs.

Both SEFs and DCMs are subject to a respective core principle addressing conflicts of interest. Pursuant to SEF Core Principle 12 and DCM Core Principle 16, both SEFs and DCMs must establish and enforce rules to minimize conflicts of interest in their decision-making processes, and must establish a process for resolving such conflicts.[20]

SEFs are also subject to a Chief Compliance Officer core principle. SEF Core Principle 15 requires SEFs to designate an individual to serve as a CCO, sets forth CCO duties,[21] including a duty to resolve conflicts of interest,[22] and requires CCOs to prepare and submit an annual report to the Commission describing the SEF's compliance with the CEA and the SEF's policies and procedures, including the SEF's code of ethics and conflicts of interest policies.[23] There is no equivalent statutory core principle for DCMs.[24]

DCMs are additionally subject to three core principles addressing governance.[25] DCM Core Principle 15 requires a DCM to establish and enforce appropriate fitness standards for members of its board of directors, disciplinary committee members, members of the DCM, persons with direct access to the DCM, and any party affiliated with of any of the foregoing persons. DCM Core Principle 17 establishes that a DCM's governance arrangements ''shall be designed to permit consideration of the views of market participants.'' [26] DCM Core Principle 22 requires publicly-traded DCMs to endeavor to recruit individuals to serve on the board of directors and other decision-making bodies of the DCM from among, and to have the composition of these bodies reflect, a broad and culturally diverse pool of qualified candidates.[27] While there are no SEF core principles directly addressing governance, the Commission believes a SEF cannot effectively manage its SEF Core Principle 2 obligations without effective governance.

b. Proposed and Final Rules Addressing SEF and DCM Governance and Conflicts of Interest

Since 2001, the Commission has proposed and adopted guidance and acceptable practices addressing conflicts

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[13] *See, e.g.,* part 39 of the Commission's regulations, adopted pursuant to Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 39333 (Nov. 8, 2011).

[14] *See* Section V(e)–(g) herein.

[15] 15 U.S.C. 8302 (Providing that before commencing any rulemaking or issuing an order regarding swaps, swap dealers, major swap participants, swap data repositories, derivative clearing organizations with regard to swaps, persons associated with a swap dealer or major swap participant, eligible contract participants, or swap execution facilities pursuant to the applicable subtitle, the CFTC must consult and coordinate to the extent possible with the SEC and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible).

[16] 7 U.S.C. 7b–3.

[17] 7 U.S.C. 7b–3(f).

[18] CEA section 8a(5), 7 U.S.C. 12a(5), authorizes the Commission to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the CEA. The CEA contains a finding that the transactions subject to the CEA are affected with a ''national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities,'' and among the CEA's purposes are to serve the aforementioned public interests through a system of ''effective self-regulation of trading facilities.'' *See* CEA section 3.

[19] CEA section 5(d)(1)(B), 7 U.S.C. 7(d)(1)(B).

[20] CEA sections 5(d)(16), 5h(f)(12). DCM Core Principle 16 and SEF Core Principle 12 are substantively identical in the statute.

[21] The duties include to report directly to the board or senior officer of the SEF; review compliance with the core principles; resolve conflicts of interest in consultation with the board, a body performing a function similar to that of a board, or the senior officer of the facility; be responsible for establishing and administering the SEF's self-regulatory policies and procedures; ensure compliance with the CEA and rules and regulations issued thereunder; and establish a procedure for remedying noncompliance issues found during compliance office reviews, look backs, internal or external audit findings, self-reported errors, or validated complaints. *See* CEA section 5h(f)(15)(B), 7 U.S.C. 7b–3(f)(15)(B).

[22] The CCO must fulfill this duty in consultation with the board of directors, a body performing a function similar to that of a board, or the senior officer of the SEF. CEA section 5h(f)(15)(B)(iii), 7 U.S.C. 7b–3(f)(15)(B)(iii).

[23] CEA section 5h(f)(15)(D), 7 U.S.C. 7b–3(f)(15)(D).

[24] The Core Principle 16 Acceptable Practices specify that DCMs should have a Regulatory Oversight Committee that, among other things, supervises the DCM's chief regulatory officer, who will report directly to the Regulatory Oversight Committee. *See* section V(f)(3) herein for a discussion of the difference between a chief regulatory officer and a chief compliance officer.

[25] Related governance requirements for SEFs exist in part 1 of the Commission's regulations. Commission regulation § 1.69(b) requires SEFs to adopt rules requiring any member of the board of directors, disciplinary committee or oversight panel to abstain from deliberating and voting on any matter involving a conflict of interest. Commission regulation § 1.69 applies to ''self-regulatory organizations'' (''SRO''), as defined in Commission regulation § 1.3, which includes SEFs and DCMs. However, pursuant to Commission regulation § 38.2, DCMs are exempt from the requirements of Commission regulation § 1.69.

[26] Commission regulation § 38.900, DCM Core Principle 17, Composition of Governing Boards of Contract Markets.

[27] This proposal is not addressing the requirements identified in DCM Core Principles 17 and 22.

of interest and governance standards for SEFs and DCMs.

1. 2001 Regulatory Framework

On August 10, 2001, the Commission adopted a regulatory framework (''2001 Regulatory Framework'') implementing the Commodity Futures Modernization Act of 2000 (''CFMA''), effective October 9, 2001.[28] The CFMA required the Commission to implement a framework of flexible core principles in lieu of detailed regulatory prescriptions. Section 110 of the CFMA, codified in section 5(d)(1) of the CEA, stated that a DCM shall have reasonable discretion in establishing the manner in which it complies with the core principles.

The CFMA contained core principles, that among other things, related to governance fitness standards and conflicts of interest. DCM Core Principle 14 (Governance Fitness Standards) [29] provided that boards of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other persons with direct access to the facility (including any parties affiliated with any of the persons described in this paragraph).[30] DCM Core Principle 15 (Conflicts of Interest) [31] provided that boards of trade shall establish and enforce rules to minimize conflicts of interest in the decision-making process of the contract market and shall establish a process for resolving such conflicts of interest.[32]

The 2001 Regulatory Framework implemented guidance for DCM Core Principles 14 (Governance Fitness Standards) and 15 (Conflicts of Interest). Guidance provides contextual information regarding the core principles, including important concerns which the Commission believes should be taken into account in complying with specific core principles.[33] The guidance for a core principle is illustrative only of the types of matters a DCM may address, and is not intended to be used as a mandatory checklist.[34]

The guidance for DCM Core Principle 14 states that minimum fitness standards for ''persons who have member voting privileges, governing obligations or responsibilities, or who exercise disciplinary authority,'' and ''natural persons who directly or indirectly have greater than a ten percent ownership interest in a designated contract'' should include those bases for refusal to register a person under section 8a(2) of the CEA.[35] Additionally, the guidance states that persons who have governing obligations or responsibilities, or who exercise disciplinary authority, should not have a significant history of serious disciplinary offenses, such as those that would be disqualifying under Commission regulation § 1.63.[36] The guidance further states that fitness standards should include providing the Commission with fitness information for such persons, whether registration information, certification to the fitness of such persons, an affidavit of such persons' fitness by the contract market's counsel or other information substantiating the fitness of such persons.[37] Finally, the guidance provides that if a contract market provides certification of the fitness of such a person, the Commission believes that such certification should be based on verified information that the person is fit to be in his or her position.[38]

The guidance for DCM Core Principle 15 (Conflicts of Interest) provides that the means to address conflicts of interest in a DCM should include methods to ascertain the presence of conflicts of interest and to make decisions in the event of such a conflict.[39] The guidance also states that a DCM should provide appropriate limitations on the use or disclosure of material non-public information gained through the performance of official duties by board members, committee members, and contract market employees, or gained through an ownership interest in the contract market.

In the 2001 Regulatory Framework, the Commission adopted Commission regulation § 38.2, which exempted ''agreements, contracts, or transactions'' traded on a DCM, as well as the ''contract market'' itself, and the ''contract market's operator'' from all Commission regulations for such activity, except for the requirements of part 38 and §§thnsp;1.3, 1.12(e), 1.31, 1.38, 1.52, 1.59(d), 1.63(c), 1.67, 33.10, part 9, parts 15 through 21, part 40, and part 190.[40] The Commission did so in the context of the CFMA, which provided DCMs with a framework of flexible core principles in lieu of detailed regulatory prescriptions.[41]

2. 2007 Final Release, Conflicts of Interest Acceptable Practices for DCMs

On February 14, 2007, the Commission adopted ''acceptable practices'' [42] as a way for DCMs to demonstrate compliance with the conflicts of interest core principle (''2007 Final Release'').[43] Acceptable practices are more detailed examples of how DCMs may satisfy particular requirements of the core principles.[44] Similar to guidance, acceptable practices are for illustrative purposes only and do not establish a mandatory or exclusive means of compliance with a core principle. Acceptable practices, however, are intended to assist DCMs by outlining specific practices for core principle compliance. As the Commission has stated, acceptable practices provide examples of how DCMs may satisfy particular requirements of the core principles; they do not, however, establish mandatory

[28] A New Regulatory Framework for Trading Facilities, Intermediaries and Clearing Organizations, 66 FR 42256 (Aug. 10, 2001) (''2001 Regulatory Framework'').

[29] In 2001, DCM Core Principle 14 addressed governance fitness standards. In the Dodd-Frank Act, the DCM conflicts of interest core principle was renumbered to be Core Principle 15. *See* Dodd-Frank Act, section 735(b); 7 U.S.C. 7(d)(15).

[30] *See* CFMA section 110, codified at CEA section 5(d)(14).

[31] In 2001, DCM Core Principle 15 addressed conflicts of interest. In the Dodd-Frank Act, the DCM conflicts of interest core principle was renumbered to be Core Principle 16. *See* Dodd-Frank Act, section 735(b); 7 U.S.C. 7(d)(16).

[32] *See* CFMA section 110, codified at CEA section 5(d)(15).

[33] The 2001 Regulatory Framework described the guidance contained therein as ''application guidance,'' but the concept is substantively similar to the ''guidance'' in part 38, Appendix B, sec. 1. *See* 2001 Regulatory Framework, 66 FR 42256 at 42278.

[34] Part 38, Appendix B, sec 1.

[35] *See* 2001 Regulatory Framework, 66 FR 42256 at 42283.

[36] *Id.* The DCM Core Principle 14 Guidance states that members with trading privileges but having no or only minimal equity in the DCM and non-member market participants who are not intermediated ''and do not have these privileges, obligations, or responsibilities or disciplinary authority'' could satisfy minimum fitness standards by meeting the standards that they must meet to qualify as a ''market participant.''

[37] 2001 Regulatory Framework, 66 FR 42256 at 42283.

[38] *Id.*

[39] *Id.* In 2001, DCM Core Principle 15 addressed conflicts of interest. In the Dodd-Frank Act, the DCM conflicts of interest core principle was renumbered to be Core Principle 16. *See* Dodd-Frank Act, section 735(b); 7 U.S.C. 7(d)(16).

[40] *See* 2001 Regulatory Framework, 66 FR 42256 at 42277. *See also id.* at 42257.

[41] *See* Section II(b)(6) herein for a description of a revised version of Commission regulation 38.2.

[42] *See* Section II(b)(1) herein for a description of acceptable practices, and how acceptable practices compare to guidance.

[43] Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations, 72 FR 6936 (Feb, 14, 2007) (''2007 Final Release'').

[44] *See* 2001 Regulatory Framework, 66 FR 42256 at 42279; Part 38, Appendix B, sec 2. Acceptable practices were adopted in the 2001 Regulatory Framework for core principles other than those relating to governance fitness standards and conflicts of interest. For example, acceptable practices were adopted for DCM Core Principles 2, 3, 4, 5, 6, 9, 10, 13, and 17. *See* 2001 Regulatory Framework, 66 FR 42256 at 42279–83.

means of compliance.[45] Acceptable practices apply only to compliance with specific aspects of a core principle, and do not protect the DCM with respect to charges of violations of other sections of the CEA or other aspects of the core principle.[46]

The DCM Core Principle 16 acceptable practices have several key provisions. First, the acceptable practices provided that DCM boards of directors, and any executive committees or similarly empowered bodies, be comprised of at least 35 percent ''public directors.'' Second, the acceptable practices also established a definition of who would constitute a ''public director'' for purposes of the acceptable practices. Third, the acceptable practices provided that a DCM establish a ROC comprised exclusively of public directors, which would have among its duties to supervise the contract market's CRO, who will report directly to the ROC.[47] The Commission explained that properly functioning ROCs should be robust oversight bodies capable of firmly representing the interests of vigorous, impartial, and effective self-regulation. ROCs should also represent the interests and needs of regulatory officers and staff; the resource needs of regulatory functions; and the independence of regulatory decisions. In this manner, ROCs will insulate DCM self-regulatory functions, decisions, and personnel from improper influence, both internal and external.[48]

The Commission also underscored the importance of a DCM's ROC being composed of 100 percent public directors, particularly given the industry shift toward demutualization.[49] The Commission stated that it strongly believed that new structural conflicts of interest within self-regulation require an appropriate response within DCMs. The Commission further stated that it believed that ROCs, consisting exclusively of public directors, are a vital element of any such response. The Commission observed that ROCs make no direct commercial decisions, and therefore, have no need for industry directors as members. The public directors serving on ROCs are a buffer between self-regulation and those who could bring improper influence to bear upon it.[50]

Fourth, the acceptable practices specified that DCM disciplinary panels should not be dominated by any group or class of DCM members or participants, and provided that at least one person who would qualify as a public director be included on the panel.

The Commission provided existing DCMs with a phase-in period of the lesser of two years or two regularly scheduled elections of the board of directors to demonstrate full compliance with the conflicts of interest core principle for DCMs.[51] Then, on March 26, 2007, the Commission proposed certain amendments to the ''public director'' definition.[52] With the ''public director'' definition in flux, the Commission stayed the phase-in period for existing DCMs to demonstrate full compliance with the conflicts of interest core principle.[53]

3. 2009 Final Release, Definition of Public Director

On April 27, 2009, the Commission adopted final amendments to the acceptable practices for complying with the conflicts of interest core principle for DCMs (''2009 Final Release).[54] The amendments established a final definition of who constitutes a ''public director'' for purposes of the acceptable practices and the stay for demonstrating full compliance with the conflicts of interest core principle was lifted.[55] In adopting the amendments, the Commission stated that ''self-regulation must be vigorous, effective, and impartial.'' [56]

The most important component of the ''public director'' definition is an overarching materiality test, which provides that a public director must have no material relationship with the DCM. Certain circumstances are specified under which a director would be deemed to have a material relationship. A director would be deemed to have a material relationship by virtue of: (1) being an officer or employee of the DCM, or an officer or employee of an affiliate of the DCM; (2) being a member, or an officer or director of a member, of the DCM; or (3) receiving more than $100,000 in annual payments from the DCM or an affiliate of the DCM for legal, accounting, or consulting services. The director would also have a material relationship if a family member had any of the aforementioned relationships. Whether a director or family member had any such relationship would be subject to a one-year look-back period.

4. 2010 Conflicts of Interest Rule Proposal

On October 18, 2010, the Commission issued a rule proposal (the ''Mitigation of Conflicts of Interest NPRM''), which proposed prophylactic measures aimed to mitigate conflicts of interest in the operation of a SEF or DCM.[57] After identifying certain potential conflicts of interest, the Commission made rule proposals for SEFs and DCMs concerning (1) governance, and (2) ownership of voting equity and the exercise of voting rights. With respect to governance, the Commission proposed, as rules, enhanced versions of the acceptable practices that had previously been adopted for the DCM core principle on conflicts of interest.[58] Specifically, the Commission proposed to require that each SEF or DCM have:

- a board of directors with at least 35 percent, but no less than two, public directors;
- a nominating committee with at least 51 percent public directors, and with a public director as chair;
- one or more disciplinary panels, with a public participant as chair;
- a ROC with all public directors; and
- a membership or participation committee, with 35 percent public directors.

The Commission also proposed, as rules, certain limitations with respect to the ownership of voting equity in the SEF or DCM and the exercise of voting rights. These proposals limited SEF participants or DCM members (and related persons) to: (1) beneficially

[45] Core Principles and Other Requirements for Designated Contract Markets, 77 FR 36612 at 36614 n.13 (June 19, 2012); 7 U.S.C. 7(d)(1) (amended 2010).

[46] *Id.*

[47] *Id.* at 6951 n.80.

[48] *Id.* at 6950–51.

[49] By 2007, the futures industry had been shifting away from mutually owned exchanges, starting in 2000 with the rule amendment approvals for CME and NYMEX to move from not-for-profit corporations to for-profit corporations. *See* Commission Release #4407–00 (June 16, 2000) *https://www.cftc.gov/sites/default/files/opa/press00/opa4407-00.htm* and Commission Release #4427–00 (July 28, 2000) *https://www.cftc.gov/sites/default/files/opa/press00/opa4427-00.htm,* respectively. The Commission also approved a demutualization plan for the Chicago Board of Trade (CBOT) on April 18, 2005. *See* Certified Rule Submissions, *https://www.cftc.gov/IndustryOversight/IndustryFilings/deaapprovalofrulestable.html.*

[50] *See* 2007 Final Release, 72 FR 6936 at 6951.

[51] *See id.*

[52] Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations, 72 FR 14051 (March 26, 2007).

[53] *Id.* at 65659.

[54] Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations, 74 FR 18982 (Apr. 27, 2009) (''2009 Final Release'').

[55] *Id.* at 18983.

[56] *Id.* at 18984.

[57] Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest, 75 FR 63732 (Oct. 18, 2010).

[58] *Id.* at 63733. *See also* 2009 Final Release, 74 FR 18982 (which defined ''public director''); 2007 Final Release, 72 FR 6936 (Feb. 14, 2007) (which adopted final acceptable practices for the DCM core principle on conflicts of interest); 71 FR 38740 (July 7, 2006) (which proposed acceptable practices for such DCM core principle).

owning no more than 20 percent of any class of voting equity in the SEF or DCM; and (2) exercising (whether directly or indirectly) no more than 20 percent of the voting power of any class of equity interest in the SEF or DCM.

The Commission never adopted the proposed rules as final rules.[59]

5. 2011 Governance and Conflicts of Interest NPRM

On January 6, 2011, the Commission issued a post-Dodd-Frank Act rule proposal (the ''2011 Governance and Conflicts of Interest NPRM'') to establish the manner in which DCMs, SEFs and DCOs must comply with their respective core principle obligations with regard to conflicts of interest.[60] The rule proposal aimed to mitigate conflicts of interest through requirements regarding reporting, transparency in decision-making, and limitations on the use or disclosure of non-public information, among other things.[61] The 2011 Governance and Conflicts of Interest NPRM also proposed rules to establish the manner in which DCMs and DCOs must comply with their respective core principle obligations with regard to governance fitness standards [62] and the composition of governing bodies,[63] and proposed rules to establish the manner in which publicly traded DCMs must comply with their core principle obligation with regard to the diversity of their board of directors.[64] The Commission never adopted the 2011 Governance and Conflicts of Interest NPRM as final rules.[65]

6. 2012 Part 38 Final Rule

The Dodd-Frank Act overhauled or reversed key aspects of the regulatory framework under the CFMA, but retained the core principles framework. Importantly, however, the Dodd-Frank Act specifically empowered the Commission to determine by rule or regulation, the manner in which a DCM may comply with core principles. Section 735 of the Dodd-Frank Act amended section 5 of the CEA to include the proviso that ''*[u]nless otherwise determined by the Commission by rule or regulation . . .*'' boards of trade shall have reasonable discretion in establishing the manner in which they comply with the core principles.[66] On June 19, 2012, the Commission adopted a rulemaking to implement the Dodd-Frank Act's amendments to section 5 of the CEA pertaining to the designation and operation of contract markets (the ''2012 Part 38 Final Rule'').[67] Similar to the Commission's approach in this rule proposal, the Commission's implementation of the new provisions under the Dodd-Frank Act substituted rules in lieu of guidance and acceptable practices for several of the DCM core principles.[68]

In the 2012 Part 38 Final Rule, the Commission adopted rules establishing the manner in which a DCM must comply with several of the DCM core principles. The Commission also adopted revised guidance and acceptable practices for certain of the DCM core principles. The Commission chose to maintain the existing guidance [69] on compliance with the DCM core principle on governance fitness standards, and to maintain the existing guidance on,[70] and acceptable practices in, compliance with the DCM conflicts of interest core principle.[71] This included the acceptable practice that the DCM's ROC supervise the DCM's CRO, who reports directly to the ROC. While the Commission did not adopt rules to establish this as an affirmative requirement for all DCMs, the Commission stated in the adopting release that current industry practice is for DCMs to designate an individual as chief regulatory officer, and it will be difficult for a DCM to meet the compliance staff and resources requirements of § 38.155 without a chief regulatory officer or similar individual to supervise its regulatory program, including any services rendered to the DCM by a regulatory service provider.[72] In the 2012 Part 38 Final Rule, the Commission contemplated that rules implementing the DCM conflicts of interest core principle might be adopted in the future.[73]

In the 2012 Part 38 Final Rule, the Commission also adopted equity transfer notification requirements for DCMs. Pursuant to § 38.5(c), DCMs must notify the Commission when they enter into a transaction involving the transfer of 10 percent or more of the equity interest in the DCM.[74] DCMs must notify the Commission of such a transfer at the earliest possible time, but in no event later than the open of business 10 business days following the date upon which the DCM enters into a firm obligation to transfer the equity interest.[75] In particular, the Commission explained that while DCMs may take up to 10 business days to submit a notification, the DCM must provide Commission staff with sufficient time, prior to consummating the equity interest transfer, to review and consider the implications of the change in ownership, including whether the change in ownership will adversely impact the operations of the DCM or the DCM's ability to comply with the core principles and the Commission's regulations thereunder.[76]

In addition to Commission regulation § 38.5(c)'s equity interest transfer requirements, the Commission adopted regulations requiring DCMs to submit certain information to the Commission.

[59] The proposal was withdrawn on the Fall 2020 Unified Agenda and Regulatory Plan. The withdrawal entry is available at: *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202010&RIN=3038-AD37*.

[60] Governance Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities; Additional Requirements Regarding the Mitigation of Conflicts of Interest, 76 FR 722 (January 6, 2011).

[61] *Id.*

[62] *See* section 5(d)(15) of the CEA, 7 U.S.C. 7(d)(15) (DCM core principle on governance fitness standards), as redesignated by section 735 of the Dodd-Frank Act.

[63] *See* section 5(d)(17) of the CEA, 7 U.S.C. 7(d)(17) (DCM core principle on composition of governing boards), as added by section 735 of the Dodd-Frank Act.

[64] *See* section 5(d)(22) of the CEA, 7 U.S.C. 7(d)(22) (DCM core principle on diversity of board of directors), as added by section 735 of the Dodd-Frank Act.

[65] The proposal was withdrawn on the Fall 2019 Unified Agenda and Regulatory Plan. The withdrawal entry that appeared in the Fall 2019 Agenda is available at: *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=3038-AD36*.

[66] *See* CEA section 5(d)(1)(B) (emphasis added).

[67] Core Principles and Other Requirements for Designated Contract Markets, 77 FR 36612 (June 19, 2012) (the ''2012 Part 38 Final Rule'').

[68] In 2007, DCM Core Principle 15 addressed conflicts of interest. In the Dodd-Frank Act, the DCM conflicts of interest core principle was renumbered to be Core Principle 16. *See* Dodd-Frank Act, section 735(b); 7 U.S.C. 7(d)(16).

[69] *See* section II(b)(1) herein for a description of the guidance adopted in 2001 relating to governance fitness standards.

[70] *See* section II(b)(1) herein for a description of the guidance adopted in 2001 relating to conflicts of interest.

[71] 2012 Part 38 Final Rule, 77 FR 36612 at 36655–56. The Commission added Commission regulation § 38.851 to permit DCMs to continue to rely on the conflicts of interest guidance in Appendix B to part 38. See section II(b)(2)–(3) herein for a description of acceptable practices adopted in 2007 and 2009 relating to conflicts of interest.

[72] 2012 Part 38 Final Rule, 77 FR 36612 at 36628.

[73] The Commission explained that until such time as it may adopt the substantive rules implementing Core Principle 16, the Commission was maintaining the current guidance and acceptable practices under part 38 applicable to Conflicts of Interest (formerly Core Principle 15). Accordingly, the existing Guidance and Acceptable Practices from Appendix B of part 38 applicable to Core Principle 16 were codified in the revised Appendix B adopted in the final rulemaking. The Commission noted that at such time as it may adopt the final rules implementing Core Principle 16, Appendix B would be amended accordingly. 2012 Part 38 Final Rule, 77 FR 36612 at 36656.

[74] *See* Commission regulation § 38.5(c).

[75] *See id.*

[76] 2012 Part 38 Final Rule, 77 FR 36612 at 36619.

Pursuant to Commission regulation § 38.5(a), upon request, a DCM must file with the Commission information related to its business as a DCM, including information relating to data entry and trade details, in the form and manner and within the time specified by the Commission in its request.[77]

The Commission notes that in the 2012 Part 38 Final Rule, pursuant to § 38.5(d), the Commission delegated ''the authority set forth in paragraph (b) of this section'' (demonstration of compliance) to the Director of the Division of Market Oversight.[78] This differs from the corresponding regulation for SEFs.[79] Existing Commission regulation § 37.5(d) provides that the Commission delegates ''the authority set forth in this section'' to the Director of the Division of Market Oversight, which is a broader delegation compared to the Part 38 regulation. In particular, the delegation provision in § 37.5(d) includes the authority to request information pursuant to both regulations §§ 37.5(a) (requests for information) and (b) (demonstration of compliance).[80] The delegation provision in § 38.5(d) does not apply to § 38.5(a) (requests for information).

Finally, in the 2012 Part 38 Final Rule, the Commission adopted a revised version of § 38.2 that specified ''the Commission regulations from which DCMs will be exempt'' as opposed to listing the regulations that DCMs were obligated to comply with.[81] The Commission made this change to add clarity and to eliminate the need for the Commission to continually update § 38.2 when new regulations with which DCMs must comply are codified.[82] The Commission exempted DCMs from certain provisions within part 1 of the Commission's regulations that address conflicts of interest and governance for self-regulatory organizations (''SROs''). In particular, the Commission exempted DCMs from all or part of the following provisions:

- Commission regulation § 1.59, which addresses limitations on the use and disclosure of non-public information;[83]
- Commission regulation § 1.63, which restricts persons with certain disciplinary histories from serving on governing boards or committees;[84]
- Commission regulation § 1.64, which addresses composition of governing boards and disciplinary committees;[85] and
- Commission regulation § 1.69, which addresses voting by conflicted members of governing boards and committees.[86]

In exempting DCMs from the provisions listed above, the Commission noted that Commission regulation § 38.2 will likely be amended if and when the referenced rules are eliminated from the regulations or modified.[87]

7. 2013 Part 37 Final Rule

On June 4, 2013, the Commission adopted a final rulemaking (the ''Part 37 Final Rule'') which established regulatory obligations that SEFs—a new category of regulated entity introduced under the Dodd-Frank Act.[88] In the Part 37 Final Rule, the Commission adopted rules establishing the manner in which a SEF must comply with several of the SEF core principles, and also adopted guidance and acceptable practices for certain of the SEF core principles. In the Part 37 Final Rule, the Commission did not adopt the guidance on, and acceptable practices in, compliance with the conflicts of interest core principle that the Commission had adopted to date for DCMs. In the adopting release, the Commission explained that, as noted in the notice of proposed rulemaking for the Part 37 Final Rule, the substantive regulations implementing SEF Core Principle 12 (Conflicts of Interest) were proposed in a separate release, the Mitigation of Conflicts of Interest NPRM. The Commission noted that until such time as it may adopt the substantive rules implementing Core Principle 12, SEFs have reasonable discretion to comply with this core principle as stated in § 37.100.[89]

As discussed above, the Commission never adopted the Mitigation of Conflicts of Interest NPRM as final rules.

Pursuant to Commission regulation § 37.2, adopted in the Part 37 Final Rule, SEFs are subject, in their entirety, to Commission regulations §§ 1.59, 1.63, 1.64 and 1.69 which, as discussed above, address conflicts of interest and governance for self-regulatory organizations. Therefore, SEFs are currently subject to a different set of conflicts of interest and governance requirements than DCMs.

In the Part 37 Final Rule, the Commission adopted rules to implement the Chief Compliance Officer core principle for SEFs that, among other things, addressed the CCO's duties and the annual compliance report requirement, provided that the CCO's duties include supervising the SEF's self-regulatory program with respect to, among other regulatory responsibilities, trade practice surveillance, market surveillance, real-time market monitoring, compliance with audit trail requirements, enforcement and disciplinary proceedings, audits, and examinations.[90] In addition, the rules provided that the CCO's duties included supervising the effectiveness and sufficiency of any regulatory services provided to the SEF by a permitted

[77] *See* Commission regulation § 38.5(a).

[78] *See* Commission regulation § 38.5(d).

[79] *See* Section II(b)(7) for a description of the rulemaking implementing regulatory obligations of SEFs in which the current version of Commission regulation 37.5 was adopted.

[80] *See* Commission regulation § 37.5(d).

[81] *See* 2012 Part 38 Final Rule, 77 FR 36612 at 36615. See Section II(b)(1) herein for a description of the previous version of Commission regulation § 38.2.

[82] *Id.*

[83] Commission regulation § 38.2 exempts DCMs from Commission regulation § 1.59(b) (requiring self-regulatory organizations to, by rule, prohibit employees from trading in certain contracts traded on or cleared by the self-regulatory organization or related to those traded on or cleared by the self-regulatory organization, and from trading on or disclosing material non-public information), and Commission regulation § 1.59(c) (requiring self-regulatory organizations to, by rule, prohibit governing board members, committee members, and consultants from disclosing material non-public information gained as a result of official duties). DCMs remain subject to Commission regulations §§ 1.59(a) (definitions) and 1.59(d) (prohibiting self-regulatory organization employees, governing board members, committee members, and consultants from trading on or disclosing material non-public information).

[84] Commission regulation § 38.2 exempts DCMs from all paragraphs of Commission regulation § 1.63 except for Commission regulation § 1.63(c), which states that no person may serve on a disciplinary committee, arbitration panel, oversight panel or governing board of a self-regulatory organization if such person is subject to any of the conditions listed in Commission regulation § 1.63(b)(1) through (6), which lists certain disqualifying offenses, suspensions, settlements, revocations, bars, and denials.

[85] Commission regulation § 38.2 exempts DCMs from the entirety of Commission regulation § 1.64.

[86] Commission regulation § 38.2 exempts DCMs from the entirely of Commission regulation § 1.69.

[87] *See* 2012 Part 38 Final Rule, 77 FR 36612 at 36615.

[88] *See* Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476 (June 4, 2013) (the ''Part 37 Final Rule'').

[89] *Id.* at 33538.

[90] *See* Part 37 Final Rule, 78 FR 33476, which adds CCO duties beyond those contained in SEF Core Principle 15, including (1) providing examples of the types of conflicts of interest that a CCO must resolve, including conflicts between business considerations and compliance requirements, and (2) supervising the SEF's self-regulatory program with respect to trade practice surveillance, market surveillance, real-time market monitoring, compliance with audit trail requirements, enforcement and disciplinary proceedings, audits, examinations, and other regulatory responsibilities with respect to members and market participants (including ensuring compliance with, if applicable, financial integrity, financial reporting, sales practice, recordkeeping, and other requirements), and (3) supervising the effectiveness and sufficiency of any regulatory services provided by a regulatory service provider pursuant to Commission regulation § 37.204.

regulatory service provider.[91] With respect to the annual compliance report, the rules provided that the CCO must, prior to submission to the Commission, provide the report for review to the SEF's board of directors or, in the absence of a board of directors, to the senior officer of the SEF.[92] Members of the board of directors or the SEF's senior officer (as applicable) must not require the CCO to make any changes to the report.[93]

The Part 37 Final Rule adopted equity transfer notification requirements for SEFs, but they differ in three areas from those applicable to DCMs pursuant to the 2012 Part 38 Final Rule. First, under Commission regulation § 37.5(c), SEFs must notify the Commission when they enter into a transaction involving the transfer of 50 percent or more of the equity interest in the SEF.[94] This is a higher percentage than the 10 percent or more percentage that applies with respect to DCM equity interest transfers, and is therefore effectively a lower notification standard. Second, Commission regulation § 37.5(c) specifically authorizes the Commission, upon receipt of notification from a SEF of an equity interest transfer, to request supporting documentation regarding the transaction; this authority also is delegated to the Director of the Division of Market Oversight or such other employee(s) as the Director may designate from time to time. Finally, upon an equity interest transfer, SEFs are affirmatively required to certify to the Commission, no later than two business days after the transfer takes place, that the SEF meets all of the requirements of section 5h of the CEA (which includes the statutory SEF core principles) and the Commission's regulations thereunder.[95] There is currently no analogous certification requirement that applies to a DCM under Commission regulation § 38.5(c).[96]

8. 2021 Part 37 Amendments—CCO Duties and Annual Compliance Report

On May 12, 2021, the Commission adopted final rules amending SEF requirements related to audit trail data, financial resources, and CCO obligations, including the rules addressing the CCO's obligation to submit an annual report to the Commission (''Part 37 Updates'').[97] The Commission stated that the purpose of the CCO amendments was to streamline requirements for the CCO position, allow SEF management to exercise greater discretion in CCO oversight, and simplify the preparation and submission of the required annual compliance report.[98] Among other changes, the Commission clarified that a CCO did not need to include in the annual compliance report a review of all the Commission regulations applicable to a SEF or an identification of the written policies and procedures designed to ensure compliance with the CEA and Commission regulations. The amendments clarified that the CCO was required to include in the annual report a description and self-assessment of the effectiveness of the written policies and procedures of the SEF to ''reasonably ensure'' compliance with the CEA and applicable Commission regulations. Additionally, the amendments clarified that CCOs are required to discuss only ''material'' noncompliance matters in the annual report, instead of all ''noncompliance issues.''

In the Part 37 Updates, the Commission also modified SEF CCO requirements in several other ways, including by: (1) consolidating certain CCO duties; [99] (2) eliminating ROC-related components of part 37; [100] (3) allowing the CCO to consult with the board of directors or senior officer of the SEF in developing the SEF's policies and procedures; (4) allowing a CCO to meet with the senior officer of the SEF on an annual basis, in lieu of an annual meeting with the board of directors; and (5) allowing a CCO to provide self-regulatory program information to the SEF's senior officer, in addition to the board of directors. The modifications identified as (3), (4) and (5) in the preceding sentence enhance the role of the SEF's senior officer, providing for an oversight role over the CCO equivalent to that of the board of directors. The Commission considered this change to be consistent with SEF Core Principle 15, which requires a CCO to report to the SEF's board of directors or senior officer.[101]

In addition, the Commission amended the rules addressing the removal of a CCO. The rules previously had restricted CCO removal authority to a majority of the board of directors, or in the absence of a board, to a senior officer. In the Part 37 Updates, the Commission amended the requirement to establish that either the board or senior officer of the SEF may remove the CCO. The Commission stated that in many instances, the senior officer may be better positioned than the board of directors to provide day-to-day oversight of the SEF and the CCO, as well as to determine whether to remove a CCO.[102]

The Part 37 Updates also amended the duties of the CCO to allow a CCO to identify noncompliance issues through ''any means'' and clarified that the procedures that the CCO takes to address noncompliance issues must be ''reasonably designed'' to handle,

[91] *Id.* at 33594. Commission regulation § 37.204(a) permits a SEF to utilize another registered entity, a registered futures association, and, in the case of SEFs, the Financial Industry Regulatory Authority, for the provision of services to assist in complying with the CEA and Commission regulations. Commission regulation § 37.204(b) provides that a SEF that chooses to use a regulatory service provider shall retain sufficient staff to supervise the regulatory services, that SEF compliance staff shall hold regular meetings with the regulatory service provider to discuss matters of regulatory concern, and that the SEF must conduct periodic reviews of the services provided. Further, Commission regulation § 37.204(b) requires that the SEF carefully document such periodic reviews and provide them to the Commission upon request. Commission regulation § 37.204(c) states that a SEF that chooses to use a regulatory service provider shall retain exclusive authority in all substantive decisions made by the regulatory service provider, and that the SEF must document any instances where its actions differ from those recommended by the regulatory service provider.

[92] *See* Commission regulation § 37.1501(e)(1).

[93] *Id.*

[94] *See* Commission regulation § 37.5(c).

[95] *See* Commission regulation § 37.5(c)(4).

[96] In 2018, as part of a notice of proposed rulemaking relating to SEFs and the trade execution requirement, the Commission proposed to amend Commission regulation § 37.5 to (i) require notification in the event of any transaction that results in the transfer of direct or indirect ownership of 50 percent or more of the equity interest in the SEF; and (ii) delete the part 40 filing requirement. *See* Swap Execution Facilities and the Trade Execution Requirement, 83 FR 61946, 71–72 (Nov. 30, 2018). The Commission withdrew this proposal in 2021. *See* 86 FR 9304 (Feb. 12, 2021).

[97] Swap Execution Facilities, 86 FR 9224 (Feb. 11, 2021) (the ''Part 37 Updates'').

[98] *Id.* at 9225.

[99] The Commission explained that the rules would allow a CCO to identify non-compliance matters through ''any means'' in addition to the means previously provided in the rule, which were by compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint. *Id.* at 9235 n.171. The Commission modified the duty for a CCO to establish procedures for the remediation of noncompliance issues to clarify that a CCO must establish procedures reasonably designed to handle, respond, remediate, retest, and resolve noncompliance issues, based on an acknowledgement that a CCO may not be able to design procedures that detect all possible noncompliance issues and noted that a CCO may utilize a variety of resources to identify noncompliance issues beyond a limited set of means. *Id.* at 9235.

[100] The ROC-related components of part 37 included a mandatory quarterly meeting of the CCO with the ROC, and the requirement that a CCO provide self-regulatory program information to the ROC. *Id.* at 9233–34. In determining to eliminate the ROC-related components of the regulation, the Commission stated that Core Principle 15 does not require a SEF to establish a ROC and the Commission has not finalized a rule that establishes requirements for a ROC. *See id.* at 9234. Pursuant to proposed § 37.1206 in this proposed rulemaking, the Commission now seeks to establish explicit requirements for a SEF ROC.

[101] *See* Commission regulation § 37.1500(b)(1).

[102] Part 37 Updates, 86 FR 9224 at 9234.

respond to, remediate, retest, and resolve those issues.[103] Such changes provide the CCO with additional flexibility in identifying and addressing noncompliance, and recognize that a CCO may not be able to design procedures that detect all possible noncompliance issues and may utilize a variety of resources to identify noncompliance issues.[104]

In addition, the Commission amended the CCO's duty to resolve conflicts of interest, requiring the CCO to take ''reasonable steps'' to resolve ''material'' conflicts of interest that may arise.[105] In adding the concepts of reasonableness and materiality, the Commission stated that the current requirement was overly broad and impractical because a CCO cannot be reasonably expected to successfully resolve every potential conflict of interest that may arise.[106]

c. Industry Changes and Impact on Regulatory Developments

By 2007, when the Commission adopted the acceptable practices relating to conflicts of interest and governance standards,[107] the futures industry had begun shifting from mutually-owned exchanges into for-profit institutions.[108] For example, in 2000, the Commission approved rules relating to plans by CME,[109] NYMEX,[110] and CBOT [111] to convert from non-profit corporations owned by their members to for-profit corporations.[112] Given that demutualization was relatively new and evolving, the Commission provided flexibility regarding governance structures and conflicts of interest provisions.[113] In contrast to many of the other SEF and DCM core principles, to date the Commission has not adopted rules to prescribe the manner in which compliance with the conflicts of interest core principle for SEFs or DCMs, or the governance fitness standards core principle for DCMs, must be demonstrated. While the guidance on compliance with the relevant DCM core principles sets forth important considerations that the Commission believes should be taken into account by DCMs in complying with those core principles, and the acceptable practices [114] for the DCM conflicts of interest core principle additionally set forth examples of how DCMs may satisfy particular requirements under that core principle, neither the guidance nor the acceptable practices establish mandatory compliance obligations for DCMs. With respect to the conflicts of interest core principle for SEFs, the Commission to date has not adopted guidance or acceptable practices for compliance with the core principle.

While the statutory core principles are intended to be broad and flexible, the Commission is mindful that, in certain circumstances, flexibility in the manner of compliance may create confusion. Practically speaking, while this flexibility exists, Commission staff has found that all DCMs have chosen to adopt the acceptable practices to demonstrate compliance with DCM Core Principle 16.

The Commission preliminarily believes that establishing affirmative, harmonized requirements for governance fitness standards and the mitigation of conflicts of interest are necessary to promote the integrity of SEFs and DCMs as self-regulatory organizations and to ensure the effective and impartial fulfillment of those functions. In particular, the Commission has recently observed an increase in the number of SEFs and DCMs that are part of corporate families that also have other Commission registrants and other market participants. In conducting SEF regulatory consultations that were completed in 2021, Commission staff identified several SEFs that were in the same corporate family as intermediaries that also traded on the SEF. Similarly, in 2021, Commission staff conducted an informal inquiry into which DCMs were in corporate families with intermediaries who traded on the DCM, and identified three such DCMs.

Where multiple Commission registrants or other market participants exist in the same corporate family, the risk of conflicts of interest may increase. For example, when a SEF or DCM is in the same corporate family as an intermediary, like an introducing broker (''IB'') or a futures commission merchant (''FCM''), that trades on or brings trades to the SEF or DCM for execution, the SEF's or DCM's market regulation obligations [115] may conflict with interests of the intermediary, such as in circumstances where there are questions about the intermediary's compliance with a SEF or DCM rule.[116] The emergence of these affiliations could also affect certain key components of a SEF's or DCM's framework for addressing conflicts of interest that may impact market regulation functions. With respect to determining whether an individual satisfies the public director standard, as outlined in the DCM Core Principal 16 Acceptable Practices, certain relationships that the individual may have with an affiliate of the DCM would need to be evaluated. Furthermore, officers and members of the board of director may need to evaluate whether certain relationships with an affiliate of

[103] *See id.* at 9235.

[104] *See id.*

[105] *See id.*

[106] *See id.*

[107] *See* Section II(b)(2).

[108] In 2007, DCM Core Principle 15 addressed conflicts of interest. In the Dodd-Frank Act, the DCM conflicts of interest core principle was renumbered to be Core Principle 16. *See* Dodd-Frank Act, section 735(b); 7 U.S.C. 7(d)(16).

[109] *See* Commission Release #4407–00, *https://www.cftc.gov/sites/default/files/opa/press00/opa4407-00.htm.*

[110] *See* Commission Release #4427–00, *https://www.cftc.gov/sites/default/files/opa/press00/opa4427-00.htm.*

[111] *See* Commission Release #4434–00, *https://www.cftc.gov/sites/default/files/opa/press00/opa4434-00.htm.*

[112] The process continued through 2020, when MGEX went through demutualization. *https://www.cftc.gov/sites/default/files/filings/documents/2020/orgdcmmgexordertransfer201124.pdf*; *https://www.mgex.com/documents/MIAX_MGEX_SeatVote_PressRelease_000.pdf.*

[113] On July 7, 2006, the Commission proposed the acceptable practices that it finalized in the 2007 Final Release. Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations, 71 FR 38739 (July 7, 2006). In that proposal, the Commission acknowledged that the U.S. futures industry was being transformed by, among other things, the demutualization of member-owned exchanges and their conversion to publicly traded stock corporations. *Id.* at 38740–38741. The Commission noted that the acceptable practices would, among other things, ensure that industry expertise, experience, and knowledge continue to play a vital role in self-regulatory organization governance and administration and thus, preserve the ''self'' in self-regulation. *Id.* at 38741–38742. In the 2007 Final Release, the Commission reiterated that the acceptable practices were being adopted in response to, among other things, demutualization. The Commission observed that it did identify industry changes that it believed create new structural conflicts of interest within self-regulation, increase the risk of customer harm, could lead to an abuse of self-regulatory authority, and threaten the integrity of, and public confidence in, self-regulation in the U.S. futures industry. The Commission further noted that increased competition, demutualization and other new ownership structures, for-profit business models, and other factors are highly relevant to the impartiality, vigor, and effectiveness with which DCMs exercise their self-regulatory responsibilities. 2007 Final Release, 72 FR 6936 at 6944.

[114] Through its acceptable practices, the Commission provides exchanges with specific practices that DCMs may adopt to demonstrate a safe harbor for compliance with selected requirements aspects of a core principle, but such acceptable practices were not intended as the exclusive means of compliance. *See* CEA section 5c(a)(1), 7 U.S.C. 7a–2(a)(1).

[115] For example, Commission regulation § 38.152 requires DCMs that allow intermediation to prohibit customer-related abuses such as trading ahead of customer orders, trading against customer orders, accommodation trading, and improper cross trading. Commission regulation § 37.203 imposes a similar requirement on SEFs.

[116] In contrast to situations in which a DCM and DCO are in the same corporate family—which the Commission has observed over the past two decades—a SEF or DCM being in the same corporate family as an intermediary registrant raises unique issues. Rena S. Miller, Congressional Research Service, Conflicts of Interest in Derivatives Clearing (2011), *https://crsreports.congress.gov/product/pdf/R/R41715/4.*

the DCM or SEF would give rise to an actual or potential conflict of interest that could impact decision-making. Accordingly, the Commission is herein proposing conflict of interest rules that focus on the identification, management and resolution of conflicts of interest related to a SEF's or DCM's *market regulation functions,* as preliminarily defined by the Commission below, as well as related governance standards that the Commission believes support the mitigation of such conflicts of interest. The set of rules proposed herein draw on many years of Commission staff's experience conducting its routine oversight of SEFs and DCMs, and reflect the Commission's identification of specific, harmonized measures that it preliminarily believes will help to ensure that SEFs and DCMs fulfill their market regulation functions in an effective and impartial manner.

Separately, on June 28, 2023, Commission staff issued a Request for Comment on the Impact of Affiliations Between Certain CFTC-Regulated Entities (''RFC'').[117] The RFC sought public comment in order to better inform Commission staff's understanding of a broad range of potential issues that may arise if a DCM, DCO or SEF is affiliated with an intermediary, such as an FCM or IB, or other market participant such as a trading entity.[118] The Commission also notes that on December 18, 2023, its Divisions of Clearing and Risk, Market Oversight, and Market Participants issued a staff advisory on affiliations between a DCM, DCO or a SEF and an intermediary, such as an FCM, or other market participant, such as a trading entity. The advisory reminds DCOs, DCMs, and SEFs that have an affiliated intermediary or trading entity, as well as the affiliated intermediary or trading entities themselves, of their obligations to ensure compliance with existing statutory and regulatory requirements with this affiliate relationship in mind.[119]

[117] Request for Comment on the Impact of Affiliations of Certain CFTC-Regulated Entities, CFTC Release 8734–23, June 28, 2023. *https://www.cftc.gov/PressRoom/PressReleases/8734-23.*

[118] The Commission received a number of comments raising concerns about the impact of affiliation, and anticipates proposing regulations that will address issues identified as a result of the RFC, including additional concerns raised by commenters about the conflicts of interest, specifically relating to market regulation functions, posed by affiliations. This rulemaking does not reflect the comments submitted in response to the Commission staff's RFC. Those comments will not be made part of the administrative record before the Commission in connection with this proposal.

[119] Staff Advisory on Affiliations Among CFTC-Regulated Entities, CFTC Release 8839–23, Dec. 18, 2023. *https://www.cftc.gov/PressRoom/PressReleases/8839-23.* In addition to the increased focus on affiliate relationships, another market structure development relates to the participation of intermediaries on SEF and DCM markets. With limited exceptions, derivatives trading today is conducted through regulated intermediaries who perform many important functions, such as providing customers with access to exchanges and clearinghouses, processing transactions, ensuring compliance with federal regulations, and guaranteeing performance of the derivatives contract to the clearinghouse. Recently, the Commission has observed a trend in which registered entities pursue a ''non-intermediated'' model, or direct trading and clearing of margined products to retail customers.

d. Conflicts of Interest Relating to Market Regulation Functions

1. Market Regulation Functions

This rule proposal addresses certain conflicts of interest that may impact a SEF's or DCM's market regulation functions. For purposes of this rule proposal, the Commission is proposing to define as ''market regulation functions'' the responsibilities related to trade practice surveillance, market surveillance, real-time market monitoring, audit trail data and recordkeeping enforcement, investigations of possible SEF or DCM rule violations, and disciplinary actions.[120] The Commission believes that effective performance of these market regulation functions require SEFs and DCMs, consistent with their core principle obligations, to establish a process for identifying, minimizing, and resolving actual and potential conflicts of interest that may arise between and among any of the SEF's or DCM's market regulation functions and its commercial interests; or the several interests of its management, members, owners, customers and market participants, other industry participants, and other constituencies.

Proposed § 37.1201(b)(9) defines ''market regulation functions'' as the SEF functions required by SEF Core Principle 2 (Compliance with Rules), SEF Core Principle 4 (Monitoring of Trading and Trade Processing), SEF Core Principle 6 (Position Limits or Accountability), SEF Core Principle 10 (Recordkeeping) and the Commission's regulations thereunder. Proposed § 38.851(b)(9) defines ''market regulation functions'' as the DCM functions required by DCM Core Principle 2 (Compliance with Rules), DCM Core Principle 4 (Monitoring of Trading), DCM Core Principle 5 (Position Limits or Accountability), DCM Core Principle 10 (Trade Information), DCM Core Principle 12 (Protection of Markets and Market Participants), DCM Core Principle 13 (Disciplinary Procedures), DCM Core Principle 18 (Recordkeeping) and the Commission's regulations thereunder.

[120] *See* proposed §§ 38.851(b)(9) and 37.1201(b)(9).

The Commission's proposed definition of ''market regulation functions'' does not include certain other SEF or DCM obligations. For example, the proposed definition does not include DCM Core Principle 11 (Financial Integrity of Transactions), the related financial surveillance requirements for DCMs under Commission regulation § 1.52, or a SEF's obligations under Core Principle 7 (Financial Integrity of Transactions).

As noted above, the Commission staff's RFC sought public comment on a range of potential issues that may arise if a DCM, DCO or SEF is affiliated with an intermediary, such as an FCM or IB, or other market participant such as a trading entity. While the scope of the proposed term ''market regulation functions'' in this rulemaking is limited to SEF and DCM functions under specific core principles, the Commission notes that public comment in response to the RFC may inform future Commission action. The Commission may further address SEF or DCM conflicts of interest obligations that may impact broader self-regulation functions of SEFs and DCMs, including their obligations under SEF Core Principle 7 and DCM Core Principle 11. The Commission notes that any future action impacting broader self-regulatory functions may consider whether those self-regulatory functions should be subject to requirements that are similar or different to the requirements being proposed in this rulemaking. As discussed further below, the main objective of this rulemaking is to establish requirements to mitigate certain conflicts of interest that may impact those SEF and DCM functions most closely tied to the SEF's or DCM's market regulation function.

2. Questions for Comment

The Commission seeks comment on the questions set forth below regarding the proposed definition of ''market regulation functions.''

1. Has the Commission appropriately defined ''market regulation functions'' for purposes of this rule proposal? Are there additional functions that should be included in the proposed definition?

2. In this rule proposal, and for purposes of the conflicts of interest that it is intended to address, has the Commission appropriately distinguished ''market regulation functions'' from the broader self-regulatory functions of a SEF or DCM?

3. Conflicts of Interest Between Market Regulation Functions and Commercial Interests

SEFs' and DCMs' obligations to perform market regulation functions may conflict with their commercial interests. For example, performing market regulation functions requires the use of staff and resources that might otherwise be dedicated to commercial functions, such as seeking new market participants or promoting new products.[121] In addition, SEFs and DCMs have a commercial interest to earn fees from market participants, and to avoid deterring participants from trading on their platforms. Fulfillment by a SEF or DCM of its market regulation functions may result in the SEF or DCM taking actions, such as enforcement actions or the imposition of fines, that may deter the use of the platform by certain market participants, and therefore run counter to commercial interests of the platform. Commercial pressure, such as competition among SEFs and among DCMs, may strain market regulation obligations.[122]

III. Proposed Governance Fitness Requirements

a. Overview

The Commission is proposing rules that would require SEFs and DCMs to establish minimum fitness standards for certain categories of individuals who are responsible for exchange governance, management, and disciplinary functions, or who have potential influence over those functions. These proposed requirements are intended to help ensure that SEFs and DCMs effectively fulfill their critical role as self-regulatory organizations by excluding individuals with a history of certain disciplinary or criminal offenses from serving in roles with influence over the governance and operations of the exchange. The integrity of these functions is critically important to their respective operations, markets, and market regulation functions. Accordingly, it is essential that the individuals responsible for governing a SEF or DCM, such as officers and members of the board of directors, committees, disciplinary panels, and dispute resolution panels, are ethically and morally fit to serve in their roles. Similarly, the Commission believes it is important that minimum fitness standards be applicable to an individual who owns 10 percent or more of a SEF or DCM and has the ability to control or direct the SEF's or DCM's management or policies.

The Commission also believes establishing the same minimum fitness requirements for both SEFs and DCMs is necessary given that their officers and members of the board of directors, committees, disciplinary panels, and dispute resolution panels have identical responsibilities for governing and administering operations, including the operations of the market regulation functions. Straightforward and consistent minimum fitness requirements are reasonably necessary to promote the hiring and designation of officers and members of the board of directors, committees, disciplinary panels, and dispute resolution panels that have the appropriate character and integrity to perform their duties.

b. Minimum Fitness Standards—Proposed §§ 37.207 and 38.801

1. Existing Regulatory Framework

DCM Core Principle 15 requires a DCM to establish and enforce appropriate fitness standards for members of the board of directors, members of any disciplinary committee, members of the DCM, other persons with direct access to the DCM, and ''any party affiliated'' with any of the foregoing persons. The DCM Core Principle 15 Guidance states that minimum fitness standards for ''persons who have member voting privileges, governing obligations or responsibilities, or who exercise disciplinary authority,'' and ''natural persons who directly or indirectly have greater than a ten percent ownership interest in a designated contract'' should include those bases for refusal to register a person under section 8a(2) of the CEA.[123] Additionally, the DCM Core Principle 15 Guidance states that persons who have governing obligations or responsibilities, or who exercise disciplinary authority, should not have a significant history of serious disciplinary offenses, such as those that would be disqualifying under Commission regulation § 1.63 [124] The DCM Core Principle 15 Guidance also states that DCMs should have standards for the collection and verification of information supporting compliance with the DCM's fitness standards. Pursuant to Commission regulation § 38.2, DCMs are exempt from some of the provisions of Commission regulation § 1.63. They are not exempt, however, from Commission regulation § 1.63(c), which prohibits persons that are subject to any of the disciplinary offenses set forth in Commission regulation § 1.63(b) from serving on a disciplinary committee, arbitration panel, oversight panel or governing board of a self-regulatory organization.

SEFs are not subject to a specific core principle requirement to establish fitness standards. However, as authorized by the CEA,[125] SEFs must comply with all requirements in Commission regulation § 1.63, which sets forth requirements and procedures to prevent persons with certain disciplinary histories from serving in certain governing or oversight capacities at a self-regulatory organization.

2. Proposed Rules

The Commission is proposing identical fitness requirements for SEFs and DCMs. The Commission believes the proposed rules are reasonably necessary to effectuate a DCM's

[121] *See* Commission regulations §§ 38.155 (DCM) and 37.203(c) (SEF).

[122] Proposed Acceptable Practices for compliance with section 5(d)(15) of the Commodity Exchange Act, 71 FR 38740, 38741 n.10 (July 7, 2006) (citing five separate domestic and international studies reaching the same conclusion); *See also* Kristin N. Johnson, Governing Financial Markets: Regulating Conflicts, 88 Wash. L.Rev. 185, 221 (2013) (''While clearinghouses and exchanges are private businesses, these institutions provide a critical, public, infrastructure resource within financial markets. The self-regulatory approach adopted in financial markets presumes that clearinghouses and exchanges will provide a public service and engage in market oversight. The owners of exchanges and clearinghouses may, however, prioritize profit-maximizing strategies that de-emphasize or conflict with regulatory goals.'')

[123] Appendix B to Part 38, Guidance on, and Acceptable Practices in, Compliance with Core Principles; Core Principle 15, Governance Fitness Standards. This Guidance was promulgated under the 2001 Regulatory Framework in direct response to the recognition that with the de-mutualization of DCMs, the governance role of ''members'' is exercised by the DCM's owner or owners. The Commission has previously noted that the 10 percent ownership threshold is consistent with the same 10 percent threshold for fitness standards that Congress itself adopted for exempt commercial markets in section 2(h)(5)(A)(iii) of the CEA, prior to the Dodd Frank amendments. *See* 2001 Regulatory Framework, 66 FR 42255, 42262 n.40. Exempt commercial markets were eliminated as a category in the CEA pursuant to Title VII of the Dodd Frank Act, which also introduced SEFs as a new category of CFTC-regulated exchange. Public Law 106–554, 114 Stat. 2763 (Dec. 21, 2000); *See also* Repeal of the Exempt Commercial Market and Exempt Board of Trade Exemptions, 80 FR 59575 (Oct. 2, 2015).

[124] *Id.* The DCM Core Principle 15 Guidance states that members with trading privileges but having no or only minimal equity in the DCM and non-member market participants who are not intermediated ''and do not have these privileges, obligations, or responsibilities or disciplinary authority'' could satisfy minimum fitness standards by meeting the standards that they must meet to qualify as a ''market participant.''

[125] Commission Regulation § 1.63 was adopted pursuant to the following statutory authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–l, 16,19, 21, 23, and 24, Service on Self-Regulatory Organization Governing Boards or Committees by Persons with Disciplinary Histories, 55 FR 7884, 7890 (March 6, 1990, Final Rule).

obligations to establish and enforce appropriate fitness standards under DCM Core Principle 15, and to effectuate a SEF's obligations to establish and enforce rules governing the operation of the SEF under SEF Core Principle 2.[126] A SEF's ability to effectively operate as both a market and SRO, and to perform its market regulation functions, is largely dependent upon the individuals who govern or control the SEF's operations, including officers, and members of the board of directors, disciplinary committees, dispute resolution panels, members and controlling owners. Given this relationship, the Commission believes that it is reasonably necessary to extend the same governance fitness standards to SEFs as to DCMs.[127]

i. Categories of Persons Subject to Minimum Fitness Standards

In proposed §§ 37.207(a) and 38.801(a), the Commission is requiring that SEFs and DCMs establish and enforce appropriate fitness standards for officers; for members of its board of directors, committees, disciplinary panels, and dispute resolution panels (or anyone performing functions similar to the foregoing); for members of the SEF or DCM; for any other person with direct access to the SEF or DCM; and for any person who owns 10 percent or more of a SEF or DCM and who, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of the SEF or DCM, and any party affiliated with any of those persons.

Specifically, the Commission notes that proposed §§ 37.207(a) and 38.801(a) would extend minimum fitness requirements to certain individuals, including officers and owners of 10 percent or more of a SEF or DCM, and SEF and DCM members with voting privileges, who were not historically subject to DCM fitness requirements under DCM Core Principle 15, or SEF and DCM fitness requirements under Commission regulation § 1.63(c). However, as discussed below, the Commission believes applying consistent minimum fitness standards to classes of individuals enumerated in proposed §§ 37.207(a) and 38.801(a) is reasonably necessary given that these individuals have: (1) obligations with respect to a SEF's or DCM's governance or disciplinary process; or (2) the ability to exercise control over a SEF or DCM.

First, officers of a SEF or DCM would be subject to the minimum fitness requirements in proposed §§ 37.207(a) and 38.801(a).[128] The Commission believes this is reasonably necessary because officers—like members of the board of directors, committee members, or members of disciplinary or dispute resolution panels, and members with voting privileges [129]—also have governing, decision-making, and disciplinary responsibilities within a SEF or DCM, and therefore must be able to demonstrate standards of integrity and rectitude in order to effectively perform their duties.

Second, members with voting privileges would also be subject to the minimum fitness requirements in proposed §§ 37.207(a) and 38.801(a).[130] Although DCM Core Principle 15 applies to a broad class of individuals associated with a DCM, including members with voting privileges, there is no parallel application for SEFs. The Commission acknowledges that SEF and DCM members with voting privileges may not have the same governing duties as officers and members of its board of directors, committees, disciplinary panels, or dispute resolution panels. Nevertheless, they may have the ability to influence or control, either directly through their voting privileges or through other indirect means, the operations or decision-making of the SEF or DCM. Accordingly, the Commission believes it is reasonably necessary to establish and enforce certain minimum standards of fitness for such individuals.

Third, certain owners of 10 percent or more of a SEF or DCM would also be subject to the minimum fitness requirements in proposed §§ 37.207(a) and 38.801(a).[131] Although the guidance to DCM Core Principle 15 lists a broad class of individuals, including natural persons who directly or indirectly have greater than a 10 percent ownership interest in a DCM, there is no parallel application for a SEF. While individuals who own 10 percent or more of a SEF or DCM may not be involved in the daily operations of a SEF or DCM, their sizeable ownership interest may, either directly or indirectly, enable them to exert influence or control over various aspects of decision-making, including decisions that may impact market regulation functions.[132] As an example, a person with a 10 percent ownership interest in the SEF or DCM may have competing business interests that are improperly prioritized, particularly if that person has influence in selecting officers or members of the board of directors. Similarly, a person with 10 percent ownership may have influence or control over the SEF's or DCM's contracts with third party service providers, or, even the ability to wield his or her influence in determining whether to investigate potential rule violations. Therefore, the Commission believes it is reasonably necessary to require that persons owning 10 percent or more of the SEF or DCM, and who, either directly or indirectly, through agreement or otherwise, in any other manner, control or direct the management or policies of the SEF or DCM [133] be subject to certain minimum fitness requirements, as described below.

ii. Minimum Fitness Standards

Proposed §§ 37.207(b) and 38.801(b) would set forth minimum standards of fitness SEFs and DCMs must establish and enforce for officers and members of its board of directors,[134] committees,

[126] CEA section 5h(f)(2); 7 U.S.C. 7b–3(f)(2).

[127] The Commission is proposing to exercise its authority under CEA section 8a(5) to establish the SEFs fitness standards; DCMs are already subject to a similar requirement to set appropriate fitness standards. CEA section 5(d); 7 U.S.C. 7(d)(15).

[128] Officers are also subject to the 8a(2) and 8a(3) minimum fitness requirements in proposed §§ 37.207(b) and 38.801(b), and the disqualifying offenses in proposed §§ 37.207(c) and 38.801(c).

[129] In addition to the three categories of individuals highlighted in this section, members of its board of directors, committees, disciplinary panels, and dispute resolution panels, all members of the SEF or DCM, and any other person with direct access to the SEF, are subject to the requirement to have appropriate fitness requirements in §§ 37.207(a) and 38.801(a).

[130] Members with voting privileges are also subject to the 8a(2) and 8a(3) minimum fitness requirements in proposed §§ 37.207(b) and 38.801(b).

[131] Owners of 10 percent or more of a SEF or DCM, who also may control or direct the management or policies of a SEF or DCM, are also subject to the 8a(2) and 8a(3) minimum fitness requirements in proposed §§ 37.207(b) and 38.801(b).

[132] As noted below concerning the proposed changes to Commission regulations § 37.5(c), if one entity holds a 10 percent equity share in a SEF it may have a significant voice in the operation and/or decision-making of the SEF.

[133] The language of the proposed fitness standards for owners of 10 percent or more of a SEF or DCM intentionally generally mirrors the language from the Appendices to Part 37 and 38, Form SEF and Form DCM, Exhibit A. Exhibit A to Form SEF and Form DCM require disclosure of owners of 10 percent or more of the applicant's stock as part of the application for registration or designation. A similar 10 percent or more ownership threshold is found in other Commission regulations, *e.g.,* the definition of Principal in Commission regulation § 3.1 and section 8a(2)(H) of the CEA, which effectively prevent individuals subject to the grounds for refusal to register in CEA section 8a(2) or section 8a(3) from owning 10 percent of voting stock in an intermediary subject to registration requirements. The 10 percent ownership interest threshold is similarly found in the reporting requirements for ''insiders'' in section 16 of the Securities Exchange Act of 1934. *See also* 17 CFR 240.16a–2.

[134] For purposes of the rules proposed herein, the Commission is proposing to define ''board of

Continued

disciplinary panels, and dispute resolution panels (or anyone performing functions similar to the foregoing), for members with voting privileges,[135] and any person who owns 10 percent or more of the SEF or DCM and who, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of the DCM,[136] to include the bases for refusal to register a person under sections 8a(2) and 8a(3) of the CEA.[137] DCM Core Principle 15 Guidance includes the bases for refusal to register under CEA section 8a(2), but it does not include the bases for refusal to register a person under section 8a(3). However, as described below, the Commission believes inclusion of the section 8a(3) disqualifications for individuals with governance or disciplinary responsibilities at the SEF or DCM, or the ability to control or direct the management or policies of the SEF or DCM, is reasonably necessary for SEFs and DCMs to fulfill their responsibilities as SROs without influence from individuals with backgrounds incompatible with such responsibility.

Sections 8a(2) and 8a(3) of the CEA provide a consistent, minimum industry framework to promote high ethical standards among officers, directors and other individuals with controlling influence over intermediaries or other registrants in the futures and swaps industry.[138] In proposing to extend the sections 8a(2) and 8a(3) minimum fitness standards to individuals subject to the fitness requirements in proposed §§ 37.207(a) and 38.801(a), the Commission is extending the same consistent, minimum industry framework [139] to promote high ethical standards among individuals with similar control or influence over the important self-regulatory functions at SEFs and DCMs. These standards are reasonably necessary to promote consistent high ethical industry standards for a SEF or DCM to serve as an effective SRO.

Proposed §§ 37.207(c) and 38.801(c) would require SEFs and DCMs to establish and enforce additional minimum fitness standards for certain individuals—officers and for members of its board of directors, committees, disciplinary panels, and dispute resolution panels (or anyone performing functions similar to the foregoing). These additional fitness requirements include ineligibility based on six types of disciplinary offenses that generally track the disciplinary offenses listed in §§ 1.63(b)(1)–(6), with certain modifications. In effect, the proposed rules would apply the fitness requirements of Commission regulation § 1.63 consistently to both SEFs and DCMs, subject to certain enhancements as further described below.

The six disciplinary offenses in proposed §§ 37.207(c)(1)–(6) and 38.801(c)(1)–(6) are substantially similar to the existing ineligibility requirements in § 1.63(b).

- Proposed §§ 37.207(c)(1) and 38.801(c)(1), require that an individual would be ineligible if they were found, in a final, non-appealable [140] order by a court of competent jurisdiction, an administrative law judge, the Commission, a self-regulatory organization,[141] or the SEC, to have committed any of four offenses described in proposed §§ 37.207(c)(1)(i)–(iv) and 38.801(c)(1)(i)–(iv) within the previous three years.[142] This requirement is substantially the same as the ineligibility requirement found in § 1.63(b)(1), except for the addition of findings by the SEC.
- Proposed §§ 37.207(c)(1)(i)–(iv) and 38.801(c)(1)(i)–(iv), include, in substance, the same four disciplinary offenses listed in § 1.63(a)(6)(i)–(iv).
- Proposed §§ 37.207(c)(2)–(6) and 38.801(c)(2)–(6) mirror, in substance, the disciplinary offenses found in § 1.63(b)(6)(2)–(6), with minor enhancements to expressly include both SEFs and DCMs when referencing suspensions from trading on a contract market.

Proposed §§ 37.207(c) and 38.801(c) also enhance the existing minimum fitness requirements in several ways, compared to the requirements in Commission regulation § 1.63. The language in proposed §§ 37.207(c) and 38.801(c) does not use the limiters ''significant history'' or ''serious disciplinary offenses'' in setting forth disqualifying offenses. These terms appear in DCM Core Principle 15 Guidance [143] and the Commission proposes to clarify which disciplinary offenses are included by specifying which offenses would automatically be

directors'' as a group of people serving as the governing body of a SEF or DCM, or—for SEFs or DCMs whose organizational structure does not include a board of directors—a body performing a function similar to a board of directors. *See* proposed §§ 37.1201(b)(2) and 38.851(b)(2).

[135] Consistent with current Core Principle 15 Guidance, members with voting privileges have the same minimum fitness standards as other individuals with the ability to directly affect the operations or governance of the Exchange, whereas members without voting privileges are subject only to the requirement that the DCM or SEF set appropriate fitness standards for them, as set out in proposed regulations §§ 37.207(a) and 38.801(a). In light of industry changes, the Commission is requesting comment on whether ''members with voting privileges'' remains a relevant category that should be subject to this distinction.

[136] These categories of individuals are similar to those subject to the 8a(2) standards in the DCM Core Principle 15 Guidance.

[137] Section 8a(2) and 8a(3) bases include, for example, revocation of registration, convictions or guilty pleas for violations of the CEA, the Securities Act of 1933, the Securities Exchange Act of 1934, misdemeanors involving embezzlement, theft, or fraud, past failure to supervise, willful misrepresentations or omissions, and ''other good cause.''

[138] CEA sections 8a(2) and (3), 7 U.S.C. 12a(2) and (3); Principals, including officers, managing members, directors and owners of 10 percent or more voting stock of FCMs, IBs, and other registrants, may already be disqualified from registration pursuant to CEA sections 8a(2) and 8a(3), which in turn may result in the revocation of the registration of the FCM, IB or other registrant. (CEA section 8a(2)(H), 7 U.S.C. 12a(2)(H), defining ''Principal,'' to include any officer, director, or beneficial owner of at least 10 percent of the voting shares of the corporation, and any other person that the Commission by rule, regulation, or order determines has the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of such person which are subject to regulation by the Commission. Both sections 8a(2) and 8a(3) provide for the revocation of registration of an FCM, IB, or other registrant where a principal of the registrant is subject to a statutory disqualification found in CEA sections 8a(2) or 8a(3).) As stated in the interpretative statement to CEA section 8a(3)(M), in Appendix A to part 3, which provides the Commission with the authority to refuse registration of any person for other good cause, any inability to deal fairly with the public and consistent with the just and equitable principles of trade may render an applicant or registrant unfit for registration, given the high ethical standards which must prevail in the industry.

[139] Individuals serving as officers, board members, disciplinary committee members, members with voting privileges, and owners with 10 percent or more of a DCM or SEF and with the ability to control or direct the management or policies of the SEF or DCM should not be subject to lower fitness standards than the fitness standards applied to principals of intermediaries facilitating trading on SEF or DCM. Otherwise, an individual could be disqualified from serving as the principal of an FCM or IB, due to the factors set out under CEA 8a(2) or 8a(3), but be allowed to serve in a role exercising influence or control over the self-regulatory functions of a SEF or DCM; the SEF or DCM is the front-line regulator of the trading activity facilitated by FCMs and IBs on a SEF or DCM.

[140] The final, non-appealable order language comes from the definition of ''final decision'' found in Commission regulation § 1.63(a)(5).

[141] With the exception of the addition of the SEC, these are the same categories as in the definition of ''final decision'' found in Commission regulation § 1.63(a)(5).

[142] Pursuant to Commission regulation § 1.63(b)(1), an individual is ineligible to serve on disciplinary committees, arbitration panels, oversight panels or governing board if, within the past three years, that individual was found to have committed a ''disciplinary offense.''

[143] DCM Core Principle 15 Guidance provides that, among other things, persons who have governing obligations or responsibilities, or who exercise disciplinary authority, should not have a significant history of serious disciplinary offenses, such as those that would be disqualifying under Commission regulation § 1.63.

disqualifying. As described above, the list of disciplinary offenses in proposed §§ 37.207(c) and 38.801(c) includes, in substance, the same offenses identified in Commission regulation § 1.63,[144] and expands the disqualifying offenses to include agreements not to apply for, or to be disqualified from applying for, registration in any capacity with the SEC, or any self-regulatory organization, including the Financial Industry Regulatory Authority (''FINRA'').[145]

iii. Verification and Documentation of Minimum Fitness Standards

Proposed §§ 37.207(d) and 38.801(d) would require each SEF and DCM to establish appropriate procedures for the collection and verification of information supporting compliance with appropriate fitness standards. The Commission believes that, to be effective, such procedures must be written, must be in a location where people who would use them can find them, and must be preserved and ready for the Commission to review.[146] The Commission anticipates staff will review the procedures and fitness determinations as part of its routine oversight.

In conducting its oversight of SEFs and DCMs, Commission staff has learned that some SEFs and DCMs accepted fitness representations from the individual subject to the fitness standard without any practice of independent verification. Independent verification of fitness information is particularly important because certain individuals could be disincentivized from self-reporting fitness information that could disqualify them from service.[147] The Commission believes SEFs and DCMs should verify fitness information provided by individuals by collecting information from third parties, for example, via the National Futures Association's (''NFA'') Background Affiliation Status Information Center (''BASIC'') system or background checks.

Commission staff also discovered during the course of its oversight that some SEFs and DCMs did not have a practice to verify an individual's compliance with applicable fitness standards prior to the individual starting to serve in the capacity requiring the fitness standard. Additionally, some SEFs and DCMs lacked practices for regular verification of fitness standards, allowing fitness information to become stale. Without these practices for verifying and documenting fitness information, the Commission believes there is an increased risk that individuals will serve in a capacity for which they are not fit. Proposed §§ 37.207(d)(1)(i)–(iv) and 38.801(d)(1)(i)–(iv) would address these practices by requiring: (i) fitness information be verified at least annually, (ii) the SEF or DCM have procedures providing for immediate notice to the SEF or DCM if an individual no longer meets the minimum fitness standards to serve in their role, (iii) the initial verification of information supporting an individual's compliance with relevant fitness standard be completed prior to the individual serving in the capacity with fitness standards, and (iv) the SEF and DCM to document their findings with respect to the verification of fitness information.

The Commission further proposes to clarify the applicability of the governance fitness requirements to SEFs and DCMs by locating them, respectively, within parts 37 and 38 of the Commission's regulations, rather than within part 1 of the Commission's regulations. The Commission also proposes to make conforming amendments to Commission regulations §§ 37.2 and 38.2 to exempt SEFs and DCMs from Commission regulation § 1.63 in its entirety.

iv. Additional Considerations for Minimum Fitness Requirements

The Commission is considering whether additional fitness requirements would enhance the performance and accountability of the individuals who are charged with governing a SEF or DCM or its operations, or have the ability to influence such functions. Therefore, the Commission is seeking comment on whether SEFs and DCMs should consider additional eligibility criteria to prevent individuals from serving as an officer or member of the board of directors if their background, although not automatically disqualifying under proposed §§ 38.801(c) or 37.207(c), raises concerns about the individual's ability to effectively govern, manage, or influence the operations or decision-making of a SEF or DCM. For example, the Commission notes that at least three SEFs have already implemented a ''good repute'' requirement for members of their board of directors,[148] and the same requirement exists for members of the management body of regulated markets in the European Union.[149] The purpose of a ''sufficiently good repute'' standard would be to identify individuals with a well-established history of honesty, integrity, and fairness in their personal, public, and professional matters. The Commission's potential standard could be as follows:

> Minimum standards of fitness for the SEF's and DCM's officers and for members of its board of directors must include the requirement that each such individuals be of *sufficiently good repute;* provided, however, that SEFs and DCMs have flexibility to establish the criteria for how individuals demonstrate good repute, as appropriate for their respective markets.

The Commission also seeks comment on whether SEFs and DCMs should also consider, in defining ''good repute,'' the type of information that is subject to disclosure in the Uniform Application for Securities Regulation (''Form U4'') for consideration by FINRA for registration.[150] Other examples for consideration include instances where the license of a licensed professional (such as a certified public accountant or attorney) has been involuntarily suspended or revoked, or where an individual is suspended by an order of

[144] The disciplinary offenses generally include a decision by a court or a self-regulatory organization (or a settlement) of: violations of the substantive rules of a self-regulatory organization, felonies, convictions involving fraud or deceit, violations of the CEA or Commission regulations, or a suspension or denial by a self-regulatory organization to serve on a board or disciplinary panel.

[145] Commission regulation § 1.63(b)(6) provides as disqualifying anyone who is currently subject to a denial, suspension or disqualification from serving on the disciplinary committee, arbitration panel or governing board of any self-regulatory organization as that term is defined in section 3(a)(26) of the Securities Exchange Act of 1934.

[146] The Commission believes that in the absence of a cohesive set of SEF or DCM conflicts of interest policies and procedures, individuals with potential conflicts of interest may have difficulty ascertaining the policies and procedures that apply to a given situation. The Commission believes that similar concerns would be raised where there is not a cohesive set of procedures related to the verification fitness information.

[147] Both the NFA and FINRA conduct background checks to confirm information provided in the Form U4 is accurate, and FINRA Rule 3110(e) requires SEC-registered member firms to verify the information provided in a Form U4 using ''reasonably available public records, or a third-party provider.''

[148] *See* CBOE SEF Rulebook, Rule 202; Bloomberg SEF Rulebook, Rule 201; ICAP Global Derivatives SEF Rulebook, Annex 1, Governance Policy. Additionally, at least five DCMs and one SEF require their members or market participants to be of ''good repute,'' ''good moral character,'' or ''good reputation.''

[149] Article 45(2)(a) to (c) of the Markets in Financial Instruments Directive 2014/65/EU (''MiFID II'') (requiring members of the management body of market operators to be of ''sufficiently good repute''); Article 4(36) defines ''management body'' to include the individuals ''empowered to set the entity's strategy, objectives, and overall direction, and which oversee and monitor management decision-making . . .'').

[150] The Form U4 includes information such as criminal charges, pending regulatory cases, license suspensions or revocations, and decisions by foreign courts.

a foreign regulator or court in foreign jurisdiction.

3. Questions for Comment

The Commission requests comment on all aspects of the proposed fitness standards for SEFs and DCMs. The Commission further requests comment on the questions set forth below.

1. Should SEFs and DCMs be required to establish additional fitness standards for officers or members of the board of directors whose background, although not automatically disqualifying under proposed §§ 37.207 or 38.801, raises concerns about the individual's ability to effectively govern, manage, or influence the operations or decision-making of a SEF or DCM? If so, is ''*sufficiently good repute*'' *an appropriate fitness standard for officers and members of the board of directors (or anyone performing similar functions) of a SEF or DCM?*

2. The Commission quoted above a ''*sufficiently good repute*'' *standard, for purposes of a potential requirement that SEFs and DCMs require members of their boards of directors and officers be of good repute. Please explain whether you agree with that standard. Does such standard provide sufficient flexibility to SEFs and DCMs? Should such standard be more detailed and list specific criteria or factors evidencing good repute? Would* ''*sufficiently good repute,*'' *already be encompassed in CEA section 8a(3)(M),* ''*other good cause?*''

3. Is a 10 percent or more ownership interest the appropriate threshold to trigger minimum fitness requirements for owners? Is the ability to control or direct the management or policies of the DCM the appropriate qualifier to trigger minimum fitness standards for 10 percent or more owners of a SEF or DCM?

4. Should owners of 10 percent or more be subject to the disqualifying disciplinary offenses in proposed §§ 37.207(c) and 38.801(c)?

5. Proposed §§ 37.207(b) and 38.801(b) apply to ''*members of the designated contract market with voting privileges*'' *and* ''*members of the swap execution facility with voting privileges,*'' *respectively. Is this an appropriate category of persons to subject to the proposed minimum fitness standard requirements? Does this category remain relevant to current SEF and DCM governance and business structures, or is it no longer applicable?*

IV. Proposed Substantive Requirements for Identifying, Managing and Resolving Actual and Potential Conflicts of Interest

a. General Requirements for Conflicts of Interest and Definitions—Proposed §§ 37.1201 and 38.851

1. Existing Regulatory Framework and Definitions

As described above, SEFs and DCMs must establish and enforce rules to minimize conflicts of interest in their decision-making processes and establish a process for resolving such conflicts, pursuant to SEF Core Principle 12 and DCM Core Principle 16. SEFs and DCMs have different standards for addressing conflicts of interest. The DCM Core Principle 16 Acceptable Practices provide specific practices that DCMs may adopt to demonstrate compliance with aspects of DCM Core Principle 16. The Commission has not adopted guidance on, or acceptable practices in, compliance with the conflicts of interest requirements under SEF Core Principle 12. Commission regulation § 1.59, however, addresses the management of conflicts of interest for SEFs in connection with protecting material non-public information from misuse and disclosure.[151]

There are several terms defined in the DCM Core Principle 16 Acceptable Practices and Commission regulation § 1.59(a) which the Commission believes are relevant to identifying and resolving conflicts of interest that may impact a SEF's or DCM's market regulation functions, and which the Commission is proposing to adopt in these proposed new conflict of interest rules with certain minor modifications as discussed below. The DCM Core Principle 16 Acceptable Practices defines a ''public director'' as an individual with no material relationship to the DCM and describes the term ''immediate family'' to include spouse, parents, children, and siblings. The terms ''material information,'' ''non-public information,'' ''commodity interest,'' ''related commodity interest,'' and ''linked exchange'' are defined in Commission regulation § 1.59. ''Material information'' is defined in § 1.59(a)(5) to mean information which, if such information were publicly known, would be considered important by a reasonable person in deciding whether to trade a particular commodity interest on a contract market or a swap execution facility, or to clear a swap contract through a derivatives clearing organization.[152] ''Non-public information'' is defined in § 1.59(a)(6), as information which has not been disseminated in a manner which makes it generally available to the trading public. Commission regulations §§ 1.59(a)(8) and (9) define ''commodity interest,'' to include all futures, swaps, and options traded on or subject to the rules of a SEF or DCM[153] and ''related commodity interest'' to include any commodity interest which is traded on or subject to the rules of a SEF, DCM, linked exchange, or other board of trade, exchange, or market, or cleared by a DCO, other than the self-regulatory organization[154] by which a person is employed, and which is subject to a self-regulatory organization's intermarket spread margins or other special margin treatment.

2. Proposed Rules

Proposed §§ 37.1201(a) and 38.851(a) would set forth the foundational requirement that SEFs and DCMs, respectively, must establish a process for identifying, minimizing, and resolving actual and potential conflicts of interest that may arise, including, but not limited to, conflicts between and among any of the SEF's or DCM's market regulation functions; its commercial interests; and the several interests of its management, members, owners, customers and market participants, other industry participants, and other constituencies. These proposed rules would largely codify existing language from the DCM Core Principle 16 Acceptable Practices.[155]

Proposed §§ 37.1201(b) and 38.851(b) would establish definitions. As discussed above, many of the terms are already defined in existing Commission regulations, and in the acceptable

[151] Commission regulation § 1.59 addresses the management of conflicts of interest for self-regulatory organizations, including SEFs and DCMs, in connection with protecting material, non-public information from use and disclosure. Pursuant to Commission regulation § 38.2, DCMs are exempt from § 1.59(b) and (c), but must comply with § 1.59(a) and (d); SEFs must comply with all subparts of § 1.59.

[152] The definition of material information in Commission regulation § 1.59(a)(5) also provides that as used in that section, ''material information'' includes, but is not limited to, information relating to present or anticipated cash positions, commodity interests, trading strategies, the financial condition of members of self-regulatory organizations or members of linked exchanges or their customers, or the regulatory actions or proposed regulatory actions of a self-regulatory organization or a linked exchange.

[153] The definition of commodity interest also includes futures or swaps cleared by a Designated Clearing Organization. Commission regulation § 1.59(a)(8).

[154] Commission regulation § 1.3 defines this term as a contract market (as defined in § 1.3(h)), a swap execution facility (as defined in § 1.3(rrrr)), or a registered futures association under section 17 of the CEA.

[155] Part 38, Appendix B, Core Principle 16.

practices for compliance with the DCM conflicts of interest core principle, and would be duplicated with minor modifications. The Commission believes that specifically defining these terms in parts 37 and 38 of its regulations would provide greater clarity to SEFs and DCMs, and to the public, regarding regulatory requirements applicable to these entities. Additional reasons for proposing these defined terms are discussed below.

First, the terms ''material information,'' ''non-public information,'' ''commodity interest,'' ''related commodity interest,'' and ''linked exchange'' would be defined in proposed §§ 37.1202(b) and 38.851(b) as they are in § 1.59(a), but modified specifically to reference SEFs and DCMs, respectively. Additionally, as addressed below, proposed §§ 37.1202(b) and 38.851(b) would define ''public director'' and ''family relationship.'' [156] ''Family relationship'' would replace the term ''immediate family'' that is currently used in the DCM Core Principle 16 Acceptable Practices.[157] As discussed above,[158] proposed §§ 37.1201 and 38.851 focus on conflicts of interests involving a subset of a SEF or DCM's self-regulatory functions—those that are generally related to the SEF's or DCM's obligations to ensure market integrity and proper and orderly conduct in its markets, and to deter abusive trading practices. Those functions include trade practice surveillance, market surveillance, real-time market monitoring, audit trail and recordkeeping enforcement, investigations of possible rule violations, and disciplinary actions. As discussed above, the Commission is proposing to define ''market regulation functions'' in §§ 37.1201(b)(9) and 38.851(b)(9) to describe the self-regulatory functions addressed in this rule proposal.

Finally, the Commission is proposing a new definition for the term ''affiliate.'' The Commission recognizes that this term is defined elsewhere in the Commission regulations. However, the definition of ''affiliate'' elsewhere in Commission regulations does not apply to SEFs or DCMs.[159] For the limited purpose of this rule proposal, the Commission proposes defining ''affiliate'' in proposed §§ 37.1201(b)(1) and 38.851(b)(1), to mean a person that directly or indirectly controls, or is controlled by, or is under common control with, the SEF or DCM (as applicable). The definition of affiliate in proposed §§ 37.1201(b)(1) and 38.851(b)(1) would establish that, for purposes of this rule proposal, ''affiliate'' broadly includes direct or indirect common ownership or control.

b. Conflicts of Interest in Decision-Making—Proposed §§ 37.1202 and 38.852

1. Background

Officers, members of the board of directors, committees, and disciplinary panels, are the key decision-makers at a SEF or DCM that can directly affect the day-to-day execution of market regulation functions. Therefore, the Commission believes individuals fulfilling these roles must have the ability to make informed and impartial decisions. If any of these decision-makers have an actual or potential conflict of interest, it can impair the decision-making process of the SEF or DCM. Accordingly, the Commission is proposing to codify and harmonize for SEFs and DCMs, in proposed §§ 37.1202 and 38.852, respectively, certain elements of Commission regulation § 1.69 that require a self-regulatory organization to address the avoidance of conflicts of interest in the execution of its self-regulatory functions. As noted above, SEFs are currently subject to the requirements of Commission regulation § 1.69; however, DCMs are exempt from these requirements pursuant to Commission regulation § 38.2. Nonetheless, Commission staff has found that as a matter of practice, most DCMs have adopted rules that voluntarily implement these requirements.

2. Existing Regulatory Framework

Commission regulation § 1.69 generally requires self-regulatory organizations to have rules requiring any member of the board of directors, disciplinary committee, or oversight panel, to abstain from deliberating and voting on certain matters that may raise conflicts of interest. Commission regulation § 1.69(a) includes a list of definitions relevant to the section, including the definition of ''named party in interest,'' which means a person or entity that is identified by name as a subject of any matter being considered by a governing board, disciplinary committee, or oversight panel. Commission regulation § 1.69(b)(1)(i)(A)–(E) enumerates a list of relationships. If a member of the board of directors, disciplinary committee, or oversight panel, has such a relationship with a named party in interest, then this would require the member to abstain from deliberating and voting on that matter. Prior to the consideration of any matter involving a named party in interest, Commission regulation § 1.69(b)(1)(ii) requires members of a governing board, disciplinary committee or oversight panel to disclose their relationships with the named party in interest. Commission regulation § 1.69(b)(1)(iii) requires self-regulatory organizations to establish procedures for determining whether any members of governing boards, disciplinary committees or oversight panels are subject to a conflicts restriction in any matter involving a named party in interest, and specifies certain requirements for making such determinations.

Commission regulation § 1.69(b)(2) requires members of governing boards, disciplinary committees or oversight panels to abstain from deliberating and voting in any significant action if the member knowingly has a direct and substantial financial interest in the result of the vote. Additional requirements for disclosure of interest and the procedures for making a conflicts determination are addressed in Commission regulations §§ 1.69(b)(2)(ii) and (iii), respectively. Commission regulation § 1.69(b)(3) permits members of governing boards, disciplinary committees or oversight panels, who otherwise would be required to abstain from deliberations and voting on a matter because of a conflict under Commission regulation § 1.69(b)(2), to deliberate but not vote on the matter under certain circumstances.[160] Finally, Commission regulation § 1.69(b)(4) requires self-regulatory organizations to document certain conflicts determination requirements.

3. Proposed Rules

The Commission proposes to include certain elements of Commission regulation § 1.69 in proposed §§ 37.1202 and 38.852, and to make a conforming amendment to Commission regulation

[156] *See* Section V(b)(3) (addressing the term public director) and Section IV(b)(3) (addressing the term family relationship).

[157] Section IV(c)(3) herein provides details regarding the proposed definitions for public director and family relationship.

[158] *See* Section II(d) herein.

[159] For example, § 162.2(a) defines ''affiliate'' specifically in relation to futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant, or swap dealer.

[160] Commission regulation § 1.64(b)(3)(ii) lists the following factors for the deliberating body to consider in determining whether to allow such member to participate in deliberations: (1) if the member's participation is necessary to achieve a quorum; and (2) whether the member has unique or special expertise, knowledge or experience in the matter under consideration.

§ 37.2 to exempt SEFs from Commission regulation § 1.69. While the intent behind Commission regulation § 1.69 remains relevant, the Commission believes that certain modifications and enhancements are necessary to reflect the current state of the futures and swaps markets. For example, Commission regulation § 1.69(b)(1)(i)(C) describes a relationship with a named party in interest through a ''broker association'' as defined in § 156.1. While this relationship may have been significant at the time Commission regulation § 1.69 was adopted, the Commission does not believe it is necessary to include it in proposed §§ 37.1202 and 38.852 given the decline of open outcry trading. Furthermore, the scope of proposed §§ 37.1202 and 38.852 would require a relationship with an individual as part of a broker association, as well as other professional associations, to be disclosed regardless of whether it is an enumerated relationship. The scope of proposed §§ 37.1202 and 38.852 expressly covers officers, as well as members of boards of directors, committees, and disciplinary panels,[161] to accurately reflect the individuals and governing bodies that are involved in the decision-making processes of a SEF or DCM and that may therefore be subject to the same conflicts of interest.

The Commission notes that Commission regulation § 1.69(a)(2) currently includes ''family relationship'' as one of the enumerated relationships, which is defined as a person's spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, or in-law. The Commission proposes redefining ''family relationship,'' as the person's spouse, parents, children, and siblings, in each case, whether by blood, marriage, or adoption, or any person residing in the home of the person, as set forth in proposed §§ 37.1201(b)(7) and 38.851(b)(7). This proposed definition focuses on the closeness of the relationship that the committee member has with the subject of the matter being considered. The proposed definition also reflects a more modern description of the relationships intended to be covered. The Commission emphasizes that the relationships listed in this proposed definition are not exhaustive; rather, each relationship should be viewed in light of the particular circumstances surrounding the relationship and the closeness of the relationship.

Proposed §§ 37.1202(a) and 38.852(a) require SEFs and DCMs, respectively, to establish policies and procedures requiring any officer or member of its board of directors, committees, or disciplinary panels to disclose any actual or potential conflicts of interest that may be present prior to considering any matter. The proposed language is a modernized version of the requirement in Commission regulation § 1.69(b). Although not exhaustive, proposed §§ 37.1202(a)(1) and 38.852(a)(1) enumerate certain conflicts in which the member or officer: (1) is the subject of any matter being considered; (2) is an employer, employee, or colleague [162] of the subject of any matter being considered; (3) has a family relationship with the subject of any matter being considered; or (4) has any ongoing business relationship with or a financial interest in the subject of any matter being considered.[163] The Commission is proposing §§ 37.1202(a)(2) and 38.852(a)(2) to extend the conflicts of interest enumerated in proposed §§ 37.1202(a)(1) and 38.852(a)(1) to also apply to relationships that an officer or member of its board of directors, committees, or disciplinary panels has with an affiliate of the subject of any matter being considered.

As discussed above, the evolution of market structures has increased the interconnectedness between SEFs, DCMs, and their affiliates. This relationship between a SEF or DCM and its affiliates—and by extension, the officers, members of the board of directors, committees, or disciplinary panels—could create, in the Commission's view, an actual or potential conflict of interest. Accordingly, the Commission believes proposed §§ 37.1202(a)(2) and 38.852(a)(2) is necessary to mitigate conflicts of interest in a SEF's or DCM's decision-making.

Proposed §§ 37.1202(b) and 38.852(b) largely track existing requirements in Commission regulation § 1.69(b)(4) and require the board of directors, committee, or disciplinary panel to document its processes for complying with the requirements of the proposed rules, and such documentation must include: (1) the names of all members and officers who attended the relevant meeting in person or who otherwise were present by electronic means; and (2) the names of any members and officers who voluntarily recused themselves or were required to abstain from deliberations or voting on a matter and the reason for the recusal or abstention. To ensure the intent of proposed §§ 37.1202 and 38.852 is captured, the Commission continues to require voluntary recusals to be documented, in addition to the instances in which a determination was made to require the abstention of an officer or member of a board of directors, committee, or disciplinary panel.

In a limited number of circumstances, Commission regulation § 1.69(b)(3) permits members of governing boards, disciplinary committee, or oversight panel, who otherwise would be required to abstain from deliberations and voting on a matter because of a conflict under Commission regulation § 1.69(b)(2), to deliberate but not vote on the matter. The Commission is not proposing to adopt this exemption. If a board of directors, committee or panel believes that it has insufficient expertise to consider a matter, the Commission encourages the committee to seek information from an expert or consultant that is not subject to a conflicts restriction. The Commission believes it is imperative for boards of directors, committees, and disciplinary panels to have access to unbiased, conflict-free information to assist in decision-making.

4. Questions for Comment

The Commission requests comment on all aspects of the proposed conflicts of interest in decision-making rules. The Commission further requests comment on the questions set forth below.

1. Should the Commission enumerate certain other relationships or circumstances that may give rise to an actual or potential conflict of interest? If so, which relationships or circumstances?

2. Does the proposed definition of ''family relationship'' cover the appropriate types of relationships?

[161] Commission regulation § 1.69(a) defines ''disciplinary committee(s),'' ''governing board(s),'' and ''oversight panel(s).''

[162] The Commission proposes replacing the current term ''fellow employee'' with ''colleague'' to include individuals with whom the officer or director may have a collegial relationship, but may not be employed by the same employer. As an example, two individuals who worked in the same office, where the first is a full-time employee of the organization, and the other works alongside the first but is employed by an outside contractor, would be considered colleagues for purposes of proposed §§ 37.1202 and 38.852.

[163] The Commission believes that this relationship, along with the overarching requirement in proposed §§ 37.1202(a) and 38.852(a) requiring an officer or member of its board of directors, committees, or disciplinary panels to disclose any actual or potential conflicts of interest that may be present prior to considering any matter, are sufficient for addressing conflicts of interest involving financial interest. Accordingly, the Commission is not proposing to include in proposed §§ 37.1202 or 38.852 a parallel to existing Commission regulation § 1.69(b)(2)'s requirements concerning financial interests in significant actions.

Should any relationships be added or removed from the proposed definition?

c. Limitations on the Use and Disclosure of Material Non-public Information—Proposed §§ 37.1203 and 38.853

1. Background

Preventing the misuse and disclosure of material non-public information at SEFs and DCMs further the objectives of promoting self-regulation of exchanges and maintaining public confidence in SEF and DCM markets. The CEA includes prohibitions on the misuse and disclosure of material non-public information. It is unlawful for any person who is an employee, member of the governing board, or member of any committee of a board of trade, to willfully and knowingly (1) trade for such person's own account, or for or on behalf of any other account, in contracts for future delivery or option thereon on the basis of any material non-public information obtained through special access related to the performance of such person's official duties as an employee or member; or (2) to disclose for any purpose inconsistent with the performance of such person's official duties as an employee or member, any material non-public information obtained through special access related to the performance of such duties.[164] Furthermore, a potential conflict of interest arises when employees or insiders with access to material non-public information leverage their insider access to advance their personal interests, or the interests of others, to the detriment of the decision-making process of the contract market. The Commission believes reducing the potential for such misuse of material nonpublic information helps to mitigate conflicts of interest. Accordingly, the Commission is proposing new rules to implement elements of the conflicts of interest core principles for SEFs and DCMs, within parts 37 and 38, respectively, that are consistent with existing requirements under current Commission regulation § 1.59, which establishes limitations on the use and disclosure of material non-public information. The proposed rules would establish prohibitions on the use or disclosure of material non-public information by: (1) employees of the SEF or DCM; and (2) members of the board of directors, committee members, consultants and those with an ownership interest of 10 percent or more in the SEF or DCM.

Moreover, the Commission is proposing to harmonize and streamline SEF and DCM requirements related to the safeguarding of material non-public information by proposing rules under §§ 37.1203 and 38.853, and to make conforming amendments to Commission regulation § 37.2 to exempt SEFs from Commission regulation § 1.59. As discussed in more detail below, the proposal would establish consistent rules for SEFs and DCMs related to the use and disclosure of material non-public information.

2. Existing Regulatory Framework

Commission regulation § 1.59 generally requires self-regulatory organizations to adopt rules prohibiting employees, governing board members, committee members or consultants from trading commodity interests on the basis of material non-public information obtained in the course of their official duties. Under Commission regulation § 1.59, employees of self-regulatory organizations are subject to stricter trading prohibitions than governing board members, committee members or consultants. Specifically, employees are prohibited from trading in any commodity interest traded on or cleared by the employing SEF, DCM or DCO, or from trading in any related commodity interest. Additionally, employees having access to material non-public information concerning a commodity interest are prohibited from trading in any such commodity interest that is traded on or cleared by any SEF, DCM or DCO, or any linked exchange.[165]

Members of the board of directors, committee members, and consultants of a self-regulatory organization, on the other hand, are prohibited from using material non-public information for any purpose other than the performance of their official duties. The possession of material non-public information, therefore, does not absolutely bar these individuals from trading commodity interests. Rather, under Commission regulation § 1.59(d), members of the board of directors, committee members, or consultants of a self-regulatory organization are directly prohibited from trading for their own account, or for or on behalf of any other account, based on this material non-public information.

The direct prohibitions under Commission regulation § 1.59(d) were adopted in 1993 to effectuate section 214 of the Futures Trading Practices Act (''FTPA'') of 1992, which, among other things, makes it a felony for employees and governing members of self-regulatory organizations to disclose or trade on inside information and for tippees of such insiders to trade on inside information so disclosed.[166] Historically, the Commission has adopted a more lenient standard for governing board members and committee members.[167] A more lenient standard helps to ensure that a trading prohibition does not impair the ability or diminish willingness of knowledgeable industry members who also are active traders from serving on a self-regulatory organization's board of directors or its major policy or disciplinary committees.

While § 1.59(b) prohibits trading in commodity interests or related commodity interests by employees, the rule also provides that exemptions may be granted. Under current § 1.59(b)(2)(ii)(b), a self-regulatory organization may adopt rules setting forth circumstances under which exemptions may be granted, as long as those exemptions are consistent with the CEA, the purposes of § 1.59, just and equitable principles of trade, and the public interest. Exemptions also may be granted, under rules adopted by a self-regulatory organization, in situations where an employee participates in a pooled investment vehicle without direct or indirect control of such vehicle.[168]

The prohibitions and requirements under § 1.59 apply differently to SEFs and DCMs. As a result of the core principles framework promulgated under the Commodity Futures Modernization Act of 2000, DCMs were relieved from many rule-based requirements in favor of core principles. Consequently, DCMs were exempted from § 1.59(b) and (c). However, employees, governing board members, committee members, and consultants at DCMs are not exempted from

[164] CEA section 9(e), 7 U.S.C. 13(e).

[165] Commission regulation § 1.59(a)(7) defines linked exchange to include any exchange or board of trade outside of the United States that lists products traded on the SEF or DCM, or that has an agreement with a SEF or DCM to permit positions in one commodity interest to be liquidated on the other market, or any clearing organizations that clears the products in any of the foregoing markets.

[166] Final Rule, Prohibition on Insider Trading, 58 FR 54966 (Oct. 25, 1993).

[167] When Commission regulation § 1.59 was first proposed, it proposed to apply the same standard to employees and governing board members and committee members. Activities of Self-Regulatory Organization Employees and Governing Members Who Possess Material, Nonpublic Information, 50 FR 24533 (June 11, 1985). In response to public comment, however, the Commission initially finalized § 1.59 without addressing what obligations applied to members of the governing board of committee members. Instead, the Commission adopted the more lenient standard in a separate rulemaking. Activities of Self-Regulatory Organization Employees Who Possess Material, Non-Public Information, 51 FR 44866 (Dec. 12, 1986).

[168] Commission regulation § 1.59(b)(ii)(b).

§ 1.59(d).[169] In addition to the Commission's statutory authority on insider trading,[170] the DCM Core Principle 16 Guidance states that DCMs should provide for appropriate limitations on the use or disclosure of material non-public information gained through performance of official duties by members of the board of directors, committee members, and DCM employees or gained by those through an ownership interest in the DCM.[171]

In contrast, Commission regulation § 1.59 applies in its entirety to SEFs. Unlike for DCMs, the Commission did not adopt any guidance or acceptable practices addressing how a SEF may demonstrate compliance with SEF Core Principle 12 related to appropriate limitations on the use and disclosure of material non-public information.

3. Proposed Rules

The Commission is proposing harmonized rules for SEFs and DCMs related to the use and disclosure of material non-public information from § 1.59.[172] Proposed §§ 37.1203(a) and 38.853(a) require SEFs and DCMs to establish and enforce policies and procedures on safeguarding the use and disclosure of material non-public information. These policies and procedures must, at a minimum, prohibit a SEF or DCM employee, member of the board of directors, committee member, consultant, or owner with a 10 percent or more interest in the SEF or DCM, from trading commodity interests or related commodity interests based on, or disclosing, any non-public information obtained through the performance of their official duties. As discussed in more detail below, the scope of individuals subject to trading limitations under this proposed rule is consistent with those individuals subject to the trading limitations under both existing § 1.59 and existing Core Principle 16 Guidance. The proposal codifies existing Core Principle 16 Guidance which considers appropriate limitations on those with an ownership interest in the exchange. The proposal clarifies that the limitation would apply to those with an ownership interest of 10 percent or more in the SEF or DCM.

Proposed §§ 37.1203(b) and 38.853(b) require SEFs and DCMs, respectively, to prohibit employees from certain types of trading [173] or disclosing for any purpose inconsistent with the performance of the person's official duties as an employee any material non-public information obtained as a result of such person's employment. The Commission believes that such a stringent restriction is necessary for employees, who, by virtue of their official position, have access to material non-public information. However, the Commission also recognizes that there may be limited circumstances under which employees should be exempted from the trading restrictions, so long as the subject trading is not pursuant to material non-public information. Accordingly, the Commission is proposing rules requiring SEFs and DCMs to oversee exemptions from the trading prohibition granted to employees.[174] Proposed §§ 37.1203(c) and 38.853(c) would allow SEFs and DCMs, respectively, to grant exemptions that are (1) approved by the SEF or DCM ROC; (2) granted only in limited circumstances in which the employee requesting the exemption can demonstrate that the trading is not being conducted on the basis of material non-public information gained through the performance of their official duties; and (3) individually documented by the SEF or DCM in accordance with requirements in existing Commission regulations §§ 37.1000 and 37.1001 or §§ 38.950 and 38.951, respectively.

In its routine oversight, Commission staff has observed certain deficiencies in the manner in which DCMs evaluated, granted, and documented exemptions from their trading prohibitions. As a result, the Commission is proposing §§ 37.1203(d) and 38.853(d) to require SEFs and DCMs, respectively, to establish and enforce policies and procedures to diligently monitor the trading activity conducted under any exemptions granted to ensure compliance with any applicable conditions of the exemptions and the SEF's or DCM's policies and procedures on the use and disclosure of material non-public information. The Commission believes that SEFs and DCMs have an obligation to monitor and ensure compliance with any applicable conditions of the exemptions that may be granted by the exchange. Moreover, SEFs and DCMs must ensure that any granted exemptions are in accordance with the exchange's policies and procedures governing employees' use and disclosure of material non-public information, as well as the CEA and Commission regulations. The Commission believes that SEFs and DCMs should already have existing programs to monitor, detect, and deter abuses that may arise from trading conducted pursuant to an exemption from the employee trading prohibition. Accordingly, a SEF or DCM should utilize its existing surveillance program to monitor trading by employees or other insiders who are granted trading exemptions pursuant to proposed §§ 37.1203(c) and 38.853(c). Such surveillance should focus on the commodity interests or related commodity interests to which the non-public information relates and the time period during which misuse of such information reasonably could be expected to occur.

The Commission continues to believe it is an important policy objective to ensure that the trading prohibition does not impair the ability or diminish the willingness of knowledgeable members of the industry who also are active traders from serving on a SEF's or DCM's board of directors or its major policy or disciplinary committees. The Commission, therefore, is maintaining its historical policy of allowing SEFs and DCMs flexibility, within limits, to establish rules that may restrict governing board members, committee members, employees, and consultants from trading in commodity interests for their own account, or for or on behalf

[169] Under the provisions of Commission regulation § 1.59(d), no employee, governing board member, committee member, or consultant shall trade for such person's own account, or for or on behalf of any other account, in any commodity interest, on the basis of any material, non-public information obtained through special access related to the performance of such person's official duties as an employee, governing board member, committee member, or consultant. Furthermore, such persons must not disclose for any purpose inconsistent with the performance of their official duties as an employee, governing board member, committee member, or consultant any material, non-public information obtained through special access related to the performance of such duties. In addition, no person shall trade for their own account, or for or on behalf of any other account, in any commodity interest, on the basis of any material, non-public information that such person knows was obtained in violation of paragraph (d)(1) of § 1.59 from an employee, governing board member, committee member, or consultant.

[170] CEA section 9(e).

[171] Part 38, Appendix B, Core Principle 16.

[172] This rule proposal would not amend Commission regulation § 1.59, which will remain unchanged and continue to be applicable to registered futures associations.

[173] Proposed §§ 37.1203(b)(1) and 38.853(b)(1) restrict trading directly or indirectly, in the following: (1) Any commodity interest traded on the employing designated contract market; (2) Any related commodity interest; (3) A commodity interest traded on designated contract markets or swap execution facilities or cleared by derivatives clearing organizations other than the employing designated contract market if the employee has access to material non-public information concerning such commodity interest; or (4) A commodity interest traded on or cleared by a linked exchange if the employee has access to material non-public information concerning such commodity interest.

[174] The exemptions, applicable only to SEF or DCM employees trading on the SEF or DCM, or trading in the same or related commodity interests, would be administered on a case-by-case basis, at the level of granularity appropriate for the situation, considering all relevant factors. The exemptions would be reviewed by Commission staff as part of its routine oversight of SEFs and DCMs.

of any other account, based on this material non-public information. Accordingly, proposed §§ 37.1203(e) and 38.853(e) require SEFs and DCMs, respectively, to establish and enforce policies and procedures that, at a minimum, prohibit members of the board of directors, committee members, employees, consultants, and those with an ownership interest of 10 percent or more from: (1) trading in any commodity interest or related commodity interest on the basis of any material non-public information obtained through the performance of such person's official duties; (2) trading in any commodity interest or related commodity interest on the basis of any material non-public information that such person knows was obtained in violation of this section; or (3) disclosing for any purpose inconsistent with the performance of the person's official duties any material non-public information obtained as a result of their official duties.

The Commission is expanding the scope of the direct prohibition on trading based on material non-public information under proposed §§ 37.1203(e) and 38.853(e) as compared to existing Commission regulation § 1.59 in three ways. First, the Commission is proposing to apply the prohibitions already applicable to employees in § 1.59(b), regarding trading in ''related commodity interests,'' to governing board members, committee members, and consultants who are in possession of material non-public information.[175] Consistent with the definition of ''related commodity interests,'' in § 1.59(a)(9), the Commission believes that the direct prohibitions on trading while in the possession of material non-public information should include related commodity interests whose price movements correlate with the price movements of a commodity interest traded on or subject to the rules of a SEF or DCM to such a degree that intermarket spread margins or special margin treatment is recognized or established by the employer SEF or DCM.[176] Second, the Commission is proposing to codify existing DCM Core Principle 16 Guidance related to those with an ownership interest in §§ 37.1203(e)(3) and 38.853(e)(3). While this expands the scope of individuals subject to trading limitations as compared to existing Commission regulation § 1.59, it is codifying existing Core Principle 16 Guidance, with one clarification. Specifically, with regards to owners, the Commission is clarifying that the direct prohibition under §§ 37.1203(e) and 38.853(e) would only apply to those with an ownership interest of 10 percent or more in the SEF or DCM.[177] Third, while the proposed rules continue to maintain a restriction on the disclosure of material non-public information, the proposal would address differences in the existing language between §§ 1.59(b)(1)(D)(ii) and 1.59(d)(ii) regarding the restrictions on the disclosure of material non-public information. The Commission is proposing the same restriction on disclosure for both employees under §§ 37.1203(b)(2) and 38.853(b)(3) and members of the board of directors, committee members, consultants, and those with an ownership interest of 10 percent or more under §§ 37.1203(e)(3) and 38.853(e)(3), to make clear that these ''insiders'' would be subject to the same restriction from disclosing material non-public information obtained as a result of their official duties at a SEF or DCM.

As mentioned in Section IV.b, the Commission is proposing to include substantial sections of existing definitions from Commission regulation § 1.59 in proposed parts 37 and 38. For example, the proposal includes, for purposes of §§ 37.1203 and 38.853, the same historical definitions of (1) ''commodity interest,'' (2) ''linked exchange,'' (3) ''material information,'' (4) ''non-public information,'' and (5) ''pooled investment vehicle.'' The Commission is proposing non-substantive changes to the (1) ''commodity interest'' and (2) ''related commodity interest'' definitions. The proposal would update the definition of a commodity interest by removing the phrase ''of a board of trade which has been designated as a'' and keep the reference to ''designated contract market.'' For the ''related commodity interest'' definition, the proposal replaces the reference to ''self-regulatory organization'' with a reference to either a SEF or DCM in the regulatory text in parts 37 and 38. The Commission believes that it is appropriate for a SEF or DCM to have the ability to grant an exemption from the trading prohibition where an employee is participating in pooled investment vehicles where the employee has no direct or indirect control with respect to transactions executed for or on behalf of such vehicles.[178]

4. Questions for Comment

The Commission requests comment on all aspects of the proposed rules regarding the use and disclosure of material non-public information. The Commission further requests comment on the questions set forth below.

1. Has the Commission proposed an appropriate definition for ''material''? If not, why not? What would be a better alternative?

2. Has the Commission proposed an appropriate definition for ''non-public information''? If not, why not? What would be a better alternative?

3. Has the Commission proposed appropriate limitations on the use and disclosure of material non-public information for SEF and DCM board of directors, committee members, employees, consultants, and those with an ownership interest of 10 percent or more? If not, why not? What would be a better alternative?

4. With regards to owners, has the Commission proposed an appropriate limitation in applying the restrictions under §§ 37.1203(e) and 38.853(e) to those with an ownership interest of 10 percent or more in the SEF or DCM? Should the restriction be applied to all those with an ownership interest in the SEF or DCM? If not, why not? What would be a better alternative?

V. Proposed Structural Governance Requirements for Identifying, Managing and Resolving Actual and Potential Conflicts of Interest

In general, the proposed structural governance requirements are intended to mitigate conflicts of interest at a SEF or DCM by introducing a perspective independent of competitive, commercial, or industry considerations to the deliberations of governing bodies (*i.e.,* the board of directors and committees). The Commission believes that such independent perspective would be more likely to encompass regulatory considerations, and accord such considerations proper weight. The Commission believes that such independent perspective also would more likely contemplate the manner in which a decision might affect all constituencies, as opposed to

[175] Proposed §§ 37.1203(e)(1) and 38.853(e)(1).

[176] *See* proposed §§ 37.1201(b)(15) and 38.851(b)(15) (defining ''related commodity interests'').

[177] Owners of 10 percent or more of a company are considered ''insiders'' pursuant to section 16 of the Securities Exchange Act of 1934. *See* section IV(C) herein.

[178] In particular, that it would be appropriate to grant an employee an exemption to trade in a pooled investment vehicle organized and operated as a commodity pool within the meaning of § 4.10(d) of the Commission regulations, and whose units of participation have been registered under the Securities Act of 1933, or a trading vehicle for which Commission regulation § 4.5 makes available relief from registration as a commodity pool operation.

concentrating on the manner in which a decision affects the interests of one or a limited number of constituencies.[179] The Commission further believes that independent decision-makers are necessary to protect a SEF's or DCM's market regulation functions from its commercial interests and that of its constituencies.

Accordingly, the Commission is proposing to require a SEF's or DCM's board of directors, and any executive committee, to include at least 35 percent public directors. The Commission also proposes establishing two committees to further enhance the structural governance of SEFs and DCMs. First, the proposed rules would require a nominating committee that is comprised of at least 51 percent public directors to enhance the transparency of the board of directors. Second, the proposed rules would require a ROC comprised solely of public directors to protect the integrity of the market regulation function of SEFs and DCMs. The Commission is also proposing a new DCM CRO requirement, and updating the existing SEF CCO requirement, to clearly establish these roles as central to the SEF's or DCM's management of conflicts of interest that may impact market regulation functions.

a. Composition and Related Requirements for Board of Directors—Proposed §§ 37.1204 and 38.854

1. Background

As the ultimate decision-maker of an exchange, governing boards are an essential component in an exchange's ability to identify, manage, and resolve conflicts of interest.[180] In particular, the board of directors, along with senior management, set the ''tone at the top'' for a SEF's or DCM's governance and compliance culture.[181] In its routine oversight, Commission staff has observed that board composition standards have become a key piece of SEFs' and DCMs' structural governance, and when coupled with clear, comprehensive policies and procedures to address conflicts of interest, have helped to minimize conflicts of interests faced by members of the board of directors. For example, the presence of public directors, both on the board of directors and the ROC, has created an avenue for DCMs, SEFs, their officers and employees to escalate, and eventually seek resolution of, conflicts of interest.

2. Existing Regulatory Framework

Currently, the board of director composition component of the DCM Core Principle 16 Acceptable Practices provides that a DCM's board of directors or executive committees include at least 35 percent public directors.[182] In adopting this acceptable practice, the Commission stated that the 35 percent figure struck an appropriate balance between (1) the need to minimize conflicts of interest in DCM decision-making processes and (2) the need for expertise and efficiency in such processes.[183]

As compared to DCMs, SEFs are currently subject to substantially different board composition standards. Specifically, SEFs are subject to Commission regulation § 1.64(b)(1), which establish a 20 percent ''non-member'' requirement.[184] This requirement was adopted in 1993 for SROs when exchanges were member-owned. At the time, the Commission sought to ensure that an SRO governing board fairly represented the diversity of membership interest at such SRO[185] and would not have an exclusively member perspective.[186] While this was a laudable goal at the time, Commission regulation § 1.64(b)(1) requirements are no longer relevant for SEFs and DCMs given that exchanges are no longer member-owned. The Commission's goal through this proposal is to ensure that SEFs and DCMs have sufficient independent perspective in their decision-making, taking into account that SEFs and DCMs are now for-profit entities that also are charged with market regulation functions. Applying Commission regulation § 1.64(b)(1) has created an unintentional consequence of allowing SEFs to compose their boards of directors with ''insiders.'' SEFs with no independent voice on the board, either through inclusion of public directors or other non-affiliated directors, have been able to meet the requirements of Commission regulation § 1.64(b)(1). For example, if an executive was seconded to the SEF from an affiliate (therefore, not a ''salaried employee''), and only spent a fraction of their time performing services for the SEF (therefore, not ''primarily performing services'' for the SEF), the executive could arguably be deemed to satisfy the ''non-member'' requirement of Commission regulation § 1.64(b)(1). Under the current DCM Core Principle 16 Acceptable Practices, however, the executive would not likely be considered a public director and therefore, to meet the acceptable practices, could not be included as a director that satisfies the board composition standards.

The Commission continues to believe that the practice of including in the board of directors at least 35 percent public directors, as reflected in the DCM Core Principle 16 Acceptable Practices, is appropriate for DCMs, and that it is also is appropriate for SEFs. In reaching this conclusion, the Commission has considered the board composition requirements applicable to publicly-traded companies, which require that a majority of the board of directors must be ''independent'' directors.[187] However, the goal of this higher threshold, which is to protect shareholders of publicly-traded companies through boards of directors that are sufficiently independent from

[179] *See* 2007 Final Release, 72 FR 6936 at 6947 (stating that the public interest will be furthered if the boards and executive committees of all DCMs are at least 35% public. Such boards and committees will gain an independent perspective that is best provided by directors with no current industry ties or other relationships which may pose a conflict of interest. These public directors, representing over one-third of their boards, will approach their responsibilities without the conflicting demands faced by industry insiders. They will be free to consider both the needs of the DCM and of its regulatory mission, and may best appreciate the manner in which vigorous, impartial, and effective self-regulation will serve the interests of the DCM and the public at large. Furthermore, boards of directors that are at least 35% public will help to promote widespread confidence in the integrity of U.S. futures markets and self-regulation).

[180] *See* 2007 Final Release, 72 FR 6936.

[181] Donald C. Langevoort, Cultures of Compliance, 54 a.m. CRIM. L. REV. 933, 946–947 (2017); Group of Thirty, Banking Conduct and Culture, A Call for Sustained and Comprehensive Reform, Washington, DC, July 2015; The Role of the Board of Directors and Senior Management in Enterprise Risk Management, by Bruce C. Branson, Chapter 4, Enterprise Risk Management: Today's Leading Research and Best Practices for Tomorrow's Executives, 2nd Edition, edited by John R. S. Fraser, Rob Quail, Betty Simkins, Copyright 2021 John Wiley & Sons; *See also* comments from former SEC Chair Mary Jo White, to the Stanford University Rock Center for Corporate Governance, June 23, 2014, *https://www.sec.gov/news/speech/2014-spch062314mjw* (accessed June 24, 2023) (''It is up to directors, along with senior management under the purview of the board, to set the all-important ''tone at the top'' [regarding compliance with federal securities laws] for the entire company.'').

[182] Part 38, Appendix B, Core Principle 16 Acceptable Practices (b)(1).

[183] 2007 Final Release, 72 FR 6936 at 6946–6947.

[184] Commission regulation § 1.64(b)(1) requires that twenty percent of the board of directors must be persons who are (1) knowledgeable of futures trading or financial regulation or otherwise capable of contributing to governing board deliberations; and (2) not members of the SEF, not currently salaried employees of the SEF, not primarily performing services for the SEF, and not officers, principals or employees of a member firm.

[185] Final Rule and Rule Amendments Concerning Composition of Various Self-Regulatory Organization Governing Boards and Major Disciplinary Committees, 58 FR 37644 at 37646 (July 13, 1993).

[186] *Id.* at 37647.

[187] NYSE American Company Guide Rule 802; Nasdaq Rule 5605(b).

management, is not entirely the same as the Commission's concern at hand.

The Commission's primary goal with respect to Core Principle 16 is to ensure that the commercial interests of SEFs and DCMs and of its constituencies do not compromise market regulation functions. Accordingly, the Commission recognizes the need to have individuals on the board of directors with sufficient background and expertise to support the SEF's or DCM's market functions. The Commission, however, also is cognizant of the importance of having individuals with sufficient independent perspectives on the board of directors to ensure that the SEF or DCM can properly manage conflicts in its decision-making. Indeed, publicly-traded companies are moving towards requiring that a majority of the board of directors must be independent directors. However, the Commission believes that imposing a majority threshold in all circumstances may deny SEFs and DCMs the flexibility necessary to ensure that the board of directors includes individuals with adequate market expertise. The Commission is currently unaware of any circumstances that would support requiring public directors to constitute a majority of the board of directors of every SEF or DCM. Therefore, the Commission is proposing a bright-line threshold that would balance the need to ensure proper representation of impartial views with the need for market expertise. In doing so, the Commission recognizes that SEF and DCM boards of directors may vary in size. However, based on the Commission's observation of existing SEFs and DCMs, the Commission believes that a minimum threshold of 35 percent public directors would lead to at least two public directors on most SEF and DCM boards of directors. At the same time, the proposal would allow SEFs and DCMs the discretion to establish a higher threshold.

The Commission requests comment on all aspects of the proposed 35 percent public director board composition requirements, including comments on the specific questions listed below in this section.

3. Proposed Rules

The Commission proposes to enhance the existing board composition standards for both SEFs and DCMs by: (1) codifying in proposed § 38.854(a)(1) the practice under the DCM Core Principle 16 Acceptable Practices that DCM boards of directors be composed of at least 35 percent ''public directors;'' [188] (2) extending this requirement to SEF boards of directors under proposed § 37.1204(a)(1); [189] and (3) adopting additional requirements to increase transparency and accountability of the board of directors. The Commission believes that in addressing these board of director composition requirements in proposed § 37.1204, it is necessary to amend Commission regulation § 37.2 to exempt SEFs from Commission regulation § 1.64, including the board of directors composition requirements under Commission regulation § 1.64(b)(1).

In addition to proposing board of director composition requirements, the Commission proposes the substantive requirements set forth below, which aim to enhance transparency and the accountability of the SEF and DCM board of directors regarding the manner in which such board of directors causes the SEF or DCM to discharge all statutory, regulatory, or self-regulatory responsibilities under the CEA, including the market regulation functions.

- A SEF or DCM must establish and enforce policies and procedures outlining the roles and responsibilities of the board of directors, including the manner in which the board of directors oversees compliance with all statutory, regulatory, and self-regulatory responsibilities under the CEA and the regulations promulgated thereunder.[190]
- A SEF or DCM must have procedures to remove a member from the board of directors, where the conduct of such member is likely to be prejudicial to the sound and prudent management of the SEF or DCM.[191]
- A SEF or DCM must notify the Commission within five business days of any changes to the membership of the board of directors or its committees.[192]

Given the complex nature of the SEF and DCM marketplace, their role as self-regulators over their markets, and the overall impact of such exchanges on the integrity, resilience, and vibrancy of U.S. derivatives and financial markets, the Commission proposes in §§ 37.1204(b) and 38.854(b) to require that each member of a SEF or DCM board of directors have relevant expertise to fulfill the roles and responsibilities of their position. The Commission believes that experience in financial services, risk management, and financial regulation are examples of relevant expertise.

The Commission proposes §§ 37.1204(c) and 38.854(c) to prohibit linking the compensation of public directors and other non-executive members of the board of directors to the business performance of the SEF or DCM, or any affiliate of the SEF or DCM. The Commission believes prohibiting compensation in this manner would help enable non-executive directors to remain independent and focused on making objective decisions for the SEF or DCM. The Commission further believes it is necessary to capture all compensation—from either the SEF or the DCM or an affiliate—that a public director or non-executive member of the board could receive. Whether a specific compensation arrangement is ''directly dependent on the business performance'' of the SEF or DCM, or its affiliates, as contemplated under proposed §§ 37.1204(c) and 38.854(c), would depend on specific facts and circumstances. The Commission understands that it may be industry practice to include some form of nominal equity in a compensation package. The Commission does not consider nominal equity ownership interest, in and of itself, to be compensation that is ''directly dependent on the business performance'' of the SEF or DCM or its affiliates. However, the Commission considers any equity ownership interest in a SEF or DCM or its affiliates that is more than nominal to be compensation that is ''directly dependent on the business performance'' of the SEF or DCM or its affiliates. In addition, the Commission believes that providing bonuses based on specific sales or customer acquisition targets would constitute compensation that is ''directly dependent on the business performance'' of the SEF or DCM or its affiliates. Finally, any equity ownership included as a component of public director compensation that reasonably could be viewed as being substantial enough to potentially compromise the impartiality of a public director would not be considered nominal.

Proposed §§ 37.1204(d) and 38.854(d) require SEFs' and DCMs' board of directors to conduct an annual self-assessment to review their performance. The Commission believes that such self-assessments will encourage boards of directors to reflect on their performance and will enhance their accountability to the Commission regarding the manner in which such board of directors causes the SEF or DCM to discharge all statutory, regulatory, and self-regulatory responsibilities under the CEA, including market regulation functions. For example, Commission staff may request to see the results of the self-

[188] Proposed § 38.854(a)(1).

[189] Proposed § 37.1204(a)(1).

[190] Proposed §§ 37.1204(a)(2) and 38.854(a)(2).

[191] Proposed §§ 37.1204(e) and 38.854(e).

[192] Proposed §§ 37.1204(f) and 38.854(f).

assessment during a rule enforcement review of the SEF or DCM. The Commission notes that many SEF and DCM boards of directors already conduct self-assessments, and that this proposal provides significant discretion to SEFs and DCMs to determine how best to implement such an assessment. The Commission believes that SEFs and DCMs should consider including the following in the self-assessment: (1) observations relating to the flow of information provided to the board of directors; (2) the effects of any changes to the board composition, succession planning and human capital management; (3) potential improvement to the SEF's or DCM's governance structure; and (4) any other information or analysis that would improve the board's ability to perform its duties and responsibilities.

4. Questions for Comment

The Commission requests comment on all aspects of the proposed board composition requirements. The Commission further requests comment on the questions set forth below.

1. Have there been any industry changes since the adoption of the DCM Core Principle 16 Acceptable Practices that the Commission should consider in adopting board composition requirements for SEFs and DCMs?

2. Is the 35 percent public director requirement sufficient to introduce an independent perspective on a SEF's or DCM's board of directors?

3. Should the Commission increase the required percentage of public directors to 51 percent?

4. Is there a number less than 51 percent but greater than 35 percent that would be more appropriate?

5. Should the Commission prohibit public director compensation from including any equity ownership?

6. Should the Commission prescribe a specific numerical limit on the amount of equity ownership paid to a public director, and, if so, what is the appropriate limit?

7. What are examples of compensation that would be more than nominal or directly dependent on the business performance of a SEF or DCM?

b. Public Director Definition—Proposed §§ 37.1201(b)(12) and 38.851(b)(12)

1. Background

Public directors can be a valuable governance tool for organizations, including SEFs and DCMs. As ''outsiders,'' public directors are in a unique position to bring an unbiased perspective. Their objectivity and independence may enhance the accountability of the board of directors and lend credibility to the organization, its leaders, and its governance arrangements. Since public directors do not have a material relationship with the SEF or DCM, the Commission believes they are well-suited to balance the commercial interests of the SEF or DCM and its regulatory obligations, including its market regulation functions.

2. Existing Regulatory Framework

The current ''public director'' definition found in the DCM Core Principle 16 Acceptable Practices provides for the DCM's board of directors to determine, on the record, that the director has no ''material relationship'' with the DCM (the ''overarching materiality test'').[193] A ''material relationship'' is ''one that reasonably could affect the independent judgment or decision-making of the director.'' Additionally, the public director definition contains a list of per se material relationships (the ''bright-line disqualifiers'') that disqualify service as a public director if: (1) such director is an officer or an employee of the DCM or an officer or an employee of its affiliate; (2) such director is a member of the DCM; (3) such director, or a firm in which the director is an officer, director, or partner, receives more than $100,000 in aggregate annual payments [194] for legal, accounting, or consulting services from the DCM, or an affiliate of the DCM.[195] Such list is neither exclusive nor exhaustive; even if the bright-line disqualifiers are not triggered, each public director nominee must satisfy the overarching materiality test. Additionally, the bright-line disqualifiers apply to a member of the director's ''immediate family,'' which includes spouse, parents, children and siblings.[196] Both the overarching materiality test and the bright-line disqualifiers are subject to a one-year look-back period.[197] The public director definition in the DCM Core Principle 16 Acceptable Practices provides that a DCM's public directors may also serve as directors of the DCM's affiliate, so long as they satisfy the requirements of the public director definition.[198] Finally, a DCM is obligated to disclose to the Commission which members of its board of directors are public directors, and the basis for those determinations.[199]

3. Proposed Rules

The Commission proposes to adopt in §§ 37.1201(b)(12) and 38.851(b)(12) a public director definition, similar to the definition in the DCM Core Principle 16 Acceptable Practices, for SEFs and DCMs, respectively. The Commission believes that SEFs and DCMs must have a board of directors that includes sufficient representation of independent perspective through public directors. The Commission believes that, in determining whether an individual qualifies as a public director, it must be considered whether there are any specific interests that would affect the individual's decision-making. In the Commission's experience, through its routine oversight of SEFs and DCMs, a ''material relationship'' that is based on certain personal or professional interests or financial incentives, could affect an individual's decision-making.

While Commission regulation § 1.64 seeks to address the conflict of interest that was prevalent when SROs were member-owned—*i.e.,* that governing boards would have an exclusively member perspective [200]—this is no longer the predominant concern for existing SEFs and DCMs. In a demutualized exchange environment, the conflicts between commercial interests and market regulation functions are exacerbated. The Commission believes that the higher standard created by the proposed public director definition is reasonably necessary to ensure an independent perspective in a demutualized exchange environment. Commission staff has identified, through its oversight of SEFs, that some SEFs have voluntarily adopted board composition requirements that reflect the DCM Core Principle 16 Acceptable Practices public director definition.

The Commission proposes to codify the existing DCM Core Principle 16 Acceptable Practices public director definition for both SEFs and DCMs, with some modifications. First, the proposed definition would amend the bright-line disqualifier that applies to a director receiving more than $100,000

[193] Part 38, Appendix B, Core Principle 16 Acceptable Practices (b)(2)(i).

[194] However, compensation for services as a director of the DCM or as a director of an affiliate of the DCM does not count toward the $100,000 payment limit, nor does deferred compensation for services prior to becoming a director, so long as such compensation is in no way contingent, conditioned, or revocable.

[195] Part 38, Appendix B, Core Principle 16 Acceptable Practices (b)(2)(ii).

[196] Part 38, Appendix B, Core Principle 16 Acceptable Practices (b)(2)(ii)(D).

[197] Part 38, Appendix B, Core Principle 16 Acceptable Practices (b)(2)(iii).

[198] Part 38, Appendix B, Core Principle 16 Acceptable Practices (b)(2)(iv).

[199] Part 38, Appendix B, Core Principle 16 Acceptable Practices (b)(2)(v).

[200] 58 FR 37644 at 37647.

in aggregate annual payments to remove the reference ''for legal, accounting, or consulting services'' from the SEF or DCM, or an affiliate of the SEF or DCM. The bright-line disqualifier would now limit receiving any payments in excess of $100,000 for any purpose. The proposed rule also would amend this bright-line disqualifier to apply to situations where a director is an employee of a firm receiving such payments.

Second, the proposed rule expands the bright-line disqualifier that applies to a situation where a director is a member of the SEF or DCM or a director, an officer of a member, to also apply where: (1) such director is an employee of a member of the SEF or DCM; and (2) extends the disqualification to apply to the prospective director's relationships, as a director, officer or employee, with an affiliate of a member of the SEF or DCM. Third, the Commission proposes expanding the scope of the bright-line disqualifiers to account for relationships that the director may have with an affiliate of the SEF or DCM or an affiliate of a member of the SEF or DCM.

Fourth, the Commission proposes to establish a new bright-line disqualifier that would prohibit an individual who, directly or indirectly, owns more than 10 percent of the SEF or DCM or an affiliate of the swap execution facility, or is an officer or employee of an entity that directly or indirectly owns more than 10 percent of the swap execution facility, from serving as a public director.

Fifth, the proposed public director definition replaces the term ''immediate family'' and expands the bright-line disqualifiers to apply to any person with whom the director has a ''family relationship,'' as set forth in proposed §§ 37.1201(b)(7) and 38.851(b)(7). Finally, the proposed definition includes a new requirement to clarify that the public director determination must be made ''upon the nomination or appointment of the director and at least on an annual basis thereafter.'' Consistent with the proposed fitness requirements in proposed §§ 37.1201(b)(12) and 38.851(b)(12), the Commission believes all determinations with respect to the public director status of members of the board of directors should be completed upon their nomination to the board of directors—*i.e.,* prior to their appointment. Further, Commission staff's oversight has revealed that not all DCMs were diligently reviewing their public director determinations for existing directors on an annual basis.

The Commission believes that the above-mentioned amendments to the public director definition are necessary to capture the full scope of the relationships that could affect a prospective director's ability to bring an independent perspective to the decision-making of a SEF or DCM. Eliminating ''legal, accounting, or consulting service'' from the bright-line disqualifier that applies to payments in excess of $100,000 is necessary, as the provision of other services could also be ''material'' for purposes of establishing whether an individual qualifies as a public director. The Commission also proposes to expand the bright-line disqualifiers to certain relationships in which the director is an employee of: (1) a member of a SEF or DCM or its affiliate; and (2) an entity that receives more than $100,000 in aggregate annual payments from the SEF or DCM or its affiliate. In these situations, the Commission believes the ties between the outside entity and the SEF or DCM are close enough to impact the actual or perceived ability of the prospective director to bring an independent perspective. Furthermore, the Commission notes that such employees would likely be restricted from serving as public directors under the overarching materiality test. Similarly, the Commission is also expanding the bright-line disqualifier to include certain relationships with affiliates. The Commission has found, as detailed above, as market structures have evolved, growing interconnectedness between SEFs, DCMs, and their affiliates. This relationship between a SEF or DCM and its affiliates—and by extension, their employees and officers—creates, in the Commission's view, a ''material relationship.'' Finally, although the 10 percent ownership bright-line disqualifier would be new, the Commission believes that an individual with an ownership interest greater than 10 percent would not currently qualify as a public director under the overarching materiality test. A 10 percent ownership of a SEF or DCM is significant enough to call into question, whether in actuality or perception, a public director's ability to act in an impartial manner to ensure business concerns do not impact market regulation functions.

4. Questions for Comment

The Commission requests comment on all aspects of the proposed public director definition. The Commission further requests comment on the questions set forth below.

1. Are there other circumstances that the Commission should include as bright-line disqualifiers? Are there circumstances that the Commission should remove from such tests?

2. Should the Commission increase or decrease the $100,000 in aggregate payment threshold?

3. Is the one-year look back period sufficient, in order to protect market regulation functions from directors that are conflicted due to industry ties?

4. Should the Commission continue to permit public directors to serve on the board of directors of a SEF's or DCM's affiliate? Why or why not?

c. Nominating Committee and Diverse Representation—Proposed §§ 37.1205 and 38.855

1. Background

As described herein,[201] the structural governance requirements applicable to boards of directors of SEFs and DCMs aim to mitigate conflicts of interest through the representation of independent perspectives. Public director composition requirements alone may not be sufficient to ensure the representation of such independent perspective. Commission staff's routine oversight has found that many SEFs and DCMs do not currently have formal policies or procedures for identifying potential members of the board of directors, and instead rely entirely on the personal networks of members of their boards of directors or executives. The Commission believes that an independent perspective on the SEF or DCM board of directors is necessary to mitigate conflicts of interest. Lack of policies or procedures for identifying potential members of the board of directors may result in delays in the appointment process.

2. Existing Regulatory Framework

DCM Core Principle 17 requires the governance arrangements of a board of directors of a DCM to permit consideration of the views of market participants. Similarly, pursuant to Commission regulation § 1.64(b)(3), members of self-regulatory organization governing boards, including SEF governing boards, must include a diversity of membership interests. However, neither DCMs nor SEFs are currently obligated by Commission regulations to have a nominating committee to identify or manage the process for nominating potential members of the board of directors.

To help protect the integrity of the process by which a SEF or DCM selects members of its board of directors, the Commission proposes requiring each

[201] *See* Section V(a) herein; Proposed §§ 37.1204 and 38.854.

SEF or DCM to have a nominating committee. The role of the nominating committee would be to: (1) identify a diverse pool of individuals qualified to serve on the board of directors, consistent with Commission regulations; and (2) administer a process for the nomination of individuals to the board of directors.

3. Proposed Rules

Proposed §§ 37.1205 and 38.855 would require a nominating committee to identify a pool of candidates who are qualified and represent diverse interests, including the interests of the participants and members of the SEF or DCM. Thus, proposed §§ 37.1205 and 38.855 incorporate, and expand upon, the diversity of membership requirements found in Commission regulation § 1.64, and, with respect to DCMs, are consistent with DCM Core Principle 17, and reasonably necessary to advance DCM Core Principle 16. Accordingly, the Commission proposes conforming amendments to Commission regulation § 37.2 to exempt SEFs from Commission regulation § 1.64.

Proposed §§ 37.1205 and 38.855 would require that public directors comprise at least 51 percent of the nominating committee, that a public director chair the nominating committee, and that the nominating committee report directly to the board of directors. The Commission proposes that the nominating committee be at least 51 percent public directors to limit the influence of non-public directors that are already involved in the governance and management of a SEF or DCM, and to help ensure a broader pool of candidates for consideration, in turn promoting diversity and independent perspectives in the governing bodies of SEFs and DCMs. The nominating committee takes the first steps in identifying the pool of future members of the board of directors, and a broad pool of candidates is critical to maintaining independent perspectives on the board of directors. Therefore, the Commission is proposing that public directors should represent a majority of members of the nominating committee.

Proposed §§ 37.1205 and 38.855 also would require the nominating committee to administer a process for nominating individuals to the board of directors. This process must be adopted prior to registration as a SEF or designation as a DCM. Similarly, boards of directors must be appointed prior to registration or designation. However, as set out in proposed §§ 37.1205(b) and 38.855(b) the initial members of the board of directors serving upon registration or designation would not be required to be appointed by the nominating committee.

4. Questions for Comment

The Commission requests comment on all aspects of the proposed nominating committee requirements.

d. Regulatory Oversight Committee—Proposed §§ 37.1206 and 38.857

1. Background

SEFs and DCMs are faced with commercial pressures to remain competitive in an industry where business models, trading practices, and products are rapidly evolving. As business enterprises, SEFs and DCMs are also tasked with maximizing shareholder value, generating profits, and satisfying the diverse needs of their constituencies. SEFs and DCMs, therefore, may face conflicts between their commercial interests and their market regulation obligations.

Other competing demands may unduly influence a SEF's or DCM's market regulation functions, such as the interests of their ownership, management, market participants, membership, customers, and other constituencies. Externally, SEFs and DCMs may find themselves conflicted with affiliated entities—including affiliated entities that are directly or indirectly trading on or subject to the rules of the SEF or DCM, affiliated entities that are in possession of data acquired by or generated from the SEF or DCM, and affiliated entities to whom SEF or DCM employees owe duties based on participating in the functions of both the affiliated entities and the SEF or DCM. The Commission published the ROC component of the DCM Core Principle 16 Acceptable Practices in 2007 to minimize these conflicts by helping to insulate core regulatory functions from improper influences and pressures.[202] In the Commission's experience, ROCs can serve one of the most critical elements of a DCM's governance structure for mitigating conflicts of interests.

2. Existing Regulatory Framework

In proposing requirements for SEF and DCM ROCs, the Commission is largely codifying language found in the ROC component of the DCM Core Principle 16 Acceptable Practices.[203] Currently, to demonstrate compliance under the acceptable practices, a DCM must establish a ROC, consisting of only public directors, to assist it in minimizing actual and potential conflicts of interest.[204] A ROC is a standing committee of the board of directors.[205] The purpose of the ROC is to oversee the DCM's regulatory program on behalf of the board of directors, which in turn delegates sufficient authority, dedicates sufficient resources, and allows sufficient time for the ROC to fulfill its mandate.[206] The Acceptable Practices for DCM Core Principle 16 describe a ROC that is responsible for the following: (1) monitoring the DCM's regulatory program for sufficiency, effectiveness, and independence; (2) overseeing all facets of the program;[207] (3) reviewing the size and allocation of the regulatory budget and resources; and the number, hiring and termination, and compensation of regulatory personnel; (4) supervising the DCM's CRO, who will report directly to the ROC; (5) preparing an annual report assessing the DCM's self-regulatory program for the board of directors and the Commission; (6) recommending changes that would ensure fair, vigorous, and effective regulation; and (7) reviewing regulatory proposals and advising the board of directors as to whether and how such changes may impact regulation.[208] In performing these functions, the ROC plays a critical role in insulating the CRO and the DCM's self-regulatory function from undue influence that may exert pressure over the CRO to put a DCM's commercial interests ahead of its market regulation functions. The ROC's is specifically tasked with oversight of a SEF's or DCM's market regulation functions. Conversely, while the interests of the ROC and a DCM's CRO or a SEF's CCO are aligned, only the ROC carries with it the authority granted by the board of directors. Accordingly, the ROC, along with the board of directors and CCO or CRO, are all integral components of a SEF's or DCM's conflicts of interest framework.

Given that SEFs and DCMs face similar pressures that may conflict with their market regulation functions—such as trade practice surveillance, market surveillance, real-time market monitoring, audit trail enforcement, investigations of possible rule violations, and disciplinary actions—the

[202] 2007 Final Release, 72 FR 6936 at 6940.

[203] Part 38, Appendix B, Core Principle 16 Acceptable Practices.

[204] Part 38, Appendix B, Core Principle 16 Acceptable Practices (b)(3)(i).

[205] *Id.*

[206] *Id.*

[207] This includes including trade practice and market surveillance; audits, examinations, and other regulatory responsibilities with respect to member firms (including ensuring compliance with financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and the conduct of investigations.

[208] Part 38, Appendix B, Core Principle 16 Acceptable Practices (b)(3)(ii).

Commission believes that SEFs and DCMs would benefit from the protections that are offered by a ROC.

3. Proposed Rules

i. Codifying DCM Core Principle 16 ROC Acceptable Practices

Accordingly, the Commission proposes to require in § 38.857(a) that DCMs must have a ROC composed of only public directors. Commission staff has found, through its general oversight of DCMs, that existing DCM ROCs are effective in providing structural governance protections that help DCMs to minimize conflicts of interest. For example, in their role as members of the ROC, these public directors are not tasked with making decisions on commercial matters or other interests of the SEF or DCM that may conflict with market regulation functions. Accordingly, Commission staff has found that ROC members have provided DCM CROs a ''safe space'' to raise concerns and have advocated, when appropriate, for the CRO and the market regulation functions.

Second, the Commission proposes in § 37.1206(a) to include a ROC requirement for SEFs, which, like DCMs, also perform market regulation functions. Through its experience with SEF registrations, routine communications with SEFs, and regulatory consultations, Commission staff has found that some SEFs established ROCs that included non-public directors and SEF executives (or executives of SEF affiliates). As a result, a committee intended to insulate the market regulation function from commercial interests had its own potential conflicts of interest. Accordingly, the Commission proposes to include in § 37.1206(a), just as it is proposing to include in § 38.857(a), a requirement that SEFs have a ROC composed only of public directors.

Under proposed §§ 37.1206(d) and 38.857(d), both SEF and DCM ROCs would generally have identical oversight duties over market regulation functions, including: (1) monitoring the SEF's or DCM's market regulation functions for sufficiency, effectiveness, and independence; (2) overseeing all facets of the market regulation functions; [209] (3) approving the size and allocation of the regulatory budget and resources; and the number, hiring and termination, and compensation of staff required pursuant to §§ 37.203(c) and 38.155(a); (4) recommending changes that would promote fair, vigorous, and effective self-regulation; and (5) reviewing all regulatory proposals prior to implementation and advising the board of directors as to whether and how such proposals may impact market regulation functions.[210]

The Commission recognizes that SEFs are also subject to a statutory core principle requirement (SEF Core Principle 15) to designate a CCO to monitor the SEF's adherence to statutory, regulatory, and self-regulatory requirements and to resolve conflicts of interest that may impede such adherence.[211] Additionally, the CCO must report to the SEF board of directors (or similar governing body) or the senior SEF officer.[212] To account for the standing CCO requirements and to integrate the addition of a ROC, the Commission envisions the CCO continuing their duties to supervise the SEF's self-regulatory program,[213] as well as making recommendations in consultation with the ROC (in the event a conflict of interest involving the CCO exists).[214] As further discussed below,[215] the Commission believes involving the ROC in such matters will help to ensure that the CCO remains insulated from undue pressures and that conflicts of interest are appropriately managed.

To ensure that the ROC can fulfill its mandate, proposed §§ 37.1206(c) and 38.857(c) require that the board of directors delegate sufficient authority, dedicate sufficient resources, and allow sufficient time for the ROC to perform its functions. The Commission has previously stated that the ROC should have the authority, discretion and necessary resources to conduct its own inquiries; consult directly with regulatory staff; interview employees, officers, members, and others; review relevant documents; retain independent legal counsel, auditors, and other professional services; and otherwise exercise its independent analysis and judgment to fulfill its regulatory obligations.'' [216]

ii. Additional Proposed Requirements To Enhance SEF and DCM ROCs

In addition to codifying the existing DCM ROC acceptable practices for both SEFs and DCMs, the Commission proposes enhancing the ROC requirements with best practices Commission staff has identified through the course of its routine oversight. Commission staff has found that DCMs have substantial differences in their implementation of ROC administrative and procedural standards. For example, some DCMs have limited individuals other than ROC members or DCM staff performing market regulation functions from attending the ROC meetings, while others have allowed DCM executives and non-ROC members of the board of directors to attend. The Commission believes the former practice is preferable as the latter practice invites to ROC meetings the very conflicts of interest that the establishment of a ROC is intended to address. Accordingly, as discussed below, the Commission is proposing certain requirements related to ROC procedures, meetings, and documentation to help ensure that the manner in which SEFs and DCMs structure and administer their ROCs does not give rise to conflicts of interest.

In the DCM Core Principle 15 Release, the Commission stressed that ROCs conduct oversight and review, and are not intended to assume managerial responsibilities or to perform direct compliance work.[217] Accordingly, the Commission is not proposing to adopt the existing component of the Acceptable Practices for DCM Core Principle 16 addressing the ROC's supervision of the DCM CRO. As further discussed in proposed § 38.856,[218] proposed § 38.856(b)(1) would require the CRO to report to the board or senior officer of the DCM.[219] Similar to other employees and executives at SEFs and DCMs, the Commission expects that CCOs and CROs, respectively, would report up to a senior officer for

[209] The Commission is proposing a more simplified version of the ROC's current duties to oversee all facets of the regulatory program, including trade practice and market surveillance; audits, examinations, and other regulatory responsibilities with respect to member firms (including ensuring compliance with financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and the conduct of investigations.

[210] This includes, for example, proposed rules, and business initiatives, etc.

[211] *See* CEA section 5h(f)(15); 7 U.S.C. 7b–3(f)(15).

[212] *See* CEA section 5h(f)(15)(B)(i); 7 U.S.C. 7b–3(f)(15)(B)(i).

[213] See Commission regulation § 37.1501(c)(7), which requires the CCO to supervise the SEF's self-regulatory program with respect to trade practice surveillance, market surveillance, real-time market monitoring, compliance with audit trail requirements, enforcement and disciplinary proceedings, audits, examinations, and other regulatory responsibilities with respect to members and market participants (including ensuring compliance with, if applicable, financial integrity, financial reporting, sales practice, recordkeeping, and other requirements). Part 37 Final Rule, 78 FR 33476.

[214] Proposed § 37.1501(c).

[215] *See* Section V(h)(3) herein.

[216] See DCM Core Principle 15 Release, 71 FR 38740 at 38744–45, as it relates to the DCM acceptable practices in Appendix B to part 38.

[217] *See* 2007 Final Release, 72 FR 6936 at 6950.

[218] *See* Section V(f) herein.

[219] The Commission is using the term ''report to'' in proposed § 38.856(b) instead of the concept of supervision used in the DCM CP 16 Acceptable Practices because a board of directors, as an entity, cannot ''supervise'' a person.

managerial and administrative matters. The Commission believes this approach allows the ROC to focus its resources on its core responsibilities related to overseeing a SEF's or DCM's market regulation functions. Finally, the ROC will be involved in matters related to the appointment, removal and compensation of the SEF CCO or DCM CRO, under proposed §§ 37.1501(a)(4) and (5) and 38.856(c) and (d), respectively.

Based on Commission staff's routine oversight of SEFs and DCMs, the Commission's experience is that the ROC has served a crucial role in the management of conflicts of interest. As a board-of-directors-level committee of public directors, the Commission believes the ROC is well-positioned to manage conflicts that may impact market regulation functions. The conflicts of interest with which the Commission envisions the ROC's involvement are not merely potential or hypothetical. The Commission's oversight of SEFs and DCMs has identified instances involving actual conflicts of interest impacting market regulation functions which were adequately managed and addressed only when the SEF or DCM had a strong governance structure and sound conflicts of interest policies and procedures. Accordingly, the Commission is including in the duties in proposed §§ 37.1206(d) and 38.857(d) that the ROC, a standing committee of the board of directors, is charged with consulting with the SEF CCO or DCM CRO with identifying, minimizing and resolving any actual or potential conflicts of interest involving market regulation functions.

Proposed §§ 37.1206(e) and 38.857(e) require the ROC to periodically report to the board of directors. The Commission expects that this reporting would occur, for example, in regularly scheduled board of director meetings.

The Commission is also proposing several requirements related to procedures and documentation for ROC meetings. The Commission believes these requirements reflect best practices that certain DCMs already implement. Proposed §§ 37.1206(f) and 38.857(f) address ROC meetings and communications. Both SEF and DCM ROCs would be required to meet quarterly. These meetings may include CROs or CCOs and will allow the ROC to share information, discuss matters of mutual concern, and speak freely about potentially sensitive issues that may relate to the SEF's or DCM's management. To facilitate this open line of communication, the proposed rules prohibit, except for the limited circumstances referenced below, any individuals with actual or potential conflicts of interest from attending ROC meetings.

The Commission recognizes, however, that there may be limited circumstances in which it would be appropriate for individuals outside of the ROC–including business executives or employees whose interest may conflict in certain respects with the ROC's market regulation functions—to attend portions of ROC meetings. In particular, if a business executive or non-market-employee had a legitimate need [220] to attend a portion of a ROC meeting, the Commission's preliminary view is that it would not be inappropriate for the ROC to elect to allow these individuals to attend such portion of the meeting. However, the Commission preliminarily believes these individuals should not attend any portion of the ROC meeting outside of the discussion of their business. These individuals should not be present, in any capacity, during discussions of the SEF's or DCM's market regulation functions, such as surveillance, investigation, or enforcement work.

To account for these circumstances, the Commission proposes in §§ 37.1206(f)(1)(iii) and 38.857(f)(1)(iii) that the following information must be included in ROC meeting minutes: (a) list of the attendees; (b) their titles; (c) whether they were present for the entirety of the meeting or a portion thereof (and if so, what portion); and (d) a summary of all meeting discussions. Finally, proposed §§ 37.1206(f)(2) and 38.857(f)(2) would require the ROC to maintain documentation of the committee's findings, recommendations, deliberations, or other communications related to the performance of its duties. If SEFs and DCMs make their ROC meeting minutes available for distribution, including to the board of directors or another committee, the Commission believes any information relating to the SEF's or DCM's market regulation functions, including surveillance, investigations, and pending enforcement actions should be redacted to avoid any undue influence on these market regulation functions.

Finally, the Commission proposes to codify for both SEFs and DCMs, and to enhance, the existing annual report component of the ROC duties under the Acceptable Practices for DCM Core Principle 16.[221] These acceptable practices contemplate that the ROC, as part of its duties, will prepare an annual report assessing the DCM's self-regulatory program for the board of directors and for the Commission, which sets forth the regulatory program's expenses, describes its staffing and structure, catalogues disciplinary actions taken during the year, and reviews the performance of disciplinary committees and panels. In addition to codifying and enhancing this as an annual report requirement, in proposed §§ 37.1206(g)(1) and 38.857(g)(1), the Commission proposes requiring ROC annual reports to contain a list of any actual or potential conflicts of interest that were reported to the ROC, including a description of how such conflicts of interest were managed and resolved and an assessment of the impact of any conflicts of interest on the SEF's or DCM's ability to perform its market regulation functions, as well as requiring disclosure of details relating to all actions taken by the board of directors pursuant to recommendations of the ROC.

The Commission also proposes in §§ 37.1206(g)(2) and 38.857(g)(2) new SEF and DCM rules addressing filing requirements for the ROC annual report. The procedural requirements would mirror the SEF annual compliance report requirements [222] including specifying a filing deadline no later than 90 days after the end of the SEF's or DCM's fiscal year, establishing a process for report amendments and extension requests, recordkeeping requirements, and providing to the Division of Market Oversight delegated authority to grant or deny extensions. Finally, proposed §§ 37.1206(g)(3) and 38.857(g)(3) would establish a recordkeeping requirement for the SEF or DCM to maintain all records demonstrating compliance with the duties of the ROC and the preparation and submission of the annual report.

4. Questions for Comment

The Commission requests comment on all aspects of the proposed ROC requirements. The Commission further requests comment on the questions set forth below.

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[220] For example, to present new product launches or discuss personnel or policy changes unrelated to market regulation functions.

[221] The Commission recognizes that SEF CCOs also prepare an annual report; however, the ROC annual report will provide a critically important, independent perspective to assess the market regulation function, including the CCO. Additionally, the ROC annual report expressly requires disclosures of actual or potential conflicts of interest reported to the ROC and details of any instances of the board of directors rejecting the recommendations of the ROC, regardless of whether the same information would qualify as ''material non-compliance matters,'' subject to disclosure pursuant to § 37.1501(d)(4).

[222] *See* Commission regulation § 37.1501(d).

1. Are there any additional duties that should be included within the scope of the ROC's duties under proposed §§ 37.1206 and 38.857? Are there any additional requirements the Commission should consider prescribing for the ROC annual report?

2. Should business executives and employees working outside of the SEF's or DCM's market regulation functions be permitted to attend even portions of ROC meetings that relate to their business? Or should ROC meetings be strictly limited to ROC members and employees who perform work related to the SEF's or DCM's market regulation functions?

e. Disciplinary Panel Composition—Proposed §§ 37.1207 and 38.858

1. Background

As part of its market regulation function, each SEF and DCM must have a disciplinary program to discipline, suspend, or expel members or market participants that violate the SEF's or DCM's rules.[223] Disciplinary panels administer this program by conducting hearings, rendering decisions, and imposing sanctions with respect to disciplinary matters. The Commission believes that fair disciplinary procedures require SEF and DCM disciplinary panels to be: (1) independent of outside influences, (2) impartial, and (3) representative of a diversity of perspectives and experiences. Accordingly, the Commission is proposing rules implementing elements of the conflicts of interest obligations under DCM Core Principle 16 and SEF Core Principle 12 in order to promote and support these panel attributes.

2. Existing Regulatory Framework

Currently, the DCM Core Principle 16 Acceptable Practices provide that DCMs establish disciplinary panel composition rules that preclude any group or class of industry participants from dominating or exercising disproportionate influence on such panels.[224] Furthermore, the DCM Core Principle 16 Acceptable Practices provide for all disciplinary panels (and appellate bodies) to include at least one person who would qualify as a public director, except in cases limited to decorum, attire, or the timely submission of accurate records required for clearing or verifying each day's transactions.[225]

Commission regulation § 1.64(c), which applies to SEFs, requires each major disciplinary committee [226] or hearing panel to include: (1) at least one member who is not a member of the SEF; and (2) sufficient different membership interests so as to ensure fairness and to prevent special treatment or preference for any person in the conduct of a committee's or the panel's responsibility.

3. Proposed Rules

The Commission is proposing to adopt rules in proposed §§ 37.1207 and 38.858, respectively, that would codify, with certain enhancements, the DCM Core Principle 16 Acceptable Practices with respect to disciplinary panel composition. While the Commission believes that both the DCM Core Principle 16 Acceptable Practices and Commission regulation § 1.64(c) seek to promote fairness in the disciplinary process by introducing a diversity of interests to serve on disciplinary panels, the Commission believes that the DCM Core Principle 16 Acceptable Practices establish more appropriate practices for achieving fairness in today's SEF and DCM environments. For example, providing for a public participant on the disciplinary panel to be the chair introduces an independent perspective in a steering role that the Commission believes will enhance the overall fairness of the disciplinary process. The Commission believes that if SEFs are subject to rules that codify the DCM Core Principle 16 Acceptable Practices with respect to disciplinary panel composition, it would not be necessary for SEFs also to be subject to the requirements of Commission regulation § 1.64(c). As noted above in Section V(c)(3) herein, the Commission is also proposing to amend Commission regulation § 37.2 to exempt SEFs from Commission regulation § 1.64 in its entirety.

Proposed § 38.858(a)(1) would require that DCMs adopt rules to preclude any group or class of participants from dominating or exercising disproportionate influence on a disciplinary panel, and proposed § 37.1207(a)(1) would establish an analogous requirement for SEFs. Accordingly, the proposed rules would be consistent with the disciplinary panel component of the DCM Core Principle 16 Acceptable Practices. The Commission believes the proposed rules are reasonably necessary to promote impartial disciplinary panels, which are critical decision-makers in fulfilling a SEF's or DCM's market regulation functions.

The Commission is also proposing additional requirements to enhance the existing regulatory framework. First, the proposal would clarify in proposed §§ 37.1207(a) and (b) and 38.858(a) and (b) that SEFs' and DCMs' disciplinary panels and appellate panels must consist of two or more persons. The Commission believes a disciplinary panel must have more than one person in order to preclude any group or class of participants from dominating or exercising disproportionate influence, as currently contemplated under the DCM Core Principle 16 Acceptable Practices, and proposed in these rules. Second, proposed §§ 37.1207 and 38.858 would prohibit any member of a disciplinary panel from participating in deliberations or voting on any matter in which the member has an actual or potential conflict of interest, consistent with the general conflicts of interest provisions proposed in §§ 37.1202 and 38.852. Third, proposed §§ 37.1207(b) and 38.858(b) would extend the public participant requirement to any SEF and DCM committee to which disciplinary panel decisions may be appealed. Fourth, the Commission proposes technical amendments to Commission regulations §§ 37.206(b) and 38.702 to remove the references that disciplinary panels must meet the composition requirements of part 40,[227] and replace these references with references to the composition requirements of proposed regulations §§ 37.1207 and 38.858, respectively. The Commission also proposes changing the reference to ''compliance'' staff to ''market regulation'' staff. This is intended for clarity and is consistent with proposed changes to §§ 38.155(a) and 37.203(c).

4. Questions for Comment

The Commission requests comment on all aspects of the proposed disciplinary panel composition requirements. The Commission further requests comment on the questions set forth below.

1. Are there any situations in which it would be appropriate for a disciplinary panel to be comprised of only one individual? If so, please describe.

[223] CEA section 5(d)(13); 7 U.S.C. 7(d)(13); CEA section 5h(f)(2)(B); 7 U.S.C. 7b–3(f)(2)(B).

[224] Part 38, Appendix B, Core Principle 16 Acceptable Practices (b)(4).

[225] *Id.*

[226] Commission regulation § 1.64(a)(2) defines a ''Major disciplinary committee'' as a committee of persons who are authorized by a self-regulatory organization to conduct disciplinary hearings, to settle disciplinary charges, to impose disciplinary sanctions or to hear appeals thereof in cases involving any violation of the rules of the self-regulatory organization subject to certain exceptions.

[227] There are currently no composition requirements in part 40 of the Commission's regulations.

2. Should the Commission exempt requiring a public participant on a disciplinary panel in cases solely involving decorum or attire?

f. DCM Chief Regulatory Officer—Proposed § 38.856

1. Background

The Commission is proposing to codify current DCM practices regarding the CRO position. The DCM Core Principle 16 Acceptable Practices do not provide that DCMs have a CRO. However, Commission staff has found through its oversight activities that all DCMs either have a CRO, or an individual performing the same functions as a CRO. DCM CROs generally are responsible for administering a DCM's market regulation functions.

2. Existing Regulatory Framework

Although not expressly a component of the DCM Core Principle Acceptable Practices, the framework created under the DCM Core Principle 16 Acceptable Practices clearly envisioned the establishment of a CRO position. Specifically, supervising the ''the contract market's chief regulatory officer, who will report directly to the ROC'' is one of the ROCs enumerated duties.[228] In adopting the DCM Core Principle 16 Acceptable Practices, the Commission emphasized that the relationship between the ROC and the CRO is a key element of the insulation and oversight provided by the ROC structure, and that, along with the board of directors, it is intended to protect regulatory functions and personnel, including the CRO, from improper influence in the daily conduct of regulatory activities and broader programmatic regulatory decisions.[229]

While the Commission did not explicitly require DCMs to appoint CROs as part of the DCM Final Rules, the Commission noted that current industry practice is for DCMs to designate an individual as chief regulatory officer, and it will be difficult for a DCM to meet the staffing and resource requirements of § 38.155 without a chief regulatory officer or similar individual to supervise its regulatory program, including any services rendered to the DCM by a regulatory service provider.[230]

3. Proposed Rules

Proposed § 38.856(a)(1) requires each DCM to establish the position of CRO and designate an individual to serve in that capacity and to administer the DCM's market regulation functions. The proposed rule further requires that (1) the position of CRO must carry with it the authority and resources necessary to fulfill the duties set forth for CROs; and (2) the CRO must have supervisory authority over all staff performing the DCM's market regulation functions. The Commission believes that the above-described requirements of the proposed rule would ensure that a CRO has authority over any staff and resources while they are acting in furtherance of the DCM's market regulation functions. Of course, any such employees are subject to the DCM's conflicts of interest policies and procedures that DCMs must establish and enforce pursuant to DCM Core Principle 16 and corresponding proposed regulations §§ 38.851 and 38.852.

Proposed § 38.856(a)(2) requires that the individual designated to serve as CRO must have the background and skills appropriate for fulfilling the duties of the position. The Commission notes that a DCM should identify the needs of its particular market regulation functions, and ensure that the CRO has the requisite surveillance and investigatory experience necessary to perform the CRO's role. In addition, proposed § 38.856(a)(2) would provide that no individual disqualified from registration pursuant to sections 8a(2) or 8a(3) of the CEA may serve as a CRO.

Proposed § 38.856(b) sets forth reporting line requirements for the CRO, providing that the CRO must report directly to the DCM's board of directors or to a senior officer. This is a change from the existing supervisory structure contemplated under the DCM Core Principle 16 Acceptable Practices, which provide for the ROC to supervise the CRO.[231] Commission staff has found, through its RERs and general DCM oversight activities, that most CROs, like other exchange executives, report to a senior officer for purposes of performance evaluations and approval of administrative requests. The ROC may not be the appropriate body for a CRO to report to, as the ROC might meet only on a quarterly basis. The DCM's senior officer represents the highest level of authority at the exchange, other than the board of directors or its committees. Consequently, the Commission believes that it would be appropriate for the CRO to report to the senior officer.

However, proposed § 38.856(b) should be interpreted in conjunction with proposed § 38.856(f), discussed below, which specifies, among other things, that a CRO must disclose actual or potential conflicts of interest to the ROC, and that a qualified person temporarily serve in place of the CRO for any matter in respect of which the CRO has such a conflict. A DCM's ROC would therefore be involved in minimizing any actual or potential conflicts of interest of the CRO, which would include conflicts of interest between the duties of the CRO and the DCM's commercial interests. As the Commission previously stated, the CRO–ROC relationship permits regulatory functions and personnel, including the CRO, to continue operating in an efficient manner while simultaneously protecting them from any improper influence which could otherwise be brought to bear upon them.[232] The DCM is responsible for establishing the reporting lines for the CRO to ensure that conflicts of interest are routed to the appropriate decision-makers.

Finally, the Commission notes generally that a CRO reporting structure in which the CRO has a direct line to the board of directors or the senior officer allows the CRO to more easily gain approval for any new policies related to the DCM's market regulation functions that the CRO needed to implement, to the extent that they required approval of a senior officer or the board of directors. Since DCM rule changes often need to be approved by the board of directors, having the CRO report to the board of directors or to the senior officer (who likely regularly communicates with the board) would allow the CRO to more easily explain the need for rule changes, and to answer questions from the board of directors or the senior officer about such changes.

Proposed § 38.856(c) provides the following CRO appointment and removal procedures: (1) the appointment or removal of a DCM's CRO must occur only with the approval of the DCM's ROC; (2) the DCM must notify the Commission within two business days of the appointment of any new CRO, whether interim or permanent; and (3) the DCM must notify the Commission within two business days of removal of the CRO. These procedures help ensure that the CRO is

[228] Part 38, Appendix B, Core Principle 16 Acceptable Practices (b)(3)(ii)(D).

[229] 2007 Final Release, 72 FR 6936 at 6951 n.80.

[230] The Commission understands that some DCMs use a slightly different title for their CRO position. For example, they may use the term Chief Compliance Officer, as opposed to Chief Regulatory Officer, but such position is the functional equivalent to the CRO role proposed herein.

[231] Part 38, Appendix B, Core Principle 16 Acceptable Practices (b)(3)(ii)(D). Additionally, the Commission is using the term ''report to'' in proposed § 38.856(b) instead of the concept of supervision used in the DCM CP 16 Acceptable Practices because a board of directors, as an entity, cannot ''supervise'' a person.

[232] 2007 Final Release, 72 FR 6936 at 6951 n.80.

properly insulated from undue influence, including commercial interests. For example, the requirement of ROC approval means that a senior officer of the DCM may not take unilateral action to replace the CRO if there is any dispute over the CRO's decisions or role in any market regulation function. In addition, the procedures requiring notification to the Commission ensure appropriate staff within the Commission are aware of who is fulfilling this key role and can initiate communications with the CRO as necessary. Moreover, the Commission will be aware if there is any lag in the appointment of a replacement CRO, and can take appropriate oversight action in such a scenario, as well.

Proposed § 38.856(d) provides that the board of directors or the senior officer of the DCM, in consultation with the DCM's ROC, must approve the compensation of the CRO. Involving the ROC in approving the compensation of the CRO further ensures that the CRO's role is insulated from improper influence or direction from the DCM's commercial interests. The Commission notes that while some portion of compensation may be in the form of equity, DCMs should avoid tying a CRO's salary to business performance in order to avoid potential conflicts of interest. The Commission believes the ROC is well-situated to determine whether specific compensation structures could raise potential conflicts of interest.

Proposed § 38.856(e) details the duties of the CRO, which include: (1) supervising the DCM's market regulation functions; (2) establishing and administering policies and procedures related to the DCM's market regulation functions; (3) supervising the effectiveness and sufficiency of any regulatory services provided to the DCM by a regulatory service provider in accordance with § 38.154; (4) reviewing any proposed rule or programmatic changes that may have a significant regulatory impact on the DCM's market regulation functions, and advising the ROC on such matters; and (5) in consultation with the DCM's ROC, identifying, minimizing, managing, and resolving conflicts of interest involving the DCM's market regulation functions.

The Commission views a CRO's role as being narrower than that of a CCO. As contemplated in these proposed rules, both CCOs and CROs would be required to have supervisory authority over certain staff,[233] and supervise the quality of regulatory services received, as applicable.[234] CCOs have additional responsibilities deriving from the statutory chief compliance officer core principle for SEFs, for which there is no DCM analogue. For example, CCOs are responsible for overall compliance of the SEF with section 5h of the CEA and related Commission rules,[235] for establishing and administering written policies to prevent violation of the CEA and Commission rules,[236] and for establishing procedures to address noncompliance issues identified through any means, such as look-back, internal or external audit findings, self-reported errors, or validated complaints.[237] The Commission understands that in some instances, CROs may take on these additional responsibilities, such as supervising the DCM's financial surveillance program under Core Principle 11 and associated Commission regulations.

Finally, and as discussed above, proposed § 38.856(f) provides that each DCM must establish procedures for the CRO's disclosure of actual or potential conflicts of interest to the ROC and designation of a qualified person to serve in the place of the CRO for any matter in respect of which the CRO has such a conflict, and documentation of such disclosure and designation.

4. Questions for Comment

The Commission requests comment on all aspects of the proposed CRO regulatory requirements. The Commission further requests comment on the questions set forth below.

1. Is the Commission correct that all DCMs have CROs or an individual performing CRO functions?

2. Are there any additional duties that should be included under proposed § 38.856(e)? Are there any that should be removed?

g. Staffing and Investigations—Proposed Changes to §§ 38.155, 38.158, and 37.203

1. Background

The Commission is proposing amendments to existing SEF and DCM rules relating to staffing and investigations. As discussed below, Commission staff has found there is a lack of clarity that has led to inconsistent approaches with respect to compliance with SEF and DCM market regulation staff and resource requirements. The Commission proposes enhancing SEF staffing requirements to require annual monitoring of staff size and workload to ensure SEFs have sufficient staff and resources dedicated to performing market regulation functions.[238] This would align SEF staffing obligations with existing DCM staffing obligations. Finally, for the purpose of clarity, staff is proposing certain non-substantive amendments.

2. Existing Regulatory Framework

Commission regulation § 38.155(a) provides that each DCM must establish and maintain sufficient compliance department resources and staff to ensure that it can conduct effective audit trail reviews, trade practice surveillance, market surveillance, and real-time market monitoring. A DCM's compliance staff also must be sufficient to address unusual market or trading events as they arise, and to conduct and complete investigations in a timely manner. Commission regulation § 38.155(b) provides that a DCM must monitor the size and workload of its compliance staff annually, and ensure that its compliance resources and staff are at appropriate levels. In determining the appropriate level of compliance resources and staff, the DCM should consider trading volume increases, the number of new products or contracts to be listed for trading, any new responsibilities to be assigned to compliance staff, the results of any internal review demonstrating that work is not completed in an effective or timely manner, and any other factors suggesting the need for increased resources and staff.

Existing Commission regulation § 37.203(c), similar to existing Commission regulation § 38.155(a), provides that a SEF must have sufficient compliance staff and resources to ensure it can conduct effective audit trail reviews, trade practice surveillance, market surveillance, and real-time market monitoring. However, part 37 of the Commission's regulations does not include for SEFs a regulation parallel to Commission regulation § 38.155(b)'s requirement for DCMs to annually

[233] Proposed § 37.1501(a)(1)(ii) requires the SEF CCO to have supervisory authority over all staff acting at the CCO's direction. Proposed § 38.856(a)(1)(iii) requires the DCM CRO to have supervisory authority over all staff performing the DCM's market regulation functions. Similarly, proposed § 38.856(e)(1) specifies that the DCM CRO must supervise the DCM's market regulation functions.

[234] Proposed §§ 37.1501(b)(8) and 38.856(e)(3).

[235] CEA section 5h(f)(15)(B)(v); 7 U.S.C. 7b–3(f)(15)(B)(v).

[236] CEA section 5h(f)(15)(B)(iv); 7 U.S.C. 7b–3(f)(15)(B)(iv).

[237] CEA section 5h(f)(15)(B)(vi); 7 U.S.C. 7b–3(f)(15)(B)(vi).

[238] As discussed below, the Commission also is proposing a technical amendment to existing § 38.155(a) to replace the list of duties a DCM must have sufficient staff to perform with the term ''market regulation functions.''

monitor the sufficiency of staff and resources.

Existing regulations §§ 38.158 and 37.203(f) relate to SEF and DCM obligations, respectively, regarding investigations and investigation reports. These provisions generally address investigation timeliness, substance of investigation reports, and how frequently warning letters may be issued.

3. Proposed Rules

The Commission is proposing amendments to existing §§ 38.155(a) and 37.203(c). First, the Commission proposes to replace references to ''compliance staff'' with ''staff.'' Second, proposed §§ 38.155(a) and 37.203(c) would amend the first sentence of the existing regulations to provide that SEFs and DCMs must establish and maintain sufficient staff and resources to ''effectively perform market regulation functions'' rather than listing the individual functions.[239] The Commission does not view these as substantive changes. References to staff rather than compliance staff are intended for clarity. Compliance staff could be viewed as a broad term that encompasses individuals who have obligations for compliance with all of the CEA and Commission regulations. To avoid confusion and a lack of clarity about which staff might fall within the scope of this broad term, the Commission proposes simply to replace references to ''compliance staff'' with ''staff.'' As noted, Commission regulations §§ 38.155(a) and 37.203(c) solely are focused on staff dedicated to performing market regulation functions.

The Commission also proposes to amend § 37.203 to add a new paragraph (d). The proposed provision would require SEFs to annually monitor the size and workload of its staff, and ensure its resources and staff effectively perform market regulation functions at appropriate levels. In determining the appropriate level of resources and staff, the proposed rule lists factors SEFs should consider. These factors include trading volume increases, the number of new products or contracts to be listed for trading, any new responsibilities to be assigned to staff, any responsibilities that staff have at affiliated entities, the results of any internal review demonstrating that work is not completed in an effective or timely manner, any conflicts of interest that prevent staff from working on certain matters and any other factors suggesting the need for increased resources and staff. In addition, paragraph (d) would include a reference to paragraph (c) to clarify that it applies to staff responsible for conducting market regulation functions.

Proposed § 37.203(d) is virtually identical to existing § 38.155(b) for DCMs. Given that SEFs and DCMs have the same obligation to perform market regulation functions, the Commission believes it is equally important for SEFs to annually review their staffing and resources to ensure they are appropriate and sufficient to adequately perform market regulation functions. Accordingly, consistent with the language in proposed § 37.203(d), the Commission is proposing to add to the list of factors that a DCM should consider in determining the appropriate level of resources and staff: (1) any responsibilities that staff have at affiliated entities; and (2) any conflicts of interest that prevent staff from working on certain matters. The Commission believes that the addition of these factors is necessary to account for potential constraints on resources and staff.

Additionally, the Commission proposes the following non-substantive changes to existing Commission regulation §§ 38.155 and 38.158. Proposed § 38.155 would rename the regulation ''Sufficient staff and resources.'' Proposed § 38.155(b) would add an internal reference to paragraph (a). This change is intended to clarify that the annual staff and resource monitoring requirement pertains to staff performing market regulation functions required under § 38.155(a). Proposed § 38.158(a) would replace the reference to ''compliance staff'' with ''staff responsible for conducting market regulation functions.'' Proposed § 38.158(b) would delete the reference to ''compliance staff investigation'' being required to be completed in a timely manner, and instead provide, more simply, that ''[e]ach investigation must be completed in a timely manner.'' Finally, proposed §§ 38.158(c) and (d) would delete the modifier ''compliance'' when referencing to staff.

Finally, the Commission proposes the following non-substantive changes to existing Commission regulation § 37.203. Proposed § 37.203(c) would rename the paragraph ''Sufficient staff and resources.'' The addition of proposed § 37.203(d) would result in renumbering the remaining provisions of § 37.203. Proposed § 37.203(g)(1), which would replace existing Commission regulation § 37.203(f)(1), adds a reference to ''market regulation functions,'' consistent with the new proposed defined term. Similarly, to avoid lack of clarity, the Commission proposes to delete the modifier ''compliance'' when referencing staff in existing § 37.203(f)(2)–(4).

4. Questions for Comment

The Commission requests comment on all aspects of the proposed changes to §§ 38.155, 38.158 and 37.203.

h. SEF Chief Compliance Officer—Proposed Changes to § 37.1501

1. Background

The Commission is proposing amendments to § 37.1501 for several reasons. First, the Commission proposes certain amendments to the existing SEF CCO requirements to ensure that, to the extent applicable, these requirements are consistent with the proposed DCM CRO requirements. Second, the Commission is proposing additional SEF CCO requirements to harmonize the language with other aspects of this rule proposal, namely proposed amendments that pertain to the board of directors and conflicts of interest procedures. Third, the Commission is proposing amendments that will more closely align § 37.1501 with the language of SEF Core Principle 15, which is codified in § 37.1500.[240]

2. Existing Regulatory Framework

The statutory framework for SEFs requires each SEF to designate an individual to serve as a CCO.[241] The CCO must report to the SEF's board of directors or senior officer,[242] and is responsible for certain enumerated duties, including compliance with the CEA and Commission regulations and resolving conflicts of interest.[243] The CCO is also responsible for designing the procedures to establish the handling, management response, remediation, retesting, and closing of

[239] *See* Sections I and II(d)(1) herein for a description of the definition of ''market regulation functions'' in proposed §§ 38.851(b)(9) and 37.1201(b)(9).

[240] *See* Commission regulation § 37.1500(b)(1).

[241] CEA section 5h(f)(15)(A); 7 U.S.C. 7b–3(f)(15)(A).

[242] CEA section 5h(f)(15)(B)(i); 7 U.S.C. 7b–3(f)(15)(B)(i).

[243] CEA section 5h(f)(15)(B) (ii)–(vi); 7 U.S.C. 7b–3(f)(15)(B)(ii)–(vi) establishes the following CCO duties: (1) reviewing compliance with the core principles; (2) in consultation with the board, a body performing a function similar to that of a board, or the senior officer of the SEF, resolving any conflicts of interest that may arise; (3) being responsible for establishing and administering the policies and procedures required to be established pursuant to this section; (4) ensuring compliance with the CEA and the rules and regulations issued under the CEA, including rules prescribed by the Commission pursuant to section 5h of the CEA; and (5) establishing procedures for the remediation of noncompliance issues found during compliance office reviews, look backs, internal or external audit findings, self-reported errors, or through validated complaints.

noncompliance issues.[244] Finally, the CCO is required to prepare an annual report describing the SEF's compliance with the CEA and the policies and procedures of the SEF.[245] These statutory requirements also are codified in Commission regulation § 37.1500.

Commission regulation § 37.1501 further implements the statutory CCO requirements. First, Commission regulation § 37.1501(a) establishes definitions for the terms ''board of directors'' and ''senior officer.'' Second, Commission regulation § 37.1501(b)(1) addresses the authority of the CCO, stating that the position shall: (1) carry with it the authority and resources to fulfill the CCO's duties; and (2) have supervisory authority over all staff acting at the discretion of the CCO. Third, Commission regulation § 37.1501(b)(2) establishes qualifications for the CCO, including a requirement that the CCO must: (1) have the appropriate background and skills; and (2) must not be disqualified from registration under CEA 8a(2) or 8a(3). Fourth, Commission regulation § 37.1501(b)(3) outlines the appointment and removal procedures for the CCO, which state that: (1) only the SEF's board of directors or senior officer may appoint or remove the CCO; and (2) the SEF shall notify the Commission within two business days of a CCO's appointment or removal. Fifth, Commission regulation § 37.1501(b)(4) requires the SEF's board of directors or senior officer to approve the CCO's compensation. Sixth, Commission regulation § 37.1501(b)(5) requires the CCO to meet with the SEF's board of directors or senior officer at least annually. Seventh, Commission regulation § 37.1501(b)(6) requires the CCO to provide any information regarding the self-regulatory program of the SEF as requested by the board of directors or the senior officer.

Commission regulation § 37.1501(c) further outlines the duties of the CCO, expanding on those already required under SEF Core Principle 15. For example, Commission regulation § 37.1501(c)(2) details that the CCO must take reasonable steps, in consultation with the board of directors or the senior officer of the SEF, to resolve any material conflicts of interest that may arise, including, but not limited to: (1) conflicts between business considerations and compliance requirements; (2) conflicts between business considerations and the requirement that the SEF provide fair, open, and impartial access as set forth in § 37.202; and; (3) conflicts between a SEF's management and members of the board of directors. In connection with establishing and administering the requisite procedures under Core Principle 15, Commission regulation § 37.1501(c)(6) specifies that the CCO must establish and administer a compliance manual designed to promote compliance with the applicable laws, rules, and regulations and a written code of ethics for the SEF designed to prevent ethical violations and to promote honesty and ethical conduct by SEF personnel. Finally, Commission regulation §§ 37.1501(c)(7) and (c)(8) detail the requirement that the CCO supervise the SEF's self-regulatory program as well as the effectiveness and sufficiency of any regulatory service provider, respectively.

Commission regulation § 37.1501(d) addresses the statutory requirement under SEF Core Principle 15 requiring a CCO to prepare an annual compliance report. Commission regulation § 37.1501(d) details that the report must contain, at a minimum: (1) a description and self-assessment of the effectiveness of the written policies and procedures of the SEF; (2) any material changes made to compliance policies and procedures during the coverage period for the report and any areas of improvement or recommended changes to the compliance program; (3) a description of the financial, managerial, and operational resources set aside for compliance with the CEA and applicable Commission regulations; (4) any material non-compliance matters identified and an explanation of the corresponding action taken to resolve such non-compliance matters; and (5) a certification by the CCO that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the annual compliance report is accurate and complete in all material respects.[246]

Commission regulation § 37.1501(e) addresses the submission of the annual compliance report, stating that: (1) the CCO must provide the annual compliance report for review to the board of directors or senior officer, who shall not require the CCO to make any changes to the report; (2) the annual compliance report must be submitted electronically to the Commission no later than 90 calendar days after the end of the SEF's fiscal year; (3) promptly upon discovery of any material error or omission made in a previously filed annual compliance report, the CCO must file an amendment with the Commission; and (4) the SEF may request an extension of time to file its annual compliance report from the Commission. Commission regulation § 37.1501(f) requires the SEF to maintain all records demonstrating compliance with the duties of the CCO and the preparation and submission of annual compliance reports consistent with Commission regulations §§ 37.1000 and 37.1001.

Finally, Commission regulation § 37.1501(g) delegates to the Director of the Division of Market Oversight the authority to grant or deny a request for an extension of time for a SEF to file its annual compliance report under Commission regulation § 37.1501(e).

3. Proposed Rules

The Commission is proposing to move the terms ''board of directors'' and ''senior officer'' from existing regulation § 37.1501(a) to proposed § 37.1201(b). The meaning of each term would remain unchanged, with one exception. Specifically, the Commission seeks to clarify the existing definition of ''board of directors'' by including the introductory language ''a group of people'' serving as the governing body of the SEF. The Commission notes that deleting the definitions from Commission regulation § 37.1501(a) will result in renumbering the remaining provisions of Commission regulation § 37.1501.

The Commission is not proposing any changes to existing Commission regulation § 37.1501(b)(1) or (b)(2).[247] However, the Commission is proposing a new § 37.1501(a)(3) that would require the CCO to report directly to the board or to the senior officer of the SEF. This would be a new provision in § 37.1501, but it is consistent with the language of SEF Core Principle 15, which is codified in § 37.1500.[248] Additionally, the language is consistent with the proposed supervisory requirements for a DCM CRO set forth in proposed § 38.856(b)(1).

Proposed § 37.1501(a)(4)(i) would amend the language in existing Commission regulation § 37.1501(b)(3)(i) to provide that the board of directors or senior officer may appoint or remove the CCO with the approval of the SEF's regulatory oversight committee. This addition is intended to help insulate the position of CCO from improper or undue influence. Proposed § 37.1501(a)(4)(ii) would retain the two-business day notification

[244] CEA section 5h(f)(15)(C); 7 U.S.C. 7b–3(f)(15)(C).

[245] CEA section 5h(f)(15)(D); 7 U.S.C. 7b–3(f)(15)(D).

[246] Commission regulation § 37.1501(d)(1)–(5).

[247] These provisions would be renumbered under the proposal as Commission regulation § 37.1501(a)(1) and (a)(2), respectively.

[248] *See* Commission regulation § 37.1500(b)(1).

requirement to the Commission of the removal of a CCO under Commission regulation § 37.1501(b)(3)(ii).

Proposed § 37.1501(a)(5) would amend the existing requirement in Commission regulation § 37.1501(b)(4) that the board of directors or the senior officer of the SEF shall approve the compensation of the CCO, to now require this approval to occur in consultation with the SEF's ROC. The Commission believes this proposed requirement would help ensure that the CCO position will remain free of improper influence.

The duties of the CCO under proposed § 37.1501(b) are substantively similar to existing Commission regulation § 37.1501(c), with two exceptions. First, proposed § 37.1501(b)(2) provides that the CCO must take reasonable steps in consultation with the SEF's board of directors ''or a committee thereof'' to manage and resolve material conflicts of interest. Regarding the CCO's duties to ''manage and resolve'' material conflicts of interest, the Commission notes there are multiple ways a conflict of interest could be managed and resolved. One example would be simply replacing a conflicted individual with an independent and qualified back-up. Another method to manage and resolve a conflict would be not to pursue a business priority where there is no other way in which to resolve the conflict. The added reference to ''committee'' accounts for the ROC's role in resolving conflicts of interest, which is provided in proposed § 37.1206(d)(4).

Second, proposed § 37.1501(b)(2)(i) specifies that conflicts of interest between business considerations and compliance requirements includes, with respect to compliance requirements, the SEF's ''market regulation functions.'' [249] The Commission believes that this proposed added language will help to clarify for SEFs and CCOs the obligation of CCOs to resolve conflicts of interest that relate to SEF Core Principle 2, SEF Core Principle 4, SEF Core Principle 6, Core Principle 10 and the applicable Commission regulations thereunder. Existing Commission regulation § 37.1501(c)(7) provides that the CCO must supervise the SEF's ''self-regulatory program,'' which includes trade practice surveillance; market surveillance; real time market monitoring; compliance with audit trail requirements; enforcement and disciplinary proceedings; audits, examinations, and other regulatory responsibilities (including taking reasonable steps to ensure compliance with, if applicable, financial integrity, financial reporting, sales practice, recordkeeping, and other requirements). Proposed § 37.1501(b)(7) would amend this provision to state that the CCO is responsible for supervising the SEF's self-regulatory program, including the market regulation functions set forth in § 37.1201(b)(9). Proposed § 37.1201(b)(9) defines ''market regulation functions'' to mean SEF functions required by SEF Core Principle 2, SEF Core Principle 4, SEF Core Principle 6, SEF Core Principle 10 and the applicable Commission regulations thereunder. The Commission is proposing this amendment for clarity and ease of reference.[250] The Commission views the proposed change as being consistent with the CCO's duties as described in existing Commission regulation § 37.1501(c)(7).[251]

Proposed § 37.1501(c) is an entirely new regulation that addresses conflicts of interest involving the CCO. The proposed rule requires the SEF to establish procedures for the disclosure of actual or potential conflicts of interest to the ROC. In addition, the SEF must designate a qualified person to serve in the place of the CCO for any matter for which the CCO has such a conflict, and maintain documentation of such disclosure and designation. As noted above, proposed § 37.1206(d)(4) requires the ROC to consult with the CCO in managing and resolving any actual or potential conflicts of interest involving the SEF's market regulation functions. The CCO's disclosure of actual or potential conflicts of interest to the ROC will facilitate the ROC's assistance in managing and resolving conflicts of interest involving the SEF's market regulation functions. The requirement that the SEF have procedures to designate a qualified person to serve in the place of the CCO for any matter in which the CCO is conflicted will help ensure there is a person with sufficient independence, expertise and authority to address such matters. The Commission believes that a qualified substitute for the CCO must, at a minimum, meet the qualification provisions set forth in existing Commission regulation § 37.1501(b)(2), but that a qualified substitute also should be free from conflicts of interest relating to the matter under consideration.

Proposed § 37.1501(d)(5) amends the existing annual compliance report requirement under Commission regulation § 37.1501(d) to require the annual report to include any actual or potential conflicts of interests that were identified to the CCO during the coverage period for the report, including a description of how such conflicts of interest were managed or resolved, and an assessment of the impact of any conflicts of interest on the swap execution facility's ability to perform its market regulation functions. The Commission proposes this requirement to help ensure it has sufficient notice of conflicts of interest, how they were resolved and whether they were resolved effectively.

4. Questions for Comment

The Commission requests comment on all aspects of the proposed changes to the SEF CCO regulatory requirements. The Commission further requests comment on the question set forth below.

1. Has the Commission struck the appropriate balance between the responsibilities of the CCO and the ROC with respect to identifying, managing and resolving conflicts of interest? Are there ways in which this balance should be modified?

2. Proposed § 37.1501(a)(5) provides that the board of directors or the senior officer of the SEF, in consultation with the ROC, shall approve the compensation of the CCO. Proposed § 38.856(d) provides the same requirement for the DCM's CRO. Should the Commission expand on this requirement, to also prohibit CCO and CRO compensation from being directly dependent on the SEF's or DCM's business performance?

VI. Conforming Changes

a. Commission Regulations §§ 37.2, 38.2, and Part 1

The Commission proposes adopting certain existing requirements from part 1, in particular those from Commission regulations §§ 1.59, 1.63, 1.64 and 1.69, into new regulations for SEFs and DCMs in parts 37 and 38, respectively. Accordingly, and as discussed in more detail above, the Commission is proposing to amend Commission

[249] Proposed § 37.1501(b)(2)(ii) includes a technical edit to add the words ''implementation of'' prior to the clause ''of the requirement that the swap execution facility provide fair, open, and impartial access as set forth in § 37.202.''

[250] The CCO's market regulation function duties are referenced in various contexts throughout the proposed rules including proposed §§ 37.1201, 37.1206(a), (d) and (f)).

[251] For avoidance of doubt, the term ''self-regulatory program,'' as used in proposed § 37.1501(b)(7), continues to include the full scope of areas described in existing Commission regulation § 37.1501(c)(7): trade practice surveillance, market surveillance, real time market monitoring, compliance with audit trail requirements, enforcement and disciplinary proceedings, audits, examinations, and other regulatory responsibilities (including financial integrity, financial reporting, sales practice, recordkeeping, and other requirements).

regulations §§ 37.2 and 38.2 to clarify the specific part 1 regulations that will no longer be applicable to SEFs and DCMs. Commission regulations §§ 1.59, 1.63, 1.64 and 1.69 would then apply only to registered futures associations. As part of the proposed amendments to 38.2 in this release, the Commission is proposing a ministerial amendment to eliminate from 38.2 any references to sections that are either ''reserved'' or have been removed.[252] Specifically, the Commission is proposing a ministerial amendment by eliminating references to (i) sections 1.44, 1.53, and 1.62, all of which have been reserved by the Commission, and (ii) part 8, which has been removed and reserved. Finally, consistent with the exemption language now included in proposed regulation § 37.2, the Commission is renaming this ''Exempt Provision.''

b. Transfer of Equity Interest—Commission Regulations §§ 37.5(c) and 38.5(c)

1. Background

The Commission proposes to amend regulations §§ 37.5(c) and 38.5(c) to: (1) ensure the Commission receives timely and sufficient information in the event of certain changes in the ownership or corporate or organizational structure of a SEF or DCM; (2) clarify what information is required to be provided and the relevant deadlines; and (3) conform to similar existing and proposed requirements applicable to DCOs. SEFs and DCMs can enter into transactions that result in a change in ownership or corporate or organizational structure. In those situations, Commission staff conducts due diligence to determine whether the change will impact adversely the operations of the SEF or DCM or its ability to comply with the CEA and Commission regulations. Similarly, Commission staff also considers whether any term or condition contained in a transaction agreement is inconsistent with the self-regulatory responsibilities of the SEF or DCM or with the CEA or Commission regulations. Commission staff's ability to undertake a timely and effective due diligence review of the impact, if any, of such transactions is essential.

While SEFs and DCMs are registered entities subject to Commission oversight, many of these entities are part of larger corporate families. SEF and DCM affiliates, including parent entities that own or control the SEF or DCM, are not necessarily registered with the Commission or otherwise subject to Commission regulations. Understanding how these larger corporate families are structured and how they operate may be critical to Commission staff understanding how a change in ownership or corporate or organizational structure could impact a SEF's or DCM's ability to comply with the CEA and Commission regulations. For example, how finances and resources are connected or shared between a parent, affiliates, and the SEF or DCM are critical facts that can impact the SEF's or DCM's core principle compliance. Similarly, how much control the parent company or an affiliate can legally exert over a SEF or DCM may impact the exchange's compliance culture, including governance policies.

Additionally, budgetary concerns might cause reductions in compliance staff, or a change in surveillance vendors. Changes in affiliate framework might also necessitate enhanced conflicts of interest procedures. In light of the corporate changes that can occur with respect to SEFs and DCMs, and the considerable impact such changes may have on the SEF's or DCM's business, products, rules, and overall compliance with the CEA and Commission regulations, the Commission is proposing rules that will clarify and enhance the Commission's authority to request information and documents in the event of certain changes in a SEF's or DCM's ownership or corporate or organizational structure.

2. Existing Regulatory Framework

Commission regulations §§ 37.5(c)(1) and 38.5(c)(1) require SEFs and DCMs, respectively, to notify the Commission in the event of an equity interest transfer. However, the notification requirement differs in two respects. First, the threshold that obligates a DCM to notify the Commission is when the DCM enters into a transaction involving the transfer of 10 percent or more of the equity interest in the DCM. In comparison, a SEF is required to notify the Commission when it enters into a transaction involving the transfer of 50 percent or more of the equity interest in the SEF. Second, Commission regulation § 37.5(c)(1) provides that the Commission may, ''upon receiving such notification, request supporting documentation of the transaction.'' Commission regulation § 38.5(c)(1) does not contain a similar explicit authority for the Commission to request such documentation for DCMs.

Commission regulations §§ 37.5(c)(2) and 38.5(c)(2) set forth the timing of the equity interest transfer notification to the Commission. These regulations are substantively similar and require notification at the earliest possible time, but in no event later than the open of business 10 business days following the date upon which the SEF or DCM enters into a firm obligation to transfer the equity interest.

Commission regulations §§ 37.5(c)(3) and 38.5(c)(3) govern rule filing obligations that may be prompted by the equity interest transfer. Specifically, if any aspect of the transfer necessitates the filing of a rule as defined part 40 of the Commission's regulations, then the SEF or DCM is required to comply with the rule filing requirements and procedures under section 5c(c) of the CEA and applicable Commission regulations.

Commission regulation § 37.5(c)(4) provides a certification requirement where a SEF is required to notify the Commission no later than two days after the equity transfer takes place that the SEF meets all of the requirements of section 5h of the CEA and the Commission regulations adopted thereunder. DCMs do not have an analogous certification requirement.

Finally, Commission regulations §§ 37.5(d) and 38.5(d) make certain delegations of authority to the Director of the Division of Market Oversight. Commission regulation § 37.5(d) provides that the Commission delegates the authority ''set forth in this section'' to the Director of the Division of Market Oversight. Therefore, the delegation of authority applies to information requests related to the business of the SEF in regulation § 37.5(a), demonstrations of compliance with the core principles and Commission regulations in § 37.5(b), and equity interest transfers in § 37.5(c). In contrast, the delegation of authority under Commission regulation § 38.5(d) provides that the Commission delegates the authority ''set forth in paragraph (b) of this section'' to the Director of the Division of Market Oversight. The scope of the delegation of authority provisions under § 38.5(d) is therefore limited to DCM demonstrations of compliance with the core principles and Commission regulations in § 38.5(b) and does not extend to requests for information related to the business of the DCM in § 38.5(a) and equity interest transfers in § 38.5(c).

3. Proposed Rules

The Commission proposes to amend regulation § 37.5(c)(1) to require SEFs to file with the Commission notification of transactions involving the transfer of at least 10 percent of the equity interest in

[252] Final Rule that deleted part 8—Final Rule, Adaptation of Regulations to Incorporate Swaps, 77 FR 66288 (November 2, 2012).

the SEF.[253] The proposed change to revise the reporting threshold from 50 percent to 10 percent would conform the SEF requirement with existing regulation § 38.5(c)(1) for DCMs and Commission regulation § 39.19(c)(4)(ix) for DCOs. As the Commission previously stated for DCMs, a 10 percent threshold is appropriate because a change in ownership of such magnitude may have an impact on the operations of the DCM.[254] The Commission believes the same is true for SEFs. The Commission also believes that such impact may be present even if the transfer of equity interest does not result in a change in control. For example, if one entity holds a 10 percent equity share in a SEF it may have a more significant voice in the operation and/or decision-making of the SEF than five entities each with a minority two percent equity interest.

Given the potential impact that a change in ownership could have on the operations of a DCM, the Commission believes it is appropriate to require a DCM to certify after such change that it will continue to comply with all obligations under the CEA and Commission regulations. The Commission believes that conforming § 38.5(c) to the SEF certification requirement will better allow the Commission to fulfill its oversight obligations, without undue burdens on DCMs.

The Commission also is proposing to amend regulations §§ 37.5(c)(1) and 38.5(c)(1) to expand the types of changes of ownership or corporate or organizational structure that would trigger a notification obligation to the Commission. The proposed amendments would require SEFs and DCMs to report any anticipated change in the ownership or corporate or organizational structure of the SEF or DCM, or its respective parent(s) that would: (1) result in at least a 10 percent change of ownership of the SEF or DCM, or a change to the entity or person holding a controlling interest in the SEF or DCM, whether through an increase in direct ownership or voting interest in the SEF or DCM, or in a direct or indirect corporate parent entity of the SEF or DCM; (2) create a new subsidiary or eliminate a current subsidiary of the SEF or DCM; or (3) result in the transfer of all or substantially all of the assets of the SEF or DCM to another legal entity. The proposed language generally tracks the current requirement for DCOs in Commission regulation § 39.19(c)(4)(ix)(A), as amended by the Commission's Final Rule on Reporting and Information Requirements for Derivatives Clearing Organizations.[255]

This final rule amended Commission regulation § 39.19(c)(4)(ix)(A)(1) to require a DCO to notify the Commission of changes that result in at least a 10 percent change of ownership of the derivatives clearing organization or a change to the entity or person holding a controlling interest in the derivatives clearing organization, whether through an increase in direct ownership or voting interest in the derivatives clearing organization or in a direct or indirect corporate parent entity of the derivatives clearing organization.[256]

In proposing this amendment, the Commission explained that it was proposing to amend the provision to require a DCO to report any change to the entity or person that holds a controlling interest, either directly or indirectly, in the DCO. The Commission noted that, because the current rule was tied to changes in ownership of the DCO by percentage share of ownership, DCOs are not currently required to report all instances in which there is a change in control of the DCO. It is possible that a change in ownership of less than 10 percent could result in a change in control of the DCO. For example, if an entity increases its stake in the DCO from 45 percent ownership to 51 percent, it is possible that control of the DCO would change without any required reporting. In addition, in some instances, a DCO is owned by a parent company, and a change in ownership or control of the parent was not required to be reported under the current rule despite the fact that it could change corporate control of the DCO. The Commission noted that the proposed changes to the rule would ensure that the Commission has accurate knowledge of the individuals or entities that control a DCO and its activities.[257]

The Commission believes the same rationale is applicable to SEFs and DCMs. It is possible that an increase in equity interest in an exchange from 45 percent to 51 percent, would change control of the exchange without required reporting under the current SEF and DCM regulations. Similarly, a change in ownership or control of a SEF's or DCM's parent is not required to be reported under the current regulations even though it could change corporate control of the SEF or DCM. The proposed changes would help to ensure that the Commission has accurate knowledge of the individuals or entities that control a SEF or DCM and its activities.[258]

The Commission is proposing to amend Commission regulations §§ 37.5(c)(2) and 38.5(c)(2) to clarify what information must be submitted to the Commission as part of a notification pursuant to Commission regulations §§ 37.5(c)(1) and 38.5(c)(1), as proposed to be amended. Existing Commission regulation § 37.5(c)(1) provides that upon receiving notification of an equity interest transfer from a SEF, the Commission may request the SEF to provide ''supporting documentation of the transaction.'' Although Commission regulation § 38.5(c)(1) currently includes a notification requirement for DCMs regarding equity interest transfers, it does not grant the Commission the specific authority to request supporting documentation upon the receipt of such a notification. Accordingly, the Commission proposes to harmonize and enhance the requirements between SEFs and DCMs by amending Commission regulations §§ 37.5(c)(2) and 38.5(c)(2) to state that, as part of a notification pursuant to Commission regulations §§ 37.5(c)(1) or 38.5(c)(1), as proposed to be amended, a SEF or DCM must provide ''required information'' including: a chart outlining the new ownership or corporate or organizational structure, a brief description of the purpose or the impact of the change, and any relevant agreement effecting the change and corporate documents such as articles of incorporation and bylaws.[259] Pursuant to proposed regulations §§ 37.5(c)(2)(i) and 38.5(c)(2)(i), the Commission may,

[253] In 2011, the Commission proposed a 10 percent equity interest transfer threshold for SEFs. Core Principles and Other Requirements for Swap Execution Facilities, 76 FR 1214 (Jan. 7, 2011). The final rule increased the threshold to 50 percent. Part 37 Final Rule, 78 FR 33476 (June 4, 2013).

[254] Core Principles and Other Requirements for Designated Contract Markets; Proposed Rule, 75 FR 80572 at 80576 n.32 (Dec. 22, 2010).

[255] Reporting and Information Requirements for Derivatives Clearing Organizations, 88 FR 53664 (Aug. 8, 2023).

[256] Reporting and Information Requirements for Derivatives Clearing Organizations, 87 FR 76698, 76716–17 (Dec. 15, 2022). *See id.* at 76716–17.

[257] *See id.* at 76704.

[258] The Commission's Division of Market Oversight generally addressed concepts of ownership in another rulemaking. *See, e.g.,* Ownership and Control Reports, Forms 102/102S, 40/40S, and 71; Final Rule, 78 FR 69178, 69261 (Parent—for purposes of Form 40, a person is a parent of a reporting trader if it has a direct or indirect controlling interest in the reporting trader; and a person has a controlling interest if such person has the ability to control the reporting trader through the ownership of voting equity, by contract, or otherwise.)

[259] The Commission notes that regulation § 39.19(c)(4)(ix)(B) currently requires a DCO to provide the Commission with the following: A chart outlining the new ownership or corporate or organizational structure; a brief description of the purpose and impact of the change; and any relevant agreements effecting the change and corporate documents such as articles of incorporation and bylaws.

after receiving such information, request additional supporting documentation related to the change in ownership or corporate or organizational structure, such as amended Form DCM or Form SEF exhibits, to demonstrate that the SEF or DCM will, following the change, continue to meet all the requirements in section 5 or 5h of the CEA (as applicable) and applicable Commission regulations.

The Commission believes that clarifying and enhancing its authority to request this information will encourage SEFs and DCMs to remain mindful of their self-regulatory and market regulation responsibilities when negotiating the terms of significant equity interest transfers or other changes in ownership or corporate or organizational structure. The Commission believes that it also will enhance Commission staff's ability to undertake a timely and effective due diligence review of the impact, if any, of such changes. In particular, parts 37 and 38 of the Commission's regulations require the filing of certain exhibits when a SEF or DCM applies for designation or registration. These include, among others, Exhibit A (the name of any person who owns ten percent (10%) or more of the Applicant's stock or who, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of the Applicant); Exhibit B (a list of the present owners, directors, governors or persons performing similar functions, including a description of any disqualifications or disciplinary actions related such persons under sections 8b and 8c of the Act); Exhibit E (a description of the personnel qualifications for each category of professional employees), Exhibit F (an analysis of staffing requirements necessary to carry out key operations), Exhibit H (a brief description of any material legal proceedings to which the SEF or DCM or any of its affiliates is a party), Exhibit M (the rulebook), Exhibit N (applicant agreements, including with third party service providers and member or user agreements), and Exhibit O (the compliance manual). In the event of a transfer of equity interest or similar ownership or corporate or organizational change to a SEF or DCM, the proposed amendments would strengthen Commission staff's authority to seek updated copies of such exhibits and other documents to confirm that the SEF or DCM will continue to be able to meet its regulatory obligations.

Pursuant to proposed regulations §§ 37.5(c)(2)(i) and 38.5(c)(2)(i), Commission staff would have clear authority to request amended Form SEF or DCM exhibits, such as Exhibit A. Exhibit A requires the full name and address of each such person. One potential scenario is that such updated exhibit reflects a non-U.S. 10 percent owner. Such information may cause Commission staff to undertake further inquiry as to whether the SEF or DCM, with such new non-U.S. owner, can demonstrate it has the ability to continue satisfying all of the requirements of section 5 of the CEA and applicable Commission regulations. Additionally, an amended Exhibit B of the Form SEF or Form DCM may reflect that an officer or director is disqualified or had disciplinary action taken against them under the Act.[260] The Commission also notes pursuant to proposed §§ 37.207(a) and 38.801(a), SEFs and DCMs must establish and enforce appropriate fitness standards for, among others, their officers, directors and any person who owns 10 percent or more of the SEF or DCM and who, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of the SEF or DCM, and any party affiliated with any of those persons. Information obtained through proposed regulations §§ 37.5(c)(2) and 38.5(c)(2) will inform the Commission as to whether the SEF or DCM remains compliant with such minimum fitness standards.

Next, proposed §§ 37.5(c)(3) and 38.5(c)(3) will require a notification pursuant to Commission regulations §§ 37.5(c)(1) or 38.5(c)(1), as proposed to be amended, to be submitted no later than three months prior to the anticipated change, provided that the SEF or DCM may report the anticipated change later than three months prior to the anticipated change if it does not know and reasonably could not have known of the anticipated change three months prior to the anticipated change. In such event, the SEF or DCM shall immediately report such change to the Commission as soon as it knows of such change. The Commission believes the proposed timing requirement strikes the appropriate balance between allowing Commission staff sufficient time to review the impact of the change and assess compliance with applicable statutory and regulatory requirements, while also preserving flexibility to the SEF or DCM if the anticipated change occurs more quickly than within three months.

In addition to the new reporting requirements, the proposal includes a new certification requirement for DCMs. Existing Commission regulation § 37.5(c)(4) requires the SEF, upon a transfer of equity interest, to file a certification that it meets all of the requirements of section 5h of the CEA and the Commission regulations adopted thereunder. The certification must be filed no later than two business days following the date on which the subject equity interest was acquired. DCMs currently do not have an analogous certification requirement.[261] Therefore, the Commission is proposing to amend Commission regulation § 38.5(c) by adding a certification requirement in regulation § 38.5(c)(5). The certification will require a DCM, upon a change in ownership or corporate organizational structure described in Commission regulation § 38.5(c)(1), to file with the Commission a certification that the DCM meets all of the requirements of section 5 of the CEA and applicable Commission regulations. The certification must be filed no later than two business days following the date on which the change in ownership or corporate or organizational structure takes effect. This should be interpreted to mean two business days after the change contemplated by the effectuating agreements actually occurred.

The Commission believes that there is no substantive difference necessitating disparate treatment between SEFs and DCMs regarding the certification. Given their roles as self-regulatory organizations, in the event of a subject change in ownership or corporate or organizational structure, the Commission believes it is imperative for the SEF or DCM to certify its compliance with the CEA and Commission regulations. The certification will help ensure that any such changes do not result in non-compliance. Toward that end, proposed §§ 37.5(c)(6) and 38.5(c)(6) provide that a change in the ownership or corporate or organizational structure of a SEF or DCM that results in the failure of the SEF or DCM to comply with any

[260] Exhibit B requires: a description of: (1) Any order of the Commission with respect to such person pursuant to section 5e of the CEA; (2) Any conviction or injunction against such person within the past ten (10) years; (3) Any disciplinary action with respect to such person within the last five (5) years; (4) Any disqualification under sections 8b and 8d of the CEA; (5) Any disciplinary action under section 8c of the CEA; and (6) Any violation pursuant to section 9 of the CEA.

[261] In the final rule implementing part 38 of the Commission's regulations, the Commission stated that the documentation that the Commission may request under Commission regulation § 38.5 may include a certification that the DCM continues to meet all of the requirements of section 5(d) of the CEA and Commission regulations adopted thereunder. *See* Part 38 Final Rule, 77 FR 36612 at 36619.

provision of the Act, or any regulation or order of the Commission thereunder, shall be cause for the suspension of the registration or designation of the SEF or DCM, or the revocation of registration or designation as a SEF or DCM, in accordance with sections 5e and 6(b) of the CEA. The proposed rule further provides that the Commission may make and enter an order directing that the SEF or DCM cease and desist from such violation, in accordance with sections 6b and 6(b) of the CEA.[262] Section 6(b) of the CEA authorizes the Commission to suspend or revoke registration or designation of a SEF or DCM if the exchange has violated the CEA or Commission orders or regulations. Section 6(b) includes a number of procedural safeguards, including that it requires notice to the SEF or DCM, a hearing on the record, and appeal rights to the court of appeals for the circuit in which the SEF or DCM has its principal place of business. It is imperative that SEFs and DCMs, regardless of ownership or control changes, continue to comply with the CEA and all Commission regulations to promote market integrity and protect market participants.

Finally, the Commission proposes to amend existing regulation § 38.5(d) by extending the delegation of authority provisions to the Director of the Division of Market Oversight to include information requests related to the business of the DCM in § 38.5(a) and equity interest transfers in § 38.5(c). This amendment would conform § 38.5(d) to the existing delegated authority the Division of Market Oversight has with respect to SEFs under § 37.5(d). Changes in ownership or control of a DCM can occur relatively quickly. Therefore, the Commission believes it is important for effective oversight to provide the Director of the Division of Market Oversight with the authority in such circumstances, to immediately request information and documents to confirm continued compliance by a DCM with the CEA and relevant Commission regulations.

4. Questions for Comment

1. Proposed regulation § 37.5(c)(1) revises the notification threshold for SEFs from 50 percent to 10 percent to align with the DCM requirement in § 38.5(c)(1). Is there any reason why the threshold should be different for SEFs?

2. Do the proposed rules provide sufficient notice and clarity to SEFs and DCMs regarding what documents and information may be requested by the Commission?

3. Are the timing provisions for the required notification (proposed regulations §§ 37.5(c)(3) and 38.5(c)(3)) and certification (proposed regulations §§ 37.5(c)(5) and 38.5(c)(5)) sufficiently clear? Do such timing provisions allow sufficient time for SEFs and DCMs to provide the required notification and certification?

VII. Effective and Compliance Dates

The Commission is proposing that the effective date for the proposed rules be sixty days after publication of final regulations in the **Federal Register**. The Commission believes that the proposed effective date would be appropriate given that DCMs have implemented many of the proposed rules' requirements that are being adopted from the DCM Core Principle 16 Acceptable Practices. Additionally, many SEFs have voluntarily adopted elements of these standards to demonstrate compliance with SEF Core Principle 12. The Commission also proposes a compliance date of one-year after the effective date of the final regulations. The Commission believes this will provide current SEFs and DCMs, as well as prospective SEF and DCM applicants, with sufficient time to comply with the final regulations.

Question for Comment

The Commission requests comment on whether the proposed effective date is appropriate and, if not, the Commission further requests comment on possible alternative effective dates and the basis for any such alternative dates.

VIII. Related Matters

a. Cost-Benefit Considerations

1. Introduction

As described above, the Commission proposes to establish governance standards and conflicts of interest rules related to market regulation functions, for SEFs and DCMs. Although SEFs and DCMs have similar obligations with respect to market regulation functions, they are subject to different obligations with respect to governance fitness standards and mitigating conflicts of interest. SEFs and DCMs are required to minimize and resolve conflicts of interest pursuant to identical statutory core principles.[263] However, with respect to governance fitness standards, DCMs are subject to specific statutory core principles addressing governance,[264] while SEFs do not have parallel core principle requirements. Additionally, SEFs and DCMs currently have different regulatory obligations with respect to governance fitness standards.[265] Further, while both SEFs and DCMs are subject to equity transfer requirements,[266] the applicable regulatory provisions currently have different notification thresholds and obligations.

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[267] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors (collectively referred to herein as ''Section 15(a) Factors'') below.

The goal of the proposed rulemaking is to provide SEFs and DCMs with a clear regulatory framework for implementing governance standards to promote the integrity of its self-regulatory functions and for identifying, managing, and resolving conflicts of interest related to their market regulation functions. Specifically, the proposed rulemaking harmonizes and enhances the existing SEF and DCM regulations by proposing: (1) new rules to implement DCM Core Principle 15 (Governance Fitness Standards) that are consistent with the existing guidance on compliance with DCM Core Principle 15 (Governance Fitness Standards); (2) new rules to implement DCM Core Principle 16 (Conflicts of Interest) that are consistent with the DCM Core Principle 16 Guidance and Acceptable Practices; (3) new rules to implement SEF Core Principle 2 (Compliance With Rules)

[262] 7 U.S.C 7b; 7 U.S.C. 13a; 7 U.S.C 8(b).

[263] *See* SEF Core Principle 12, Commodity Exchange Act (''CEA'') section 5h(f)(12), 7 U.S.C. 7b–3(f)(12), and DCM Core Principle 16, CEA section 5(d)(16), 7 U.S.C. 7(d)(16).

[264] *See* DCM Core Principles 15 and 17, CEA section 5(d)(15), 7 U.S.C. 7(d)(15), and CEA section 5(d)(17), 7 U.S.C. 7(d)(17), respectively.

[265] As discussed below, SEFs, but not DCMs, are required to comply with requirements under part 1 of the Commission's regulations addressing the sharing of nonpublic information, service on the board or committees by persons with disciplinary histories, board composition, and voting by board or committee members persons where there may be a conflict of interest.

[266] Commission regulation § 37.5(c) (SEFs) and Commission regulation § 38.5(c) (DCMs).

[267] 7 U.S.C. 19(a).

that are consistent with the DCM Core Principle 15 Guidance; (4) new rules to implement SEF Core Principle 12 (Conflicts of Interest) that are consistent with the DCM Core Principle 16 Guidance and Acceptable Practices; (5) new rules under part 37 of the Commission's regulations for SEFs and part 38 of the Commission's regulations for DCMs that are consistent with existing conflicts of interest and governance requirements under Commission regulations §§ 1.59 and 1.63; (6) new rules for DCM Chief Regulatory Officers (''CROs''); (7) amendments to certain requirements relating to SEF Chief Compliance Officers (''CCOs''); and (8) new rules for SEFs and DCMs relating to the establishment and operation of a Regulatory Oversight Committee (''ROC'').

The Commission recognizes that the proposed changes in this release could result in benefits, but also could impose costs. Any initial and recurring compliance costs for any SEF or DCM will depend on the size, existing infrastructure, practices, and cost structure of the entity. The Commission has endeavored to provide qualitative analysis of costs based on its experience overseeing SEFs and DCMs. The Commission generally requests comment on all aspects of its cost-benefit considerations, including the identification and assessment of any costs and benefits not discussed herein; data and any other information to assist or otherwise inform the Commission's ability to quantify or qualitatively describe the costs and benefits of the proposed amendments; and substantiating data, statistics, and any other information to support positions posited by commenters with respect to the Commission's discussion. The Commission welcomes comment on such costs and benefits.

2. Baseline

The baseline for the Commission's consideration of the costs and benefits of this proposed rulemaking is the existing statutory and regulatory framework regarding conflicts of interests and governance standards for SEFs and DCMs. The existing governance requirements and conflicts of interest standards for SEFs are set forth in SEF Core Principles 2, 12 and 15,[268] and certain regulations in part 1 of the Commission's regulations that apply to SROs, including SEFs. SEFs must comply with SEF Core Principle 2, requiring SEFs to establish and enforce rules governing the operation of the SEF.[269] Commission regulation § 1.59 provides limits on the use and disclosure of SEF material, non-public information. Commission regulation § 1.63 restricts persons with certain disciplinary histories from serving on disciplinary committees, arbitration panels, oversight panels or the governing board of a SEF. Commission regulation § 1.64 sets forth requirements for the composition of SEF governing boards and major disciplinary committees. Commission regulation § 1.69 requires a SEF to have rules to prevent members of the board of directors, disciplinary committees, or oversight panels, to abstain from deliberating and voting on certain matters that may raise conflicts of interest.

The existing requirements for DCMs to minimize and resolve conflicts of interests are outlined in DCM Core Principle 16.[270] DCMs must also comply with DCM Core Principle 15, which sets forth governance fitness standards for members of the board of directors or disciplinary committees, members of the contract market, any other person with direct access to the facility, and any person affiliated with those enumerated individuals. Additionally, DCM Core Principle 17 requires a DCM's governance arrangements be designed to consider the views of market participants and DCM and Core Principle 22 requires DCMs that are publicly traded to endeavor to have boards of directors and other decision-making bodies composed of diverse individuals. DCMs are also subject to existing regulatory requirements in Commission regulation § 1.63(c), that disqualifies individuals with certain disciplinary histories from serving on DCM governing boards, arbitration or oversight panels, or disciplinary committees. disciplinary committees, arbitration panels, oversight panels or the governing board of a DCM. Although DCMs are exempt from Commission regulation § 1.59(b) and (c), Commission regulation § 1.59(d) directly prohibits members of the board of directors, committee members, or consultants of a self-regulatory organization from trading for their own account, or for or on behalf of any other account, based on this material non-public information.

Both SEFs and DCMs are subject to equity interest transfer requirements set forth in Commission regulations §§ 37.5(c) and 38.5(c), respectively.

The Commission notes that this cost-benefit consideration is based on its understanding that the derivatives market regulated by the Commission functions internationally with: (1) transactions that involve U.S. entities occurring across different international jurisdictions; (2) some entities organized outside of the United States that are registered with the Commission; and (3) some entities that typically operate both within and outside the United States and that follow substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits below refers to the effects of the proposed rules on all relevant derivatives activity, whether based on their actual occurrence in the United States or on their connection with, or effect on, U.S. commerce.[271]

3. Proposed Rules

i. Minimum Fitness Standards—Proposed §§ 37.207 and 38.801

SEFs must comply with SEF CP 2, which requires SEFs to establish and enforce rules governing the operation of its facility.[272] Currently, SEFs must also comply with all requirements in Commission regulation § 1.63, which restricts persons with certain disciplinary histories from serving on disciplinary committees, arbitration panels, oversight panels or the governing board of a SEF, because SEFs qualify as SROs and are not otherwise exempt. While DCMs are also SROs, they are exempt from Commission regulations §§ 1.63(a), (b), and (d)–(f), pursuant to Commission regulation § 38.2. DCMs are not, however, exempt from Commission regulation 1.63(c), which provides that persons are disqualified from serving on disciplinary committees, arbitration panels, oversight panels or the governing board of a DCM if they are subject to any of the disciplinary offenses found in § 1.63(b). DCMs must also comply with DCM Core Principle 15, requiring DCMs to establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other person with direct access to the facility (including

[268] *See* CEA section 5h(f)(2), 7 U.S.C. 7b–3(f)(2), CEA section 5h(f)(12), 7 U.S.C. 7b–3(f)(12) and CEA section 5h(f)(15), 7 U.S.C. 7b–3(f)(15).

[269] CEA section 5h(f)(2), 7 U.S.C. 7b–3(f)(2).

[270] The Commission, however, notes that—as a practical matter—all of the DCMs that are currently designated by the Commission rely on the acceptable practices to comply with Core Principle 16, in lieu of any other means for compliance. As such, the actual costs and benefits of the codification of those acceptable practices with respect to DCMs, as realized in the market, may not be as significant.

[271] *See, e.g.,* 7 U.S.C. 2(i).

[272] CEA section 5h(f)(2); 7 U.S.C. 7b–3(f)(2).

any party affiliated with any person described in this paragraph).[273]

Proposed §§ 37.207(a) and 38.801(a) would require SEFs and DCMs to establish and enforce appropriate fitness requirements for officers, members of its board directors, committees, disciplinary panels, dispute resolution panels, any other persons with direct access to the SEF or DCM, any person who owns 10 percent or more of the SEF or DCM and who, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of the SEF or DCM, and for any party affiliated with any of the foregoing. In subparts (b), and (c) of proposed §§ 37.207 and 38.801, the Commission has identified certain minimum fitness standards that SEFs and DCMs would be required to establish and enforce. First, under subpart (b), SEFs and DCMs would be required to include the basis for refusal to register a person under sections 8(a)(2) and 8a(3) of the CEA as minimum fitness standards for members of its board of directors, committees, disciplinary panels, dispute resolution panels, for members with voting privileges, and any person who owns 10 percent or more of the SEF or DCM and who, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of the SEF or DCM. Second, under subpart (c), SEF and DCM minimum fitness standards would be required to include six offenses the Commission has identified as disqualifying for key decision-makers, including members of its board of directors, committees, disciplinary panels, and dispute resolution panels.

Commission regulation § 1.63(d) requires each SRO to provide the Commission with a certified list of persons removed from a disciplinary committee, arbitration panel, or oversight panel, in the previous year. In addition to the above standards, proposed §§ 37.207(d) and 38.801(d) would require that SEFs and DCMs to establish new procedures for the initial and annual collection, verification, and preservation of information supporting compliance with appropriate fitness standards.

A. Benefits

The Commission believes that requiring appropriate, minimum fitness standards for individuals with the ability to exercise influence or control over the operations of SEFs and DCMs, including their market regulation functions, will improve the integrity and effectiveness of SEFs and DCMs in their role as SROs. By establishing automatic disqualifiers, including disqualifications described in CEA sections 8a(2) and 8a(3), or a history of disciplinary offenses described in Commission regulation § 1.63, SEFs and DCMs may benefit by attracting individuals with demonstrated ethical conduct and sound decision-making to those influential roles. Proposed §§ 37.207 and 38.801 are likely to reduce the likelihood and the extent of harm caused by individuals with a history of disciplinary offenses to the operations of SEFs and DCMs, including their market regulation functions. In addition, clear minimum standards for individuals with the ability to influence or control the governance of SEFs and DCMs will provide market participants using exchange services, as well as exchange shareholders, with greater confidence in key SEF and DCM decision-makers. Ongoing verification of the fitness of these decision-makers may also provide greater accountability and trust in the management and operations of SEFs and DCMs. Such requirements may also increase the trust of market participants using exchange services.

Establishing automatic disqualifiers and establishing independent fitness verification procedures for SEFs and DCMs are likely to aid in identifying trustworthy individuals to serve in roles with the ability to control or influence the governance of the exchange or its market regulation functions. It is important that the individuals able to influence or control a SEF's and DCM's governance, management, and disciplinary standards have a record of integrity and rectitude. Such record provides confidence that those individuals will be able to effectuate a SEF's or DCM's obligations to establish and enforce its rules, and a DCM's obligation to establish and enforce appropriate minimum fitness requirements.[274]

Finally, as discussed above, SEFs currently must comply with all requirements in Commission regulation § 1.63. To the extent SEFs are already compliant with this regulation, the benefits of proposed § 37.207 may be less significant. Similarly, DCMs currently must comply with Commission regulation § 1.63(c) and DCM Core Principle 15. To the extent that DCMs are already compliant with § 1.63(c) and DCM Core Principle 15, the benefits of proposed § 38.801 may be less significant. Finally, to the extent that SEFs or DCMs have already implemented rules consistent with all aspects of the DCM Core Principle 15 Guidance, the benefits of proposed § 37.207 and § 38.801 may be less significant.[275]

B. Costs

The Commission believes that SEFs and DCMs would incur additional costs from proposed §§ 37.207 and 38.801 through the additional hours SEF and DCM employees might need to spend analyzing the compliance of their existing rules and procedures with these proposed requirements, and implementing new or amended rules and procedures, as necessary. Specifically, SEFs and DCMs may incur costs in the form of administrative time related to drafting new policies to comply with the proposed fitness standards and verification procedures. Costs associated with complying with proposed §§ 37.207 and 38.801 may further vary based on the size of the SEF or DCM, available resources, and existing practices and policies. Accordingly, those costs would be impracticable to reasonably quantify. The Commission believes that the policies and procedures required for implementing minimum fitness standards would likely not change significantly from year to year, so after the initial creation of the policies and procedures, the time required to maintain those policies and procedures would be negligible.

When implementing proposed §§ 37.207 and 38.801, to the extent that the current officers or membership of their board of directors, or committees do not meet the proposed minimum fitness requirements, SEFs and DCMs may need to make changes to their officers, members of their board of directors, or committees. This might lead to additional costs related to any time and efforts SEFs and DCMs may need to take to find suitable candidates.

The Commission notes that, regarding DCMs, the above costs may be mitigated to the extent that a DCM is already complying with DCM Core Principle 15 and Commission regulation § 1.63(c). Additionally, to the extent a DCM has already implemented practices

[273] CEA section 5(d)(15); 7 U.S.C. 7(d)(15).

[274] The minimum fitness requirements facilitate a SEF's and DCM's ability to establish and enforce their rules, in accordance with SEF Core Principle 2 (Compliance with Rules), CEA section 5h(f)(2); 7 U.S.C. 7b–3(f)(2), DCM Core Principle 2 (Compliance with Rules), CEA section 5(d)(2); 7 U.S.C. 7(d)(2), and DCM Core Principle 15, respectively.

[275] As described *supra,* Section III(a)(Proposed Governance Fitness Standards—Proposed §§ 37.207 and 38.801), the proposed minimum fitness standards are consistent with the existing DCM Core Principle 15 Guidance, subject to certain enhancements described therein.

consistent with DCM Core Principle 15 Guidance, some of the costs may have been already realized. The DCM Core Principle 15 Guidance states that minimum fitness standards for persons who have member voting privileges, governing obligations or responsibilities, or who exercise disciplinary authority, should include those bases for refusal to register a person under section 8a(2) of the CEA.[276] Additionally, the DCM Core Principle 15 Guidance states that persons who have governing obligations or responsibilities, or who exercise disciplinary authority, should not have a significant history of serious disciplinary offenses, such as those that would be disqualifying under Commission regulation § 1.63.[277] As a practical matter, many DCMs may have already adopted practices consistent with the Core Principle 15 Guidance. As such, the actual costs of the proposed rules amendments may be less significant.

The costs to implement the proposed §§ 37.207 and 38.801 minimum fitness requirements for SEFs may be mitigated to the extent that they already have a framework in place to comply with existing Commission regulation § 1.63, which sets forth requirements and procedures to prevent persons with certain disciplinary histories from serving in certain governing or oversight capacities as an SRO.

Proposed §§ 37.207 and 38.801 require each SEF and DCM to establish appropriate procedures for the collection and verification of information supporting compliance with appropriate fitness standards. Ongoing implementation of the proposed rules would also impose costs associated with the time required to collect and verify a candidate's fitness in a timely manner, to document the findings with respect to the fitness standards, to make the findings available to the Commission as a part of staff's oversight activities, and to re-verify fitness eligibility on an annual basis. Similar to above, a SEF's or DCM's costs may be less significant if it is already following the DCM Core Principle 15 Guidance, which states that DCMs should have standards for the collection and verification of information supporting compliance with the DCM's fitness standards.

The Commission requests comments on the potential costs of proposed §§ 37.207 and 38.801, including any costs that would be imposed on SEFs, DCMs, other market participants, or the financial system more broadly.

C. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of proposed §§ 37.207 and 38.801 with regard to the specific considerations identified in Section 15(a) of the CEA. The Commission believes that proposed §§ 37.207 and 38.801 may protect market participants and the public, as well as the financial integrity of the markets, by ensuring the integrity of individuals influencing the decisions made by SEFs and DCMs. By having fit and reputable decision-makers, the Commission believes SEFs and DCMs are likely able to increase industry and public trust in their organizations and markets. Minimum fitness standards also may increase the confidence in the decisions made by officers and members of its board of directors, committees, disciplinary panels, dispute resolution panels, and certain owners. The Commission believes that trust and confidence in SEF and DCM leadership fosters market participation, which could in turn enhance liquidity, price discovery, and the financial integrity of markets. The Commission has considered the other Section 15(a) Factors and believes that they are not implicated by the proposed amendments to §§ 37.207 and 38.801.

ii. General Requirements for Addressing Conflicts of Interest and Definitions—Proposed §§ 37.1201 and 38.851

Currently, both SEFs and DCMs have an obligation under SEF Core Principle 12 and DCM Core Principle 16 to minimize and resolve conflicts of interest in their decision-making. Additionally, DCM Core Principle 16 Acceptable Practices set forth practices for complying with Core Principle 16. By contrast, there are no acceptable practices or guidance for SEF Core Principle 12.

Proposed §§ 37.1201(a) and 38.851(a) require SEFs and DCMs to establish processes for identifying, minimizing, and resolving actual and potential conflicts of interest that may arise. Proposed §§ 37.1201(b) and 38.851(b) revise existing definitions[278] and define two new terms. First, the term ''market regulation function,'' under § 38.851(b)(9) means DCM functions required by DCM Core Principle 2, DCM Core Principle 4, DCM Core Principle 5, DCM Core Principle 10, DCM Core Principle 12, DCM Core Principle 13, DCM Core Principle 17 and the applicable Commission regulations thereunder. ''Market regulation function'' under § 37.1201(b)(9) means SEF functions required by SEF Core Principle 2, SEF Core Principle 4, SEF Core Principle 6, SEF Core Principle 10 and the applicable Commission regulations thereunder. Second, the proposed rules define the term ''affiliate,'' which refers to a person that directly, or indirectly, controls, or is controlled by, or is under common control with, the SEF or DCM.

A. Benefits

The Commission believes that SEF and DCM conflict of interest processes, as required by proposed §§ 37.1201(a) and 38.851(a), are likely to provide the framework necessary for SEFs and DCMs to minimize conflicts of interest and comply with their core principle requirements. The specific conflicts of interest this proposal addresses relate to market regulation functions, *i.e.,* SEF and DCM functions that promote market integrity and orderly conduct in the markets.[279]

The Commission believes that the new definitions for ''market regulation functions'' and ''affiliate'' in proposed §§ 37.1201(b) and 38.851(b) will provide benefits, including operational efficiency. SEFs and DCMs will spend less time and resources in determining how to comply with regulatory requirements. Moreover, the definitions will provide additional regulatory certainty and risk reduction; delineate

[276] *See* Appendix B to part 38, Guidance to Core Principle 15 of section 5(d) of the Act, Governance Fitness Standards.

[277] *Id.*

[278] The DCM Core Principle 16 Acceptable Practices defines a ''public director'' as an individual with no material relationship to the DCM and describes the term ''immediate family'' to include spouse, parents, children, and siblings. The terms ''material information,'' ''non-public information,'' ''commodity interest,'' ''related commodity interest,'' and ''linked exchange'' are defined in Commission regulation § 1.59. ''Material information'' is defined in § 1.59(a)(5) to mean information which, if such information were publicly known, would be considered important by a reasonable person in deciding whether to trade a particular commodity interest on a contract market or a swap execution facility, or to clear a swap contract through a derivatives clearing organization. ''Non-public information'' is defined in § 1.59(a)(6), as information which has not been disseminated in a manner which makes it generally available to the trading public. Commission regulations § 1.59(a)(8) and (9) define ''commodity interest,'' to include all futures, swaps, and options traded on or subject to the rules of a SEF or DCM and ''related commodity interest'' to include any commodity interest which is traded on or subject to the rules of a SEF, DCM, linked exchange, or other board of trade, exchange, or market, or cleared by a DCO, other than the self-regulatory organization by which a person is employed, and which is subject to a self-regulatory organization's intermarket spread margins or other special margin treatment. Commission regulations § 1.59(a)(5), (a)(6), (a)(8), and (a)(9).

[279] *E.g.,* trade practice surveillance, market surveillance, real-time market monitoring, audit trail data and recordkeeping enforcement, investigations of possible SEF or DCM rule violations, and disciplinary actions.

the responsibilities addressed by SEF and DCM regulations, including which functions are considered self-regulatory versus market regulation; and clarify which relationships are affiliate relationships. Reducing ambiguities regarding the meaning of these terms should promote regulatory compliance.

B. Costs

SEFs and DCMs may incur additional costs from proposed §§ 37.1201(a) and 38.851(a) in terms of employee hours spent analyzing whether existing rules and procedures comply with the proposed requirements, and drafting and implementing new or amended rules and procedures, as necessary. Costs associated with complying with proposed §§ 37.1201 and 38.851 may further vary based on the size of the SEF or DCM, available resources, and existing practices, rules, and procedures. Accordingly, those costs would be impracticable to reasonably quantify. Further, rules and procedures required for implementing the proposed conflict of interest requirements would likely not change significantly from year to year, so after the initial creation of such rules and procedures, the time required to maintain those rules and procedures would be negligible.

The Commission does not believe that there any independent costs related to the amended and new definitions in proposed §§ 37.1201(b) and 38.851(b). Costs that might be associated with the proposed definitions will likely arise in connection with implementing the conflict of interest requirements under proposed §§ 37.1201(a) and 38.851(a).

The Commission requests comments on the potential costs of proposed §§ 37.1201 and 38.851, including any costs that would be imposed on SEFs, DCMs, other market participants, or the financial system more broadly.

C. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of proposed §§ 37.1201 and 38.851 with regard to the specific considerations identified in Section 15(a) of the CEA. The Commission believes that proposed §§ 37.1201 and 38.851 may have a beneficial effect on the protection of market participants and the public, as well as on the financial integrity of the markets by ensuring that SEFs and DCMs have an adequate framework for addressing potential conflicts of interest. Procedures for identifying conflicts of interest also may reduce the risk of decision-makers being influenced by concerns that are not in the best interest of the SEF's or DCM's market regulation functions. Rules and processes to identify and manage conflicts of interest also aid in ensuring that decision-makers are accountable to SEFs and DCMs, and therefore, proposed §§ 37.1201 and 38.851 may lead to increased trust in SEF and DCM markets by market participants and the public. The Commission has considered the other Section 15(a) Factors and believes they are not implicated by proposed §§ 37.1201 and 38.851.

iii. Conflicts of Interest in Decision-Making—Proposed §§ 37.1202 and 38.852

As described above, SEFs are subject to the requirements of SEF Core Principle 12, requiring SEFs to establish and enforce rules and processes to identify and resolve conflicts of interest.[280] Currently, SEFs are also required to comply with Commission regulation § 1.69, which requires SROs to have rules requiring any member of its board of directors, disciplinary committees, or oversight panels to disclose conflicts of interest and abstain from deliberating and voting in actions with certain personal or financial conflicts of interest. DCMs, however, are exempt from these requirements pursuant to Commission regulation § 38.2.

The Commission is proposing to make a conforming amendment to Commission regulation § 37.2 to exempt SEFs from Commission regulation § 1.69. However, the Commission is also proposing §§ 37.1202 and 38.852, which incorporate certain elements of existing Commission regulation § 1.69, for both SEFs and DCMs, along with certain modifications and enhancements. Notably, the Commission proposes to redefine the term ''family relationship'' to enhance and modernize the conflict of interest disclosure requirements.

For example, under § 1.69, if a member of the board of directors, disciplinary committee, or oversight panel, has a relationship with a named party in interest [281] that falls within the enumerated relationships in § 1.69(b)(1)(i)(A)–(E), the member is required to abstain from deliberating and voting on that matter. One of the enumerated relationships is a ''family relationship,'' which is currently defined as a person's spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, or in-law.[282]

In proposed §§ 37.1201(b)(7) and 38.851(b)(7), the Commission redefines ''family relationship,'' as the person's spouse, parents, children, and siblings, in each case, whether by blood, marriage, or adoption, or any person residing in the home of the person. This proposed definition focuses on the closeness of the relationship that the officer, or member of the board of directors, committee, or disciplinary panel has with the subject of the matter being considered. The proposed definition also reflects a more modern description of the relationships intended to be covered.

More broadly, proposed §§ 37.1202(a) and 38.852(a) require SEFs and DCMs to establish policies and procedures requiring any officer or member of their board of directors, committees, or disciplinary panels to disclose any actual or potential conflicts of interest that may be present prior to considering any matter. Proposed §§ 37.1202(a)(1) and 38.852(a)(1) provide a list of enumerated relationships that are deemed to be conflicts of interest, and proposed §§ 37.1202(a)(2) and 38.852(a)(2) would extend the applicability of these enumerated relationships that an officer or member of their board of directors, committees, or disciplinary panels has with an affiliate of the subject of any matter being considered. Similar to existing § 1.69(b)(4), proposed §§ 37.1202(b) and 38.852(b) require documentation of conflict of interest determinations. Specifically, under the proposed rules, SEFs and DCMs must require members of their board of directors, committees, and disciplinary panels to document in meeting minutes, or otherwise document in a comparable manner, compliance with the applicable requirements.

A. Benefits

Requiring SEF and DCM officers, and members of their board of directors, committees, or disciplinary panels to disclose conflicts of interests before considering a matter, under proposed §§ 37.1202 and 38.852, is essential to implementing the goals of this proposed rulemaking. Given the governing authority bestowed upon key decision-makers, it is crucial that their decision-making is guided by the best interests of the SEF or DCM, and is not influenced by personal or financial gain. In requiring these key decisions-makers to be transparent about relationships that may raise conflicts of interest, SEFs and DCMs are better able to hold these individuals accountable. Additionally, the Commission believes that proposed §§ 37.1202(a) and 38.852(a) are beneficial because requirements to disclose conflicts of interests promote transparency in the decision-making

[280] *Supra* Section II(a).

[281] As defined in Commission regulation § 1.69(a).

[282] Commission regulation § 1.69(a)(2).

process relating to SEF and DCM market regulation functions, further promoting confidence in their markets.

The Commission believes that the proposed §§ 37.1202(b) and 38.852(b) documentation requirements have several additional benefits. First, documentation requirements identifying conflicts of interest and recusals promotes transparency, ensures that conflicts of interests have been managed, and provides useful precedent for how the SEF or DCM can manage similar types of conflicts of interest in the future. Second, requiring conflicts of interest to be documented, rather than simply disclosed, is likely to promote more accountability among members of the board of directors, committees, and disciplinary panels. Third, this documentation is important evidence demonstrating compliance efforts, which can aid the SEF, DCM, and the Commission, in conducting oversight.

SEFs currently are subject to Commission regulation § 1.69. Therefore, to the extent SEFs already are compliant with Commission regulation § 1.69, the benefits of proposed § 37.1202 may be less significant. Similarly, if DCMs, as a matter of industry practice, already have procedures in place consistent with Commission regulation § 1.69 requirements, the benefits of proposed § 38.852 may be less significant.

B. Costs

The Commission believes that SEFs will not incur significant costs implementing proposed § 37.1202 as the requirements of the proposed rule are similar to the existing Commission regulation§ 1.69 requirements. SEFs may incur some administrative costs of analyzing their existing rules and procedures to determine whether they comply with proposed § 37.1202, as the proposed rule, as discussed above, contains some enhancements, such as the new definition of ''family relationship,'' that do not exist in Commission regulation § 1.69.

DCMs may incur costs implementing proposed § 38.852, including the administrative costs of analyzing their existing rules and procedures to determine whether they comply with the proposed requirements, and drafting and implementing new or amended rules and procedures, as necessary. Additionally, proposed § 38.852 requires disclosures to be made by DCM officers or members of the board of directors when any actual or potential conflict of interest may be present, and requires these officers or members of the board of directors to abstain from deliberations and voting on issues where the individual is conflicted. Costs will arise not only from administrative time in handling the disclosure, but also in the required documentation to ensure compliance with the intent of the proposed rules. Furthermore, there may be additional costs incurred when conflicted individuals abstain from deliberations and the DCM officers, and members of the board of directors, committees, and disciplinary panels potentially need to seek additional information from independent, non-conflicted experts and consultants. Finally, the Commission believes that DCMs will incur costs related to collecting and storing documents evidencing conflicts of interest determinations. The Commission notes that some of these costs may be less significant to the extent that DCMs have voluntarily adopted the requirements of Commission regulation § 1.69.

Costs associated with complying with the proposed §§ 37.1202 and 38.852 may further vary based on the size of the SEF or DCM, available resources, and existing practices and policies. Further, conflict of interest policies required for implementing proposed §§ 37.1202 and 38.852, would likely not significantly change from year to year, so after the initial creation of the policies, the time required to maintain and amend rules and procedures would be negligible.

The Commission requests comments on the potential costs of proposed §§ 37.1202 and 38.852, including any costs that would be imposed on SEFs, DCMs, other market participants, or the financial system more broadly.

C. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of proposed §§ 37.1202 and 38.852 in light of the specific considerations identified in Section 15(a) of the CEA. The Commission believes that proposed §§ 37.1202 and 38.852 may have a beneficial effect on protection of market participants and the public, as well as on the financial integrity of the markets, by taking steps to help ensure the impartiality of key SEF and DCM decision-makers, particularly those persons responsible for the exchange's market regulation functions. Identifying and documenting actual and potential conflicts of interest before reviewing a matter may reduce the risk of decision-makers being influenced by personal interests rather than acting in best interest of the SEF or DCM, and, ultimately, market participants and the public. Such a requirement also is likely to hold decision-makers accountable to SEFs and DCMs and may foster market participant and public trust in the SEFs and DCMs, which is also essential to maintaining the integrity of markets. The Commission has considered the other Section 15(a) factors and believes that they are not implicated by proposed §§ 37.1202 and 38.852.

iv. Limitations on the Use and Disclosure of Material Non-Public Information—Proposed §§ 37.1203 and 38.853

Currently, Commission regulation § 1.59 generally requires SROs to adopt rules prohibiting employees, governing board members, committee members or consultants from trading commodity interests on the basis of material non-public information. DCMs are exempt from Commission regulation § 1.59(b) and (c), but the entirety of § 1.59 applies to SEFs. As previously described in detail,[283] both SEFs and DCMs must comply with the requirements of Commission regulation § 1.59(d), which prohibits members of the board of directors, committee members, or consultants of the SRO from trading for their own account, or for or on behalf of any other account, based on material non-public information.

In addition to the Commission's statutory authority on insider trading,[284] DCMs are subject to Core Principle 16, which requires DCMs to establish and enforce rules to minimize conflicts of interest. DCM Core Principle 16 Guidance provides that DCMs should provide appropriate limitations on the use or disclosure of material non-public information gained through performance of official duties by members of the board of directors, committee members, and DCM employees, or gained by those through an ownership interest in the DCM.[285]

Proposed §§ 37.1203 and 38.853 would require SEFs and DCMs to establish and enforce policies and procedures for their employees, members of the board of directors, committee members, and consultants to prohibit the disclosure of material non-public information and to prohibit trading if the individual has access to material non-public information. Additionally, proposed §§ 37.1203 and 38.853 would provide conditions under which exemptions to employee trading prohibitions could be granted.

Proposed §§ 37.1203(c) and 38.853(c) state that SEFs and DCMs may grant trading exemptions to employees pursuant to its policies and procedures,

[283] *Supra* Section IV(c).

[284] *See* CEA section 9(e), 7 U.S.C. 13(e).

[285] *See* Appendix B to part 38, Core Principle 16 Guidance.

on a case-by-case basis, only if certain requirements are met, including: (1) the ROC approves the trading exemption; (2) the employee can demonstrate that the trading is not being conducted on the basis of material non-public information gained through the performance of their official duties; and (3) the SEF or DCM documents the employee's exemption in accordance with requirements in existing Commission regulations §§ 37.1000 and 37.1001, or 38.950 and 38.951, as applicable. Additionally, proposed §§ 37.1203(d) and 38.853(d) would require SEFs and DCMs to diligently monitor trading activity conducted pursuant to such exemptions.

A. Benefits

The Commission believes proposed §§ 37.1203(a) and 38.853(a), requiring SEFs and DCMs to establish policies and procedures to safeguard the use and disclosure of material non-public information, will result in several benefits. Generally, the Commission believes that these proposed rules are likely to result in benefits by reducing the instances of conflicts of interest where persons responsible for exchange governance or market regulation functions take advantage of their roles for personal financial benefit. Establishing consistent and clearly defined standards is likely to reduce instances of the misuse and disclosure of material non-public information by employees, members of the board of directors, committee members, and consultants at SEFs and DCMs and promote public confidence in the markets. In addition, preventing SEF and DCM employees or insiders with access to material non-public information from leveraging their access to benefit themselves, or others, commercially or otherwise, promotes fair and transparent markets, which will benefit all the market participants.

There also will be benefits from the requirements in proposed §§ 37.1203(b) and 38.853(b), which prohibit employees from certain types of trading or disclosing for any purpose inconsistent with the performance of the person's official duties as an employee any material non-public information obtained as a result of such person's employment. Additionally, the parameters outlined in proposed §§ 37.1203(c) and 38.853(c) for granting exemptions to the employee trading prohibition, along with the new requirement to monitor such exemptions under proposed §§ 37.1203(d) and 38.853(d), are likely to deter misuse of the employee trading exemptions. Additionally, these proposed rules may also promote confidence in the market regulation functions of SEFs and DCMs because they are: (1) requiring SEFs and DCMs to limit the issuance of exemptions to specific, case-by-case instances; and (2) protecting the markets from trading by employees with unfair, informational advantages.

As noted above, Commission regulation § 1.59 currently requires SEFs to adopt rules prohibiting employees, governing board members, committee members or consultants from trading commodity interests on the basis of material non-public information. Both SEFs and DCMs must comply with the requirements of Commission regulation § 1.59(d), which prohibits members of the board of directors, committee members, or consultants of an SRO from trading for their own account, or for or on behalf of any other account, based on material non-public information. DCM Core Principle 16 Guidance states that DCMs should provide for appropriate limitations on the use or disclosure of material non-public information. To the extent that SEFs and DCMs have policies and procedures consistent with Commission regulation § 1.59, DCM Core Principle 16 Guidance, or have existing programs to monitor trading conducted pursuant to an exemption from the employee trading prohibition, the discussed benefits may be less significant.

The Commission believes that enhancing SEFs' and DCMs' obligations regarding their oversight of the exemptions they grant is an appropriate balance between limiting the misuse of exemptions and ensuring that the employee trading prohibition is not overly broad. One of the benefits of the proposed requirements related to the permitted trading exemptions is that providing such exemptions, as appropriate, will not impair the ability or diminish willingness of potential employees to accept employment opportunities with a SEF or DCM. Similarly, the proposed regulatory limitations on the use and disclosure of material non-public information as well as the new requirements on administering the exemptions will result in a more efficient process where there is transparency of the trading conducted by SEF or DCM employees.

The proposed rules' expansion of the trading prohibition to ''related commodity interests'' at the product level, as well as the expansion of the trading prohibition on direct owners on the person/entity level, are also likely to have benefits. The Commission believes that expanding these limitations are likely to prevent and reduce the instances of conflicts of interest even as to those contracts that are interconnected due to having price movements correlate with the price movements of a commodity interest traded on, or subject to the rules of a SEF or a DCM to such a degree that intermarket spread margins or special margin treatment is recognized or established by the SEF or DCM.

The Commission also believes that proposed §§ 37.1203(e) and 38.853(e) prohibiting certain trading by members of the board of directors, committee members and consultants in possession of material non-public information and barring the release of material non-public information will have benefits by promoting confidence in SEF and DCM market regulation functions and the integrity of the marketplace. The Commission also believes that preventing decision-makers from trading on or disclosing material non-public information, is beneficial in that is further prevents such decision-makers from exploiting unfair informational advantages. In turn, that helps create integrity and fairness in the markets. Finally, by restricting the disclosure of material non-public information, SEF and DCM decision-makers are less likely to share information that might put other market participants at a disadvantage.

Regarding proposed non-substantive changes to certain terms such as ''commodity interest'' and ''related commodity interest,'' as fully discussed above,[286] the Commission believes these changes enhance ease of reference for SEF and DCM staff.

B. Costs

Proposed §§ 37.1203 and 38.853 would require that SEFs and DCMs implement policies and procedures to safeguard against the misuse of material non-public information. SEFs and DCMs would incur additional costs from this proposal through the additional hours SEF or DCM employees might need to spend analyzing the compliance of their rules and procedures with these requirements, and drafting and implementing new or amended rules and procedures, when necessary. Costs associated with complying with the proposed §§ 37.1203 and 38.853 may further vary based on the size of the SEF or DCM, available resources the SEF or DCM may have, and existing practices and policies the SEF or DCM may have in place.

While the Commission believes that most SEFs and DCMs already have policies and procedures in place to

[286] *Supra* Section IV(c).

prevent the misuse and disclosure of material non-public information, proposed §§ 37.1203 and 38.853 would likely require SEFs and DCMs to allocate employee administrative time dedicated to either draft new or amend existing policies to ensure the SEF and DCM are complying with any regulatory proposed rules on the limitations on the use and disclosure of material non-public information. The amount of time required would vary based on a number of factors, including whether the SEF or DCM already has policies complying with the proposed rules and the amount of time needed for each SEF and DCM to draft new or amended polices where necessary. For example, there will likely be costs associated with ensuring the policies and procedures apply to each class of individuals described in proposed §§ 37.1203 and 38.853. Costs associated with complying with proposed §§ 37.1203 and 38.853 may further vary based on the size of the SEF or DCM, available resources, and existing practices, rules, and procedures. Accordingly, those costs would be impracticable to reasonably quantify. Further, the Commission believes that the rules, policies and procedures required to implement the limitations on the use and disclosure of material non-public information would likely not change significantly from year to year, so after the initial creation of the policies and procedures, the time required to maintain those policies and procedures would be negligible.

Additionally, to the extent the SEF or DCM seeks to provide employee trading exemptions, there will likely be costs to revise or draft policies and procedures consistent with proposed §§ 37.1203 and 38.853 requirements, and to evaluate those exemptions on a case-by-case basis. Furthermore, any exemptions being granted would require review by the ROC and be individually documented by the SEF or DCM, all which would take administrative time.

SEFs and DCMs will incur additional costs if they grant employee trading exemptions, but do not already have processes in place to diligently monitor the trading by those employees. However, the Commission believes that SEFs and DCMs should have existing programs to monitor, detect, and deter abuses that may arise from trading conducted pursuant to an exemption from the employee trading prohibition. A SEF or DCM should, for example, utilize its existing surveillance program to monitor trading by employees or other insiders subject to proposed §§ 37.1203 and 38.853. Such existing resources may alleviate some of the burden and costs associated with compliance with proposed §§ 37.1203 and 38.853.

The Commission requests comments on the potential costs of proposed §§ 37.1203 and 38.853, including any costs that would be imposed on SEFs, DCMs, other market participants, or the financial system more broadly.

C. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the proposed amendments to §§ 37.1203 and 38.853 in light of the specific considerations identified in Section 15(a) of the CEA. The Commission believes that proposed §§ 37.1203 and 38.853 may have a beneficial effect on protection of market participants and the public, as well as on the financial integrity of the markets. The Commission believes that preventing members of the board of directors, committee members, employees, consultants, and those with an ownership interest of 10 percent or more in the SEF or DCM with access to material non-public information from leveraging their access to benefit themselves, or others, commercially or otherwise, upholds the principle of fair markets. Furthermore, the Commission believes that the requirements related to granting and monitoring employee trading exemptions to will enhance employee accountability and promote transparency, which are essential for establishing the integrity of markets. The Commission has considered the other Section 15(a) Factors and believes that they are not implicated by proposed §§ 37.1203 and 38.853.

v. Composition and Related Requirements for Board of Directors—Proposed §§ 37.1204 and 38.854

DCMs are not subject to a specific statutory or regulatory requirement to have a certain threshold of public directors.[287] Existing Commission regulation § 1.64(b)(1) requires SEFs to include at least 20 percent ''non-member'' directors in the board of directors.

The Commission proposes the following composition standards for the board of directors for both SEFs and DCMs by: (i) codifying in proposed § 38.854(a)(1) the DCM Core Principle 16 Acceptable Practice standards that DCM boards of directors be composed of at least 35 percent public directors; (ii) extending this requirement to SEF boards of directors under proposed § 37.1204(a)(1); [288] and (iii) adopting additional requirements to increase transparency and accountability of the board of directors. Proposed §§ 37.1204(b) and 38.854(b) require that each member of a SEF's or DCM's board of directors, including public directors, have relevant expertise to fulfill the roles and responsibilities of being a director.

Proposed §§ 37.1204(c) and 38.854(c) prohibit linking the compensation of public directors and other non-executive members of the board of directors, to either the business performance of the SEF or DCM or an affiliate. Proposed §§ 37.1204(d) and 38.854(d) require SEFs' and DCMs' board of directors to conduct an annual self-assessment to review their performance.

A. Benefits

In general, a board of directors plays a crucial role in an exchange's ability to identify, manage, and resolve conflicts of interest. Together with senior management, the board of directors set the ''tone at the top'' for a SEF's or DCM's governance and compliance culture. The Commission believes that the proposed 35 percent public director standard is likely to provide benefits for both SEFs and DCMs. For example, in comparison to the existing twenty-percent ''non-member'' requirement for SEFs in existing § 1.64(b)(1), which has created an unintentional consequence of allowing SEFs to compose their boards of directors entirely with ''insiders'' such as executives at the SEF's affiliate, the proposed rule will promote independent decision-making on the board of directors. Composition standards for the board of directors that promote a well-functioning governing body with the presence of directors that are independent from the executive team, coupled with clear, comprehensive policies and procedures, will minimize conflicts of interests at SEFs and DCMs, and the resulting impact that such conflicts could have on a SEF's or DCM's market regulation functions. Since all current DCMs have adopted the DCM Core Principle 16 Acceptable Practices, which include 35 percent public directors, the benefits of the proposed 35 percent composition requirement will be limited. It is important to note that the proposed 35 percent threshold is less than the

[287] However, the DCM Core Principle 16 Acceptable Practices set forth practices to demonstrate compliance with DCM Core Principle 16. Among other topics, the acceptable practices provide that a DCM's board of directors or executive committees would be comprised of at least 35 percent public directors. The Commission notes that currently all of the DCMs that are designated by the Commission rely on the acceptable practices to comply with Core Principle 16, in lieu of any other means for compliance.

[288] *See* proposed § 37.1204(a)(1), herein.

composition requirements applicable to publicly-traded companies, which require that the majority of the board of directors to be ''independent'' directors. While the proposed threshold is lower than the standard that applies to publicly-traded companies, the Commission seeks to strike the appropriate balance between promoting independence on the board of directors and providing enough flexibility to include directors with the necessary industry expertise.

By setting the percentage of public directors at 35 percent and requiring enhanced accountability by board of directors through an annual self-assessment, the Commission believes that proposed §§ 37.1204(a) and 38.854(a) will provide multiple benefits. First, public directors may offer perspectives and experiences that differ but complement the views of internal directors to aid decision-making at exchanges. Second, establishing clear roles and responsibilities for board of directors will enhance accountability. Third, the proposed §§ 37.1204(b) and 38.854(b) requirements that members of SEF's and DCM's board of directors have relevant expertise will ensure these individuals can contribute to a well-functioning board of directors that is capable of addressing complex problems that SEFs and DCMs face.

To further minimize conflicts of interest, proposed §§ 37.1204(c) and 38.854(c) prohibit the compensation of public directors and other non-executive members of the board of directors from being directly dependent on the business performance of either the SEF or DCM or an affiliate. This requirement helps to ensure that non-executive directors remain independent and make objective decisions for the SEF or DCM—not for their own financial benefit. This also should promote public confidence in the ability of the board of directors to effectively govern the SEF or DCM.

The Commission believes that proposed §§ 37.1204(c) and 38.854(c) requirements for SEF and DCM boards of directors to conduct annual self-assessments should enhance boards of directors' accountability and improve their ability to meet the standards of conduct expected by the proposed rules, which in turn will benefit SEFs, DCMs, market participants, and the financial system more broadly. The documentation process will also create benefits by allowing Commission staff to request to see the results of the self-assessment during the course of rule enforcement reviews. To the extent that SEFs and DCMs already conduct self-assessments of their boards of directors, these benefits will be limited or may already have been realized.

B. Costs

The requirements in proposed §§ 37.1204(a)(1) and (3) and 38.854(a)(1) and (3) requiring SEF and DCM board of directors and executive committees to be composed of 35 percent public directors could cause SEFs and DCMs to incur higher costs, compared to non-public directors, because public directors must meet additional qualifications and therefore it may take SEF and DCM staff additional time to identify such persons. Similarly, requiring members of the board of directors to have relevant expertise, under proposed §§ 37.1204(b) and 38.854(b) and will impose costs in terms of SEF and DCM staff time. When the composition requirements are first established, some SEFs and DCMs will incur initial costs to identify and appoint new members for their boards of directors that satisfy the composition requirements of proposed §§ 37.1204(b) and 38.854(b). Time requirements will vary based on SEFs and DCMs current composition of the board of directors.

Proposed §§ 37.1204(a)(2) and 38.854(a)(2) will require SEFs and DCMs to draft policies and procedures setting forth the requirements of the board of directors, including how the board oversees the entity's compliance with statutory, regulatory, and self-regulatory responsibilities. At a minimum, existing board of directors' policies would need to be reviewed, and, as necessary, such policies would need to be revised. To the extent that such policies are approved by the board of directors, the board of directors would need to devote additional meeting time to approve such policies.

Prohibiting compensation being directly linked to business performance, for public directors and other non-executive members, as required by proposed §§ 37.1204(c) and 38.854(c) will impose costs in terms of time necessary to review existing compensation plans, and revise such plans if they are not in compliance.

The requirements under proposed §§ 37.1204(d) and 38.854(d) for a SEF's and DCM's board of directors to conduct an annual self-assessment will impose costs in terms of conducting such a review, including reviewing policies and procedures and interviewing SEF or DCM staff. Additionally, there will be costs of the time of the board of directors evaluating and approving the self-assessment at board meetings.

Proposed §§ 37.1204(e) and 38.854(e) require procedures for removing members of the board of directors, when the conduct of a member is likely to be prejudicial to the sound and prudent management of the SEF or DCM. The proposed requirements will impose costs relating to reviewing existing procedures, drafting new procedures if necessary, and board of director's time in assessing situations where a member's conduct may be problematic.

The requirements in proposed §§ 37.1204(f) and 38.854(f) relating to reporting to the Commission within five business days of any change in board membership or any of its committees will require SEF and DCM staff time in notifying the Commission, as applicable, when changes to the membership of the board of directors or any of its committees occur.

Generally, costs associated with complying with proposed §§ 37.1204 and 38.854 may further vary based on the size of the SEF or DCM, available resources, and existing practices, rules, and procedures. Accordingly, those costs would be impracticable to reasonably quantify. Further, rules and procedures required for implementing the proposed board of director requirements would likely not change significantly from year to year, so after the initial creation of the rules and procedures, the time required to maintain those procedures would be negligible. To the extent that SEFs and DCMs have adopted existing board of director composition standards under DCM Core Principle 16 Acceptable Practices, some of the costs identified above will have already been realized.

The Commission requests comments on the potential costs of proposed §§ 37.1204 and 38.854, including any costs that would be imposed on SEFs, DCMs, other market participants, or the financial system more broadly.

C. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of proposed §§ 37.1204 and 38.854 in light of the specific considerations identified in Section 15(a) of the CEA. The Commission believes that proposed §§ 37.1204 and 38.854 may have a beneficial effect on protection of market participants and the public, as well as on the financial integrity of the markets. Public directors, with their independent perspective, might consider and advocate for stakeholders that non-public directors do not consider. As a result, this might lead to greater protection of the wider public. The Commission has considered the other Section 15(a) Factors and believes that they are not implicated by proposed §§ 37.1204 and 38.854.

vi. Public Director Definition—Proposed §§ 37.1201(b)(12) and 38.851(b)(12)

The definition of ''public director'' in proposed §§ 37.1201(b)(12) and 38.851(b)(12) excludes a person who has a ''material relationship'' with the SEF or DCM from serving as a public director, and defines a ''material relationship'' as one that could affect the independent judgment or decision-making ability of the director. The public director definition enumerates certain relationships that are deemed to be material: (1) the director is an officer or an employee of the SEF or DCM, or an officer or an employee of its affiliate; (2) the director is a member of the DCM or is a director, officer, or an employee of either a member or an affiliate of a member; (3) the director directly or indirectly owns more than 10 percent of the SEF or DCM or an affiliate of the SEF or DCM, or is an officer or employee of an entity that directly or indirectly owns more than 10 percent of SEF or DCM; (4) the director, or an entity in which the director is a partner, an officer, an employee, or a director receives more than $100,000 in aggregate annual payments from the SEF or DCM, or an affiliate of the SEF or DCM. A material relationship disqualifies a person from being a public director. The material relationship disqualifier also applies to any person with whom the director has a ''family relationship,'' as set forth in proposed §§ 37.1201(b)(7) and 38.851(b)(7), and is subject to a one-year look-back period.

A. Benefits

The Commission believes that codifying the public director definition for both SEFs and DCMs in proposed §§ 37.1201(b)(12) and 38.851(b)(12) will provide several benefits. First, expanding the disqualifying factors to prohibit individuals who, directly or indirectly, own more than 10 percent of either the SEF or DCM or an affiliate will further prevent individuals with specific conflicts of interests, including personal financial interests, from serving as public directors and makes it more likely that decision-makers will remain independent. Second, applying the disqualifying factors to family relationships ensures that public directors are not influenced by familial connections. Third, requiring both an initial and annual review of the qualifications of public directors should reduce the risk that existing public directors may become disqualified in the course of the service on the board of directors and become conflicted in the SEFs' or DCMs' decision-making process.

B. Costs

The Commission does not believe that there are costs associated with the definition of ''public director'' in proposed §§ 37.1201(b)(12) and 38.851(b)(12). However, SEFs and DCMs will incur costs associated with making determinations on whether an individual is qualified to serve as a public director. Those costs include the process to identify, minimize, and resolve conflicts of interests as proposed by §§ 37.1201(a) and 38.851(a), and to determine whether a person meets fitness standards under proposed §§ 37.207 and 38.801, discussed above. Finally, the Commission notes that if an individual is found not to be eligible to serve, the SEF or DCM can mitigate the costs incurred with making such determination if it chooses to nominate the individual as a non-public director. Costs associated with complying with the proposed §§ 37.1201(b)(12) and 38.851(b)(12) may vary based on the size of the SEF and DCM, its available resources, and its existing practices and policies. To the extent that SEFs and DCMs have voluntarily adopted existing public director standards under the DCM Core Principle 16 Acceptable Practices, some of the costs identified above will have already been realized.

The Commission requests comments on the potential costs of proposed §§ 37.1201(b)(12) and 38.851(b)(12), including any costs that would be imposed on SEFs, DCMs, other market participants, or the financial system more broadly.

C. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of proposed §§ 37.1201(b)(12) and 38.851(b)(12) in light of the specific considerations identified in Section 15(a) of the CEA. The Commission believes that the public director definition under proposed §§ 37.1201(b)(12) and 38.851(b)(12) may have a beneficial effect on the protection of market participants and the public, as well as on the financial integrity of the markets.[289] Ensuring sufficient independent judgment through the inclusion of public directors will improve the overall decision-making of a SEF or DCM and protect the market regulation functions. The Commission has considered the other Section 15(a) Factors and believes that they are not implicated by proposed §§ 37.1201(b)(12) and 38.851(b)(12).

vii. Nominating Committee—Proposed §§ 37.1205 and 38.855

Currently, neither SEFs nor DCMs are obligated by Commission regulations to have a nominating committee to identify or manage the process for nominating potential members of the board of directors. DCM Core Principle 17 requires the governance arrangements of a board of directors of a DCM to permit consideration of the views of market participants. Similarly, pursuant to Commission regulation § 1.64(b)(3), an SRO, such as a SEF, must include a diversity of membership interests on their governing boards.

The Commission is proposing §§ 37.1205 and 38.855 to require SEFs and DCMs to have a nominating committee. The role of the nominating committee would be to identify a pool of candidates who are qualified to serve on the board of directors who represent diverse interests, including the interests of the participants and members of the SEF or DCM. Furthermore, proposed §§ 37.1205 and 38.855 would require: at least 51 percent of the nominating committee be comprised of public directors, the nominating committee be chaired by a public director, and the nominating committee report directly to the board of directors.

A. Benefits

The Commission believes that proposed §§ 37.1205 and 38.855 establishing SEF and DCM nominating committees will help protect the integrity of selecting members for the board of directors and assist SEFs and DCMs in identifying qualified candidates. The Commission believes that requiring 51 percent of the nominating committee to be public directors will help maintain independence and objectivity in selecting nominees for the board of directors. Additionally, the requirement in proposed §§ 37.1205 and 38.855 that the nominating committee identify individuals that reflect the views of market participants will help ensure that a broader pool of candidates with more diverse viewpoints are considered to serve on the board of directors. The Commission believes that these diverse viewpoints may improve the decision-making of the SEF or DCM. These benefits, in turn, will improve the governance and public perception of the SEF or DCM.

[289] See *supra,* Section V(b), ''public director'' definition—proposed §§ 37.1201(b)(12) and 38.851(b)(12).

B. Costs

Since SEFs and DCMs are not currently required to have nominating committees, some entities would need to revise their existing policies and procedures to create a nominating committee in accordance with proposed §§ 37.1205 and 38.855. Accordingly, proposed §§ 37.1205 and 38.855 would impose some costs on these SEFs and DCMs, including costs that could arise from additional hours SEF and DCM employees might need to spend time reviewing existing SEF and DCM policies and procedures, and designing and implementing new or amended rules and procedures, as necessary.

Specifically, drafting new policies and procedures to form a nominating committee would cost administrative time. Those administrative costs associated with complying with proposed §§ 37.1205 and 38.855 may vary based on the size of the SEF or DCM, available resources, and existing practices, rules, and procedures. Accordingly, those costs would be impracticable to reasonably quantify. Further, rules and procedures required to administer a nominating committee would likely not change significantly from year to year, so after the initial creation of the rules and procedures, the time required to maintain those procedures would be negligible.

When the nominating committee is first established, the SEF and DCM will incur initial costs related to identifying potential members for the nominating committee, including public directors that must comprise 51 percent of the committee. Ongoing implementation of proposed §§ 37.1205 and 38.855 would also impose costs whenever the nominating committee meets to identify new candidates for the board of directors, nominates individuals to the board of directors, and reports their decisions to the SEF or DCM board of directors.

The Commission requests comments on the potential costs of proposed §§ 37.1205 and 38.855, including any costs that would be imposed on SEFs, DCMs, other market participants, or the financial system more broadly.

C. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of proposed §§ 37.1205 and 38.855 in light of the specific considerations identified in Section 15(a) of the CEA. The Commission believes that proposed §§ 37.1205 and 38.855 may have a beneficial effect on protection of market participants and the public, as well as on the financial integrity of the markets. The Commission believes that the proposed rules requiring SEF and DCM nominating committees will have a beneficial effect on the identification of nominees for the board of directors who have independent and diverse experiences. Such characteristics, the Commission believes, will aid in recruiting members for the board of directors who will contribute to making sound decisions for SEFs and DCMs, and, ultimately, for the markets. The Commission has considered the other Section 15(a) Factors and believes that they are not implicated by proposed §§ 37.1205 and 38.855.

viii. Regulatory Oversight Committee—Proposed §§ 37.1206 and 38.857

Currently, the DCM Core Principle 16 Acceptable Practices provide that DCMs establish a ROC, consisting of only public directors, to assist in minimizing actual and potential conflicts of interest. The purpose of the ROC is to oversee the DCM's regulatory program on behalf of the board of directors, which in turn, delegates the necessary authority, resources, and time for the ROC to fulfill its mandate. The ROC is responsible for: (1) monitoring the DCM's regulatory program for sufficiency, effectiveness, and independence; (2) overseeing all facets of the regulatory program; (3) reviewing the size and allocation of the regulatory budget and resources; and the number, hiring and termination, and compensation of regulatory personnel; (4) supervising the DCM's CRO, who reports directly to the ROC; (5) preparing an annual report assessing the DCM's self-regulatory program for the board of directors and the Commission; (6) recommending changes that would ensure fair, vigorous, and effective regulation; and (7) reviewing regulatory proposals and advising the board as to whether and how such changes may impact regulation. In performing these functions, the ROC plays a critical role in insulating the CRO and the DCM's self-regulatory function from undue influence.

Currently, SEFs do not have any requirements for establishing a ROC but they are subject to Core Principle 15, which requires SEFs to designate a CCO to monitor its adherence to statutory, regulatory, and self-regulatory requirements and to resolve conflicts of interest that may impede such adherence. The CCO is required to report to the SEF board of directors (or similar governing body) or the senior SEF officer.

The Commission is proposing to codify the ROC component of the DCM Core Principle 16 Acceptable Practices for both SEFs and DCMs. Proposed §§ 37.1206(a) and 38.857(a), respectively, require SEFs and DCMs to establish a ROC composed of only public directors. In addition, the Commission is proposing §§ 37.1206(c) and 38.857(c), which require the board of directors to delegate sufficient authority, dedicate sufficient resources, and allow sufficient time to perform its functions to ensure that the ROC can fulfill its mandate and duties. Furthermore, proposed §§ 37.1206(d) and 38.857(d) would require SEF and DCM ROCs, respectively, to have oversight duties over the market regulation functions, including: (1) monitoring the SEF's or DCM's market regulation functions for sufficiency, effectiveness, and independence; (2) overseeing all facets of the market regulation functions; (3) approving the size and allocation of the regulatory budget and resources; and the number, hiring and termination, and compensation of staff; (4) recommending changes that would promote fair, vigorous, and effective self-regulation; and (5) reviewing all regulatory proposals prior to implementation and advising the board of directors as to whether and how such proposals may impact market regulation functions.

The Commission also is proposing several new requirements related to procedures and documentation for ROC meetings that reflect the best practices that have been identified during the Commission's oversight of DCMs. Proposed §§ 37.1206(f) and 38.857(f) would require SEF and DCM ROCs to meet quarterly. In addition, proposed §§ 37.1206(f)(1)(iii) and 38.857(f)(1)(iii) would require that ROC meeting minutes include: (a) list of the attendees; (b) their titles; (c) whether they were present for the entirety of the meeting or a portion thereof (and if so, what portion); and (d) a summary of all meeting discussions. Proposed §§ 37.1206(f)(2) and 38.857(f)(2) would require the ROC to maintain documentation of the committee's findings, recommendations, and any other discussions or deliberations related to the performance of its duties. The Commission also is proposing rules to require an annual ROC report, which would enhance the ROC report procedures currently set forth in the DCM Core Principle 16 Acceptable Practices. Specifically, the Commission is proposing §§ 37.1206(g)(1) and 38.857(g)(1) to require that ROC annual reports include a list of any actual or potential conflicts of interest that were reported to the ROC and a description

of how such conflicts of interest were managed and resolved and an assessment of the impact of any conflicts of interest on the SEF's or DCM's ability to perform its market regulation functions. In addition, proposed §§ 37.1206(g)(2) and 38.857(g)(2) would establish a process for filing the ROC annual report which mirrors the existing SEF annual compliance report requirements in Commission regulation § 37.1501(e). These proposed requirements would establish the following: (1) a filing deadline no later than 90 days after the end of the fiscal year; (2) a process for amendments and extension requests; (3) recordkeeping requirements; and (4) delegated authority to the Division of Market Oversight to grant or deny extensions. Finally, proposed §§ 37.1206(g)(3) and 38.857(g)(3) require SEFs and DCMs to maintain all records demonstrating compliance with the duties of the ROC and the preparation and submission of its annual report.

A. Benefits

Proposed §§ 37.1206 and 38.857 establish the creation and duties for SEF and DCM ROCs. These proposed rules will generate benefits by establishing effective structural governance protections to assist SEFs and DCMs in minimizing conflicts of interest that may impact their market regulation functions. The ROC will help to ensure that improper influences and pressures from a SEF's or DCM's commercial interest do not denigrate the integrity of the market regulation functions. Because both SEFs and DCMs are SROs, these benefits extend well beyond the internal functioning of a SEF or DCM. Since SEFs and DCMs have similar commercial interests that may conflict with their market regulation functions, the Commission believes that applying similar ROC structures across SEFs and DCMs will result in a more level and resilient marketplace, which in turn will promote competition in the derivatives markets.

The proposed rules address the types of conflicts of interest Commission staff has identified through its SEF and DCM oversight activities. Accordingly, the proposed rules are based on existing, identifiable solutions that have already benefitted SEFs and DCMs. To the extent that the existing SEF and DCM practices are similar to the proposed requirements, the benefits will be limited or already have been realized.

The requirements under proposed §§ 37.1206(f) and 38.857(f) relating to ROC meetings and documentation should provide a number of benefits. First, the quarterly meeting requirement facilitates the free-flow of information between the ROC and the SEF's CCO or the DCM's CRO. This is an opportunity to share information, discuss matters of mutual concern, and speak freely about potentially sensitive issues that may relate to the SEF's or DCM's management. Such communication may enable the SEF or DCM to more effectively fulfill its market regulation function. Similarly, restricting individuals with actual or potential conflicts of interest from attending ROC meetings ensures that sensitive information related to the market regulation function is not broadly disseminated. The documentation requirements, such as requiring ROC meeting minutes under proposed §§ 37.1206(f)(1)(iii) and 38.857(f)(1)(iii), and the ROC annual reporting requirements under proposed §§ 37.1206(g)(1) and 38.857(g)(1), are mechanisms to enhance the accountability of the ROC and promote transparency for all stakeholders. Ultimately, market participants will benefit from the improvements in SEF and DCM governance operations.

B. Costs

The proposed rules would impose some costs on SEFs and DCMs. To the extent that DCMs and some SEFs already have established a ROC, they may incur some costs related to updating their ROC policies and procedures to comply with proposed §§ 37.1204 and 38.854. Costs could arise from additional hours SEF and DCM employees might need to spend analyzing the compliance of their rules and procedures with these requirements, drafting and implementing new or amended rules and procedures, when necessary. While some SEFs have chosen to create ROCs, those SEFs that do not current have ROCs may incur additional costs associated with establishing the committee and identifying the public directors that will serve on the committee. Specifically, drafting new policies to form this committee would cost administrative time. The amount of time required to establish this committee would vary based on a number of factors, including whether the SEF's or DCM's existing policies complying with the proposed rules, and the amount of time necessary for each SEF and DCM to draft and implement new or amended polices, where necessary. Further, policies required for implementing the proposed rules would likely not change significantly from year to year, so after the initial creation of the policies, the time required to create rules and procedures would be negligible.

When the ROC is initially established, the SEF or DCM will incur costs for the time spent to identify potential members that meet public director composition requirement. Ongoing implementation of the proposed rules also would impose costs. For example, there may be costs associated with providing necessary information to the ROC for its consideration, and time spent by the members of a SEF's or DCM's board of directors or senior officer to meet and consult with the ROC, and consider and respond to any information requested by the ROC. A ROC's operation also would require time from its members to meet at least on a quarterly basis, as required by proposed §§ 37.1206(f) and 38.857(f). ROC members also will spend time on the duties outlined in proposed §§ 37.1206(d) and 38.857(d).

There may be additional costs related to ROC meetings, reporting, and recordkeeping. Proposed §§ 37.1206(f)(1)(iii) and 38.857(f)(1)(iii) require ROCs to keep minutes of their meetings and proposed §§ 37.1206(f)(2) and 38.857(f)(2) require ROCs to maintain documentation of findings, recommendations, and any other discussions or deliberations. Proposed §§ 37.1206(g)(1) and 38.857(g)(1) require ROCs to prepare an annual report for the board of directors and the Commission. The time spent drafting the annual report will include time spent assessing the SEF's or DCM's self-regulatory program and preparing the report with the information required in proposed §§ 37.1206(g)(1)(i)–(vi) and 38.857(g)(1)(i)–(vi). Finally, SEFs and DCMs may incur some initial costs associated with establishing a process to maintain all records demonstrating compliance with the duties of the ROC and the preparation and submission of annual reports, as required by proposed §§ 37.1206(g)(3) and 38.857(g)(3).

Costs associated with complying with proposed §§ 37.1206(f) and 38.857(f) may vary based on the size of the SEF and DCM, available resources, and existing practices and policies. To the extent that SEFs and DCMs have adopted existing ROC standards under the DCM Core Principle 16 Acceptable Practices, some of the costs identified above will have already been realized.

The Commission requests comments on the potential costs of proposed §§ 37.1206 and 38.857, including any costs that would be imposed on SEFs, DCMs, other market participants, or the financial system more broadly. In particular, for those SEFs and DCMs that already have ROCs in place, the

Commission requests comment on the extent to which the proposed rules would require changes to existing ROC policies and procedures.

C. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of proposed §§ 37.1206 and 38.857 in light of the specific considerations identified in Section 15(a) of the CEA. The Commission believes that proposed §§ 37.1206 and 38.857 may have a beneficial effect on protection of market participants and the public, as well as on the financial integrity of the markets by strengthening the boards oversight of the market regulation functions of SEFs and DCMs. The Commission has considered the other Section 15(a) Factors and believes that they are not implicated by proposed §§ 37.1206 and 38.857.

ix. Disciplinary Panel Composition—Proposed §§ 37.1207 and 38.858

Currently, the DCM Core Principle 16 Acceptable Practices provide that DCMs establish disciplinary panel composition standards. Those acceptable practices state that no group or class of industry participants may dominate or exercise disproportionate influence on such panels. Furthermore, the DCM Core Principle 16 Acceptable Practices provide that all disciplinary panels (and appellate bodies) include at least one person who would qualify as a public director, except in cases limited to decorum, attire, or the timely submission of accurate records required for clearing or verifying each day's transactions. Currently, Commission regulation § 1.64(c) requires SEF major disciplinary committees to include: (1) at least one member who is not a member of the SEF; and (2) sufficient different membership interests to ensure fairness and to prevent special treatment or preference for any person in the conduct of a committee's or the panel's responsibility.

The Commission is proposing §§ 37.1207 and 38.858 for both SEFs and DCMs, respectively, to adopt disciplinary panel composition requirements which prohibit any member of a disciplinary panel from participating in deliberations or voting on any matter in which the member has an actual or potential conflict of interest. With this proposed rulemaking, SEFs will be exempt from complying with Commission regulation § 1.64(c) since they will be subject to this new rule.

In addition, the Commission is proposing §§ 37.1207(a) and (b) and 38.858(a) and (b) to clarify that SEF and DCM disciplinary panels and appellate panels must consist of two or more persons. The Commission is also proposing §§ 37.1207(b) and 38.858(b) to extend the public participant requirement to any SEF and DCM committee to which disciplinary panel decisions may be appealed. Finally, the Commission is proposing technical amendments to Commission regulations §§ 37.206(b) and 38.702 to remove the references that disciplinary panels must meet the composition requirements of part 40 and replace these references with references to proposed regulations §§ 37.1207 and 38.858, respectively. The Commission also proposes changing the reference to ''compliance'' staff to ''market regulation'' staff. This is intended for clarity and is consistent with proposed changes to §§ 38.155(a) and 37.203(c).

A. Benefits

The requirement under proposed §§ 37.1207 and 38.858 for SEFs and DCMs to establish disciplinary panel requirements is likely to provide a number of benefits. The composition requirements of §§ 37.1207(a) and 38.858(a) instill fairness in the disciplinary process by requiring a minimum of two members, one of whom must be a public participant. This ensures that the disciplinary panels have a degree of independence from outside influences, and are capable of functioning impartially. Proposed §§ 37.1207(a)(1) and (2) and 38.858(a)(1) and (2) further these goals by precluding any group or class of participants from dominating or exercising disproportionate influence on a disciplinary panel, and prohibiting any member of a disciplinary panel from participating in deliberations or voting on any matter in which the member has an actual or potential conflict of interest. These safeguards increase the likelihood that disciplinary proceedings are handled by competent individuals that represent a diversity of perspectives, and are free of conflicts of interest. This, in turn, may benefit the overall integrity of the derivatives markets.

B. Costs

SEFs and DCMs are already required to establish disciplinary panels pursuant to Commission regulations §§ 37.206(b) and 38.702. Accordingly, the potential cost is limited to the changes necessary to comply with proposed §§ 37.1207 and 38.858. Initial costs could arise from additional administrative hours SEF and DCM employees might need to spend analyzing the compliance of their rules and procedures with these requirements, and drafting and implementing new or amended rules, as necessary. Once these rules and policies are established, they would likely not change significantly from year to year.

SEFs and DCMs may need to change the composition of their disciplinary panels to satisfy the requirements of proposed §§ 37.1207(a) and 38.858(a), and ensure that these requirements are extended to appellate panels, as required by proposed §§ 37.1207(b) and 38.858(b). Additionally, proposed §§ 37.1207 and 38.858 prohibit any member of the panel from voting on issues in which they have a conflict of interest, which may reduce the number of potential suitable individuals who may serve on the disciplinary panel.

Costs associated with complying with the proposed §§ 37.1207(b) and 38.858(b) may further vary based on the size of the SEF and DCM, its available resources, its existing practices and policies. To the extent that SEFs and DCMs have adopted existing disciplinary panel standards under the Acceptable Practices for DCM Core Principle 16, some of the costs identified above will have already been realized. The Commission requests comments on the potential costs of proposed §§ 37.1207 and 38.858, including any costs that would be imposed on SEFs, DCMs, other market participants, or the financial system more broadly. In particular, for those SEFs and DCMs that already have disciplinary panels in place, the Commission requests comment on the extent to which the proposed rules would require changes to existing policies and procedures regarding their disciplinary panels.

C. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the proposed amendments to §§ 37.1207 and 38.858 in light of the specific considerations identified in Section 15(a) of the CEA. The Commission believes that proposed §§ 37.1207 and 38.858 may have a beneficial effect on protection of market participants and the public, as well as on the financial integrity of the markets. The Commission believes that by better ensuring the fairness of the disciplinary process, market participants can have greater trust in the oversight process of SEF and DCM rules. The Commission has considered the other Section 15(a) Factors and believes that they are not implicated by proposed §§ 37.1207 and 38.858.

x. DCM Chief Regulatory Officer—Proposed § 38.856

Commission regulations do not currently require DCMs to have a CRO. However, the framework created under the DCM Core Principle 16 Acceptable Practices includes a reference to a CRO, who reports directly to the ROC.

The Commission is proposing § 38.856(a)(1) to require DCMs to establish the position of a CRO to administer a DCM's market regulation functions. The proposed rules would require that (i) the position of CRO must carry with it the authority and resources necessary to fulfill the duties set forth in this section for CROs; and (ii) the CRO must have supervisory authority over all staff performing the DCM's market regulation functions.

In addition, the Commission is proposing § 38.856(a)(2) to require that the individual designated to serve as CRO must have the background and skills appropriate for fulfilling the duties of the position. A DCM, therefore, is expected to identify the needs of its own market regulation functions and ensure that the CRO has the requisite surveillance and investigatory experience necessary to perform the role. Moreover, individuals disqualified from registration pursuant to sections 8a(2) or 8a(3) of the CEA are ineligible to serve as a CRO.

Proposed § 38.856(b) requires the CRO to report directly to the DCM's board of directors or senior officer. The Commission is also proposing § 38.856(c) to require (1) the appointment or removal of a DCM's CRO to occur only with the approval of the DCM's ROC; (2) the DCM to notify the Commission within two business days of the appointment of any new CRO, whether interim or permanent; and (3) the DCM to notify the Commission within two business days of removal of the CRO. The Commission is proposing § 38.856(d) to require the board of directors or the senior officer of the DCM, in consultation with the DCM's ROC, to approve the compensation of the CRO.

The Commission is proposing § 38.856(e) to establish the duties of the CRO, which include: (1) supervising the DCM's market regulation functions; (2) establishing and administering policies and procedures related to the DCM's market regulation functions; (3) supervising the effectiveness and sufficiency of any regulatory services provided to the DCM by a regulatory service provider in accordance with existing § 38.154; (4) reviewing any proposed rule or programmatic changes that may have a significant regulatory impact and advising the ROC on such matters; and (5) in consultation with the DCM's ROC, identifying, minimizing, managing, and resolving conflicts of interest involving the DCM's market regulation functions.

Finally, proposed§ 38.856(f) requires DCMs to establish procedures for the CRO's disclosure of actual or potential conflicts of interest to the ROC, and designation of a qualified person to serve in the place of the CRO if the CRO has such a conflict of interest. The proposed rules also require documentation of any such disclosure regarding conflicts of interest.

A. Benefits

The Commission preliminarily believes that establishing a position of a CRO under proposed § 38.856(a)(1) will enable DCMs to comply with their statutory and regulatory obligation to fulfill their market regulation functions. Proposed § 38.856(a)(2) provides that the CRO must have the necessary background and skills appropriate for fulfilling the responsibilities of the position. This requirement will benefit DCMs by ensuring CROs have the requisite experience necessary to oversee the DCM's market regulation functions. CROs who lack appropriate background and skills for their position would have a harder time effectively fulfilling their duties, which could be detrimental to the DCM's role as a SRO.

Furthermore, proposed § 38.856(b), which requires the CRO to directly report to the board of directors or to the senior officer, would make it easier for the CRO to fulfill the duties critical to the DCM's market regulation functions. For example, having a direct line to the board of directors or the senior officer would allow the CRO to more easily gain approval for any new policies related to the DCM's market regulation functions that the CRO needed to implement, to the extent that they required approval of a senior officer or the board of directors. Since DCM rule changes often need to be approved by the board of directors, having the CRO report to the board of directors or to the senior officer (who likely regularly communicates with the board of directors) would allow the CRO to more easily explain the need for rule changes, and to answer questions from the board of directors or the senior officer about such changes.

Proposed §§ 38.856(c) and (d) require the ROC to (1) approve the appointment or removal of the CRO, and (2) consult with the board of directors or senior officer regarding the compensation of the CRO. The ROC is composed of exclusively public directors who have no material relationship with the exchange, and therefore, is well-positioned to protect the CRO from interference from commercial interests. If the senior officer or the board of directors sought to terminate the CRO or decrease the CRO's compensation, as retaliation for not advancing the DCM's commercial interests ahead of the interests of the market regulation function, the ROC could step in to protect the CRO. By requiring the DCM to notify the Commission upon the appointment of a new CRO, the proposed rule will facilitate Commission staff being able to contact the new CRO to discuss regulatory concerns. Additionally, Commission staff can ask questions about the removal of the old CRO, and identify whether the ROC was involved.

Additionally, proposed § 38.856(e), which establishes the duties of a CRO, will provide benefits by establishing clear and transparent standards for the CRO duties, and may prevent the board of directors or senior officer from unreasonably limiting the CRO's role. For example, a board of directors or senior officer would be prohibited from taking over the market regulation functions in order to prioritize commercial interests.

Finally, proposed § 38.856(f), which requires the CRO to disclose to the ROC and document any actual or potential conflicts of interest identified by the CRO, is likely to provide benefits by promoting integrity and further allowing CROs to fulfill their duties. If the CRO did not have to disclose their own conflicts, the CRO's involvement in resolving conflicts of interest could exacerbate, rather than mitigate, conflicts of interest in the critical market regulation functions of the DCM. Therefore, proposed § 38.856(f) may further mitigate potential conflicts of interests in the DCM's role as an SRO.

B. Costs

Commission regulations do not currently require a DCM to appoint a CRO. However, the Commission noted that current industry practice is for DCMs to designate an individual to serve as CRO, and it would be difficult for a DCM to meet the staffing and resource requirements of § 38.155 without a CRO. However, even if all DCMs currently have a CRO, it is possible that some DCMs may incur costs by having to adjust their existing staffing structure to ensure it complies with the specific regulatory requirements of proposed § 38.856(a)(1). These costs could arise from additional hours DCM employees might need to spend analyzing their rules, policies,

and procedures for compliance with these requirements, and drafting and implementing new or amended rules, policies, and procedures, when necessary. Additionally, there may be costs incurred in implementing the appropriate policies and procedures to ensure that the CRO has the resources required to perform the duties set forth in proposed § 38.856(a)(1).

DCMs may also expend administrative time finding a suitable candidate for the CRO position if the DCM either does not have a CRO, or does not have a CRO that meets the requirements of proposed § 38.856(a)(2). If a DCM does not already have a CRO, the costs to identify and hire a new CRO could be significant. Where DCMs have existing CROs, the cost of implementing the proposed rules may be lower. Nevertheless, there may costs related to ensuring the existing CRO role satisfies all of the requirements set forth in proposed § 38.856. Ongoing costs may include employment costs for the position itself, as well as time spent by the board of directors or senior officer to supervise the CRO and the administrative costs associated with notifying the Commission of the appointment of a new CRO or the removal of an existing CRO. The Commission requests comments on the potential costs of proposed § 38.856, including any costs that would be imposed on DCMs, other market participants, or the financial system more broadly. In particular, for those DCMs that already have CROs, the Commission requests comment on the extent to which the proposed rules would require changes to existing policies and procedures regarding the CRO position.

C. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of proposed § 38.856 in light of the specific considerations identified in Section 15(a) of the CEA. The Commission believes that proposed § 38.856 may have a beneficial effect on protection of market participants and the public, as well as on the financial integrity of the markets. The Commission believes that designating a CRO to administer the market regulation functions of the DCM will promote compliance with the proposed rules related to identifying and minimizing DCM conflicts of interest, which, in turn, will allow the DCMs to better provide services as an exchange. The Commission has considered the other Section 15(a) Factors and believes that they are not implicated by proposed § 38.856.

xi. Staffing and Investigations—Proposed Changes to Commission Regulations §§ 38.155, 38.158, and 37.203

Commission regulation § 38.155(a) requires a DCM to: (1) establish and maintain sufficient compliance department resources and staff to ensure that it can conduct effective audit trail reviews, trade practice surveillance, market surveillance, and real-time market monitoring; (2) maintain sufficient compliance staff to address unusual market or trading events as they arise; and (3) conduct and complete investigations in a timely manner. Furthermore, Commission regulation § 38.155(b) requires a DCM to: (1) monitor the size and workload of its compliance staff annually and ensure that its compliance resources and staff are at appropriate levels; and (2) consider trading volume increases, the number of new products or contracts to be listed for trading, any new responsibilities to be assigned to compliance staff, the results of any internal review demonstrating that work is not completed in an effective or timely manner, and any other factors suggesting the need for increased resources and staff.

Similarly, existing Commission regulation § 37.203(c) requires SEFs to have sufficient compliance staff and resources to ensure it can conduct effective audit trail reviews, trade practice surveillance, market surveillance, and real-time market monitoring. Currently, SEFs are not subject to a regulation parallel to Commission regulation § 38.155(b) where DCMs are required to annually monitor the sufficiency of staff and resources.

Finally, existing regulations §§ 37.203(f) and 38.158, respectively, relate to SEF and DCM obligations regarding investigations and investigation reports. These provisions generally address investigation timeliness, substance of investigation reports, and the issuance of warning letters.

The Commission is proposing amendments to existing §§ 37.203(c) and 38.155(a). First, the Commission proposes to replace references to ''compliance staff'' with ''staff.'' Second, proposed §§ 37.203(c) and 38.155(a) would amend the first sentence of the existing regulations to provide that SEFs and DCMs must establish and maintain sufficient staff and resources to ''effectively perform market regulation functions'' rather than listing the individual functions. The Commission does not view these as substantive changes. References to ''staff'' rather than ''compliance staff'' are intended for clarity. As noted, Commission regulations §§ 37.203(c) and 38.155(a) are solely focused on staff dedicated to performing market regulation functions.

The Commission also proposes to amend § 37.203 to add a new paragraph (d). The proposed provision would require SEFs to annually monitor the size and workload of their staff, and ensure its resources and staff effectively perform market regulation functions at appropriate levels. In addition, paragraph (d) would include a reference to paragraph (c) to clarify that it applies to staff responsible for conducting market regulation functions. In addition, with respect to both proposed § 37.203(d) and amended § 38.155(b), the Commission is proposing to add to the list of factors that a SEF or DCM should consider in determining the appropriate level of resources and staff: (1) any responsibilities that staff have at affiliated entities; and (2) any conflicts of interest that prevent staff from working on certain matters.

Additionally, the Commission proposes certain non-substantive changes to existing Commission regulations §§ 38.155 and 38.158. Proposed § 38.155 would rename the regulation ''Sufficient staff and resources.'' Proposed § 38.155(b) would add an internal reference to paragraph (a). This change is intended to clarify that the annual staff and resource monitoring requirement pertains to staff performing market regulation functions required under § 38.155(a). Proposed § 38.158(a) would replace the reference to ''compliance staff'' with ''staff responsible for conducting market regulation functions.'' Proposed § 38.158(b) would delete the reference to ''compliance staff investigation'' being required to be completed in a timely manner, and instead provide, more simply, that ''[e]ach investigation must be completed in a timely manner.'' Finally, proposed §§ 38.158(c) and (d) would delete the modifier ''compliance'' when referencing to staff.

Finally, the Commission also proposes certain non-substantive changes to existing Commission regulation § 37.203. Proposed § 37.203(c) would rename the paragraph ''Sufficient staff and resources.'' The addition of proposed § 37.203(d) would result in redesignating the remaining paragraphs of § 37.203. Proposed § 37.203(g)(1), which would replace existing Commission regulation § 37.203(f)(1), and adds a reference to ''market regulation functions,'' consistent with the new proposed defined term. Proposed § 37.203(g)(1),

which would replace existing Commission regulation § 37.203(f)(1), adds a reference to ''market regulation functions,'' consistent with the new proposed defined term. Proposed § 37.203(g)(2)–(4) deletes the modifier ''compliance'' when referencing staff.

A. Benefits

As explained above, the Commission is proposing certain non-substantive changes to existing §§ 37.203(c) and 38.155(a). These changes include replacing references to ''compliance staff'' with ''staff.'' Proposed §§ 37.203(c) and 38.155(a) would also amend the first sentence of the existing regulations to provide that SEFs and DCMs must establish and maintain sufficient staff and resources to ''effectively perform market regulation functions'' rather than listing the individual functions. Additionally, as noted above, the Commission proposes non-substantive changes to existing Commission regulations §§ 38.155, 38.158 and § 37.203. Proposed § 37.203(c) and § 38.155 would both be renamed as ''Sufficient staff and resources.'' Proposed § 37.203(g)(1) would add reference to ''market regulation functions,'' and 38.155(b) would add an internal reference to paragraph (a) to achieve the same result. Proposed § 38.158(a) would replace the reference to ''compliance staff'' with ''staff responsible for conducting market regulation functions.'' Proposed § 38.158(b) would delete the reference to ''compliance staff investigation'' being required to be completed in a timely manner, and instead provide, more simply, that ''[e]ach investigation must be completed in a timely manner.'' Finally, proposed §§ § 37.203(g)(2)–(4) and 38.158(c) and (d) would delete the modifier ''compliance'' when referencing to staff. These amendments provide additional clarity to those regulations. Such changes may provide benefits through enhanced regulatory clarity for SEFs and DCMs. However, as they are non-substantive changes, benefits will not be significant.

The Commission also proposes to amend § 37.203 to add a new paragraph (d). The proposed rule would require SEFs to annually monitor the size and workload of its staff, and ensure its resources and staff effectively perform market regulation functions at appropriate levels. In addition, paragraph (d) would include a reference to paragraph (c) to clarify that it applies to staff responsible for conducting market regulation functions. In addition, as noted above, with respect to both proposed § 37.203(d) and amended § 38.155(b), the Commission is proposing to add to the list of factors that a SEF or DCM should consider in determining the appropriate level of resources and staff: (1) any responsibilities that staff have at affiliated entities; and (2) any conflicts of interest that prevent staff from working on certain matters. Market regulation functions are critical for the performance of a SEF's self-regulatory obligations. This amendment is beneficial because it will help ensure sufficiency of SEF staff responsible for performing market regulation functions and identify in a timely way any potential conflicts of interest relating to market regulations staff, particularly regarding a SEF's or DCM's affiliates.

B. Costs

The Commission also proposes to amend § 37.203 to add a new paragraph (d). The proposed provision would require SEFs to annually monitor the size and workload of its staff, and ensure its resources and staff effectively perform market regulation functions at appropriate levels. SEFs may need to adjust their policies and procedures to comply with this new monitoring requirement. Costs could arise from additional hours SEF employees might need to spend analyzing the compliance of their rules and procedures with these requirements, drafting new or amended rules and procedures when necessary, and implementing these new or amended rules and procedures. Costs may further vary based on the size of the SEF, available resources the SEF may have, and with existing practices and policies the SEF may have in place. If a SEF has insufficient staff, it will need to find suitable candidates and hire staff as necessary. As noted above, the Commission proposes to amend § 38.155(b), to add to the list of factors that a DCM should consider in determining the appropriate level of resources and staff: (1) any responsibilities that staff have at affiliated entities; and (2) any conflicts of interest that prevent staff from working on certain matters. The Commission believes that any costs imposed by such additional two factors will be negligible, as DCMs are currently obligated under existing Commission regulation § 38.155(b) to monitor the size and workload of its compliance staff annually, and already lists various factors they should consider in making that determination of sufficiency of resources.

Finally, as noted above, the Commission proposes various non-substantive changes to Commission regulations §§ 37.203, 38.155, and 38.158. These will provide additional clarity to SEFs and DCMs, and any costs associated with such changes will be negligible.

The Commission requests comments on the potential costs of the proposed amendments to §§ 37.203, 38.155, and 38.158, including any costs that would be imposed on SEFs, DCMs, other market participants, or the financial system more broadly. In particular, for those SEFs and DCMs that already have these requirements in place, the Commission requests comment on the extent to which the proposed rules would require changes to existing policies and procedures.

C. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the proposed amendments to §§ 38.155, 38.158, and 37.203 in light of the specific considerations identified in Section 15(a) of the CEA. The Commission believes that the proposed amendments to §§ 38.155, 38.158, and 37.203 may have a beneficial effect on protection of market participants and the public, as well as on the financial integrity of the markets by requiring a more direct link between exchange management and the staff performing market regulation functions, hence providing a more direct way of effectuating compliance with Commission rules. The Commission has considered the other Section 15(a) Factors and believes that they are not implicated by the proposed amendments to §§ 38.155, 38.158, and 37.203.

xii. SEF Chief Compliance Officer—Proposed Changes to Commission Regulation § 37.1501

In general, the statutory framework provided in SEF Core Principle 15 requires each SEF to designate an individual to serve as a CCO.[290] SEF Core Principle 15 also provides requirements relating to the CCO's reporting structure and duties.[291]

Commission regulation § 37.1501 further implements the statutory CCO requirements. In particular, Commission regulation § 37.1501 currently establishes definitions for the terms ''board of directors'' and ''senior officer;'' addresses the authority of the CCO; establishes qualifications for the CCO; outlines the appointment and removal procedures for the CCO; requires the SEF's board of directors or senior officer to approve the CCO's compensation; and requires the CCO to

[290] CEA section 5h(f)(15); 7 U.S.C. 7b–3(f)(15)(A).

[291] *See id.*

meet with the SEF's board of directors or senior officer at least annually.[292]

Commission regulation § 37.1501(c) further outlines the duties of the CCO. For example, Commission regulation § 37.1501(c)(2) details that the CCO must take reasonable steps, in consultation with the board of directors or the senior officer of the SEF, to resolve any material conflicts of interest that may arise, including, but not limited to: (1) conflicts between business considerations and compliance requirements; (2) conflicts between business considerations and implementation of the requirement that the SEF provide fair, open, and impartial access as set forth in § 37.202; and (3) conflicts between a SEF's management and members of the board of directors. Commission regulation § 37.1501(c)(6) specifies that the SEF's CCO must establish and administer a compliance manual designed to promote compliance with the applicable laws, rules, and regulations and a written code of ethics for the SEF designed to prevent ethical violations and to promote honesty and ethical conduct by SEF personnel. Finally, Commission regulation §§ 37.1501(c)(7) and (c)(8) detail the requirement that the CCO supervise the SEF's self-regulatory program as well as the effectiveness and sufficiency of any regulatory service provider, respectively.

Commission regulation § 37.1501(d) addresses the statutory requirement under SEF Core Principle 15 requiring a CCO to prepare an annual compliance report. Commission regulation § 37.1501(d) details the information the report must contain.[293] Commission regulation § 37.1501(e) addresses the submission of the annual compliance report; Commission regulation § 37.1501(f) requires the SEF to maintain all records demonstrating compliance with the duties of the CCO and the preparation and submission of annual compliance reports consistent with Commission regulations §§ 37.1000 and 37.1001. Finally, Commission regulation § 37.1501(g) delegates to the Director of the Division of Market Oversight the authority to grant or deny a request for an extension of time for a SEF to file its annual compliance report under Commission regulation § 37.1501(e).

The Commission is proposing several amendments to § 37.1501. First, the Commission proposes amendments to the existing SEF CCO requirements to ensure that, to the extent applicable, these requirements are consistent with the proposed DCM CRO requirements. Second, the Commission is proposing additional SEF CCO requirements to harmonize the language with other aspects of this proposal, namely proposed amendments that pertain to the board of directors and conflicts of interest procedures. Third, the Commission is proposing amendments that will more closely align § 37.1501 with the language of SEF Core Principle 15.

The Commission is proposing to move the terms ''board of directors'' and ''senior officer'' from existing regulation § 37.1501(a) to proposed § 37.1201(b). The meaning of each term would remain unchanged, with one exception. Specifically, the Commission seeks to clarify the existing definition of ''board of directors'' by including the introductory language ''a group of people'' serving as the governing body of the SEF.

The Commission also is proposing a new § 37.1501(a)(3) that would require the CCO to report directly to the board of directors or to the senior officer of the SEF. This would be a new provision in § 37.1501, but it is consistent with the language of SEF Core Principle 15, as set out in § 37.1500. Proposed § 37.1501(a)(4)(i) would amend the language in existing Commission regulation § 37.1501(b)(3)(i) to provide that the board of directors or senior officer may appoint or remove the CCO ''with the approval of the [SEF's] regulatory oversight committee.'' [294] Finally, proposed § 37.1501(a)(5) would amend the existing requirement in Commission regulation § 37.1501(b)(4) that the board of directors or the senior officer of the SEF shall approve the compensation of the CCO, to now require this approval to occur ''in consultation with the [SEF's ROC].'' [295]

The duties of the CCO under proposed § 37.1501(b) are substantively similar to existing Commission regulation § 37.1501(c), with two exceptions. First, proposed § 37.1501(b)(2) provides that the CCO must take reasonable steps in consultation with the SEF's board of directors ''or a committee thereof'' to manage and resolve material conflicts of interest. The added reference to ''committee'' accounts for the ROC's role in resolving conflicts of interest, which is provided in proposed § 37.1206(d)(4). Second, proposed § 37.1501(b)(2)(i) specifies that conflicts of interest between business considerations and compliance requirements includes, with respect to compliance requirements, the SEF's ''market regulation functions.''

Existing Commission regulation § 37.1501(c)(7) provides that the CCO must supervise the SEF's ''self-regulatory program,'' which includes trade practice surveillance; market surveillance; real time market monitoring; compliance with audit trail requirements; enforcement and disciplinary proceedings; audits, examinations, and other regulatory responsibilities (including taking reasonable steps to ensure compliance with, if applicable, financial integrity, financial reporting, sales practice, recordkeeping, and other requirements). Proposed § 37.1501(b)(7) would amend this provision to state that the CCO is responsible for supervising the SEF's self-regulatory program, including the market regulation functions set forth in § 37.1201(b)(9).

Proposed § 37.1501(c) is an entirely new rule that addresses conflicts of interest involving the CCO. The proposed rules requires the SEF to establish procedures for the disclosure of actual or potential conflicts of interest to the ROC. In addition, the SEF must designate a qualified person to serve in the place of the CCO for any matter for which the CCO has such a conflict, and maintain documentation of such disclosure and designation.

Proposed § 37.1501(d)(5) amends the existing annual compliance report requirement under Commission regulation § 37.1501(d) to require the annual report to include any actual or potential conflicts of interests that were identified to the CCO during the coverage period for the report, including a description of how such conflicts of interest were managed or resolved, and an assessment of the impact of any conflicts of interest on the swap execution facility's ability to perform its market regulation functions.

A. Benefits

The Commission believes that proposed § 37.1201(b) and the proposed amendments to § 37.1501(a) are likely to provide benefits as they enhance the existing definition for the board of directors to include the introductory language ''a group of people,'' which provides clarity and ease of reference. This, in turn, should enhance the SEF's ability to comply with the regulation. Proposed § 37.1501(a)(3), which requires the CCO to directly report to the SEF's board of directors or to the senior officer of the SEF, is likely to provide benefits by allowing the CCO to report directly to the ROC, which insulates the CCO's role from commercial interests and allows that

[292] *See* Commission regulation § 37.1501(a)–(b).

[293] Commission regulation § 37.1500(d)(1)–(5).

[294] Proposed § 37.1501(a)(4)(i).

[295] Proposed § 37.1501(a)(5).

person to more effectively fulfill its critical market regulations functions and other self-regulatory obligations. This may result in improved overall SEF compliance with Commission regulations. It is, however, important to note that providing the SEF an option to have its CCO to report to a senior officer may introduce a possibility of interference by the management team, as senior officers are likely to have incentives that conflict with that of a CCO. For example, senior officers are sometimes responsible for performance evaluations and approving administrative requests, which might compromise the effectiveness of the CCO and may limit the benefits of the proposed rule.

Proposed § 37.1501(a)(4)(i), which will allow the board of directors or a senior officer to appoint or remove the CCO with the approval of the SEF's ROC, is likely to generate benefits as it further insulates the CCO from improper or undue influence from the commercial interests of the SEF. These benefits, however, are likely to be limited as SEFs have been operating under an existing similar standard. Furthermore, by requiring the board of directors or the senior officer to consult with the ROC in approving the compensation of the CCO, proposed § 37.1501(a)(5) is likely to provide benefits as it may further insulate the CCO from interference from the commercial interests of the SEF.

In addition, by requiring the ROC's involvement in resolving conflicts of interest and by explicitly including the SEF's market regulation function in the list of conflicts considered for compliance requirements, proposed § 37.1501(b) will allow the CCO to be in a better position to resolve conflicts of interest that relate to surveillance, investigations, and disciplinary functions which, in turn, will enhance the SEF's important role as an SRO.

The proposed amendment to § 37.1501(b)(7) will explicitly refer to a SEF's market regulation function in referring to the CCO's supervision responsibility. The term ''market regulation functions'' is defined in proposed § 37.1201(b)(9), and will provide clarity and ease of reference to compliance standards. Such clarity and ease of reference should enhance a SEF's ability to comply with core principle and regulatory requirements. To the extent that a SEF's CCO is already carrying out such responsibilities, the benefits may be less significant.

Proposed § 37.1501(c), requires SEFs to establish procedures for disclosing conflicts of interest to the ROC, designate a qualified person to serve in the place of the CCO for any matter in which the CCO has a conflict, and maintain documentation of such designation. These requirements are likely to provide benefits by better facilitating the ROC's assistance in managing and resolving conflicts of interest. This will allow the SEF to effectively perform its market regulation functions and maintain regulatory compliance. In addition, the requirement in proposed regulation § 37.1501(c) that the SEF have procedures to designate a qualified person to serve in the place of the CCO for any matter in which the CCO is conflicted is likely to provide benefits as it will increase the likelihood that the conflict of interest is managed and resolved by a person with sufficient independence, expertise and authority, which, in turn, will allow the SEF to effectively perform its market regulation functions.

In addition, proposed § 37.1501(d)(5), which amends the annual compliance report requirements to include a report of any actual or potential conflicts of interests and how such conflicts of interests were managed or resolved, will increase the chances that the Commission has timely notice and sufficient knowledge of conflicts of interest and how they are resolved. Such disclosures allow the Commission to have effective oversight over SEFs and enhances SEF governance transparency and accountability.

B. Costs

In order to comply with the proposed amendments to § 37.1501, SEFs may need to adjust their policies and procedures regarding CCOs. This may impose some administrative costs on SEFs. Costs could arise from additional hours SEF employees might need to spend analyzing the compliance of their rules and procedures with the proposed requirements, drafting new or amended rules and procedures when necessary, and implementing these new or amended rules and procedures.

More specifically, SEFs may have additional costs associated with the CCO position resulting from the time requirements on the board of directors or senior officer meeting with the CCO, and administrative costs associated with the ROC actions being required to hire or remove a CCO and to approve CCO compensation. To the extent that SEFs already have such rules and procedures in place, costs may have been already realized.

The Commission requests comment on the potential costs of the proposed amendments to § 37.1501, including any costs that would be imposed on SEFs, other market participants, or the financial system more broadly.

C. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the proposed amendments to § 37.1501 in light of the specific considerations identified in Section 15(a) of the CEA. The Commission believes that the proposed amendments to § 37.1501 may have a beneficial effect on protection of market participants and the public, as well as on the financial integrity of the markets because the proposed amendments should support and effectuate better compliance with core principles. Increased independence of the CCO position and additional requirements pertaining to the resolution and documentation of conflicts of interest will enhance SEF governance, accountability, and promote transparency, which is an essential factor for establishing the integrity of derivatives markets. The Commission has considered the other Section 15(a) Factors and believes that they are not implicated by the proposed amendments to § 37.1501.

xiii. Transfer of Equity Interest—Proposed Changes to Commission Regulations §§ 37.5(c) and 38.5(c)

Currently, Commission regulations §§ 37.5(c)(1) and 38.5(c)(1) require SEFs and DCMs, respectively, to notify the Commission in the event of an equity interest transfer. The threshold that triggers the notification requirement when a DCM enters a transaction is the transfer of 10 percent or more of the DCM's equity. In comparison, a SEF is required to notify the Commission when it enters a transaction to transfer 50 percent or more of the SEF's equity. Commission regulation § 37.5(c)(1) provides that the Commission may ''upon receiving such notification, request supporting documentation of the transaction.'' Commission regulation § 38.5(c)(1) does not include a similar provision for DCMs.

Commission regulations §§ 37.5(c)(2) and 38.5(c)(2) govern the timing of the equity interest transfer notification to the Commission. These provisions require notification at the earliest possible time, but in no event later than the open of business 10 business days following the date upon which the SEF or DCM enters a firm obligation to transfer the equity interest. Commission regulations §§ 37.5(c)(3) and 38.5(c)(3) govern rule filing obligations that may be prompted by the equity interest transfer. Commission regulation § 37.5(c)(4) requires a SEF to certify to

the Commission no later than two days after an equity transfer takes place that the SEF meets all of the requirements of section 5h of the CEA and applicable Commission regulations. Commission regulation § 38.5(c) does not have an analogous certification requirement for DCMs.

Commission regulations §§ 37.5(d) and 38.5(d) establish Commission delegation of authority provisions to the Director of the Division of Market Oversight. The delegation authority under § 37.5(d) permits the Director to request any of the information specified in § 37.5, including information relating to the business of the SEF, information demonstrating compliance with the core principles, or with the SEF's other obligations under the CEA or the Commission's regulations, and information relating to an equity interest transfer. In contrast, the scope of the delegation of authority in Commission regulation 38.5(d) limits the Director to requesting information from a DCM pursuant to Commission regulation § 38.5(b) demonstrating compliance with the DCM core principles and the CEA. The Director's delegation authority does not extend to requests for information related to the business of the DCM or to equity interest transfers.

The Commission proposes to amend regulations §§ 37.5(c) and 38.5(c) to: (1) ensure the Commission receives timely and sufficient information in the event of certain changes in the ownership or corporate or organizational structure of a SEF or DCM; (2) clarify what information is required to be provided and the relevant deadlines; and (3) conform to similar requirements applicable to DCOs.

The Commission proposes to amend regulation § 37.5(c)(1) to require SEFs to file with the Commission notification of transactions involving the transfer of at least 10 percent of the equity interest in the SEF. The Commission also is proposing to amend regulations §§ 37.5(c)(1) and 38.5(c)(1) to expand the types of changes of ownership or corporate or organizational structure that would trigger a notification obligation to the Commission. The proposed amendments would require SEFs and DCMs to report any anticipated change in the ownership or corporate or organizational structure of the SEF or DCM, or its respective parent(s) that would: (1) result in at least a 10 percent change of ownership of the SEF or DCM, or a change to the entity or person holding a controlling interest in the SEF or DCM, whether through an increase in direct ownership or voting interest in the SEF or DCM, or in a direct or indirect corporate parent entity of the SEF or DCM; (2) create a new subsidiary or eliminate a current subsidiary of the SEF or DCM; or (3) result in the transfer of all or substantially all of the assets of the SEF or DCM to another legal entity.

The Commission also is proposing to amend regulations §§ 37.5(c)(2) and 38.5(c)(2) to clarify what information must be submitted to the Commission as part of a notification pursuant to Commission regulations §§ 37.5(c)(1) and 38.5(c)(1), as proposed to be amended. The Commission proposes to harmonize and enhance the requirements between SEFs and DCMs by amending regulations §§ 37.5(c)(2) and 38.5(c)(2) to state that, as part of a notification pursuant to Commission regulations §§ 37.5(c)(1) or 38.5(c)(1), a SEF or DCM must provide ''required information'' including: a chart outlining the new ownership or corporate or organizational structure, a brief description of the purpose or the impact of the change, and any relevant agreement effecting the change and corporate documents such as articles of incorporation and bylaws. As proposed, the Commission may, after receiving such information, request additional supporting documentation related to the change in ownership or corporate or organizational structure, such as amended Form SEF or Form DCM exhibits, to demonstrate that the SEF or DCM will, following the change, continue to meet all the requirements in section 5 or 5h of the CEA (as applicable) and applicable Commission regulations.

Proposed §§ 37.5(c)(3) and 38.5(c)(3) will require a notification pursuant to Commission regulations §§ 37.5(c)(1) or 38.5(c)(1) to be submitted no later than three months prior to the anticipated change, provided that the SEF or DCM may report the anticipated change later than three months prior to the anticipated change if it does not know and reasonably could not have known of the anticipated change three months prior to the anticipated change. In such event, the SEF or DCM shall immediately report such change to the Commission as soon as it knows of such change.

In addition to the new reporting requirements, the proposal includes a new certification requirement for DCMs. The Commission is proposing to amend Commission regulation § 38.5(c) by adding a certification requirement in regulation § 38.5(c)(5). The certification will require a DCM, upon a change in ownership or corporate organizational structure described in Commission regulation § 38.5(c)(1), file with the Commission a certification that the DCM meets all of the requirements of section 5 of the CEA and applicable Commission regulations. The certification must be filed no later than two business days following the date on which the change in ownership or corporate or organizational structure takes effect.

The Commission proposes a new §§ 37.5(c)(6) and 38.5(c)(6), which provide that a change in the ownership or corporate or organizational structure of a SEF or DCM that results in the failure of the SEF or DCM to comply with any provision of the Act, or any regulation or order of the Commission thereunder, shall be cause for the suspension of the registration or designation of the SEF or DCM, or the revocation of registration or designation as a SEF or DCM, in accordance with sections 5e and 6(b) of the CEA. The proposed rule further provides that the Commission may make and enter an order directing that the SEF or DCM cease and desist from such violation, in accordance with sections 6b and 6(b) of the CEA. Section 6(b) of the CEA authorizes the Commission to suspend or revoke registration or designation of a SEF or DCM if the exchange has violated the CEA or Commission orders or regulations. Section 6(b) includes a number of procedural safeguards, including that it requires notice to the SEF or DCM, a hearing on the record, and appeal rights to the court of appeals for the circuit in which the SEF or DCM has its principal place of business. It is imperative that SEFs and DCMs, regardless of ownership or control changes, continue to comply with the CEA and all Commission regulations to promote market integrity and protect market participants.

Finally, the Commission proposes to amend existing regulation § 38.5(d) by extending the delegation of authority provisions to the Director of the Division of Market Oversight to include information requests related to the business of the DCM in § 38.5(a) and changes in ownership or corporate or organizational structure in § 38.5(c).

A. Benefits

The proposed change to revise the reporting threshold for SEFs from 50 percent to 10 percent would harmonize the regulatory standard currently in place for DCMs and DCOs. In addition, lowering the notification standard for SEFs may better allow the Commission to fulfill its oversight obligations. The Commission recognizes that a notification based on a percentage of ownership change that is set too low will result in notifications of changes that do not have a consequential change

in who has control over the exchange or impact on SEF operations. In contrast, a threshold set too high will reduce the instances of notification of changes in ownership or corporate or organizational structure to the Commission that are consequential to the operations of a SEF. The Commission believes that lowering the threshold to 10 percent results in an appropriate balance. In this connection, the 10 percent threshold represents a level where the Commission would receive notice of a SEF's ownership or corporate or organizational structure changes, when such changes actually reflect meaningful changes in who potentially could impact a SEF's compliance with the CEA and Commission regulations. Therefore, the proposed amendment will benefit SEF market participants and the public given the increased transparency to the Commission in terms of who potentially controls the SEF.

As discussed in the preamble above, under the existing regulations, an increase in equity interest of less than 10 percent could still result in change of control of the exchange. Proposed §§ 37.5(c)(1) and 38.5(c)(1) expand the scope of corporate changes that require notification to include changes not only in ownership, but also corporate and organizational structural changes. These proposed changes will help ensure that the Commission has accurate knowledge of the individuals or entities that control a SEF or DCM and its activities, thereby promoting market integrity. The Commission believes that proposed §§ 37.5(c)(2) and 38.5(c)(2) will encourage SEFs and DCMs to remain mindful of their self-regulatory responsibilities when negotiating the terms of significant equity interest transfers or other changes in ownership or corporate or organizational structure. In addition, the proposed rules help maintain an orderly marketplace despite changes in the ownership or corporate or organizational structure of the exchange. The proposed amendments will enhance Commission staff's ability to undertake a timely and effective due diligence review of the impact, if any, of such changes. These enhanced requirements will allow Commission staff to seek updated copies of exhibits and other documents that provide valuable and timely information regarding the professional staff, legal proceedings, rulebook changes, third party service provider agreements, member and user agreements, and compliance manual changes. Those documents are important to confirm that the registrant will continue to be able to meet its regulatory obligations.

The Commission believes that new provisions §§ 37.5(c)(3) and 38.5(c)(3) that require the SEF or the DCM notification three months prior to the anticipated change or immediately as soon as it knows of such a change, will allow the Commission staff sufficient time to review the change and confirm compliance with applicable statutory and regulatory requirements. The new rules will also provide flexibility to the SEF or DCM if the anticipated change occurs more quickly than within three months.

Given their roles as SROs, the proposed amendments to § 38.5(c) are likely to provide benefits by establishing consistent regulations among SEFs and DCMs in the manner they certify their compliance with the CEA and Commission regulations. Furthermore, to the extent that the certification requirement will help ensure any changes to ownership or corporate or organizational structure do not result in non-compliance, the certification requirement will improve confidence in the marketplace and promote market integrity.

Finally, the proposal extends the delegation of authority provisions to the Director of the Division of Market Oversight regarding DCMs to include information requests related to the business and changes to ownership or corporate or organizational structure of a DCM. Proposed § 38.5(d) provides a standard for DCMs that conforms to the existing standard for SEFs and establishes a consistent regulatory framework. Furthermore, since changes to ownership or corporate or organizational structure of a DCM can occur relatively quickly with significant consequences, the amendments are likely to provide benefits by providing the Director of the Division of Market Oversight with the authority to immediately request information and documents to confirm continued compliance with the CEA and relevant regulations, which in turn should result in more effective DCM oversight.

B. Costs

As described above, the Commission proposes to amend regulations §§ 37.5(c) and 38.5(c) to ensure the Commission receives timely and sufficient information in the event of certain changes in the ownership or corporate or organizational structure of a SEF or DCM.

To comply with the proposed rules, SEFs and DCMs may need to adjust their policies and procedures, which would impose some costs. SEF and DCM costs could arise from additional hours employees might need to spend analyzing the compliance of their rules and procedures with these requirements, drafting new or amended rules and procedures when necessary, and implementing these new or amended rules and procedures. Costs associated with complying with the proposed §§ 37.5(c) and 38.5(c) may further vary based on the size of the SEF and DCM, available resources, and the existing practices and policies they may already have in place. Finally, costs will depend significantly on how often a change in ownership or corporate or ownership structure occurs.

More specifically, while DCMs are already required to notify the Commission in the event of a 10 percent change in ownership interest, this 10 percent threshold requirement is being extended to SEFs, which will impose additional costs whenever such a transfer occurs. Additionally, the proposed rules also require both SEFs and DCMs to report any anticipated change in the ownership or corporate or organizational structure of the SEF or DCM, or its respective parent(s) that would result in at least a 10 percent change of ownership of the SEF or DCM, or a change to the entity or person holding a controlling interest in the SEF or DCM. This additional reporting in the event of anticipated change will generate additional costs for both SEFs and DCMs. Under proposed §§ 37.5(c)(3) and 38.5(c)(3), this additional reporting is required to be submitted to the Commission no later than three months prior to the anticipated change which will add additional employee time and costs to any anticipated change in ownership or organizational structure event that requires notification under the proposed rules.

With respect to DCMs, proposed § 38.5(c)(5) will add a certification requirement in the event of a change in ownership or organizational structure similar to the existing requirements for SEFs. This certification must be no later than two business days following the date on which the change in ownership or corporate or organizational structure took effect, and will add direct costs to any such change event.

Finally, the Commission proposes to amend existing Commission regulation § 38.5(d) to delegate to the Director of the Division of Market Oversight the authority to request information related to the DCM's business and changes in ownership or corporate or organizational structure. Information or document requests initiated by the Director, as opposed to the Commission, should not, on its own, impose

additional costs on DCMs. Therefore, costs to DCMs relating to this change should be negligible. The Commission acknowledges that a streamlined process for requesting information and documents may result in more frequent information or document requests under § 38.5. In that respect, direct costs to DCMs could increase.

The Commission requests comments on the potential costs of the proposed amendments to §§ 37.5(c) and 38.5(c) and (d), including any costs that would be imposed on SEFs, DCMs, other market participants, or the financial system more broadly.

C. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the proposed amendments to §§ 37.5(c) and 38.5(c) and (d) in light of the specific considerations identified in Section 15(a) of the CEA. The Commission believes that the proposed amendments may have a beneficial effect on protection of market participants and the public, as well as on the integrity of the markets through improved Commission awareness and oversight of significant changes to ownership or corporate or organizational structure of SEFs. The Commission has considered the other Section 15(a) Factors and believes that they are not implicated by the proposed amendments to §§ 37.5(c) and 38.5(c)–(d).

Summary 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the proposed rules in light of the following five broad areas of market and public concern identified in Section 15(a) of the CEA: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission believes that the proposed rules will have a beneficial effect on sound risk management practices and on the protection of market participants and the public.

1. Protection of Market Participants and the Public

The Commission believes that the proposed rules will enhance the protection of market participants and the public by improving the ability of SEFs and DCMs to identify, manage and resolve conflicts of interest. The proposed rules will allow the exchanges to properly and orderly perform their function in facilitating markets, which in turn will reduce the likelihood that market participants and the public face unanticipated costs. The proposed rules will enhance the transparency and consistency of governance fitness standards, which in turn increases the likelihood that exchanges provide reliable services to the market participants. Finally, the proposed rules will provide the public and the Commission with transparent information regarding changes in ownership of SEFs or DCMs, which enhances the protection of the public.

2. Efficiency, Competitiveness, and Financial Integrity

The proposed rules will benefit the financial integrity of the derivatives markets by promoting the transparency and the integrity of the governance practices and proper identification and handling of conflicts of interest through the adoption of the proposed rules. The proposed rules will also benefit the marketplace by allowing a consistent approach on managing conflicts of interest and implementation of governance fitness standards. Additionally, the proposed rules will promote SEF's and DCM's ability to complete their self-regulatory obligations by promoting the resources necessary to effectively complete those obligations.

3. Price Discovery

Price discovery is the process of determining the price level for an asset through the interaction of buyers and sellers and based on supply and demand conditions. The Commission has not identified any effect of the proposed rules on the price discovery process.

4. Sound Risk Management Practices

The proposed rules seek to establish transparent and consistent governance fitness standards and proposes rules for proper identification and handling of conflicts of interest, which will support sound risk management practices at SEFs and DCMs. Nevertheless, the proposed rules will not necessarily impact the sound risk management practices by other market participants per se.

5. Other Public Interest Considerations

The Commission has not identified any effect of the proposed rule on other public interest considerations.

4. *Question for Comment*

As noted above regarding the regulatory baseline, the Commission's understanding is that all of the DCMs that are currently designated by the Commission rely on the acceptable practices to comply with Core Principle 16, and therefore the actual costs and benefits of the codification of those acceptable practices with respect to DCMs may not be as significant. Is this understanding correct in all cases or are there situations where DCMs using other means to satisfy the core principles? If so, what are these means?

b. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires Federal agencies to consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis with respect to such impact.[296] The regulations proposed herein will directly affect SEFs, DCMs, and their market participants. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[297] The Commission previously concluded that SEFs are not small entities for the purpose of the RFA.[298] The Commission has also previously stated its belief in the context of relevant rulemakings that SEFs' market participants, which are all required to be eligible contract participants (''ECPs'') [299] as defined in section 1a(18) of the CEA,[300] are not small entities for purposes of the RFA.[301] Similarly, Commission previously determined that DCMs are not small entities for purposes of the RFA because DCMs are required to demonstrate compliance with a number of core principles, including principles concerning the expenditure of sufficient financial resources to establish and maintain an adequate self-regulatory program.[302] Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed rules will not have a significant economic impact on a substantial number of small entities.

[296] 5 U.S.C. 601 *et seq.*

[297] 47 FR at 18618–21 (Apr. 30, 1982).

[298] *See* Part 37 Final Rule, 78 FR 33476 at 33548 (citing 47 FR 18618, 18621 (Apr. 30, 1982) (discussing DCMs)).

[299] Commission regulation 37.703.

[300] 7 U.S.C. 1(a)(18).

[301] Opting Out of Segregation, 66 FR 20740 at 20743 (Apr. 25, 2001) (stating that ECPs by the nature of their definition in the CEA should not be considered small entities).

[302] *See* Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18619 (Apr. 30, 1982); *See also, e.g.,* DCM Core Principle 21 applicable to DCMs under section 735 of the Dodd-Frank Act.

The Commission invites the public and other federal agencies to comment on the above determination.

c. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'') [303] imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any ''collection of information,'' as defined by the PRA. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number from the Office of Management and Budget (''OMB'').[304] The PRA is intended, in part, to minimize the paperwork burden created for individuals, businesses, and other persons as a result of the collection of information by federal agencies, and to ensure the greatest possible benefit and utility of information created, collected, maintained, sued, shared, and disseminated by or for the Federal Government.[305] The PRA applies to all information, regardless of form or format, whenever the Federal Government is obtaining, causing to be obtained, or soliciting information, and includes required disclosure to third parties or the public, of facts or opinions, when the information collection calls for answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, 10 or more persons.[306]

This NPRM, if adopted, would result in a collection of information within the meaning of the PRA, as discussed below. The proposal affects three collections of information for which the Commission has previously received a control number from OMB: OMB Control No. 3038–0052, ''Core Principles & Other Requirements for DCMs;'' [307] OMB Control No. 3038–0074, ''Core Principles and Other Requirements for Swap Execution Facilities;'' [308] and OMB Control No. 3038–0093, ''Part 40, Provisions Common to Registered Entities.'' [309]

The Commission is therefore submitting this NPRM to OMB for review.[310] Responses to this collection of information would be mandatory. The Commission will protect any proprietary information according to the Freedom of Information Act and part 145 of the Commission's regulations.[311] In addition, CEA section 8(a)(1) strictly prohibits the Commission, unless specifically authorized by the CEA, from making public any data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.[312] Finally, the Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974.[313]

1. *Burden Estimates*

For PRA purposes, there are 23 registered SEFs and 16 designated DCMs. The proposed amendments would impose new one-time and ongoing reporting and recordkeeping requirements on SEFs and DCMs related to conflict of interest requirements and associated governance requirements under parts 37 and 38, along with associated rule submissions under part 40. The estimated aggregate burden imposed by the proposed amendments is set out below.

2. *Fitness Documentation and Written Procedures (§§ 37.207(d) and 38.801(d))*

The proposed amendments would add requirements that SEFs and DCMs establish appropriate procedures for the collection of information supporting compliance with appropriate fitness standards, including the creation of written procedures that are preserved for Commission review. The new provisions would codify and enhance existing guidance covering DCMs (Core Principle 15 Guidance) and Commission regulation § 1.63 covering SEFs and DCMs.

The Commission estimates that each SEF and DCM will spend an additional 10 hours annually on recordkeeping for §§ 37.207(d) and 38.801(d), plus a 40-hour one-time start-up cost for the initial written procedures. Accordingly, the aggregate annual estimate for the recordkeeping and reporting burden associated as with the proposal, is as follows:

DCMs—Recordkeeping § 38.801(d)

Estimated number of respondents: 16.
Estimated number of reports per respondent: 1.
Average number of hours per report: 10.
Estimated gross annual recordkeeping burden (hours): 160.
One-time start-up burden (hours): 40.
Estimated gross one-time start-up burden (hours): 640.

SEFs—Recordkeeping § 37.207(d)

Estimated number of respondents: 23.
Estimated number of reports per respondent: 1.
Average number of hours per report: 10.
Estimated gross annual recordkeeping burden (hours): 230.
One-time start-up burden (hours): 40.
Estimated gross one-time start-up burden (hours): 920.

3. Documentation of Conflict-of-Interest Provisions (§§ 37.1202(b) and 38.852(b))

Proposed §§ 37.1202(b) and 38.852(b) require the board of directors, committee, or disciplinary panel to document its processes for complying with the requirements of the conflict-of-interest rules, and such documentation must include: (1) the names of all members and officers who attended the relevant meeting in person where a conflict of interest was raised; and (2) the names of any members and officers who voluntarily recused themselves or were required to abstain from deliberations or voting on a matter and the reason for the recusal or abstention. Although these provisions currently exist for SEFs in § 1.69, they are new for DCMs.

The Commission estimates that each SEF and DCM will spend an additional one hour four times a year on recordkeeping associated with the proposal. Accordingly, the aggregate annual estimate for the reporting burden associated with proposed new §§ 37.1202(b) and 38.852(b) is as follows:

DCMs—Recordkeeping § 38.852(b)

Estimated number of respondents: 16.
Estimated number of reports per respondent: 4.
Average number of hours per report: 1.
Estimated gross annual recordkeeping burden (hours): 64.

SEFs—Recordkeeping § 37.1202(b)

Estimated number of respondents: 23.
Estimated number of reports per respondent: 4.

[303] 5 U.S.C. 601, *et seq.*

[304] *See* 44 U.S.C. 3507(a)(3); 5 CFR 1320.5(a)(3).

[305] *See* 44 U.S.C. 3501.

[306] *See* 44 U.S.C. 3502(3).

[307] For the previously approved PRA estimates for DCMs under OMB Control No. 3038–0052, see ICR Reference No. 202207–3038–003, Conclusion Date Aug. 24, 2022, at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202207-3038-003.* The PRA analysis uses a count of 16 DCMs based on Commission data accurate as of Sept. 29, 2023.

[308] For the previously approved estimates for SEFs under OMB Control No. 3038–0074, see ICR Reference No. 202201–3038–002, Conclusion Date Apr. 30, 2022, at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202201-3038-002.* The PRA analysis uses a count of 23 SEFs based on Commission data accurate as of Sept. 29, 2023.

[309] OMB Control Number 3038–0093 has two Information Collections: Part 40, Provisions Common to Registered Entities; and Part 150, Position Limits. *See https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202102-3038-001.*

[310] *See* 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[311] *See* 5 U.S.C. 552; *see also* 17 CFR part 145 (Commission Records and Information).

[312] 7 U.S.C. 12(a)(1).

[313] 5 U.S.C. 552a.

Average number of hours per report: 1.

Estimated gross annual recordkeeping burden (hours): 92.

4. Trading on Material Non-Public Information (§§ 37.1203 and 38.853)

The amendments include documentation and recordkeeping requirements connected to a new requirement that SEFs and DCMs take certain steps to prevent an employee, member of the board of directors, committee member, consultant, or owner with more than a 10 percent interest in the SEF or DCM, from trading commodity interests or related commodity interests based on, or disclosing, any non-public information obtained through the performance of their official duties. The proposal would replace an existing regulation applicable to SEFs and partially to DCMs (§ 1.59), and guidance applicable to DCMs (Core Principle 16 Guidance). Under the proposed amendments, SEFs and DCMs must continue to document any exemptions from trading restrictions, in accordance with requirements in existing Commission regulations §§ 37.1000 and 37.1001 or 38.950 and 38.951, respectively.

The Commission estimates that each SEF and DCM will spend an estimated additional 10 hours annually on recordkeeping associated with this proposal, with a one-time burden of 10 hours to review and update existing policies and procedures. Accordingly, the aggregate annual estimate for the reporting burden associated with proposed new §§ 37.1203 and 38.853, is as follows:

DCMs—Recordkeeping § 38.853

Estimated number of respondents: 16.

Estimated number of reports per respondent: 1.

Average number of hours per report: 10.

Estimated gross annual reporting burden (hours): 160.

One-time start-up burden (hours): 10.

Estimated gross one-time start-up burden (hours): 160.

SEFs—Recordkeeping § 37.1203

Estimated number of respondents: 23.

Estimated number of reports per respondent: 1.

Average number of hours per report: 10.

Estimated gross annual reporting burden (hours): 230.

One-time start-up burden (hours): 10.

Estimated gross one-time start-up burden (hours): 230.

5. Annual Self-Assessment §§ 37.1204(d) and 38.854(d)

Proposed §§ 37.1204(d) and 38.854(d) are new requirements that SEF and DCM Boards perform an annual self-assessment and performance review, and document the results for possible Commission review.

The Commission estimates that the documentation and recordkeeping for the annual review will take 25 hours. Accordingly, the aggregate annual estimate for the recordkeeping burden associated with §§ 37.1204(d) and 38.854(d) is as follows:

DCMs—§ 38.854(d)

Estimated number of respondents: 16.

Estimated number of reports per respondent: 1.

Average number of hours per report: 25.

Estimated gross annual reporting burden (hours): 400.

SEFs—§ 37.1204(d)

Estimated number of respondents: 23.

Estimated number of reports per respondent: 1.

Average number of hours per report: 25.

Estimated gross annual reporting burden (hours): 575.

6. Commission Notice of Membership Changes of the Board of Directors (§§ 37.1204(f) and 38.854(f))

This new proposed provision would require SEFs and DCMs to notify the Commission within five business days of any changes to the membership of the board of directors or its committees.

The Commission believes that although the ongoing burden will be low, it constitutes a burden for PRA purposes. Each notification will take an estimated one hour, and each SEF and DCM will on average change two board or committee members a year (in total). Accordingly, the aggregate annual estimate for the reporting burden associated with proposed §§ 37.1204(f) and 38.854(f) is as follows:

DCMs—§ 38.854(f) Reporting

Estimated number of respondents: 16.

Estimated number of reports per respondent: 2.

Average number of hours per report: 1.

Estimated gross annual reporting burden (hours): 32.

SEF—§ 37.1204(f) Reporting

Estimated number of respondents: 23.

Estimated number of reports per respondent: 2.

Average number of hours per report: 1.

Estimated gross annual reporting burden (hours): 46.

7. ROC Meeting Minutes and Documentation (§§ 37.1206(f)(1)(iii) and 38.857(f)(1)(iii); §§ 37.1206(f)(2) and 38.857(f)(2))

The proposed provisions in §§ 37.1206(f)(1)(iii) and 38.857(f)(1)(iii) would require that SEF and DCM ROC meeting minutes include the following specific information: (a) list of the attendees; (b) their titles; and (c) whether they were present for the entirety of the meeting or a portion thereof (and if so, what portion); and (d) a summary of all meeting discussions. In addition, new §§ 37.1206(f)(2) and 38.857(f)(2) would require the ROCs to maintain documentation of the committee's findings, recommendations, and any other discussions or deliberations related to the performance of its duties.

The Commission estimates that these new requirements will add an additional four hours of recordkeeping for an estimated four quarterly ROC meetings for each SEF and DCM. Accordingly, the aggregate annual estimate for the reporting burden associated with the proposal is as follows:

DCMs—§ 38.857(f)(1)(iii) and 38.857(f)(2) Recordkeeping

Estimated number of respondents: 16.

Estimated number of reports per respondent: 4.

Average number of hours per report: 4.

Estimated gross annual reporting burden (hours): 256.

SEFs—§§ 37.1206(f)(1)(iii) and 37.1206(f)(2) Recordkeeping

Estimated number of respondents: 23.

Estimated number of reports per respondent: 4.

Average number of hours per report: 4.

Estimated gross annual reporting burden (hours): 368.

8. ROC Annual Report ((§§ 37.1206(g)(1) and (g)(2) and 38.857(g)(1) and (g)(2))

Currently, DCMs prepare annual ROC reports pursuant to the Acceptable Practices for DCM Core Principle 16, but SEFs do not have a similar requirement. Proposed §§ 37.1206(g)(1) and 38.857(g)(1) would codify annual report requirements for SEFs and DCMs. Proposed §§ 37.1206(g)(2) and 38.857(g)(2) would set out the filing requirements for the reports.

The current PRA estimated burden for the DCM ROC reports is 70 hours for one annual report. The Commission has

reevaluated the ROC report burden and now revises its estimate down to 40 hours, including the new requirements. In the Commission's recent experience, the ROC report is less extensive and burdensome to prepare than the SEF Annual Compliance Report, which has a burden of 52 hours. 40 hours more accurately reflects the preparation required for the ROC report, including the new reporting requirements added by the proposal. The proposal would add a new burden of 40 hours for one annual SEF ROC report.

Accordingly, the aggregate annual estimate for the reporting burden associated the proposal is as follows:

DCMs—§ 38.857(g)(1) and (g)(2) Reporting

Estimated number of respondents: 16.
Estimated number of reports per respondent: 1.
Average number of hours per report: 40.
Estimated gross annual reporting burden (hours): 640.

SEFs—§ 37.1206(g)(1) and (g)(2) Reporting

Estimated number of respondents: 23.
Estimated number of reports per respondent: 1.
Average number of hours per report: 40.
Estimated gross annual reporting burden (hours): 920.

9. ROC Recordkeeping (§§ 37.1206(g)(3) and 38.857(g)(3))

Proposed §§ 37.1206(g)(3) and 38.857(g)(3) establish a recordkeeping requirement to maintain all records demonstrating compliance with the duties of the ROC and the preparation and submission of the annual report.

The Commission estimates that the proposal will add an additional two hours of burden per an estimated four quarterly ROC meetings. Accordingly, the aggregate annual estimate for the reporting burden associated with the proposal is as follows:

DCMs—§ 38.857(g)(3) Recordkeeping

Estimated number of respondents: 16.
Estimated number of reports per respondent: 4.
Average number of hours per report: 2.
Estimated gross annual reporting burden (hours): 128.

SEFs—§ 37.1206(g)(3) Recordkeeping

Estimated number of respondents: 23.
Estimated number of reports per respondent: 4.
Average number of hours per report: 2.
Estimated gross annual reporting burden (hours): 184.

10. DCM CRO Appointment and Removal Notification (§ 38.856(c))

Under proposed new § 38.856(c), DCMs must notify the Commission when a CRO is appointed or removed. A similar requirement for SEFs is proposed in § 37.1501(a)(4)(ii), but does not add a reporting burden since the requirement already exists in Commission regulation § 37.1501(b)(3)(ii) for SEF CCOs.

The Commission estimates that a CRO would be replaced on average every two years at a maximum, and the required notice would require 0.5 hours. Accordingly, the aggregate annual estimate for the reporting burden associated with the proposal is as follows:

DCMs—§ 38.856(c) Reporting

Estimated number of respondents: 16.
Estimated number of reports per respondent: 0.5.
Average number of hours per report: 0.5.
Estimated gross annual reporting burden (hours): 4.

11. Documentation of CCO/CRO Conflicts of Interest (§§ 37.1501(c) and 38.856(f))

Proposed §§ 37.1501(c) and 38.856(f) require SEFs and DCMs to maintain documentation when a CCO (SEF) or CRO (DCM) discloses a conflict of interest to the ROC.

The Commission estimates that the proposal would require an additional four hours of recordkeeping for each SEF and DCM once per year. Accordingly, the aggregate annual estimate for the reporting burden associated with is as follows:

DCMs—§ 38.856(f) Recordkeeping

Estimated number of respondents: 16.
Estimated number of reports per respondent: 1.
Average number of hours per report: 4.
Estimated gross annual reporting burden (hours): 64.

SEFs—§ 37.1501(c) Recordkeeping

Estimated number of respondents: 23.
Estimated number of reports per respondent: 1.
Average number of hours per report: 4.
Estimated gross annual reporting burden (hours): 92.

12. Conflicts of Interests Reported in SEF Annual Compliance Report (§ 37.1501(d)(5))

Proposed § 37.1501(d)(5) requires any actual or potential conflicts reported to the CCO to be included in the SEF Annual Compliance Report (ACR) to the Commission. The Commission estimates that this new requirement would add one hour to the existing 52 hours burden associated with the SEF ACR, for a total of 53 hours. Accordingly, the aggregate annual estimate for the reporting burden associated with the proposal is as follows:

SEFs—Reporting

Estimated number of respondents: 23.
Estimated number of reports per respondent: 1.
Average number of hours per report: 53.
Estimated gross annual reporting burden (hours): 1,219.

13. Reports of Anticipated Changes in Ownership or Corporate Structure (§§ 37.5(c)(1) and 38.5(c)(1)); §§ 37.5(c)(2) and 38.5(c)(2)

The proposal would amend §§ 37.5(c)(1) and 38.5(c)(1) to require that SEFs and DCMs report anticipated changes of corporate structure or ownership that would result in certain significant changes to ownership, subsidiaries, or transfer of assets to another legal entity. The amendments to §§ 37.5(c)(1) and 38.5(c)(1) would require SEFs and DCMs to file with the Commission reports of anticipated changes in ownership or corporate structure that would (i) result in at least a 10 percent change of ownership of the SEF or DCM or a change to the entity or person holding a controlling interest in the SEF or DCM; (ii) create a new subsidiary or eliminate a current subsidiary of the SEF or DCM; or (iii) result in the transfer of all or substantially all of the assets of the SEF or DCM to another legal entity.

The proposed amendments to §§ 37.5(c)(2) and 38.5(c)(2) would set out the documents that must be submitted to the Commission in such reports, including a chart outlining the new ownership or corporate or organizational structure; a brief description of the purpose and impact of the change; and any relevant agreements effecting the change and corporate documents such as articles of incorporation and bylaws; and any additional supporting documents requested by the Commission.

The Commission estimates that each SEF and DCM would file one report every four years, which would require

40 hours of burden. Accordingly, the aggregate annual estimate for the reporting burden associated with the proposal is as follows:

DCMs—§ 38.5(c)(1) and (c)(2) Reporting

Estimated number of respondents: 16.
Estimated number of reports per respondent: 0.25.
Average number of hours per report: 40.
Estimated gross annual reporting burden (hours): 160.

SEFs—§ 38.5(c)(1) and (c)(2)

Estimated number of respondents: 23.
Estimated number of reports per respondent: 0.25.
Average number of hours per report: 40.
Estimated gross annual reporting burden (hours): 230.

14. Change in Ownership/Structure Certification Requirement (§§ 37.4(c)(4) and 38.5(c)(5))

The Commission is proposing to amend § 38.5(c) by adding a certification requirement that will require a DCM, upon a change in ownership or corporate organizational structure, to certify that the DCM meets all of the requirements of section 5h of the Act and applicable Commission regulations. SEFs have an existing similar requirement in § 37.4(c)(4) with no new increase in burden from the proposed rule. However, the SEF burden will be listed here for clarity, since it is not separately accounted for in the current PRA approval.

The Commission estimates that each SEF and DCM would file one report under the proposed amendments every four years, and each report would require an additional two hours of burden. Accordingly, the aggregate annual estimate for the reporting burden associated with the proposed amendments is as follows:

DCMs—§ 38.5(c)(5) Reporting

Estimated number of respondents: 16.
Estimated number of reports per respondent: 0.25.
Average number of hours per report: 2.
Estimated gross annual reporting burden (hours): 8.

SEFs—§ 37.4(c)(4)—Reporting

Estimated number of respondents: 23.
Estimated number of reports per respondent: 0.25.
Average number of hours per report: 2.
Estimated gross annual reporting burden (hours): 11.5.

15. SEF and DCM Updates to Rulebooks and Internal Procedures (§§ 40.5 and 40.6; Parts 37 and 38)

The proposal would institute organizational changes that may require one-time updates to SEF and DCM rulebooks and internal procedures, such as compliance manuals, or require submissions to the Commission under part 40.

Under §§ 40.5 and 40.6, registered entities must submit a written certification to the Commission in connection with a new or amended rule. However, this burden is already covered in the existing part 40 PRA collection.[314]

To comply with parts 37 and 38, SEFs and DCMs must maintain policies and procedures for ensuring compliance with regulatory requirements, such as compliance manuals. The Commission estimates that the proposed rules would require one-time updates to SEF and DCM internal procedures, with an estimated burden of 20 hours. Accordingly, the aggregate annual estimate for the recordkeeping and reporting burden associated with the proposed amendments is as follows:

DCMs—Internal Procedures Recordkeeping and Reporting (Part 38)

Estimated number of respondents: 16.
Estimated number of reports per respondent: 1.
Average number of hours per report: 20.
Estimated gross one-time reporting and recordkeeping burden (hours): 320.

SEFs—Internal Procedures Manual Recordkeeping and Reporting (Part 37)

Estimated number of respondents: 23.
Estimated number of reports per respondent: 1.
Average number of hours per report: 20.
Estimated gross one-time reporting and recordkeeping burden (hours): 460.

[314] The Commission accounts for the burden associated with the part 40 filings under Collection No. 3038–0093, ''Part 40, Provisions Common to Registered Entities,'' which includes updates to rulebooks in response to new Commission regulations and other actions. The CFTC bases its burden estimates under this clearance on the number of annual rule filings with the Commission. Based on those numbers, the Commission has estimated that these reporting requirements entail a burden of approximately 2,800 hours annually for covered entities (70 respondents × 20 reports per respondent × 2 hours per report = 2,800 hours annually). The Commission is retaining its existing burden estimates under the existing clearance. The Commission believes that these estimates are adequate to account for any incremental burden associated with part 40 filings that may result from the proposed organizational changes.

16. Request for Comment

The Commission invites the public and other Federal agencies to comment on any aspect of the proposed information collection requirements discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission will consider public comments on this proposed collection of information in:

(1) Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

(2) Evaluating the accuracy of the estimated burden of the proposed collection of information, including the degree to which the methodology and the assumptions that the Commission employed were valid;

(3) Enhancing the quality, utility, and clarity of the information proposed to be collected; and

(4) Minimizing the burden of the proposed information collection requirements on registered entities, including through the use of appropriate automated, electronic, mechanical, or other technological information collection techniques, *e.g.,* permitting electronic submission of responses.

Copies of the submission from the Commission to OMB are available from the CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418–5160 or from *https://RegInfo.gov.* Organizations and individuals desiring to submit comments on the proposed information collection requirements should send those comments to:

- The Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Trading Commission;
- (202) 395–6566 (fax); or
- *OIRAsubmissions@omb.eop.gov* (email).

Please provide the Commission with a copy of submitted comments so that comments can be summarized and addressed in the final rulemaking, and please refer to the **ADDRESSES** section of this rulemaking for instructions on submitting comments to the Commission. OMB is required to make a decision concerning the proposed information collection requirements between 30 and 60 days after publication of this release in the **Federal Register**. Therefore, a comment to OMB is best assured of receiving full consideration if OMB receives it within 30 calendar days of publication of this release. Nothing in the foregoing affects

the deadline enumerated above for public comment to the Commission on the proposed rules.

d. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation.[315]

The Commission believes that the public interest to be protected by the antitrust laws is the promotion of competition. The Commission requests comment on whether the proposed amendments implicate any other specific public interest to be protected by the antitrust laws. The Commission has considered the proposed rulemaking to determine whether it is anticompetitive and has identified no anticompetitive effects. The Commission requests comment on whether the proposed rulemaking is anticompetitive and, if it is, what the anticompetitive effects are.

Because the Commission has determined that the proposed rule amendments are not anticompetitive and have no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the CEA that would otherwise be served by adopting the proposed rule amendments.

List of Subjects

17 CFR Part 37

Compliance with rules, Conflicts of interest, Designation of Chief Compliance Officer, General Provisions.

17 CFR Part 38

Compliance with rules, Conflicts of Interest, Disciplinary procedures, General provisions.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR chapter I as follows:

PART 37—SWAP EXECUTION FACILITIES

■ 1. The authority citation for part 37 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a–2, 7b–3, and 12a, as amended by Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376.

[315] 7 U.S.C. 19(b).

■ 2. Revise § 37.2 to read as follows:

§ 37.2 Exempt provisions.

A swap execution facility, the swap execution facility's operator and transactions executed on or pursuant to the rules of a swap execution facility must comply with all applicable requirements under Title 17 of the Code of Federal Regulations, except for the requirements of §§ 1.59(b) and (c), 1.63, 1.64, and 1.69.

■ 3. In § 37.5, revise paragraph (c) to read as follows:

§ 37.5 Information relating to swap execution facility compliance.

* * * * *

(c) *Change in ownership or corporate or organizational structure*—(1) *Reporting requirement.* A swap execution facility must report to the Commission any anticipated change in the ownership or corporate or organizational structure of the swap execution facility or its parent(s) that would:

(i) Result in at least a ten percent change of ownership of the swap execution facility or a change to the entity or person holding a controlling interest in the swap execution facility, whether through an increase in direct ownership or voting interest in the swap execution facility or in a direct or indirect corporate parent entity of the swap execution facility;

(ii) Create a new subsidiary or eliminate a current subsidiary of the swap execution facility; or

(iii) Result in the transfer of all or substantially all of the assets of the swap execution facility to another legal entity.

(2) *Required information.* The information reported under paragraph (c)(1) of this section must include: A chart outlining the new ownership or corporate or organizational structure; a brief description of the purpose and impact of the change; and any relevant agreements effecting the change and corporate documents such as articles of incorporation and bylaws.

(i) The Commission may, after receiving such report, request additional supporting documentation relating to the anticipated change in the ownership or corporate or organizational structure of the swap execution facility, including amended Form SEF exhibits, to demonstrate that the swap execution facility will continue to meet all of the requirements of section 5h of the Act and applicable Commission regulations following such change.

(ii) [Reserved]

(3) *Time of report.* The report under paragraph (c)(1) of this section must be submitted to the Commission no later than three months prior to the anticipated change, provided that the swap execution facility may report the anticipated change to the Commission later than three months prior to the anticipated change if the swap execution facility does not know and reasonably could not have known of the anticipated change three months prior to the anticipated change. In such event, the swap execution facility must immediately report such change to the Commission as soon as it knows of such change. The report must be filed electronically with the Secretary of the Commission at *submissions@cftc.gov* and with the Division of Market Oversight at *DMOSubmissions@cftc.gov.*

(4) *Rule filing.* Notwithstanding the provisions of paragraphs (c)(1) through (3) of this section, if any aspect of a change in ownership or corporate or organizational structure described in paragraph (c)(1) of this section requires a swap execution facility to file a rule as defined in § 40.1(i) of this chapter, then the swap execution facility must comply with the rule filing requirements of section 5c(c) of the Act and part 40 of this chapter, and all other applicable Commission regulations.

(5) *Certification.* Upon a change in ownership or corporate or organizational structure described in paragraph (c)(1) of this section, a swap execution facility must file electronically with the Secretary of the Commission at *submissions@cftc.gov* and with the Division of Market Oversight at *DMOSubmissions@cftc.gov,* a certification that the swap execution facility meets all of the requirements of section 5h of the Act and applicable Commission regulations, no later than two business days following the date on which the change in ownership or corporate or organizational structure described in paragraph (c)(1) of this section takes effect.

(6) *Failure to comply.* A change in the ownership or corporate or organizational structure of a swap execution facility that results in the failure of the swap execution facility to comply with any provision of the Act, or any regulation or order of the Commission thereunder—

(i) Shall be cause for the suspension of the registration of the swap execution facility or the revocation of registration as a swap execution facility, in accordance with the procedures provided in sections 5e and 6(b) of the Act, including notice and a hearing on the record; or

(ii) May be cause for the Commission to make and enter an order directing that the swap execution facility cease

and desist from such violation, in accordance with the procedures provided in sections 6b and 6(b) of the Act, including notice and a hearing on the record.

* * * * *

■ 4. Amend § 37.203 as follows:
■ a. Revise paragraph (c);
■ b. Redesignate paragraphs (d), (e), (f), and (g) as paragraphs (e), (f), (g), and (h);
■ c. Add a new paragraph (d); and
■ d. Revise newly redesignated paragraph (g).

The revisions and addition read as follows:

§ 37.203 Rule enforcement program.

* * * * *

(c) *Sufficient staff and resources.* A swap execution facility must establish and maintain sufficient staff and resources to effectively perform market regulation functions, as defined in § 37.1201(b)(9). Such staff must be sufficient to address unusual market or trading events as they arise, and to conduct and complete investigations in a timely manner, as set forth in § 37.203(g).

(d) *Ongoing monitoring of staff and resources.* A swap execution facility must monitor the size and workload of its staff required under paragraph (c) of this section annually and ensure that its staff and resources are at appropriate levels. In determining the appropriate level of staff and resources, the swap execution facility should consider trading volume increases, the number of new products or contracts to be listed for trading, any new responsibilities to be assigned to staff, any responsibilities that staff have at affiliated entities, the results of any internal review demonstrating that work is not completed in an effective or timely manner, any conflicts of interest that prevent staff from working on certain matters, and any other factors suggesting the need for increased staff and resources.

* * * * *

(g) *Investigations and investigation reports*—(1) *Procedures.* A swap execution facility shall establish and maintain procedures that require its staff responsible for market regulation functions to conduct investigations of possible rule violations. An investigation shall be commenced upon the receipt of a request from Commission staff or upon the discovery or receipt of information by the swap execution facility that indicates a reasonable basis for finding that a violation may have occurred or will occur.

(2) *Timeliness.* Each investigation shall be completed in a timely manner. Absent mitigating factors, a timely manner is no later than 12 months after the date that an investigation is opened. Mitigating factors that may reasonably justify an investigation taking longer than 12 months to complete include the complexity of the investigation, the number of firms or individuals involved as potential wrongdoers, the number of potential violations to be investigated, and the volume of documents and data to be examined and analyzed by staff.

(3) *Investigation reports when a reasonable basis exists for finding a violation.* Staff shall submit a written investigation report for disciplinary action in every instance in which staff determines from surveillance or from an investigation that a reasonable basis exists for finding a rule violation. The investigation report shall include the reason the investigation was initiated; a summary of the complaint, if any; the relevant facts; staff's analysis and conclusions; and a recommendation as to whether disciplinary action should be pursued.

(4) *Investigation reports when no reasonable basis exists for finding a violation.* If after conducting an investigation, staff determines that no reasonable basis exists for finding a rule violation, it shall prepare a written report including the reason the investigation was initiated; a summary of the complaint, if any; the relevant facts; and staff's analysis and conclusions.

(5) *Warning letters.* No more than one warning letter may be issued to the same person or entity found to have committed the same rule violation within a rolling twelve month period.

* * * * *

■ 5. In § 37.206, revise paragraph (b) to read as follows:

§ 37.206 Disciplinary procedures and sanctions.

* * * * *

(b) *Disciplinary panels.* A swap execution facility must establish one or more disciplinary panels that are authorized to fulfill their obligations under the rules of this subpart. Disciplinary panels must meet the composition requirements of § 37.1207, and must not include any members of the swap execution facility's market regulation staff or any person involved in adjudicating any other stage of the same proceeding.

* * * * *

■ 6. Add § 37.207 in subpart C to read as follows:

§ 37.207 Minimum fitness standards.

(a) *In general.* A swap execution facility must establish and enforce appropriate fitness standards for its officers and for members of its board of directors, committees, disciplinary panels, and dispute resolution panels (or anyone performing functions similar to the foregoing), for members of the swap execution facility, for any other person with direct access to the swap execution facility, any person who owns 10 percent or more of the SEF and who, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of the SEF, and for any party affiliated with any person described in this paragraph.

(b) *Minimum standards for certain persons—bases for refusal to register.* Minimum standards of fitness for the swap execution facility's officers and for members of its board of directors, committees, disciplinary panels, and dispute resolution panels (or anyone performing functions similar to the foregoing), for members of the swap execution facility with voting privileges, and any person who owns 10 percent or more of the SEF and who, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of the SEF, must include the bases for refusal to register a person under sections 8a(2) and 8a(3) of the Act.

(c) *Additional minimum fitness standards for certain persons—history of disciplinary offenses.* Minimum standards of fitness for the swap execution facility's officers and for members of its board of directors, committees, disciplinary panels, and dispute resolution panels (or anyone performing functions similar to the foregoing), must include ineligibility based on the disciplinary offenses listed in the following paragraphs (c)(1) through (6):

(1) Was found within the prior three years by a final, non-appealable decision of a self-regulatory organization, an administrative law judge, a court of competent jurisdiction, the Securities Exchange Commission, or the Commission to have committed:

(i) A violation of the rules of a self-regulatory organization, except rules related to decorum or attire, financial requirements, or reporting or recordkeeping resulting in fines aggregating $5,000 or less within a calendar year; or

(ii) A violation of any rule of a self-regulatory organization if the violation involved fraud, deceit, or conversion, or resulted in suspension or expulsion; or

(iii) Any violation of the Act or the regulations promulgated thereunder; or

(iv) Any failure to exercise supervisory responsibility in violation of the rules of a self-regulatory organization, or the Act, or regulations promulgated thereunder.

(2) Entered into a settlement agreement within the prior three years in which the acts charged, or findings included any of the violations described in paragraph (c)(1) of this section;

(3) Currently is suspended from trading on any designated contract market or swap execution facility, is suspended or expelled from membership with any self-regulatory organization, is serving any sentence of probation, or owes any portion of a fine imposed due to a finding or settlement described in paragraphs (c)(1) or (2) of this section;

(4) Currently is subject to an agreement with the Commission, the Securities Exchange Commission, or any self-regulatory organization, not to apply for registration with the Securities Exchange Commission, Commission or membership in any self-regulatory organization;

(5) Currently is subject to or has had imposed on him or her within the prior three years a Commission registration revocation or suspension in any capacity for any reason, or has been convicted within the prior three years of any of the felonies listed in section 8a(2)(D)(ii) through (iv) of the Act; or

(6) Currently is subject to a denial, suspension or disqualification from serving on the disciplinary panel, arbitration panel or governing board of any self-regulatory organization as that term is defined in section 3(a)(26) of the Securities Exchange Act of 1934.

(d) *Collection and verification of fitness information.* (1) A swap execution facility must have appropriate procedures for the collection and verification of information supporting compliance with appropriate fitness standards, including, at a minimum, the following:

(i) A swap execution facility must, on at least an annual basis, collect and verify fitness information for each person acting in the capacity subject to the fitness standards;

(ii) A swap execution facility must require each person acting in any capacity subject to the fitness standards to provide immediate notice if that person no longer meets the minimum fitness standards to act in that capacity;

(iii) An initial verification of fitness information must be completed prior to the person commencing to act in the capacity for which the person is subject to fitness standards; and

(iv) A swap execution facility must document its findings with respect to the verification of fitness information for each person acting in the capacity subject to the fitness standards.

(2) [Reserved]

■ 7. Add § 37.1201 in subpart M to read as follows:

§ 37.1201 General requirements.

(a) *Establishment of process.* A swap execution facility must establish a process for identifying, minimizing, and resolving actual or potential conflicts of interest that may arise, including, but not limited to, conflicts between and among any of the swap execution facility's market regulation functions; its commercial interests; and the several interests of its management, members, owners, customers and market participants, other industry participants, and other constituencies.

(b) *Definitions.* For purposes of this section:

(1) *Affiliate* means a person that directly or indirectly controls, is controlled by, or is under common control with, the swap execution facility.

(2) *Board of directors* means a group of people serving as the governing body of a swap execution facility, or for a swap execution facility whose organizational structure does not include a board of directors, a body performing a function similar to a board of directors.

(3) *Commodity interest* means any commodity futures, commodity option or swap contract traded on or subject to the rules of a designated contract market, a swap execution facility or linked exchange, or cleared by a derivatives clearing organization, or cash commodities traded on or subject to the rules of a designated contract market.

(4) *Disciplinary panel* means a panel of two or more persons authorized to conduct hearings, render decisions, approve settlements, and impose sanctions with respect to disciplinary matters.

(5) *Dispute resolution* panel means a panel of two or more persons authorized to resolve disputes involving a swap execution facility's members, market participants, and any intermediaries.

(6) *Executive committee* means a committee of the board of directors that may exercise the authority delegated to it by the board of directors with respect to the decision-making of the company or organization.

(7) *Family relationship* means a person's relationship with a spouse, parents, children, or siblings, in each case, whether by blood, marriage, or adoption, or the person's relationship with any person residing in the home of the person.

(8) *Linked exchange* means:

(i) Any board of trade, exchange or market outside the United States, its territories or possessions, which has an agreement with a designated contract market or swap execution facility in the United States that permits positions in a commodity interest which have been established on one of the two markets to be liquidated on the other market;

(ii) Any board of trade, exchange or market outside the United States, its territories or possessions, the products of which are listed on a United States designated contract market, swap execution facility, or a trading facility thereof;

(iii) Any securities exchange, the products of which are held as margin in a commodity account or cleared by a securities clearing organization pursuant to a cross-margining arrangement with a futures clearing organization; or

(iv) Any clearing organization which clears the products of any of the foregoing markets.

(9) *Market regulation functions* means SEF functions required by SEF Core Principle 2, SEF Core Principle 4, SEF Core Principle 6, SEF Core Principle 10 and the applicable Commission regulations thereunder.

(10) *Material information* means information which, if such information were publicly known, would be considered important by a reasonable person in deciding whether to trade a particular commodity interest on a designated contract market or a swap execution facility, or to clear a swap contract through a derivatives clearing organization. As used in this section, ''material information'' includes, but is not limited to, information relating to present or anticipated cash positions, commodity interests, trading strategies, the financial condition of members of self-regulatory organizations or members of linked exchanges or their customers, or the regulatory actions or proposed regulatory actions of a swap execution facility or a linked exchange.

(11) *Non-public information* means information which has not been disseminated in a manner which makes it generally available to the trading public.

(12) *Pooled investment vehicle* means a trading vehicle organized and operated as a commodity pool within the meaning of § 4.10(d) of this chapter, and whose units of participation have been registered under the Securities Act of 1933, or a trading vehicle for which § 4.5 of this chapter makes available relief from regulation as a commodity

pool operator, *i.e.,* registered investment companies, insurance company separate accounts, bank trust funds, and certain pension plans.

(13) *Public director* means a member of the board of directors who has been found, by the board of directors of the swap execution facility, on the record, to have no material relationship with the swap execution facility. The board of directors must make such finding upon the nomination of the director and at least on an annual basis thereafter.

(i) For purposes of this definition, a ''material relationship'' is one that reasonably could affect the independent judgment or decision-making of the member of the board of directors. Circumstances in which a member of the board of directors shall be considered to have a ''material relationship'' with the swap execution facility include, but are not limited to, the following:

(A) Such director is an officer or an employee of the swap execution facility or an officer or an employee of its affiliate;

(B) Such director is a member of the swap execution facility, or a director, an officer, or an employee of either a member or an affiliate of a member. In this context, ''member'' shall have the meaning set forth in § 1.3 of this chapter;

(C) Such director directly or indirectly owns more than 10 percent of the swap execution facility or an affiliate of the swap execution facility, or is an officer or employee of an entity that directly or indirectly owns more than 10 percent of the swap execution facility;

(D) Such director, or an entity in which the director is a partner, an officer, an employee, or a director, receives more than $100,000 in aggregate annual payments from the swap execution facility, or an affiliate of the swap execution facility. Compensation for services as a director of the swap execution facility or as a director of an affiliate of the swap execution facility does not count toward the $100,000 payment limit, nor does deferred compensation for services rendered prior to becoming a director of the swap execution facility, so long as such compensation is in no way contingent, conditioned, or revocable; or

(E) The director shall be considered to have a ''material relationship'' with the swap execution facility when any of the circumstances described in paragraphs (b)(13)(i)(A) through (D) of this section apply to any person with whom the director has a family relationship.

(ii) All of the circumstances described in paragraph (b)(13)(i) of this section shall be subject to a one-year look back.

(iii) A public director of the swap execution facility may also serve as a public director of an affiliate of the swap execution facility if they otherwise meet the requirements of this section.

(iv) A swap execution facility must disclose to the Commission which members of its board are public directors, and the basis for those determinations.

(14) *Related commodity interest* means any commodity interest which is traded on or subject to the rules of a designated contract market, swap execution facility, linked exchange, or other board of trade, exchange, or market, or cleared by a derivatives clearing organization, other than the swap execution facility by which a person is employed, and with respect to which:

(i) Such employing swap execution facility has recognized or established intermarket spread margins or other special margin treatment between that other commodity interest and a commodity interest which is traded on or subject to the rules of the employing swap execution facility; or

(ii) Such other swap execution facility has recognized or established intermarket spread margins or other special margin treatment with another commodity interest as to which the person has access to material nonpublic information.

(15) *Self-regulatory organization* shall have the meaning set forth in § 1.3 of this chapter.

(16) *Senior officer* means the chief executive officer or other equivalent officer of the swap execution facility.

■ 8. Add § 37.1202 in subpart M to read as follows:

§ 37.1202 Conflicts of interest.

(a) *Conflicts of interest in the decision-making of a swap execution facility.* (1) A swap execution facility must establish policies and procedures that require any officer or member of its board of directors, committees, or disciplinary panels to disclose any actual or potential conflicts of interest that may be present prior to considering any matter. Such conflicts of interests include, but are not limited to, conflicts of interest that may arise when such member or officer:

(i) Is the subject of any matter being considered;

(ii) Is an employer, employee, or colleague of the subject of any matter being considered;

(iii) Has a family relationship with the subject of any matter being considered; or

(iv) Has any ongoing business relationship with or a financial interest in the subject of any matter being considered.

(2) Any relationship of the type listed in paragraphs (a)(1)(i) through (iv) of this section that is with an affiliate of the subject of any matter being considered would be deemed an actual or potential conflict of interest for purposes of this section.

(3) The swap execution facility must establish policies and procedures that require any officer or member of a board of directors, committee, or disciplinary panel of a swap execution facility that has an actual or potential conflict of interest, including any of the relationships listed in paragraphs (a)(1) and (2) of this section, to abstain from deliberating or voting on such matter.

(b) *Documentation of conflicts of interest determinations.* The board of directors, committees, and disciplinary panels of a swap execution facility must document in meeting minutes, or otherwise document in a comparable manner, compliance with the applicable requirements of this section. Such documentation demonstrating compliance must also include:

(1) The names of all members and officers who attended the relevant meeting in person or who otherwise were present by electronic means; and

(2) The names of any members and officers who voluntarily recused themselves or were required to abstain from deliberations or voting on a matter and the reason for the recusal or abstention.

■ 9. Add § 37.1203 in subpart M to read as follows:

§ 37.1203 Limitations on the use and disclosure of material non-public information.

(a) *In general.* A swap execution facility must establish and enforce policies and procedures on safeguarding the use and disclosure of material non-public information. Such policies and procedures must provide for appropriate limitations on the use or disclosure of material non-public information gained through the performance of official duties by members of the board of directors, committee members, and employees, or through an ownership interest in the swap execution facility.

(b) *Prohibited conduct by employees.* A swap execution facility must establish and enforce policies and procedures that, at a minimum, prohibit employees of the swap execution facility from the following:

(1) Trading directly or indirectly, in the following:

(i) Any commodity interest traded on the employing swap execution facility;

(ii) Any related commodity interest;

(iii) A commodity interest traded on designated contract markets or swap execution facilities or cleared by derivatives clearing organizations other than the employing swap execution facility if the employee has access to material non-public information concerning such commodity interest; or

(iv) A commodity interest traded on or cleared by a linked exchange if the employee has access to material non-public information concerning such commodity interest.

(2) Disclosing for any purpose inconsistent with the performance of the person's official duties as an employee any material non-public information obtained as a result of such person's employment at the swap execution facility; provided, however, that such policies and procedures shall not prohibit disclosures made in the performance by the employee, acting in the employee's official capacity or the employee's official duties, including to another self-regulatory organization, linked exchange, court of competent jurisdiction or representative of any agency or department of the federal or a state government.

(c) *Permitted exemptions.* A swap execution facility may grant exemptions from the trading prohibitions contained in paragraph (b)(1) of this section. Such exemptions must be:

(1) Consistent with policies and procedures established by the swap execution facility that set forth the circumstances under which such exemptions may be granted;

(2) Administered by the swap execution facility on a case-by-case basis;

(3) Approved by the swap execution facility's regulatory oversight committee;

(4) Granted only in limited circumstances in which the employee requesting the exemption can demonstrate that the trading is not being conducted on the basis of material non-public information gained through the performance of official duties, which limited circumstances may include participation by an employee in pooled investment vehicles where the employee has no direct or indirect control with respect to transactions executed for or on behalf of such vehicles; and

(5) Individually documented by the swap execution facility, with the documentation maintained by the swap execution facility in accordance with §§ 37.1000 and 37.1001.

(d) *Monitoring for Permitted Exemptions.* A swap execution facility must establish and enforce policies and procedures to diligently monitor the trading activity conducted under any exemptions granted under paragraph (c) of this section to ensure compliance with any applicable conditions of the exemptions and the swap execution facility's policies and procedures on the use and disclosure of material non-public information that are required pursuant to this section.

(e) *Prohibited conduct by members of the board of directors, committee members, employees, consultants, or owners.* A swap execution facility must establish and enforce policies and procedures that, at a minimum, prohibit members of the board of directors, committee members, employees, consultants, and those with an ownership interest of 10 percent or more in the swap execution facility, from the following:

(1) Trading for such person's own account, or for or on behalf of any other account, in any commodity interest or related commodity interest, on the basis of any material non-public information obtained through the performance of such person's official duties as a member of the board of directors, committee member, employee, consultant, or those with an ownership interest of 10 percent or more in the swap execution facility;

(2) Trading for such person's own account, or for or on behalf of any other account, in any commodity interest or related commodity interest, on the basis of any material non-public information that such person knows was obtained in violation of this section from a member of the board of directors, committee member, employee, consultant, or those with an ownership interest of 10 percent or more in the swap execution facility; or

(3) Disclosing for any purpose inconsistent with the performance of the person's official duties any material non-public information obtained as a result of their official duties at the swap execution facility; provided, however, that such policies and procedures shall not prohibit disclosures made in the performance of such person's official duties, including to another self-regulatory organization, linked exchange, court of competent jurisdiction or representative of any agency or department of the federal or state government acting in their official capacity.

■ 10. Add § 37.1204 in subpart M to read as follows:

§ 37.1204 Board of directors.

(a) *In general.* (1) The board of directors of a swap execution facility must be composed of at least thirty-five percent public directors.

(2) A swap execution facility must establish and enforce policies and procedures outlining the roles and responsibilities of the board of directors, including the manner in which the board of directors oversees the swap execution facility's compliance with all statutory, regulatory, and self-regulatory responsibilities of the swap execution facility under the Act and the regulations promulgated thereunder.

(3) Any executive committee (or any similarly empowered body) must be composed of at least thirty-five percent public directors.

(b) *Expertise.* Each member of the board of directors, including public directors, of the swap execution facility, must have relevant expertise to fulfill the roles and responsibilities of such member.

(c) *Compensation.* The compensation of public directors and other non-executive members of the board of directors of a swap execution facility must not be directly dependent on the business performance of such swap execution facility or any affiliate of the swap execution facility.

(d) *Annual self-assessment.* The board of directors of a swap execution facility must annually conduct a self-assessment of its performance and that of its committees. Such self-assessments must be documented and made available to the Commission for inspection.

(e) *Removal of a member of the board of directors.* A swap execution facility must have procedures to remove a member from the board of directors, where the conduct of such member is likely to be prejudicial to the sound and prudent management of the swap execution facility.

(f) *Reporting to the Commission.* A swap execution facility must notify the Commission within five business days of any changes to the membership of the board of directors or any of its committees.

■ 11. Add § 37.1205 in subpart M to read as follows:

§ 37.1205 Nominating committee.

(a) *In general.* A swap execution facility must have a board-level nominating committee, which must, at a minimum:

(1) Identify a diverse panel of individuals qualified to serve on the board of directors, consistent with the fitness requirements set forth in § 37.207, the composition requirements set forth in § 37.1204, and that reflect the views of market participants; and

(2) Administer a process for the nomination of individuals to the board of directors.

(b) *Applicability.* The requirements in paragraphs (a)(1) and (2) of this section apply to all nominations that occur after the initial establishment of the nominating committee and the appointment of members to the nominating committee.

(c) *Reporting.* The nominating committee must report to the board of directors of the swap execution facility.

(d) *Composition.* The nominating committee must be composed of at least fifty-one percent public directors. The chair of the nominating committee must be a public director.

■ 12. Add § 37.1206 in subpart M to read as follows:

§ 37.1206 Regulatory oversight committee.

(a) *In general.* Each swap execution facility must establish a regulatory oversight committee, as a standing committee of the board of directors, to oversee the swap execution facility's market regulation functions on behalf of the board of directors.

(b) *Composition.* The regulatory oversight committee must be composed entirely of public directors, and must include no less than two directors.

(c) *Delegation.* The board of directors must delegate sufficient authority, dedicate sufficient resources, and allow sufficient time for the regulatory oversight committee to fulfill its mandate and duties.

(d) *Duties.* The regulatory oversight committee must:

(1) Monitor the sufficiency, effectiveness, and independence of the swap execution facility's market regulation functions;

(2) Oversee all facets of the swap execution facility's market regulation functions;

(3) Approve the size and allocation of the regulatory budget and resources, and the number, hiring, termination, and compensation of staff required pursuant to § 37.203(c);

(4) Consult with the chief compliance officer in managing and resolving any actual or potential conflicts of interest involving the swap execution facility's market regulation functions;

(5) Recommend changes that would promote fair, vigorous, and effective self-regulation; and

(6) Review all regulatory proposals prior to implementation and advising the board of directors as to whether and how such proposals may impact the swap execution facility's market regulation functions.

(e) *Reporting.* The regulatory oversight committee must periodically report to the board of directors of the swap execution facility.

(f) *Meetings and documentation.* (1) The regulatory oversight committee must have processes related to the conducting of meetings, including, but not limited to, the following:

(i) The regulatory oversight committee must meet no less than on a quarterly basis;

(ii) The regulatory oversight committee must not permit any individuals with actual or potential conflicts of interest to attend any discussions or deliberations in its meetings that relate to the swap execution facility's market regulation functions; and

(iii) The regulatory oversight committee must maintain minutes of its meetings. Such minutes must include a list of the attendees; their titles; whether they were present for the entirety of the meeting or a portion thereof (and if so, what portion); and a summary of all meeting discussions.

(2) The regulatory oversight committee must maintain documentation of the committee's findings, recommendations, deliberations, or other communications related to the performance of its duties.

(g) *Annual report*—(1) *Preparation.* The regulatory oversight committee must prepare an annual report of the swap execution facility's market regulation functions for the board of directors and the Commission, which includes an assessment, at a minimum, of the following:

(i) Details of all market regulation function expenses;

(ii) A description of staffing, structure, and resources for the swap execution facility's market regulation functions;

(iii) A description of disciplinary actions taken during the year;

(iv) A review of the performance of the swap execution facility's disciplinary panels;

(v) A list of any actual or potential conflicts of interests reported to the regulatory oversight committee, including a description of how such conflicts of interest were managed or resolved, and an assessment of the impact of any conflicts of interest on the swap execution facility's ability to perform its market regulation functions; and

(vi) Details related to all actions taken by the board of directors of a swap execution facility pursuant to a recommendation of the regulatory oversight committee, which details must include the following:

(A) The recommendation or action of the regulatory oversight committee;

(B) The rationale for such recommendation or action of the regulatory oversight committee;

(C) The rationale of the board of directors for rejecting such recommendation or superseding such action of the regulatory oversight committee, if applicable; and

(D) The course of action that the board of directors decided to take that differs from such recommendation or action of the regulatory oversight committee, if applicable.

(2) *Submission of the annual report to the Commission*—(i) *Timing.* The annual report must be submitted electronically to the Commission no later than 90 days after the end of the swap execution facility's fiscal year.

(ii) *Request for extension.* A swap execution facility may request an extension of time to file its annual report from the Commission. Reasonable and valid requests for extensions of the filing deadline may be granted at the discretion of the Commission.

(iii) *Delegation of authority.* The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, the authority to grant or deny a request for an extension of time for a swap execution facility to file its annual report under paragraph (g)(2)(ii) of this section. The Director may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

(3) *Records.* The swap execution facility must maintain all records demonstrating compliance with the duties of the regulatory oversight committee and the preparation and submission of annual reports consistent with §§ 37.1000 and 37.1001.

■ 13. Add § 37.1207 in subpart M to read as follows:

§ 37.1207 Disciplinary panel composition.

(a) *Composition.* Each disciplinary panel must include at least two persons, including one public participant. A public participant is a person who would meet the eligibility requirements of a public director in § 37.1201(b)(12), provided that such person need not be a member of the board of directors of the swap execution facility. A public participant must chair each disciplinary panel. In addition, a swap execution facility must adopt rules that would, at a minimum:

(1) Preclude any group or class of participants from dominating or exercising disproportionate influence on a disciplinary panel; and

(2) Prohibit any member of a disciplinary panel from participating in deliberations or voting on any matter in

which the member has an actual or potential conflict of interest as set forth in § 37.1202(a).

(b) *Appeals.* If the rules of the swap execution facility provide that the decision of a disciplinary panel may be appealed to another committee of the board of directors, then such committee must also include at least two persons, including one public participant, and such public participant must chair the committee.

(c) *Exception.* Paragraphs (a) and (b) of this section do not apply to a disciplinary panel convened for cases solely involving decorum or attire.

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■ 14. In § 37.1501, revise paragraphs (a) through (d) to read as follows:

§ 37.1501 Chief compliance officer.

(a) *Chief compliance officer*—(1) *Authority of chief compliance officer.* (i) The position of chief compliance officer must carry with it the authority and resources to develop, in consultation with the board of directors or senior officer, the policies and procedures of the swap execution facility and enforce such policies and procedures to fulfill the duties set forth for chief compliance officers in the Act and Commission regulations.

(ii) The chief compliance officer must have supervisory authority over all staff acting at the direction of the chief compliance officer.

(2) *Qualifications of chief compliance officer.* (i) The individual designated to serve as chief compliance officer must have the background and skills appropriate for fulfilling the responsibilities of the position.

(ii) No individual disqualified from registration pursuant to sections 8a(2) or 8a(3) of the Act may serve as a chief compliance officer.

(3) *Reporting line of the chief compliance officer.* The chief compliance officer must report directly to the board of directors or to the senior officer of the swap execution facility.

(4) *Appointment and removal of chief compliance officer.* (i) Only the board of directors or the senior officer, with the approval of the swap execution facility's regulatory oversight committee, may appoint or remove the chief compliance officer.

(ii) The swap execution facility must notify the Commission within two business days of the appointment or removal, whether interim or permanent, of a chief compliance officer.

(5) *Compensation of the chief compliance officer.* The board of directors or the senior officer, in consultation with the swap execution facility's regulatory oversight committee, must approve the compensation of the chief compliance officer.

(6) *Annual meeting with the chief compliance officer.* The chief compliance officer must meet with the board of directors or senior officer of the swap execution facility at least annually.

(7) *Information requested of the chief compliance officer.* The chief compliance officer must provide any information regarding the self-regulatory program of the swap execution facility as requested by the board of directors or the senior officer.

(b) *Duties of chief compliance officer.* The duties of the chief compliance officer must include, but are not limited to, the following:

(1) Overseeing and reviewing compliance of the swap execution facility with section 5h of the Act and any related rules adopted by the Commission;

(2) Taking reasonable steps, in consultation with the swap execution facility's board of directors, or a committee thereof, or the senior officer of the swap execution facility, to manage and resolve any material conflicts of interest that may arise relating to:

(i) Conflicts between business considerations and compliance requirements, including the swap execution facility's market regulation functions;

(ii) Conflicts between business considerations and implementation of the requirement that the swap execution facility provide fair, open, and impartial access as set forth in § 37.202; and

(iii) Conflicts between a swap execution facility's management and members of the board of directors.

(3) Establishing and administering written policies and procedures reasonably designed to prevent violations of the Act and the rules of the Commission;

(4) Taking reasonable steps to ensure compliance with the Act and the rules of the Commission;

(5) Establishing procedures reasonably designed to handle, respond, remediate, retest, and resolve noncompliance issues identified by the chief compliance officer through any means, including any compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint; and

(6) Establishing and administering a compliance manual designed to promote compliance with the applicable laws, rules, and regulations and a written code of ethics for the swap execution facility designed to prevent ethical violations and to promote honesty and ethical conduct by personnel of the swap execution facility.

(7) Supervising the swap execution facility's self-regulatory program, including the market regulation functions set forth in § 37.1201(b)(9); and

(8) If applicable, supervising the effectiveness and sufficiency of any regulatory services provided to the swap execution facility by a regulatory service provider in accordance with § 37.204.

(c) *Conflicts of interest involving the chief compliance officer.* Each swap execution facility must establish procedures for the chief compliance officer's disclosure of actual or potential conflicts of interest involving the chief compliance officer to the regulatory oversight committee and designation of a qualified person to serve in the place of the chief compliance officer for any matter in which the chief compliance officer has such a conflict, and documentation of such disclosure and designation.

(d) *Preparation of annual compliance report.* The chief compliance officer must, not less than annually, prepare and sign an annual compliance report that covers the prior fiscal year. The report must, at a minimum, contain:

(1) A description and self-assessment of the effectiveness of the written policies and procedures of the swap execution facility, including the code of ethics and conflict of interest policies, to reasonably ensure compliance with the Act and applicable Commission regulations;

(2) Any material changes made to policies and procedures related to the swap execution facility's self-regulatory functions during the coverage period for the report and any areas of improvement or recommended changes such policies and procedures;

(3) A description of the financial, managerial, and operational resources set aside for compliance with the Act and applicable Commission regulations;

(4) Any material non-compliance matters identified and an explanation of the corresponding action taken to resolve such non-compliance matters;

(5) Any actual or potential conflicts of interests that were identified to the chief compliance officer during the coverage period for the report, including a description of how such conflicts of interest were managed or resolved, and an assessment of the impact of any conflicts of interest on the swap execution facility's ability to perform its market regulation functions; and

(6) A certification by the chief compliance officer that, to the best of his or her knowledge and reasonable

belief, and under penalty of law, the annual compliance report is accurate and complete in all material respects.

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PART 38—DESIGNATED CONTRACT MARKETS

■ 15. The authority citation for part 38 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6c, 6d, 6e, 6f, 6g, 6i, 6j, 6k, 6l, 6m, 6n, 7, 7a–2, 7b, 7b–1, 7b–3, 8, 9, 15, and 21, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376.

■ 16. Revise § 38.2 to read as follows:

§ 38.2 Exempt provisions.

A designated contract market, the designated contract market's operator and transactions traded on or through a designated contract market under section 5 of the Act shall comply with all applicable regulations under Title 17 of the Code of Federal Regulations, except for the requirements of §§ 1.39(b), 1.54, 1.59(b) and (c), 1.63, 1.64, 1.69, 100.1, 155.2, and part 156 of this chapter.

■ 17. In § 38.5, revise paragraphs (c) and (d) to read as follows:

§ 38.5 Information relating to contract market compliance.

* * * * *

(c) *Change in ownership or corporate or organizational structure*—(1) *Reporting requirement.* A designated contract market must report to the Commission any anticipated change in the ownership or corporate or organizational structure of the designated contract market or its parent(s) that would:

(i) Result in at least a ten percent change of ownership of the designated contract market or a change to the entity or person holding a controlling interest in the designated contract market, whether through an increase in direct ownership or voting interest in the designated contract market or in a direct or indirect corporate parent entity of the designated contract market;

(ii) Create a new subsidiary or eliminate a current subsidiary of the designated contract market; or

(iii) Result in the transfer of all or substantially all of the assets of the designated contract market to another legal entity.

(2) *Required information.* The information reported under paragraph (c)(1) of this section must include: A chart outlining the new ownership or corporate or organizational structure; a brief description of the purpose and impact of the change; and any relevant agreements effecting the change and corporate documents such as articles of incorporation and bylaws.

(i) The Commission may, after receiving such report, request additional supporting documentation relating to the anticipated change in the ownership or corporate or organizational structure of the designated contract market, including amended Form DCM exhibits, to demonstrate that the designated contract market will continue to meet all of the requirements of section 5 of the Act and applicable Commission regulations following such change.

(ii) [Reserved]

(3) *Time of report.* The report under paragraph (c)(1) of this section must be submitted to the Commission no later than three months prior to the anticipated change, provided that the designated contract market may report the anticipated change to the Commission later than three months prior to the anticipated change if the designated contract market does not know and reasonably could not have known of the anticipated change three months prior to the anticipated change. In such event, the designated contract market must immediately report such change to the Commission as soon as it knows of such change. The report must be filed electronically with the Secretary of the Commission at *submissions@cftc.gov* and with the Division of Market Oversight at *DMOSubmissions@cftc.gov.*

(4) *Rule filing.* Notwithstanding the provisions of paragraphs (c)(1) through (3) of this section, if any aspect of a change in ownership or corporate or organizational structure described in paragraph (c)(1) of this section requires a designated contract market to file a rule as defined in § 40.1(i) of this chapter, then the designated contract market must comply with the rule filing requirements of section 5c(c) of the Act and part 40 of this chapter, and all other applicable Commission regulations.

(5) *Certification.* Upon a change in ownership or corporate or organizational structure described in paragraph (c)(1) of this section, a designated contract market must file electronically with the Secretary of the Commission at *submissions@cftc.gov* and with the Division of Market Oversight at *DMOSubmissions@cftc.gov,* a certification that the designated contract market meets all of the requirements of section 5 of the Act and applicable Commission regulations, no later than two business days following the date on which the change in ownership or corporate or organizational structure described in paragraph (c)(1) of this section takes effect.

(6) *Failure to comply.* A change in the ownership or corporate or organizational structure of a designated contract market that results in the failure of the designated contract market to comply with any provision of the Act, or any regulation or order of the Commission thereunder—

(i) Shall be cause for the suspension of the designation of the designated contract market or the revocation of designation as a designated contract market, in accordance with the procedures provided in sections 5e and 6(b) of the Act, including notice and a hearing on the record; or

(ii) May be cause for the Commission to make and enter an order directing that the designated contract market cease and desist from such violation, in accordance with the procedures provided in sections 6b and 6(b) of the Act, including notice and a hearing on the record.

(d) *Delegation of authority.* The Commission hereby delegates, until it orders otherwise, the authority set forth in this section to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time. The Director may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

■ 18. Revise § 38.155 to read as follows:

§ 38.155 Sufficient staff and resources.

(a) *Sufficient staff and resources.* A designated contract market must establish and maintain sufficient staff and resources to effectively perform market regulation functions, as defined in § 38.851(b)(9). Such staff must be sufficient to address unusual market or trading events as they arise, and to conduct and complete investigations in a timely manner, as set forth in § 38.158(b).

(b) *Ongoing monitoring of staff and resources.* A designated contract market must monitor the size and workload of its staff required under paragraph (a) of this section annually and ensure that its staff and resources are at appropriate levels. In determining the appropriate level of staff and resources, the designated contract market should consider trading volume increases, the number of new products or contracts to be listed for trading, any new responsibilities to be assigned to staff, any responsibilities that staff have at affiliated entities, the results of any internal review demonstrating that work is not completed in an effective or

timely manner, any conflicts of interest that prevent staff from working on certain matters, and any other factors suggesting the need for increased staff and resources.

■ 19. In § 38.158, revise paragraphs (a) through (d) to read as follows:

§ 38.158 Investigations and investigation reports.

(a) *Procedures.* A designated contract market must establish and maintain procedures that require staff responsible for market regulation functions to conduct investigations of possible rule violations. An investigation must be commenced upon the receipt of a request from Commission staff or upon the discovery or receipt of information by the designated contract market that indicates a reasonable basis for finding that a violation may have occurred or will occur.

(b) *Timeliness.* Each investigation must be completed in a timely manner. Absent mitigating factors, a timely manner is no later than 12 months after the date that an investigation is opened. Mitigating factors that may reasonably justify an investigation taking longer than 12 months to complete include the complexity of the investigation, the number of firms or individuals involved as potential wrongdoers, the number of potential violations to be investigated, and the volume of documents and data to be examined and analyzed by staff.

(c) *Investigation reports when a reasonable basis exists for finding a violation.* Staff must submit a written investigation report for disciplinary action in every instance in which such staff determines from surveillance or from an investigation that a reasonable basis exists for finding a rule violation. The investigation report must include the reason the investigation was initiated; a summary of the complaint, if any; the relevant facts; staff's analysis and conclusions; and a recommendation as to whether disciplinary action should be pursued.

(d) *Investigation reports when no reasonable basis exists for finding a violation.* If after conducting an investigation, staff determines that no reasonable basis exists for finding a violation, it must prepare a written report including the reason(s) the investigation was initiated; a summary of the complaint, if any; the relevant facts; and staff's analysis and conclusions.

* * * * *

■ 20. Revise § 38.702 to read as follows:

§ 38.702 Disciplinary panels.

A designated contract market must establish one or more disciplinary panels that are authorized to fulfill their obligations under the rules of this subpart. Disciplinary panels must meet the composition requirements of § 38.858, and must not include any members of the designated contract market's market regulation staff or any person involved in adjudicating any other stage of the same proceeding.

■ 21. Revise § 38.801 to read as follows:

§ 38.801 Minimum fitness standards.

(a) *In general.* A designated contract market must establish and enforce appropriate fitness standards for its officers and for members of its board of directors, committees, disciplinary panels, and dispute resolution panels (or anyone performing functions similar to the foregoing), for members of the designated contract market, for any other person with direct access to the contract market, any person who owns 10 percent or more of the DCM and who, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of the DCM, and for any party affiliated with any person described in this paragraph.

(b) *Minimum standards for certain persons—bases for refusal to register.* Minimum standards of fitness for the designated contract market's officers and for members of its board of directors, committees, disciplinary panels, and dispute resolution panels (or anyone performing functions similar to the foregoing), for members of the designated contract market with voting privileges, and any person who owns 10 percent or more of the DCM and who, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of the DCM, must include the bases for refusal to register a person under sections 8a(2) and 8a(3) of the Act.

(c) *Additional minimum fitness standards for certain persons—history of disciplinary offenses.* Minimum standards of fitness for the designated contract market's officers and for members of its board of directors, committees, disciplinary panels, and dispute resolution panels (or anyone performing functions similar to the foregoing), must include ineligibility based on the disciplinary offenses listed in the following paragraphs (c)(1) through (6):

(1) Was found within the prior three years by a final, non-appealable decision of a self-regulatory organization, an administrative law judge, a court of competent jurisdiction, the Securities Exchange Commission, or the Commission to have committed:

(i) A violation of the rules of a self-regulatory organization, except rules related to decorum or attire, financial requirements, or reporting or recordkeeping resulting in fines aggregating $5,000 or less within a calendar year; or

(ii) A violation of any rule of a self-regulatory organization if the violation involved fraud, deceit, or conversion, or resulted in suspension or expulsion; or

(iii) Any violation of the Act or the regulations promulgated thereunder; or

(iv) Any failure to exercise supervisory responsibility in violation of the rules of a self-regulatory organization, or the Act, or regulations promulgated thereunder.

(2) Entered into a settlement agreement within the prior three years in which the acts charged, or findings included any of the violations described in paragraph (c)(1) of this section;

(3) Currently is suspended from trading on any designated contract market or swap execution facility, is suspended or expelled from membership with any self-regulatory organization, is serving any sentence of probation, or owes any portion of a fine imposed due to a finding or settlement described in paragraphs (c)(1) or (2) of this section;

(4) Currently is subject to an agreement with the Commission, the Securities Exchange Commission, or any self-regulatory organization, not to apply for registration with the Securities Exchange Commission, Commission or membership in any self-regulatory organization;

(5) Currently is subject to or has had imposed on him or her within the prior three years a Commission registration revocation or suspension in any capacity for any reason, or has been convicted within the prior three years of any of the felonies listed in section 8a(2)(D) (ii) through (iv) of the Act; or

(6) Currently is subject to a denial, suspension or disqualification from serving on the disciplinary panel, arbitration panel or governing board of any self-regulatory organization as that term is defined in section 3(a)(26) of the Securities Exchange Act of 1934.

(d) *Collection and verification of fitness information.* (1) A designated contract market must have appropriate procedures for the collection and verification of information supporting compliance with appropriate fitness standards, including, at a minimum, the following:

(i) A designated contract market must, on at least an annual basis, collect and verify fitness information for each person acting in the capacity subject to the fitness standards;

(ii) A designated contract market must require each person acting in any capacity subject to the fitness standards to provide immediate notice if that person no longer meets the minimum fitness standards to act in that capacity;

(iii) An initial verification of fitness information must be completed prior to the person commencing to act in the capacity for which the person is subject to fitness standards; and

(iv) A designated contract market must document its findings with respect to the verification of fitness information for each person acting in the capacity subject to the fitness standards.

(2) [Reserved]

■ 22. Revise § 38.851 to read as follows:

§ 38.851 General requirements.

(a) *Establishment of process.* A designated contract market must establish a process for identifying, minimizing, and resolving actual or potential conflicts of interest that may arise, including, but not limited to, conflicts between and among any of the designated contract market's market regulation functions; its commercial interests; and the several interests of its management, members, owners, customers and market participants, other industry participants, and other constituencies.

(b) *Definitions.* For purposes of this section:

(1) *Affiliate* means a person that directly or indirectly controls, is controlled by, or is under common control with, the designated contract market.

(2) *Board of directors* means a group of people serving as the governing body of a designated contract market, or for a designated contract market whose organizational structure does not include a board of directors, a body performing a function similar to a board of directors.

(3) *Commodity interest* means any commodity futures, commodity option or swap contract traded on or subject to the rules of a designated contract market, a swap execution facility or linked exchange, or cleared by a derivatives clearing organization, or cash commodities traded on or subject to the rules of a designated contract market.

(4) *Disciplinary panel* means a panel of two or more persons authorized to conduct hearings, render decisions, approve settlements, and impose sanctions with respect to disciplinary matters.

(5) *Dispute resolution panel* means a panel of two or more persons authorized to resolve disputes involving a designated contract market's members, market participants, and any intermediaries.

(6) *Executive committee* means a committee of the board of directors that may exercise the authority delegated to it by the board of directors with respect to the decision-making of the company or organization.

(7) *Family relationship* means a person's relationship with a spouse, parents, children, or siblings, in each case, whether by blood, marriage, or adoption, or the person's relationship with any person residing in the home of the person.

(8) *Linked exchange* means:

(i) Any board of trade, exchange or market outside the United States, its territories or possessions, which has an agreement with a designated contract market or swap execution facility in the United States that permits positions in a commodity interest which have been established on one of the two markets to be liquidated on the other market;

(ii) Any board of trade, exchange or market outside the United States, its territories or possessions, the products of which are listed on a United States designated contract market, swap execution facility, or a trading facility thereof;

(iii) Any securities exchange, the products of which are held as margin in a commodity account or cleared by a securities clearing organization pursuant to a cross-margining arrangement with a futures clearing organization; or

(iv) Any clearing organization which clears the products of any of the foregoing markets.

(9) *Market regulation functions* means DCM functions required by DCM Core Principle 2, DCM Core Principle 4, DCM Core Principle 5, DCM Core Principle 10, DCM Core Principle 12, DCM Core Principle 13, DCM Core Principle 17 and the applicable Commission regulations thereunder.

(10) *Material information* means information which, if such information were publicly known, would be considered important by a reasonable person in deciding whether to trade a particular commodity interest on a designated contract market or a swap execution facility, or to clear a swap contract through a derivatives clearing organization. As used in this section, ''material information'' includes, but is not limited to, information relating to present or anticipated cash positions, commodity interests, trading strategies, the financial condition of members of self-regulatory organizations or members of linked exchanges or their customers, or the regulatory actions or proposed regulatory actions of a designated contract market or a linked exchange.

(11) *Non-public information* means information which has not been disseminated in a manner which makes it generally available to the trading public.

(12) *Pooled investment vehicle* means a trading vehicle organized and operated as a commodity pool within the meaning of § 4.10(d) of this chapter, and whose units of participation have been registered under the Securities Act of 1933, or a trading vehicle for which § 4.5 of this chapter makes available relief from regulation as a commodity pool operator, *i.e.,* registered investment companies, insurance company separate accounts, bank trust funds, and certain pension plans.

(13) *Public director* means a member of the board of directors who has been found, by the board of directors of the designated contract market, on the record, to have no material relationship with the designated contract market. The board of directors must make such finding upon the nomination of the director and at least on an annual basis thereafter.

(i) For purposes of this definition, a ''material relationship'' is one that reasonably could affect the independent judgment or decision-making of the member of the board of directors. Circumstances in which a member of the board of directors shall be considered to have a ''material relationship'' with the designated contract market include, but are not limited to, the following:

(A) Such director is an officer or an employee of the designated contract market or an officer or an employee of its affiliate;

(B) Such director is a member of the designated contract market, or a director, an officer, or an employee of either a member or an affiliate of the member. In this context, ''member'' shall have the meaning set forth in § 1.3 of this chapter;

(C) Such director directly or indirectly owns more than 10 percent of the designated contract market or an affiliate of the designated contract market, or is an officer or employee of an entity that directly or indirectly owns more than 10 percent of the designated contract market;

(D) Such director, or an entity in which the director is a partner, an officer, an employee, or a director, receives more than $100,000 in aggregate annual payments from the designated contract market, or an affiliate of the designated contract market. Compensation for services as a director of the designated contract

market or as a director of an affiliate of the designated contract market does not count toward the $100,000 payment limit, nor does deferred compensation for services rendered prior to becoming a director of the designated contract market, so long as such compensation is in no way contingent, conditioned, or revocable; or

(E) The director shall be considered to have a ''material relationship'' with the designated contract market when any of the circumstances described in paragraphs (b)(13)(i)(A) through (D) of this section apply to any person with whom the director has a family relationship.

(ii) All of the circumstances described in paragraph (b)(13)(i) of this section shall be subject to a one-year look back.

(iii) A public director of the designated contract market may also serve as a public director of an affiliate of the designated contract market if they otherwise meet the requirements of this section.

(iv) A designated contract market must disclose to the Commission which members of its board are public directors, and the basis for those determinations.

(14) *Related commodity interest* means any commodity interest which is traded on or subject to the rules of a designated contract market, swap execution facility, linked exchange, or other board of trade, exchange, or market, or cleared by a derivatives clearing organization, other than the designated contract market by which a person is employed, and with respect to which:

(i) Such employing designated contract market has recognized or established intermarket spread margins or other special margin treatment between that other commodity interest and a commodity interest which is traded on or subject to the rules of the employing designated contract market; or

(ii) Such other designated contract market has recognized or established intermarket spread margins or other special margin treatment with another commodity interest as to which the person has access to material nonpublic information.

(15) *Self-regulatory organization* shall have the meaning set forth in § 1.3 of this chapter.

(16) *Senior officer* means the chief executive officer or other equivalent officer of the designated contract market.

■ 23. Add § 38.852 in subpart Q to read as follows:

§ 38.852 Conflicts of interest.

(a) *Conflicts of interest in the decision-making of a designated contract market.* (1) A designated contract market must establish policies and procedures that require any officer or member of its board of directors, committees, or disciplinary panels to disclose any actual or potential conflicts of interest that may be present prior to considering any matter. Such conflicts of interests include, but are not limited to, conflicts of interest that may arise when such member or officer:

(i) Is the subject of any matter being considered;

(ii) Is an employer, employee, or colleague of the subject of any matter being considered;

(iii) Has a family relationship with the subject of any matter being considered; or

(iv) Has any ongoing business relationship with or a financial interest in the subject of any matter being considered.

(2) Any relationship of the type listed in paragraphs (a)(1)(i) through (iv) of this section that is with an affiliate of the subject of any matter being considered would be deemed an actual or potential conflict of interest for purposes of this section.

(3) The designated contract market must establish policies and procedures that require any officer or member of a board of directors, committee, or disciplinary panel of a designated contract market that has an actual or potential conflict of interest, including any of the relationships listed in paragraphs (a)(1) and (2) of this section, to abstain from deliberating or voting on such matter.

(b) *Documentation of conflicts of interest determinations.* The board of directors, committees, and disciplinary panels of a designated contract market must document in meeting minutes, or otherwise document in a comparable manner, compliance with the applicable requirements of this section. Such documentation demonstrating compliance must also include:

(1) The names of all members and officers who attended the relevant meeting in person or who otherwise were present by electronic means; and

(2) The names of any members and officers who voluntarily recused themselves or were required to abstain from deliberations or voting on a matter and the reason for the recusal or abstention.

■ 24. Add § 38.853 in subpart Q to read as follows:

§ 38.853 Limitations on the use and disclosure of material non-public information.

(a) *In general.* A designated contract market must establish and enforce policies and procedures on safeguarding the use and disclosure of material non-public information. Such policies and procedures must provide for appropriate limitations on the use or disclosure of material non-public information gained through the performance of official duties by members of the board of directors, committee members, and employees, or through an ownership interest in the designated contract market.

(b) *Prohibited conduct by employees.* A designated contract market must establish and enforce policies and procedures that, at a minimum, prohibit employees of the designated contract market from the following:

(1) Trading directly or indirectly, in the following:

(i) Any commodity interest traded on the employing designated contract market;

(ii) Any related commodity interest;

(iii) A commodity interest traded on designated contract markets or swap execution facilities or cleared by derivatives clearing organizations other than the employing designated contract market if the employee has access to material non-public information concerning such commodity interest; or

(iv) A commodity interest traded on or cleared by a linked exchange if the employee has access to material non-public information concerning such commodity interest.

(2) Disclosing for any purpose inconsistent with the performance of the person's official duties as an employee any material non-public information obtained as a result of such person's employment at the designated contract market; provided, however, that such policies and procedures shall not prohibit disclosures made in the performance by the employee, acting in the employee's official capacity or the employee's official duties, including to another self-regulatory organization, linked exchange, court of competent jurisdiction or representative of any agency or department of the federal or a state government.

(c) *Permitted exemptions.* A designated contract market may grant exemptions from the trading prohibitions contained in paragraph (b)(1) of this section. Such exemptions must be:

(1) Consistent with policies and procedures established by the designated contract market that set forth

the circumstances under which such exemptions may be granted;

(2) Administered by the designated contract market on a case-by-case basis;

(3) Approved by the designated contract market's regulatory oversight committee;

(4) Granted only in limited circumstances in which the employee requesting the exemption can demonstrate that the trading is not being conducted on the basis of material non-public information gained through the performance of official duties, which limited circumstances may include participation by an employee in pooled investment vehicles where the employee has no direct or indirect control with respect to transactions executed for or on behalf of such vehicles; and

(5) Individually documented by the designated contract market, with the documentation maintained by the designated contract market in accordance with §§ 38.950 and 38.951.

(d) *Monitoring for Permitted Exemptions.* A designated contract market must establish and enforce policies and procedures to diligently monitor the trading activity conducted under any exemptions granted under paragraph (c) of this section to ensure compliance with any applicable conditions of the exemptions and the designated contract market's policies and procedures on the use and disclosure of material non-public information that are required pursuant to this section.

(e) *Prohibited conduct by members of the board of directors, committee members, employees, consultants, or owners.* A designated contract market must establish and enforce policies and procedures that, at a minimum, prohibit members of the board of directors, committee members, employees, consultants, and those with an ownership interest of 10 percent or more in the designated contract market, from the following:

(1) Trading for such person's own account, or for or on behalf of any other account, in any commodity interest or related commodity interest, on the basis of any material non-public information obtained through the performance of such person's official duties as a member of the board of directors, committee member, employee, consultant, or those with an ownership interest of 10 percent or more in the designated contract market;

(2) Trading for such person's own account, or for or on behalf of any other account, in any commodity interest or related commodity interest, on the basis of any material non-public information that such person knows was obtained in violation of this section from a member of the board of directors, committee member, employee, consultant, or those with an ownership interest of 10 percent or more in the designated contract market; or

(3) Disclosing for any purpose inconsistent with the performance of the person's official duties any material non-public information obtained as a result of their official duties at the designated contract market; provided, however, that such policies and procedures shall not prohibit disclosures made in the performance of such person's official duties, including to another self-regulatory organization, linked exchange, court of competent jurisdiction or representative of any agency or department of the federal or state government acting in their official capacity.

■ 25. Add § 38.854 in subpart Q to read as follows:

§ 38.854 Board of directors.

(a) *In general.* (1) The board of directors of a designated contract market must be composed of at least thirty-five percent public directors.

(2) A designated contract market must establish and enforce policies and procedures outlining the roles and responsibilities of the board of directors, including the manner in which the board of directors oversees the designated contract market's compliance with all statutory, regulatory, and self-regulatory responsibilities of the designated contract market under the Act and the regulations promulgated thereunder.

(3) Any executive committee (or any similarly empowered body) must be composed of at least thirty-five percent public directors.

(b) *Expertise.* Each member of the board of directors, including public directors, of the designated contract market, must have relevant expertise to fulfill the roles and responsibilities of such member.

(c) *Compensation.* The compensation of public directors and other non-executive members of the board of directors of a designated contract market must not be directly dependent on the business performance of such designated contract market or any affiliate of the designated contract market.

(d) *Annual self-assessment.* The board of directors of a designated contract market must annually conduct a self-assessment of its performance and that of its committees. Such self-assessments must be documented and made available to the Commission for inspection.

(e) *Removal of a member of the board of directors.* A designated contract market must have procedures to remove a member from the board of directors, where the conduct of such member is likely to be prejudicial to the sound and prudent management of the designated contract market.

(f) *Reporting to the Commission.* A designated contract market must notify the Commission within five business days of any changes to the membership of the board of directors or any of its committees.

■ 26. Add § 38.855 in subpart Q to read as follows:

§ 38.855 Nominating committee.

(a) *In general.* A designated contract market must have a board-level nominating committee, which must, at a minimum:

(1) Identify a diverse panel of individuals qualified to serve on the board of directors, consistent with the fitness requirements set forth in § 38.801, the composition requirements set forth in § 38.853, and that reflect the views of market participants; and

(2) Administer a process for the nomination of individuals to the board of directors.

(b) *Applicability.* The requirements in paragraphs (a)(1) and (2) of this section apply to all nominations that occur after the initial establishment of the nominating committee and the appointment of members to the nominating committee.

(c) *Reporting.* The nominating committee must report to the board of directors of the designated contract market.

(d) *Composition.* The nominating committee must be composed of at least fifty-one percent public directors. The chair of the nominating committee must be a public director.

■ 27. Add § 38.856 in subpart Q to read as follows:

§ 38.856 Chief regulatory officer.

(a) *Designation and qualifications of chief regulatory officer.* (1) Each designated contract market must establish the position of chief regulatory officer, and designate an individual to serve in that capacity, to administer the designated contract market's market regulation functions.

(i) The position of chief regulatory officer must carry with it the authority and resources necessary to fulfill the duties set forth in this section for chief regulatory officers.

(ii) The chief regulatory officer must have supervisory authority over all staff

performing the designated contract market's market regulation functions.

(2) The individual designated to serve as chief regulatory officer must have the background and skills appropriate for fulfilling the duties of the position. No individual disqualified from registration pursuant to sections 8a(2) or 8a(3) of the Act may serve as a chief regulatory officer.

(b) *Reporting line of the chief regulatory officer.* (1) The chief regulatory officer must report directly to the board of directors or to the senior officer of the designated contract market.

(2) The designated contract market's regulatory oversight committee must oversee the chief regulatory officer to minimize any actual or potential conflicts of interest, including conflicts of interest between the duties of the chief regulatory officer and the designated contract market's commercial interests.

(c) *Appointment and removal of the chief regulatory officer.* (1) The appointment or removal of a designated contract market's chief regulatory officer must occur only with the approval of the designated contract market's regulatory oversight committee.

(2) The designated contract market must notify the Commission within two business days of the appointment of any new chief regulatory officer, whether interim or permanent.

(3) The designated contract market must notify the Commission within two business days of removal of the chief regulatory officer.

(d) *Compensation of the chief regulatory officer.* The board of directors or the senior officer of the designated contract market, in consultation with the designated contract market's regulatory oversight committee, must approve the compensation of the chief regulatory officer.

(e) *Duties of the chief regulatory officer.* The chief regulatory officer's duties must include, but are not limited to, the following:

(1) Supervising the designated contract market's market regulation functions;

(2) Establishing and administering policies and procedures related to the designated contract market's market regulation functions.

(3) Supervising the effectiveness and sufficiency of any regulatory services provided to the designated contract market by a regulatory service provider in accordance with § 38.154;

(4) Reviewing any proposed rule or programmatic changes that may have a significant regulatory impact on the designated contract market's market regulation functions and advising the regulatory oversight committee on such matters; and

(5) In consultation with the designated contract market's regulatory oversight committee, identifying, minimizing, managing, and resolving conflicts of interest involving the designated contract market's market regulation functions.

(f) *Conflicts of interest involving the chief regulatory officer.* Each designated contract market must establish procedures for the chief regulatory officer's disclosure of actual or potential conflicts of interest involving the chief regulatory officer to the regulatory oversight committee and designation of a qualified person to serve in the place of the chief regulatory officer for any matter in which the chief regulatory officer has such a conflict, and documentation of such disclosure and designation.

■ 28. Add § 38.857 in subpart Q to read as follows:

§ 38.857 Regulatory oversight committee.

(a) *In general.* Each designated contract market must establish a regulatory oversight committee, as a standing committee of the board of directors, to oversee the designated contract market's market regulation functions on behalf of the board of directors.

(b) *Composition.* The regulatory oversight committee must be composed entirely of public directors, and must include no less than two directors.

(c) *Delegation.* The board of directors must delegate sufficient authority, dedicate sufficient resources, and allow sufficient time for the regulatory oversight committee to fulfill its mandate and duties.

(d) *Duties.* The regulatory oversight committee must:

(1) Monitor the sufficiency, effectiveness, and independence of the designated contract market's market regulation functions;

(2) Oversee all facets of the designated contract market's market regulation functions;

(3) Approve the size and allocation of the regulatory budget and resources, and the number, hiring, termination, and compensation of staff required pursuant to § 38.155(a);

(4) Consult with the chief regulatory officer in managing and resolving any actual or potential conflicts of interest involving the designated contract market's market regulation functions;

(5) Recommend changes that would promote fair, vigorous, and effective self-regulation; and

(6) Review all regulatory proposals prior to implementation and advising the board of directors as to whether and how such proposals may impact the designated contract market's market regulation functions.

(e) *Reporting.* The regulatory oversight committee must periodically report to the board of directors of the designated contract market.

(f) *Meetings and documentation.* (1) The regulatory oversight committee must have processes related to the conducting of meetings, including, but not limited to, the following:

(i) The regulatory oversight committee must meet no less than on a quarterly basis;

(ii) The regulatory oversight committee must not permit any individuals with actual or potential conflicts of interest to attend any discussions or deliberations in its meetings that relate to the designated contract market's market regulation functions; and

(iii) The regulatory oversight committee must maintain minutes of its meetings. Such minutes must include a list of the attendees; their titles; whether they were present for the entirety of the meeting or a portion thereof (and if so, what portion); and a summary of all meeting discussions.

(2) The regulatory oversight committee must maintain documentation of the committee's findings, recommendations, deliberations, or other communications related to the performance of its duties.

(g) *Annual report*—(1) *Preparation.* The regulatory oversight committee must prepare an annual report of the designated contract market's market regulation functions for the board of directors and the Commission, which includes an assessment, at a minimum, of the following:

(i) Details of all market regulation function expenses;

(ii) A description of staffing, structure, and resources for the designated contract market's market regulation functions;

(iii) A description of disciplinary actions taken during the year;

(iv) A review of the performance of the designated contract market's disciplinary panels; and

(v) A list of any actual or potential conflicts of interests reported to the regulatory oversight committee, including a description of how such conflicts of interest were managed or resolved, and an assessment of the impact of any conflicts of interest on the swap execution facility's ability to perform its market regulation functions; and

(vi) Details related to all actions taken by the board of directors of a designated

contract market pursuant to a recommendation of the regulatory oversight committee, which details must include the following:

(A) The recommendation or action of the regulatory oversight committee;

(B) The rationale for such recommendation or action of the regulatory oversight committee;

(C) The rationale of the board of directors for rejecting such recommendation or superseding such action of the regulatory oversight committee, if applicable; and

(D) The course of action that the board of directors decided to take that differs from such recommendation or action of the regulatory oversight committee, if applicable.

(2) *Submission of the annual report to the Commission*—(i) *Timing.* The annual report must be submitted electronically to the Commission no later than 90 days after the end of the designated contract market's fiscal year.

(ii) *Request for extension.* A designated contract market may request an extension of time to file its annual report from the Commission. Reasonable and valid requests for extensions of the filing deadline may be granted at the discretion of the Commission.

(iii) *Delegation of authority.* The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, the authority to grant or deny a request for an extension of time for a designated contract market to file its annual report under paragraph (g)(2)(ii) of this section. The Director may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

(3) *Records.* The designated contract market must maintain all records demonstrating compliance with the duties of the regulatory oversight committee and the preparation and submission of annual reports consistent with §§ 38.950 and 38.951.

■ 29. Add § 38.858 in subpart Q to read as follows:

§ 38.858 Disciplinary panel composition.

(a) *Composition.* Each disciplinary panel must include at least two persons, including one public participant. A public participant is a person who would meet the eligibility requirements of a public director in § 38.851(b)(13), provided that such person need not be a member of the board of directors of the designated contract market. A public participant must chair each disciplinary panel. In addition, a designated contract market must adopt rules that would, at a minimum:

(1) Preclude any group or class of participants from dominating or exercising disproportionate influence on a disciplinary panel; and

(2) Prohibit any member of a disciplinary panel from participating in deliberations or voting on any matter in which the member has an actual or potential conflict of interest as set forth in § 38.852(a).

(b) *Appeals.* If the rules of the designated contract market provide that the decision of a disciplinary panel may be appealed to another committee of the board of directors, then such committee must also include at least two persons, including one public participant, and such public participant must chair the committee.

(c) *Exception.* Paragraphs (a) and (b) of this section do not apply to a disciplinary panel convened for cases solely involving decorum or attire.

■ 30. Amend Appendix B to part 38 by revising ''Core Principle 15 of section 5(d) of the Act'' and ''Core Principle 16 of section 5(d) of the Act'' to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

* * * * *

Core Principle 15 of section 5(d) of the Act [Reserved]

Core Principle 16 of section 5(d) of the Act [Reserved]

* * * * *

Issued in Washington, DC, on March 4, 2024, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

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

Appendices to Requirements for Designated Contract Markets and Swap Execution Facilities Regarding Governance and the Mitigation of Conflicts of Interest Impacting Market Regulation Functions—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Behnam and Commissioners Goldsmith Romero and Pham voted in the affirmative. Commissioners Johnson and Mersinger voted in the negative.

Appendix 2—Statement of Support of Chairman Rostin Behnam

I support the proposed rules for designated contract markets (DCMs) and swap execution facilities (SEFs) that would establish governance and fitness requirements with respect to market regulation functions and related conflict of interest standards. This action continues my commitment to ensure that conflicts of interest are appropriately mitigated, and that SEF and DCM governing bodies adequately incorporate an independent perspective. Advancements in technology, coupled with demand for ever greater efficiency and speed, are pushing markets and market structure in new directions. This new disruption raises new and novel policy issues in all aspects of markets, including conflicts of interest. This proposal is just one step towards addressing potential and existing conflicts of interest in CFTC markets, to ensure markets remain strong, resilient, and transparent.

The proposed rules would enhance substantive requirements for identifying, managing, and resolving conflicts of interest related to market regulation functions. The rules also establish structural governance requirements regarding the makeup of SEF and DCM governing bodies. Importantly, these proposed rules would simplify the CFTC's rules for conflicts and governance fitness standards by harmonizing the regulatory regimes for SEFs and DCMs. In addition, these proposed rules would harmonize and enhance rules for SEFs and DCMs regarding the notification of a transfer of equity interest in a SEF or DCM, and would confirm the CFTC's authority to obtain information concerning continued regulatory compliance in the event of a change in ownership of a SEF or DCM.

I look forward to hearing the public's comments on the proposed amendments to the regulations for SEFs and DCMs. I thank staff in the Division of Market Oversight, Office of the General Counsel, and the Office of the Chief Economist for all of their work on the proposal.

Appendix 3—Dissenting Statement of Commissioner Kristin N. Johnson

I. Introduction

I dissent from this conflicts of interest and equity ownership transfer proposal (Proposed Rule). For nearly two years, in Commodity Futures Trading Commission (Commission or CFTC) public meetings, speeches, and engaged conversations with my fellow Commissioners, staff, and diverse market participants, I have advocated for the Commission to address two critical gaps in our regulations: incomplete and disparate conflicts of interest rules as well as Commission rules governing the transfer of ownership interests in a registered entity.[1]

[1] Commissioner Kristin N. Johnson, Keynote Address at Digital Assets @Duke Conference (Jan. 26, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/opajohnson2;* Commissioner Kristin N. Johnson, Statement Calling for the CFTC to Initiate a Rulemaking Process for CFTC Registered DCOs Engaged in Crypto or Digital Asset Clearing Activities (May 30, 2023), *https://*

In the Commission's December 2023 open meeting, I expressly stated that I cannot support the Commission in permitting conflicts-laden market structures without effective regulation.[2] It is imperative to note that this Proposed Rule will not address the conflicts of interest that I and many others have advocated for the Commission to address.

The Proposed Rule is materially incomplete. The Proposed Rule ignores conflicts of interest in novel segments of our markets where the Commission lacks visibility and the market lacks the benefit of robust regulatory oversight. While the Commission could have used this rulemaking to address endemic conflicts of interest in emerging markets such as cryptocurrency or digital asset markets, this Proposed Rule does not address these deeply concerning, pernicious conflicts of interest.

The Proposed Rule undermines harmonization of conflicts regulations across our markets. Over a century ago, in passing the Grain Futures Act and, later, the Commodity Exchange Act (CEA), Congress expressly emphasized the necessity of governing conflicts of interest and registration standards in the oversight of the derivatives markets.

In 2010, in the wake of the financial crisis, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and expressly tasked the Commission with introducing clearing infrastructure regulation in the bespoke, bilateral over-the-counter (OTC) swaps market. In 2011, the Commission adopted a rule proposal to establish conflicts of interest regulations for derivatives clearing organizations (DCOs), derivatives contract markets (DCMs) and swap execution facilities (SEFs).[3] This proposal was withdrawn. In an approach that splintered the proposed rule and may have stymied harmonization, the Commission proceeded with separate, disparate conflicts of interest final rulemakings. It adopted conflicts requirements in 2012 for DCMs, in 2013 for SEFs, and in 2020 for all DCOs.[4]

This fractured approach has led to entrenched challenges and resulted in different rules for different registered entities.

While some tailoring may be appropriate to acknowledge differences in market design and the role and obligation of registered entities, the Commission should not permit weaker conflicts rules in certain segments of our markets. It is imperative that any final rule governing conflicts address conflicts of interest comprehensively across our existing regulatory landscape.

Conflicts of interest have the potential to create governance risks. Governance plays a critical role in operational, market, credit and general risk management decision-making. Any post-mortem of the financial crisis offers dozens of illustrations regarding the potential for conflicts of interest to trigger the very types of disruption that may undermine enterprise risk management, market stability and integrity, and potentially generate risks that may be antecedents to systemic crises. Because we know well the consequences of failing to introduce effective risk management and governance regulation, the Commission must act now.

I have repeatedly called on the Commission to initiate a rulemaking that addresses the conflicts of interest that may arise from adopting vertically integrated market structures. This concern is intimately connected with the previously articulated concern. The CFTC's enforcement actions filed in the wake of FTX's bankruptcy detail the potential for a market participant to interface with retail market participants through a series of affiliated entities that share a common ownership structure among the exchange, market maker, broker dealer, and custodian. These concerns should prompt the Commission to act within our existing authority and as part of this conflicts rulemaking.

In an increasing number of instances, businesses with no history of operating in derivatives markets, no track record of compliance with federal financial market regulations, and limited evidence of corporate governance and risk management infrastructure have expressed interest in acquiring or have acquired CFTC-registered entities. Some may conclude that it is cheaper to purchase a business licensed to operate in our markets than to engage with the Commission in the rigorous and extensive licensing application process.

It is important for the Commission to carefully consider regulations governing equity interest transfers and ensure that anyone acquiring a registered entity is prepared to comply with the entire regulatory regime applicable to CFTC-registered firms. Similar to the proposed conflicts of interest rules, I am concerned that the Commission's actions are not commensurate with the risks presented by emerging market conditions.

For these reasons and as explained below, I dissent from the Commission's decision to adopt the Proposed Rule.

II. Background of the Proposed Rule

I support the Commission's efforts to enhance the integrity of the decision-making process of SEFs and DCMs and reduce conflicts of interest. The Proposed Rule seeks to ensure that conflicts of interest are mitigated for SEFs and DCMs. The Commission proposes enhancing conflicts of interest requirements to ensure that SEFs and DCMs identify, manage, and resolve conflicts related to ''market regulation functions.'' In the Proposed Rule, the Division of Market Oversight (DMO) identifies a set of issues that the Commission has carefully considered addressing for over a decade. I deeply respect and appreciate the tireless efforts and expertise of the Commission staff.

I applaud the staff's identification of and focus on addressing conflicts of interest in certain self-regulatory functions of SEFs and DCMs. The carefully developed rule text seeks to impose heightened governance fitness and structural standards to ensure that a SEF and DCM board of directors and disciplinary panels incorporate independent and expert perspectives.

For almost two decades, I have advocated for the Commission to enhance conflicts regulations. The Proposed Rule reflects a thoughtful commitment to addressing an area of conflicts that has not received sufficient attention. The Commission is also proposing to strengthen the notification requirements with respect to changes in the ownership or corporate or organizational structure of a SEF or DCM.

The Commission is proposing:

- new rules to implement DCM Core Principle 15 (*Governance Fitness Standards*) that are consistent with the existing Guidance on compliance with DCM Core Principle 15;
- new rules to implement DCM Core Principle 16 (*Conflicts of Interest*) that are consistent with the existing Guidance on, and Acceptable Practices in, compliance with DCM Core Principle 16;
- new rules to implement SEF Core Principle 2 (*Compliance with Rules*) that are consistent with the existing DCM Core Principle 15 Guidance;
- new rules to implement SEF Core Principle 12 (*Conflicts of Interest*) that are consistent with the existing DCM Core Principle 16 Guidance and Acceptable Practices;
- new rules under Part 37 of the Commission's regulations for SEFs and Part 38 of the Commission's regulations for DCMs that are consistent with existing conflicts of interest and governance requirements under Commission Regulations 1.59 and 1.63;
- new rules for DCM chief regulatory officers (CROs);
- amendments to certain requirements relating to SEF chief compliance officers (CCOs); and
- new rules for SEFs and DCMs relating to the establishment and operation of a Regulatory Oversight Committee (ROC).

www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement053023; Commissioner Kristin N. Johnson, Keynote Speech at the Salzburg Global Finance Forum (June 29, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/opajohnson4;* Commissioner Kristin N. Johnson, Opening Statement Before the Market Risk Advisory Committee (July 10, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement071023;* Commissioner Kristin N. Johnson, Opening Statement Before the Market Risk Advisory Committee Meeting (Dec. 11, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement121123;* Commissioner Kristin N. Johnson, Opening Statement Regarding the Open Commission Meeting on December 13, 2023 (Dec. 13, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement121323;* Commissioner Kristin N. Johnson, A Call for the CFTC to Begin a Formal Rulemaking to Address Vertical Integration (Dec. 18, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement121823c#:~:text=I%20strongly%20advocate%20for%20the,risk%20or%20financial%20stability%20concerns.*

[2] Opening Statement Regarding the Open Commission Meeting on December 13, 2023, *supra* note 1.

[3] Governance Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities; Additional Requirements Regarding the Mitigation of Conflicts of Interest, 76 FR 722 (Jan. 6, 2011).

[4] Core Principles and Other Requirements for Designated Contract Markets, 77 FR 36612 (June 19, 2012); Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476 (June 4, 2013); Derivatives Clearing Organization General Provisions and Core Principles, 85 FR 4800 (Jan. 27, 2020).

I thank the staff for their constructive engagement and cooperation with my office. DMO staff addressed and incorporated my comments into the Proposed Rule, which materially improve and strengthen both the conflicts of interest and governance requirements. Through coordinated efforts with my office, we have made our markets stronger and safer.

Section 5h of the CEA sets forth requirements for SEFs.[5] To be registered and maintain registration with the Commission, a SEF must comply with 15 core principles and any requirement that the Commission may impose by rule or regulation pursuant to Section 8a(5) of the CEA.[6] Similarly, Section 5 of the CEA sets forth requirements for DCMs.[7] The CEA requires that to be designated and maintain designation by the Commission, a DCM must comply with 23 core principles, and any requirement that the Commission may impose by rule or regulation pursuant to Section 8a(5) of the CEA.[8]

Section 8a(5) authorizes the Commission to make and promulgate rules and regulations that, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the CEA.[9] As noted in the Preamble to the Proposed Rule, the CEA contains a finding that the transactions subject to the CEA are affected with a ''national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities,'' and among the CEA's purposes are to serve the aforementioned public interests through a system of ''effective self-regulation of trading facilities.'' [10]

A SEF or DCM has reasonable discretion to establish the manner in which it complies with a particular core principle unless the Commission adopts more prescriptive requirements by rule or regulation. In the Proposed Rule, the Commission is prescribing heightened requirements for SEFs and DCMs.

III. Limitations of the Conflicts Rules

SEFs, DCMs, and DCOs, as self-regulatory organizations, are tasked with the important responsibility of regulating the derivatives market and fostering market integrity. The CEA requires effective self-regulation of trading facilities, clearing systems (clearinghouses), market participants and market professionals under the oversight of the Commission.[11]

A SEF's or DCM's decision-making process encompasses a broad range of regulatory functions, including certain self-regulatory obligations subject to the influence or capture of interested decision-makers. Under the existing conflicts of interest framework, both SEFs and DCMs are subject to a respective core principle (DCM Core Principle 16 and SEF Core Principle 12) to minimize and have a process to resolve conflicts of interest in their decision-making processes.[12]

Under the Proposed Rule, SEFs and DCMs will be required, by regulation, to establish a process for identifying, managing, and resolving actual and potential conflicts of interest that may arise between and among any of the SEF's or DCM's ''market regulation functions'' and its commercial interests as well as the interests of its management, members, owners, customers, market participants, other industry participants, and other constituencies.

Specifically, both SEFs and DCMs are required to establish a ROC, a standing committee of the board consisting of only public directors tasked with minimizing conflicts of interest, overseeing the DCM's market regulation functions, and preparing an annual report assessing the market regulation functions for the Commission (among other responsibilities). The DCM is required to designate a CRO responsible for the market regulation function. A SEF is required to designate a CCO or a similar senior officer. The CRO and CCO must report to the board or a senior officer. SEFs and DCMs must also limit the use or disclosure of material non-public information by certain decision-makers, employees, and owners.

Notwithstanding my general support for the conflicts regulation that the Proposed Rule advances, I am unable to support the conflicts provisions in the Proposed Rule for several reasons.

First, the Proposed Rule is incomplete. The Proposed Rule fails to modernize similar conflicts of interest rules for DCOs. The Commission should take a comprehensive approach to conflicts of interest across our various market structures to avoid potential inconsistencies, contradictions, and inefficiencies.

Second, last year in a series of public statements and speeches, I clearly and unequivocally signaled to the Commission that we must adopt comprehensive conflicts rules.[13] The proposed conflicts regulation overlooks the need for conflicts regulation for certain market participants adopting vertically integrated market structures. I repeat my call for the Commission to commit to engage in a public rulemaking with formal notice and comment period on vertically integrated structures.[14]

A. Failure To Address Conflicts of Interest for DCOs

The Commission should adopt enhanced conflicts of interest rules that parallel today's proposed conflicts rules for DCOs. DCOs play a central role in derivatives markets. Since the passage of the Dodd-Frank Act, market participants have cleared significant volumes of OTC derivatives transactions through DCOs. Clearing OTC derivatives through registered clearinghouses may lead to greater concentration of risk.

In the Preamble to the Proposed Rule, DMO cited to an article I published a decade ago that explores how CCP boards of directors face persistent and pernicious conflicts of interest that impede objective risk oversight. The preamble acknowledges my view that:

While clearinghouses and exchanges are private businesses, these institutions provide a critical, public, infrastructure resource within financial markets. The self-regulatory approach adopted in financial markets presumes that clearinghouses and exchanges will provide a public service and engage in market oversight. The owners of exchanges and clearinghouses may, however, prioritize profit-maximizing strategies that de-emphasize or conflict with regulatory goals.[15]

It is imperative that, to the extent the Commission advances the Proposed Rule, it also adopts well-tailored governance reforms to address conflicts and prevent DCO owners' self-interested commercial incentives or other institutional constraints from triggering systemic risk concerns.

DCOs are subject to Core Principle P regarding conflicts of interest.[16] CFTC Regulation 39.25 implements DCO Core Principle P and is identical in all material respects to the existing SEF and DCM core principles and implementing regulations on conflicts of interest. A DCO is also required ''to establish and enforce rules to minimize conflicts of interest in the decision-making process,'' ''establish a process for resolving conflicts of interest,'' and ''have procedures for identifying, addressing, and managing conflicts of interest involving their members.'' [17]

The Commission has improved the conflicts requirements for SEFs and DCMs but did not propose parallel revised rules for DCOs. For example, the Proposed Rule introduces common scenarios in which a conflict of interest may arise and imposes requirements to document conflicts of interest determinations.[18]

At a minimum, the Commission should advance parallel rules to assist DCOs in identifying, managing, and resolving conflicts of interest in their decision-making process.[19]

B. Commit to a Conflicts Rulemaking on Vertical Integration

It is essential that the Commission adopt a comprehensive approach to addressing deep-seated conflicts of interest concerns, instead of its piece-meal and fragmented approach. I

[5] 7 U.S.C. 7b–3.

[6] 7 U.S.C. 7b–3(f).

[7] 7 U.S.C. 7.

[8] 7 U.S.C. 7(d)(1)(A).

[9] 7 U.S.C. 12a(5).

[10] 7 U.S.C. 5.

[11] *Id.*

[12] 7 U.S.C.A. 7, 7b–3.

[13] *See supra* note 1.

[14] A Call for the CFTC to Begin a Formal Rulemaking to Address Vertical Integration, *supra* note 1 (''I strongly advocate for the Commission to initiate a rulemaking. More market participants are adopting a vertically-integrated market structure, and the Commission must ensure that such structure does not raise systemic risk or financial stability concerns.'').

[15] *See* also Kristin N. Johnson, Governing Financial Markets: Regulating Conflicts, 88 Wash. L.Rev. 185, 221 (2013).

[16] 7 U.S.C. 7a–1.

[17] 17 CFR 39.25.

[18] Proposed 17 CFR 37.1202, 38.852.

[19] Commissioner Kristin N. Johnson, Statement of Commissioner Kristin N. Johnson Regarding the CFTC's Notice of Proposed Rulemaking on Operational Resilience Program for FCMs, SDs, and MSPs (Dec. 18, 2023); *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement121823.*

have repeatedly called for the Commission to initiate a comprehensive rulemaking process across all market infrastructures—DCOs, SEFs, and DCMs—to address inherent conflicts of interest issues that arise in vertically integrated structures, including, most recently, in my statement on the Bitnomial DCM application where I outlined numerous important Commission conflicts of interest regulations.[20]

A Rulemaking on Vertical Integration Is Essential

The Preamble to the Proposed Rule notes that in 2021, Commission staff identified several SEFs and three DCMs that were in the same corporate family as intermediaries engaged in trading on the affiliated-SEF or DCM. Such organizational structures increase the risk of conflicts of interest.

The Commission's request for comment and staff advisory are helpful initial steps. On June 28, 2023, Commission staff issued a Request for Comment on the Impact of Affiliations Between Certain CFTC-Regulated Entities (RFC on Vertical Integration) to better understand a broad range of potential issues that may arise if a DCO, DCM, or SEF is affiliated with an intermediary that uses its platform.[21] On December 18, 2023, the Commission issued a staff advisory on affiliations between a DCM, DCO, or a SEF and an intermediary or other market participant to remind them of their regulatory obligations.[22]

The Commission staff indicates that we should anticipate proposed conflicts regulations addressing vertical integration, including responses to concerns related to market regulation functions posed by affiliations. It is, however, unacceptable that this commitment note appears only in a footnote that fails to provide a clear and unambiguous commitment to undertake a rulemaking.

Industry comments related to SEFs and DCMs with affiliated trading members highlight the urgent need for a regulatory response. Many of the comments to the RFC on Vertical Integration echo these concerns. It is particularly disappointing that the Commission is delaying a resolution of the matter when certain questions in the RFC on Vertical Integration directly implicate the narrowly-defined ''market regulation functions.''

A Piecemeal Approach Risks Inconsistencies and Contradictions

The Proposed Rule's significant gaps are likely to demand future rulemakings addressing them. For example, the Proposed Rule is silent on the sharing of certain key executive functions and other key personnel, which is not an unusual operating model for vertically integrated structures.[23]

While the Proposed Rule requires a DCM's CRO and an SEF's CCO to report to the board of directors or a senior officer of the SEF or DCM, it does not require that the CCO report to the ROC, which is comprised of only public directors.[24] A member of the board, including a shared officer—*e.g.,* the chief executive officer—may have supervisory authority over the CRO and CCO. This raises the question of whether the Commission has adequately insulated the CRO and CCO from commercial pressures when a CRO or CCO is required to make decisions about a member that is affiliated with the SEF or DCM. Compounding this issue, the Commission is allowing the CRO and CCO to be paid based on the profits of the SEF or DCM, which could create perverse incentives.

I am disappointed that the Commission has elected to proceed with the Proposed Rule on conflicts concerns without initiating a formal rulemaking to establish effective conflicts rules in the context of vertically integrated structures.[25] The Commission's piecemeal approach to regulating the derivatives market leaves key issues unaddressed.

IV. Failure To Adequately Reinforce the Commission's Right To Take Regulatory Action Upon a Change of Ownership

Since the early months of my tenure as a Commissioner, I have raised questions regarding a change of control in the ownership of a registered entity.

I welcome the Commission's efforts to address the disparate regulations that govern the two approaches for acquiring access to our markets. I find, however, that the Proposed Rule advances and codifies deficiencies and reinforces an antiquated understanding of markets.

In any instance in which an applicant seeks to register with the CFTC, transfer a designation, or acquire a controlling percentage of the equity interest in a licensed registrant, the CFTC must be confident that the party assuming control over a registrant will continue to comply with our regulations in a manner consistent with the Commission's expectations of the registrant at the time of the approval of the registrant's initial application.

While the Commission retains the authority to suspend or revoke the registration of or impose a cease and desist order on a SEF or DCM that fails to comply with the CEA and Commission regulations, our regulations should clearly state that the Commission will object to a transfer of ownership in such circumstances or has an outright approval right.

The efforts of the Commission staff are commendable but not sufficient. With respect to a change in ownership or corporation or organizational structure of the SEF or DCM, if a SEF or DCM does not have the ability to comply with the CEA and Commission regulations in connection with such a change, the Commission should have the ability to approve or object to such change.

New Equity Transfer Provisions

Commission Regulation 38.5(c)(1) currently provides that a DCM must file with the Commission a notification of each transaction it enters into involving the transfer of ten percent or more of the equity interest in the DCM.[26] The regulation does not indicate that Commission approval is required for the acquisition. Similar provisions apply to SEFs in CFTC Regulation 37.5(c), but the threshold that triggers a notice event is fifty percent or more of the equity interest of the SEF. Under Regulation 37.5(c), a SEF must also certify as to its compliance with the CEA and Commission regulations.[27] DMO staff review the relevant notifications.

The Commission proposes to amend CFTC Regulations 37.5(c) and 38.5(c) to:

- ensure the Commission receives timely and sufficient information in the event of certain changes in the ownership or corporate or organizational structure of a SEF or DCM;
- clarify what information is required to be provided and the relevant deadlines;
- conform to similar existing and proposed requirements applicable to DCOs; and
- impose a certification requirement.

The Proposed Rule emphasizes the importance of disclosures related to the ownership structure of registrants. In our registration process, staff carefully evaluates significant volumes of data regarding an entity that seeks to be licensed by and subject to the Commission's authority. The disclosures enable the Commission to assess whether the entity demonstrates the requisite ability to comply with our regulation.

The Proposed Rule acknowledges the significant business organizational shifts in our markets. For many years market participants were organized as cooperative structures or private partnerships. Demutualization and an increase in registrants choosing to become publicly-traded companies alters the market landscape. In addition to a transformation in how risks and default risks are managed, this approach has led to significant consolidation in some contexts.

A ten percent change in the equity ownership may create a notable difference in governance and risk management decision-making authority within a firm. Finally, our regulations note that an asset purchase may have the same effect as an equity interest

[20] Opening Statement Regarding the Open Commission Meeting on December 13, 2023, *supra* note 1.

[21] Request for Comment on the Impact of Affiliations of Certain CFTC-Regulated Entities, CFTC Release 8734–23, June 28, 2023, *https://www.cftc.gov/PressRoom/PressReleases/8734-23.*

[22] Staff Advisory on Affiliations Among CFTC-Regulated Entities, CFTC Release 8839–23, Dec. 18, 2023, *https://www.cftc.gov/PressRoom/PressReleases/8839-23.*

[23] *See* CME Comment Letter in response to General CFTC Request for Comment on the Impact of Affiliations of Certain CFTC-Regulated Entities at 16–17 (Sept. 20, 2023), *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7401;* Global Association of Central Counterparties Comment Letter in response to General CFTC Request for Comment on the Impact of Affiliations of Certain CFTC-Regulated Entities at 3 (Sept. 28, 2023), *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7401.*

[24] *See* Futures Industry Association Comment Letter in response to General CFTC Request for Comment on the Impact of Affiliations of Certain CFTC-Regulated Entities at 10 (Sept. 28, 2023), *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7401.*

[25] A Call for the CFTC to Begin a Formal Rulemaking to Address Vertical Integration, *supra* note 1.

[26] 17 CFR 38.5(c).

[27] 17 CFR 37.5(c).

transfer. The Proposed Rule requires SEFs and DCMs to notify the CFTC if substantially all of the assets of the SEF or DCM are transferred to another legal entity.

Limitations of the Equity Transfer Provisions

The Proposed Rule should clearly state that the Commission has the regulatory authority to take traditional and well-recognized regulatory action in the context of a change in the ownership or corporate or organizational structure of a SEF or DCM. From as early as 2022, I have raised alarms with respect to the Commission's explicit and express authority under Commission regulations to engage in a robust dialogue with a registrant planning a significant equity interest transfer.[28] The Proposed Rule fails to fully address my concerns.

I am deeply concerned that some may mistakenly interpret the Proposed Rule to indicate that the Commission has no explicit or express legal authority to take regulatory action upon disclosure of an acquisition of our registrant where the Commission believes that the registrant will no longer comply with the CEA or Commission regulations.

In addition to this concern, I strongly believe that the Commission has missed an opportunity to ensure that all entities entering in our markets are subject to the same rules whether they are acquiring a significant equity interest in a registered entity or registering as a registrant. The best method of addressing these twin concerns is to first clarify the Commission's existing authority and to ensure that across our markets the equity interest transfer regulations are similar and that these regulations involve inquiries as robust and effectively enforced as disclosures provided at the time that an entity registers with the Commission.

Objecting to a Change in Equity Ownership

As part of the registration process, SEFs and DCMs are required to demonstrate, prior to registration, compliance with the CEA and related core principles. An entity seeking designation as a SEF or DCM must include ownership information in its Form DCM or Form SEF application. This authority is parallel to the authority the Commission exercises when a registered entity experiences a change of control.

The Proposed Rule should clarify that the Commission may object to a proposed change in ownership or corporate or organizational structure for SEFs and DCMs if such change could result in a failure of a registrant to comply with the CEA or Commission regulations. In parallel to the Commission's authority to grant registration is the Commission's authority to revoke registration.

Approving a Change in Ownership

The Proposed Rule should state that the Commission has an approval right in the event of a change in ownership or corporate or organizational structure. This approval authority parallels the authority that the Commission exercises at the time of registration. Rule text that explicitly states the same would clarify the Commission's authority for market participants.

For example, certain prudential regulations are consistent with this understanding. The Office of the Comptroller of the Currency (OCC), for example, requires that any party seeking to acquire control of a national bank give notice of such change to the OCC. Upon the filing of such notice, the OCC has the power to disapprove (*i.e.,* object to) such changes set out in the notice.[29] Similarly, under FINRA Rule 1017, a member is required to file an application with FINRA for approval of a 25% change in equity ownership of the member.

V. Conclusion

I believe the Commission should adopt parallel conflicts regulations across our markets and must adopt conflicts rules that effectively govern conflicts among affiliated entities. I believe that the Commission has notable authority with respect to any entity seeking to acquire a controlling equity interest in a business in our markets, including the authority to suspend, revoke, or enter a cease and desist order, should the ownership change result in a violation of a statutory or regulatory requirement or a Commission order. I would like to see the Commission go farther and adopt a rulemaking that gives the Commission the right to approve or object to a change in ownership or corporate or organizational structure to the same extent.

I would like to extend my sincere gratitude to the DMO team, including Rachel Berdansky, Swati Shah, Marilee Dahlman, Jennifer Tveiten-Rifman, David Steinberg, Lillian Cardona, Caitlin Holzem, and Rebecca Mersand.

Appendix 4—Statement of Commissioner Christy Goldsmith Romero

Conflicts of interest at exchanges and swap execution facilities (SEFs) present serious risk to market fairness, integrity, and financial stability. The CFTC plays a critical role in implementing strong rules to prevent conflicts from hurting customers, markets, market participants, and end users. As designated self-regulatory organizations, exchanges serve as the front line for market integrity.[1] And given the contribution to the financial crisis of opaque *caveat emptor* swaps markets,[2] the Dodd-Frank Act created SEFs and gave them important regulatory responsibilities to ensure transparency in the swaps markets.[3] In order for markets to function well and fairly, these important regulatory responsibilities must be performed free of conflicts of interest.

Existing CFTC rules already require exchanges and SEFs to establish and enforce rules to minimize conflicts of interest, and we have issued accompanying guidance to exchanges. Though I support the rule, I consider it to be a baseline minimum, largely codifying existing guidance,[4] extending it to swap execution facilities, and adding a few additional requirements.

This proposed rule would not create an adequate conflicts of interest regulatory regime to cover conflicts that come from affiliated entities serving multiple functions (*i.e.* broker, exchange, clearinghouse, etc.)–so called ''vertical integration,'' which the proposal acknowledges.[5] Therefore, this rule does not serve as a basis for future approval of additional vertically integrated structures that break from the traditional structure on which the Commodity Exchange Act and CFTC rules are based.

The proposal purposely attempts to carve out vertical integration from this rulemaking and commits to addressing it in the future in light of the recently completed request for comment on affiliated entities. By September, the CFTC received more than 100 comments expressing significant concern over conflicts of interest with vertically integrated market structures.[6] Serious concerns about vertically integrated market structures in digital assets had already been expressed by the White House in the Economic Report of the President,[7] the Financial Stability Oversight

[28] Commissioner Kristin N. Johnson, Keynote Address at UC Berkeley Law Crypto Regulation Virtual Conference (Feb. 8, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/opajohnson3* (''During a more recent speech at Duke University. . . I also called for Congress to consider including in any legislation expanding the CFTC's authority a provision that enables the Commission to have greater authority including, in the least, a robust dialogue in advance of the acquisition of a controlling equity ownership stake in any registered market participant.'').

[29] 12 CFR 5.50(f)(3).

[1] Exchanges are responsible for setting financial and reporting rules, including involving customer funds. Exchanges must also supervise compliance with exchange rules and Commission regulations related to capital, customer protection, risk management, financial reporting, and record keeping. They have a responsibility to investigate and discipline those who violate those requirements.

[2] *See* Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties, 77 FR 9734, 9805 (Feb. 17, 2012) (Comment of CFA/AFR).

[3] SEFs have important regulatory responsibilities, including reporting transactions and maintaining an audit trail. SEFs are required to establish and enforce rules for trading or processing swaps, and to have the capacity to investigate violations and enforce these rules.

[4] *See* 17 CFR part 38, Appendix B.

[5] *See* Proposal at note 118 (''The Commission received a number of comments raising concerns about the impact of affiliation, and anticipates proposing regulations that will address issues identified as a result of the [request for comment] RFC, including additional concerns raised by commenters about the conflicts of interest, specifically relating to market regulation functions, posed by affiliations. This rulemaking does not reflect the comments submitted in response to the Commission staff's RFC. Those comments will not be made part of the administrative record before the Commission in connection with this proposal'').

[6] The comments were in response to a request for comment on the impact of affiliated entities. I have raised concerns about the risk posed by these arrangements, including the immediately apparent risk of conflict of interest. *See* CFTC Commissioner Christy Goldsmith Romero, *https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement062823,* (June 28, 2023); *See also* CFTC Commissioner Christy Goldsmith Romero, *https://www.cftc.gov/PressRoom/SpeechesTestimony/oparomero3,* (Oct. 26, 2022).

[7] *See* The White House, *https://www.whitehouse.gov/wp-content/uploads/2023/03/ERP-2023.pdf,* (Mar. 2023).

Council (FSOC),[8] Treasury Secretary Janet Yellen,[9] then-Federal Reserve Vice Chair Lael Brainard,[10] and Acting Comptroller of the Currency Michael Hsu before we issued the request for comment.[11] The CFTC has not issued any new rules or guidance based on those comments. Last month, the Commission approved a vertically integrated market structure for the first time (on which I dissented given that we were in the middle of studying the risks and had not engaged in rulemaking),[12] and it was said in the open meeting that there are other pending applications. As this proposal's record will not reflect comments submitted in response to the request for comment on vertical integration, I encourage commenters to resubmit relevant sections of those comments in response to this proposal.

Requirements of the Proposed Rule

The rule would require an exchange or SEF to report any change to the entity or person that holds a controlling interest, either directly or indirectly, as opposed to the more limited notification requirements (10% change in ownership of an exchange or 50% ownership of a SEF). Any owners of exchanges and SEFs may have other interests (financial or otherwise) that may not align with the exchange's or SEF's responsibilities.

The rule would require officers or directors with an actual or potential conflict of interest in the subject of a matter to abstain from both voting and deliberation. The proposal also creates a baseline definition of what is a conflict of interest, and requires documentation of compliance with the rule, which facilitates oversight.

Officers, directors, those with an ownership interest in the exchange of at least 10%, and employees would be banned from trading on or disclosing material non-public information. I would like to hear from commenters if the 10% ownership threshold is appropriate or should be lowered. I would also like to hear whether commenters think the proposed requirements are sufficient to prevent the misuse of non-public information, especially in cases where employees, officers, directors or owners are also employed by a company that trades in contracts for commodities traded on the exchange. I am especially interested in comments about whether the Commission should ban use of material non-public information for trades on a spot exchange by an officer, director, owner or employee of an affiliated derivatives exchange.[13]

The proposal would codify guidance by requiring establishment of a regulatory oversight committee, comprised entirely of independent public directors tasked with monitoring the effectiveness of an exchange or SEF's regulatory functions and minimizing and resolving conflicts of interest, and requires every exchange to have a Chief Regulatory Officer (''CRO'').[14] Requirements for the regulatory oversight committee include approving the size and allocation of resources and the number of market regulation staff.

The proposal does not address the issue of shared resources of affiliated entities, including for example dual-hatted employees. Shared resources lead to concerns about whose interest will dominate when it counts the most, during times of stress. Shared resources also raise concerns over capacity to fulfill regulatory responsibilities, including for example, a derivatives exchange's ability to fulfill its front-line market integrity responsibility when using shared resources of an affiliated spot exchange.[15]

I want to thank the staff for working with me to strengthen this proposal, including in the way it incorporates affiliates in certain areas, particularly given that affiliated entities can raise conflicts of interest even outside of the vertical integration structure. I continue to urge further rulemaking to address conflicts of interest, including those associated with vertically integrated market structures.

Appendix 5—Statement of Commissioner Caroline D. Pham

I am voting to publish the Notice of Proposed Rulemaking on Requirements for Designated Contract Markets (DCMs) and Swap Execution Facilities (SEFs) Regarding Governance and the Mitigation of Conflicts of Interest Impacting Market Regulation Functions (DCM and SEF Conflicts of Interest Proposal or NPRM) because the public must have an opportunity to weigh in on these important issues that raise serious concerns. I would like to thank Lillian Cardona, Jennifer Tveiten-Rifman, Marilee Dahlman, Swati Shah, and Rachel Berdansky in the Division of Market Oversight for their time and efforts, and I take this opportunity to recognize the importance of their rule enforcement reviews program for DCMs and SEFs. I appreciate the staff working with me to make revisions to address my concerns. Unfortunately, while the NPRM has been improved, it is far from perfect.

Overall, I believe the public comment process is a critical component of good government. That is why, although I have serious concerns about the DCM and SEF Conflicts of Interest Proposal, I am voting to publish it for transparency and public engagement on this flawed rulemaking.

The CFTC cannot haphazardly codify guidance as rules. That goes against the very essence of the statutory framework to regulate derivatives markets under the Commodity Exchange Act (CEA). Here, public input will serve as a valuable tool in refining the NPRM by providing insights that may not have been considered in changing the CFTC's longstanding principles-based approach to oversight of self-regulatory organizations (SROs) such as DCMs and SEFs, who establish their own rule books and bring enforcement actions against market participants for violations.[1] In 2012, when the CFTC first adopted its DCM rules and decided to leave certain areas as guidance on acceptable best practices, the CFTC thoroughly examined each regulation and explained where guidance was more appropriate than a rule in recognition of the need to maintain flexibility for DCMs to establish rules that are appropriate for their products, markets, and participants, including associated risks.[2] I have serious concerns with the CFTC proceeding down a path to finalizing a rule that is overly prescriptive and unsupported by data or other evidence.

Specific Areas for Public Comment

Separately, I am highlighting two additional issues for commenters:

[8] *See* Financial Stability Oversight Council, *https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf,* (Oct. 3, 2022).

[9] *See https://home.treasury.gov/news/featured-stories/remarks-by-secretary-of-the-treasury-janet-l-yellen-at-the-national-association-for-business-economics-39th-annual-economic-policy-conference,* (Mar. 30, 2023).

[10] *See* Federal Reserve Board Vice-Chair Lael Brainard, *https://www.federalreserve.gov/newsevents/speech/brainard20220708a.htm,* (July 8, 2022).

[11] *See* Acting Comptroller of the Currency Michael J. Hsu, *https://www.occ.treas.gov/news-issuances/speeches/2022/pub-speech-2022-125.pdf,* (Oct. 11, 2022).

[12] *See* CFTC Commissioner Christy Goldsmith Romero, *https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement121823b,* (December 18, 2023).

[13] The Commission currently requires an exchange to provide for ''appropriate'' limitations on the use of material non-public information by employees, officers, and directors, but does not include a spot exchange trading ban as one of its specific requirements for such limitations.

[14] SEFs are required to have a Chief Compliance Officer with similar duties and responsibilities. The regulatory oversight committee would be required to minimize any conflicts of interest involving the CRO or CCO. Compensation of the position would require consultation with the public directors in the ROC. The exchange would also be required to disclose and minimize any conflicts of interest involving the CRO or CCO.

[15] *See* CFTC Commissioner Christy Goldsmith Romero, *https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement062823,* (June 28, 2023).

[1] *See* Statement of Commissioner Caroline D. Pham Regarding Request for Comment on the Impact of Affiliations Between Certain CFTC-Regulated Entities (June 28, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement062823;* Statement of Commissioner Caroline D. Pham on Effective Self-Regulation and Notice of Proposed Rulemaking to Amend Part 40 Regulations (July 26, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement072623b.*

[2] *See* Core Principles and Other Requirements for Designated Contract Markets, 77 FR 36612, 36614 (June 19, 2012), *https://www.federalregister.gov/documents/2012/06/19/2012-12746/core-principles-and-other-requirements-for-designated-contract-markets* (explaining the process as ''In determining whether to codify a compliance practice in the form of a rule or guidance/acceptable practice, the Commission was guided by whether the practice consisted of a commonly-accepted industry practice. Where there is a standard industry practice that the Commission has determined to be an acceptable compliance practice, the Commission believes that the promulgation of clear-cut regulations will provide greater legal certainty and transparency to DCMs in determining their compliance obligations, and to market participants in determining their obligations as DCM members, and will facilitate the enforcement of such provisions. Several of the rules adopted in this notice of final rulemaking largely codify practices that are commonly accepted in the industry and are currently being undertaken by most, if not all, DCMs.'').

Material Non-Public Information

The Commission is refusing to fix the references to ''material non-public information'' in Parts 37 and 38. Even though the NPRM cites Regulation 1.59(d) and its use of ''material, non-public information,'' and that the intent is to copy the requirements in Regulation 1.59(d) to Parts 37 and 38 purely for housekeeping purposes, the Commission is potentially creating a loophole by making a small but very substantive change in using ''material non-public information'' in Parts 37 and 38. The former—with a comma—broadly captures information that is material and non-public. The latter—with no comma—is an incorrect usage of a well-established term of art under securities laws that is too narrow to address the potential conflicts in derivatives markets, creates unnecessary confusion for market participants, and undermines robust compliance programs by introducing uncertainty.[3] ''Consistency'' is a goal repeated throughout the NPRM, and I do not understand why we are refusing to resolve the inconsistency here.

The Commission must protect all confidential information—not just material information—in order to effectively mitigate, prevent, or avoid conflicts of interest. In some circumstances, there must be a complete information barrier or segregation of activities between business units or personnel to protect sensitive and confidential information about customer trades or positions in order to prevent potential market manipulation or other abusive trading practices. The Commission's misguided approach is not enough to protect our markets from misconduct.[4]

Revocation of Registration

I am deeply concerned about proposed Regulations 37.5(c)(6) and 38.5(c)(6).[5] This is the first time that the CFTC has decided to promulgate a rule to revoke the registration of a registered entity since section 5e of the Commodity Exchange Act was enacted in 1998, with insufficient explanation to demonstrate a reasonable basis and reasoned decision-making as required by the Administrative Procedure Act,[6] and insufficient procedural safeguards to ensure due process for DCMs and SEFs. The government must ensure due process under the Constitution, including judicial review, before taking away the rights of the public in what may well be a death knell for trading venues. Anything less is an abuse of power.[7]

Further, the rules are clearly overbroad because the CFTC could revoke registration due to changes ''in the ownership or corporate or organizational structure'' of a DCM or SEF (emphasis added). This could include simple changes in headcount and other staffing reorganizations, making it all too easy for the CFTC to manufacture a reason to revoke registration. I sincerely hope that this is not the Commission's intent. What is even more puzzling is that the CFTC is choosing to propose structural changes as cause to revoke registration, but not grave misconduct such as fraud, abuse, or manipulation. This is nonsensical. I urge commenters to pay close attention to the full import of the revocation of registration proposed rules.

I look forward to reviewing the comments on the DCM and SEF Conflicts of Interest Proposal.

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[3] *See* Dissenting Statement of Commissioner Caroline D. Pham on Misappropriation Theory in Derivatives Markets (Sept. 27, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement092723*.

[4] *Id.*

[5] The language is the same for both SEFs and DCMs, so for brevity I will only include it for SEFs here: Reg. 37.5(c)(6) A change in the ownership or corporate or organizational structure of a SEF that results in the failure of the SEF to comply with any provision of the CEA, or any regulation or order of the Commission thereunder—(i) shall be cause for the suspension of the registration of the SEF or the revocation of registration as a SEF, in accordance with the procedures provided in sections 5e and 6(b) of the CEA, including notice and a hearing on the record; or (ii) may be cause for the Commission to make and enter an order directing that the SEF cease and desist from such violation, in accordance with the procedures provided in sections 6b and 6(b) of the CEA, including notice and a hearing on the record.

[6] The only justification provided is ''[i]t is imperative that SEFs and DCMs, regardless of ownership or control changes, continue to comply with the CEA and all Commission regulations to promote market integrity and protect market participants.''

[7] *See* Statement of Commissioner Caroline D. Pham on Effective Self-Regulation and Notice of Proposed Rulemaking to Amend Part 40 Regulations (July 26, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement072623b*.

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